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JOHN ANTHONY VASQUEZ, on behalf of themselves
and all others similarly situated and aggrieved,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

HECTOR IRAHETA and JOHN
ANTHONY VASQUEZ, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

LEGACY FRAMERS, INC., a California
corporation; CEMCON, INC., a California
corporation; DAVID J. GUTRIDGE, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: MSC21-00762

**SECOND AMENDED CLASS ACTION
AND REPRESENTATIVE COMPLAINT
FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION;
10. PENALTIES PER LABOR CODE § 210
11. PENALTIES PER LABOR CODE § 226.3
12. PENALTIES PER LABOR CODE § 558
13. PENALTIES PER LABOR CODE § 1174.5
14. PENALTIES PER LABOR CODE § 1197.1
15. PENALTIES PER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

**ELECTRONICALLY
FILED**

10/6/2021

K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
S. GONZALEZ, DEPUTY CLERK

1 COME NOW plaintiffs HECTOR IRAHETA and JOHN ANTHONY VASQUEZ
2 ("Plaintiffs"), as individuals and on behalf of all others similarly situated and aggrieved, and allege
3 as follows:

4 **GENERAL ALLEGATIONS**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
7 LEGACY FRAMERS, INC., a California corporation and any of its respective subsidiaries or
8 affiliated companies within the State of California ("LEGACY"); CEMCON, INC., a California
9 corporation and any of its respective subsidiaries or affiliated companies within the State of
10 California ("CEMCON"); and DAVID J. GUTRIDGE, and individual ("MR. GUTRIDGE" and,
11 collectively with LEGACY, CEMCON, and with DOES 1 through 100, as further defined below,
12 "Defendants") on behalf of Plaintiffs and all current and former non-exempt California employees
13 employed by or formerly employed by Defendants ("Class Members").

14 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
15 General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against LEGACY,
16 CEMCON, and individual MR. GUTRIDGE, as a proxy of the Labor and Workforce Development
17 Agency of the State of California ("LWDA"), on behalf of Plaintiffs and all other current and former
18 non-exempt employees of Defendants working within the Civil Penalty Period, as further defined
19 herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5,
20 Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code
21 section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all
22 employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved
23 Employees").

24 **PARTIES**

25 **A. Plaintiffs**

26 3. Plaintiff HECTOR IRAHETA is a resident of the State of California. At all relevant
27 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 employed Plaintiff HECTOR IRAHETA as a non-exempt employee, with duties that included, but

1 were not limited to, building and repairing roofs. Plaintiff is informed and believes, and based
2 thereon alleges, that Plaintiff HECTOR IRAHETA worked for Defendants from approximately May
3 of 2016 through approximately March of 2021.

4 4. Plaintiff JOHN ANTHONY VASQUEZ is a resident of the State of California. At
5 all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that
6 Defendants employed Plaintiff JOHN ANTHONY VASQUEZ as a non-exempt employee, with
7 duties that included, but were not limited to, installing trim and siding on new constructions.
8 Plaintiff is informed and believes, and based thereon alleges, that Plaintiff JOHN ANTHONY
9 VASQUEZ worked for Defendants from approximately July of 2019 through approximately
10 October of 2019.

11 **B. Defendants**

12 5. Plaintiffs are informed and believe, and based thereon allege, that defendant
13 LEGACY is, and at all times relevant hereto was, a corporation organized and existing under and
14 by virtue of the laws of the State of California and doing business in the County of Contra Costa,
15 State of California.

16 6. Plaintiffs are informed and believe, and based thereon allege, that defendant
17 CEMCON is, and at all times relevant hereto was, a corporation organized and existing under and
18 by virtue of the laws of the State of California and doing business in the County of Contra Costa,
19 State of California

20 7. Plaintiffs are informed and believe, and based thereon allege, that defendant MR.
21 GUTRIDGE is, and at all times relevant hereto was, an individual residing in California, as well as
22 owner of LEGACY and CEMCON, and DOES 1 through 100, as further defined below. Plaintiffs
23 are further informed and believe, and based thereon allege, that MR. GUTRIDGE violated, or
24 caused to be violated, the above-referenced and below-referenced Labor Code provisions in
25 violation of Labor Code section 558.1.

26 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
27 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
28 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.

1 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
2 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
3 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
4 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
5 are informed and believe, and based thereon allege, that each defendant acted in all respects pertinent
6 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
7 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
8 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
9 include LEGACY, CEMCON, MR. GUTRIDGE, and any of their parent, subsidiary, or affiliated
10 companies within the State of California, as well as DOES 1 through 100 identified herein.

11 **JOINT LIABILITY ALLEGATIONS**

12 9. Plaintiffs are informed and believe, and based thereon allege, that all the times
13 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
14 representative, joint venture or co-conspirator of each of the other defendants, either actually or
15 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
16 employment, joint venture, and conspiracy.

17 10. All of the acts and conduct described herein of each and every corporate defendant
18 was duly authorized, ordered, and directed by the respective and collective defendant corporate
19 employers, and the officers and management-level employees of said corporate employers. In
20 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
21 their said employees, agents, and representatives, and each of them; and upon completion of the
22 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
23 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
24 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
25 aforementioned corporate employees, agents and representatives.

26 11. Plaintiffs are further informed and believe, and based thereon allege, that MR.
27 GUTRIDGE violated, or caused to be violated, the above-referenced and below-referenced Labor
28 Code provisions in violation of Labor Code section 558.1.

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2 12. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
3 unity of interest and ownership between Defendants, and each of them, that their individuality and
4 separateness have ceased to exist.

5 13. Plaintiffs are informed and believe, and based thereon allege, that despite the
6 formation of the purported corporate existence of LEGACY, CEMCON, and DOES 1 through 50,
7 inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with MR.
8 GUTRIDGE and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but
9 not limited to, the following reasons:

- 10 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
11 Defendants who personally committed the wrongful and illegal acts and violated the
12 laws as set forth in this Complaint, and who has hidden and currently hide behind the
13 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
14 other wrongful or inequitable purpose;
- 15 B. The Individual Defendants derive actual and significant monetary benefits by and
16 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
17 Defendants as the funding source for the Individual Defendants' own personal
18 expenditures;
- 19 C. Plaintiffs are informed and believe, and based thereon allege, that the Individual
20 Defendants and the Alter Ego Defendants, while really one and the same, were
21 segregated to appear as though separate and distinct for purposes of perpetrating a
22 fraud, circumventing a statute, or accomplishing some other wrongful or inequitable
23 purpose;
- 24 D. Plaintiffs are informed and believe, and based thereon allege, that the business affairs
25 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant
26 times mentioned herein were, so mixed and intermingled that the same cannot
27 reasonably be segregated, and the same are inextricable confusion. The Alter Ego
28 Defendants are, and at all relevant times mentioned herein were, used by the

1 Individual Defendants as mere shells and conduits for the conduct of certain of their,
2 and each of their affairs. The Alter Ego Defendants are, and at all relevant times
3 mentioned herein were, the alter egos of the Individual Defendants;

4 E. The recognition of the separate existence of the Individual Defendants and the Alter
5 Ego Defendants would promote injustice insofar that it would permit defendants to
6 insulate themselves from liability to Plaintiffs for violations of the Civil Code, Labor
7 Code, and other statutory violations. The corporate existence of these defendants
8 should thus be disregarded in equity and for the ends of justice because such
9 disregard is necessary to avoid fraud and injustice to Plaintiffs herein;

10 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
11 Defendants (and vice versa), and the fiction of their separate corporate existence
12 must be disregarded;

13 14. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
14 thereon allege, that Defendants, and each of them, are joint employers.

15 JURISDICTION

16 15. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
17 of Civil Procedure section 410.10.

18 16. Venue is proper in Contra Costa County, California pursuant to Code of Civil
19 Procedure sections 392, et seq. because, among other things, Contra Costa County is where the
20 causes of action complained of herein arose; the county in which the employment relationship
21 began; the county in which performance of the employment contract, or part of it, between Plaintiffs,
22 or some of them, and Defendants was due to be performed; the county in which the employment
23 contract, or part of it, between Plaintiffs, or some of them, and Defendants was actually performed;
24 and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged
25 herein have a direct effect on Plaintiffs and Class Members in Contra Costa County, and because
26 Defendants employ numerous Class Members in Contra Costa County.

27 17. Plaintiffs are each an "aggrieved employee" under PAGA, as they were employed
28 by Defendants during the applicable statutory period and suffered one or more of the Labor Code

1 violations set forth herein. Accordingly, Plaintiffs seeks to recover, on behalf of themselves and all
2 other current and former employees of Defendants within the statutory period (“aggrieved
3 employees”), the civil penalties provided by PAGA plus reasonable attorneys’ fees and costs, as the
4 term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175.

5 18. Plaintiffs seek to recover the PAGA civil penalties through a representative action
6 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior*
7 *Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA
8 allegations described herein is not required.

9 19. During the period beginning one (1) year preceding the provision of notice to the
10 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
11 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
12 226.3, 226.7, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
13 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

14 20. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
15 such as Plaintiffs, on behalf of themselves and all other aggrieved current and former employees
16 within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
17 specified in Labor Code section 2699.3.

18 21. On or around April 20, 2021, Plaintiff HECTOR IRAHETA provided written notice
19 in a manner compliant with Labor Code section 2699.3 online and by certified mail, with return
20 receipt requested, of Defendants’ violation of various, including the herein-described provisions of
21 the Labor Code, to the Labor and Workforce Development Agency (“LWDA”), as well as by
22 certified mail with return receipt requested to Defendants, and each of them.

23 22. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
24 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
25 calendar days of the April 20, 2021 postmarked date of the herein-described notice sent by Plaintiff
26 HECTOR IRAHETA to the LWDA and Defendants.

27 **FACTUAL BACKGROUND**

28 23. For at least four (4) years prior to the filing of this action and continuing to the

1 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members,
2 or some of them, in violation of California state wage and hour laws as a result of, without limitation,
3 Plaintiffs and Class Members working over eight (8) hours per day, forty (40) hours per week, and
4 seven consecutive work days in a work week without being properly compensated for hours worked
5 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
6 worked on the seventh consecutive work day in a work week by, among other things, failing to
7 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay;
8 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
9 by requiring employees: to leave work late without being able to clock in for all that time; to suffer
10 under Employer's control due to having to complete post-shift tasks after clocking out, to clock out
11 for meal periods and continue working, to make phone calls or drive off the clock, and conduct
12 temperature/symptom checks off the clock; detrimental rounding of employee time entries, editing
13 and/or manipulation of time entries to show less hours than actually worked, to the detriment of
14 Plaintiffs and Class Members.

15 24. For at least four (4) years prior to the filing of this Action and continuing to the
16 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
17 or some of them, in violation of California state wage and hour laws as a result of, among other
18 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
19 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
20 off the clock, including, without limitation, by requiring employees: to leave work late without being
21 able to clock in for all that time; to suffer under Employer's control due to having to complete post-
22 shift tasks after clocking out, to clock out for meal periods and continue working, and to make phone
23 calls or drive off the clock; and detrimental rounding of employee time entries and editing and/or
24 manipulation of time entries to show less hours than actually worked, to the detriment of Plaintiffs
25 and Class Members.

26 25. For at least four (4) years prior to the filing of this Action and continuing to the
27 present, Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them,
28 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than

1 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
2 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
3 for such unprovided meal periods as required by California wage and hour laws.

4 26. For at least four (4) years prior to the filing of this action and continuing to the
5 present, Defendants have, at times, failed to authorize and permit Plaintiffs and Class Members, or
6 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
7 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
8 California wage and hour laws.

9 27. For at least three (3) years prior to the filing of this action and continuing to the
10 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
11 full amount of their wages owed to them upon termination and/or resignation as required by Labor
12 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
13 minimum wages, and premium wages.

14 28. For at least one (1) year prior to the filing of this Action and continuing to the present,
15 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with
16 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
17 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate, and other such information as required by Labor Code section
19 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
20 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

21 29. For at least one (1) year prior to the filing of this action and continuing to the present,
22 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full
23 amount of their wages for labor performed in a timely fashion as required under Labor Code section
24 204.

25 30. For at least three (3) years prior to the filing of this action and continuing to the
26 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
27 costs incurred in mileage and/or gas costs incurred in driving personal vehicles for work-related
28 purposes; using cellular phones for work-related purposes; and purchasing tools necessary to

1 perform work duties.

2 31. Plaintiffs, on their own behalf and on behalf of Class Members, bring this action
3 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
4 510, 512, 558.1, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of Regulations, Title 8,
5 section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
6 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
7 failure to indemnify work-related expenses, and other such provisions of California law, and
8 reasonable attorneys' fees and costs.

9 32. Plaintiffs, on their own behalf and on behalf of Class Members, pursuant to Business
10 and Professions Code sections 17200 through 17208, also seek (an) injunction(s) prohibiting
11 Defendants from further violating the Labor Code and requiring the establishment of appropriate
12 and effective means to prevent further violations, as well as all monies owed but withheld and
13 retained by Defendants to which Plaintiffs and Class Members are entitled, as well as restitution of
14 amounts owed.

15 33. At all relevant times mentioned herein, Defendants have had a policy or practice of,
16 failing to provide Plaintiffs and other Aggrieved Employees with, or permit them inspection of,
17 records pertaining to their employment, including wage statements and similar payroll documents
18 under Labor Code section 226, documents signed to obtain or hold employment under Labor Code
19 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
20 Code section 1174, making it difficult for Plaintiffs and other Aggrieved Employees to calculate
21 their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other Aggrieved
22 Employees.

23 34. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to timely pay Plaintiffs and other Aggrieved Employees, among other wages, all wages
25 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
26 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
27 Code sections 201, 202, and 203.

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2 35. At all relevant times mentioned herein, Defendants have had a policy or practice of
3 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
4 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
5 Employees with the rates of pay and overtime rates of pay applicable to their employment;
6 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
7 name of the employer, including any “doing business as” names used, the name, address, and
8 telephone number of the workers’ compensation insurance carrier; information regarding paid sick
9 leave; and other pertinent information required to be disclosed by Defendants under Labor Code
10 section 2810.5.

11 36. At all relevant times mentioned herein, Defendants have had a policy or practice of,
12 failing to provide Plaintiffs and other Aggrieved Employees with the amount of paid sick leave
13 required to be provided pursuant to California law (including, without limitation Labor Code section
14 246, *et seq.*), and also did not permit its use upon request as contemplated under California laws, to
15 the detriment of Plaintiffs and all other Aggrieved Employees.

16 37. At all relevant times mentioned herein, Defendants have had a policy or practice of
17 failing to pay employees their wages in accordance with Labor Code Section 204, which requires
18 that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be
19 paid for between the 16th and 26th day of the month during which the labor was performed, and
20 labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid
21 for between the 1st and 10th day of the following month.”

22 38. Plaintiff, in Plaintiff’s representative capacity, seeks civil penalties under Labor
23 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
24 the California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
25 Employees pursuant to PAGA.

26 **CLASS ACTION ALLEGATIONS**

27 39. Plaintiffs bring this action on behalf of Plaintiffs and Class Members as a class action
28 pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all current

1 and former non-exempt employees of Defendants within the State of California at any time
2 commencing four (4) years preceding the filing of Plaintiffs' complaint up until the time that notice
3 of the class action is provided to the class (collectively referred to as "Class Members").

4 40. Plaintiffs reserve the right under California Rule of Court rule 3.765, subdivision (b)
5 to amend or modify the class description with greater specificity, further divide the defined class
6 into subclasses, and to further specify or limit the issues for which certification is sought.

7 41. This action has been brought and may properly be maintained as a class action under
8 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
9 of interest in the litigation and the proposed Class is easily ascertainable.

10 **A. Numerosity**

11 42. The potential Class Members as defined are so numerous that joinder of all the
12 members of the Class is impracticable. While the precise number of Class Members has not been
13 determined yet, Plaintiffs are informed and believe that there are over seventy-five (75) Class
14 Members employed by Defendants within the State of California.

15 43. Accounting for employee turnover during the relevant periods necessarily increases
16 this number. Plaintiffs allege Defendants' employment records would provide information as to the
17 number and location of all Class Members. Joinder of all members of the proposed Class is not
18 practicable.

19 **B. Commonality**

20 44. There are questions of law and fact common to Class Members. These common
21 questions include, but are not limited to:

- 22 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
23 worked at a proper overtime rate of pay?
- 24 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
25 for all other time worked at the employee's regular rate of pay and a rate of pay that
26 is greater than the applicable minimum wage?
- 27 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
28 Class Members to take compliant meal periods?

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2 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
3 with additional wages for missed or interrupted meal periods?

4 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
5 Class Members to take compliant rest periods?

6 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
7 with additional wages for missed rest periods?

8 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
9 Members upon termination or resignation all wages earned?

10 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
11 section 203?

12 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
13 Class Members with accurate wage statements?

14 J. Did Defendants fail to pay Class Members in a timely fashion as required under
15 Labor Code section 204?

16 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
17 losses incurred in direct consequence of the discharge of their duties or by obedience
18 to the directions of Defendants as required under Labor Code section 2802?

19 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
20 section 17200, *et seq.*, by their unlawful practices as alleged herein?

21 M. Are Class Members entitled to restitution of wages under Business and Professions
22 Code section 17203?

23 N. Are Class Members entitled to costs and attorneys' fees?

24 O. Are Class Members entitled to interest?

25 **C. Typicality**

26 45. The claims of Plaintiffs herein alleged are typical of those claims which could be
27 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
28 by each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and

1 damages arising out of and caused by Defendants' common course of conduct in violation of laws
2 and regulations that have the force and effect of law and statutes as alleged herein.

3 **D. Adequacy of Representation**

4 46. Plaintiffs will fairly and adequately represent and protect the interest of Class
5 Members. Counsel who represents Plaintiffs are competent and experienced in litigating wage and
6 hour class actions.

7 **E. Superiority of Class Action**

8 47. A class action is superior to other available means for the fair and efficient
9 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
10 questions of law and fact common to Class Members predominate over any questions affecting only
11 individual Class Members. Class Members, as further described therein, have been damaged and
12 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
13 violation of the Labor Code at times, as set out herein.

14 48. Class action treatment will allow Class Members to litigate their claims in a manner
15 that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware
16 of any difficulties that are likely to be encountered in the management of this action that would
17 preclude its maintenance as a class action.

18 **FIRST CAUSE OF ACTION**

19 **(Failure to Pay Overtime Wages – Against All Defendants)**

20 49. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
21 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

22 50. At all relevant times, Plaintiffs and Class Members were employees or former
23 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
24 Wage Orders.

25 51. At all times relevant to this Complaint, Labor Code section 510 was in effect and
26 provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
27 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
28 at the rate of no less than one and one-half times the regular rate of pay for an employee."

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2 52. At all times relevant to this Complaint, Labor Code section 510 further provided that
3 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
4 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
5 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
6 pay.”

7 53. Four (4) years prior to the filing of the Complaint in this Action through the present,
8 Plaintiffs and Class Members, at times, worked for Defendants during shifts that consisted of more
9 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
10 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
11 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
12 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
13 work off the clock, including, without limitation, by requiring employees: to leave work late without
14 being able to clock in for all that time; to suffer under Employer’s control due to having to complete
15 post-shift tasks after clocking out, to clock out for meal periods and continue working, to make
16 phone calls or drive off the clock, and conduct temperature/symptom checks off the clock;
17 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
18 less hours than actually worked, to the detriment of Plaintiffs and Class Members.

19 54. Accordingly, by requiring Plaintiffs and Class Members to, at times, work greater
20 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
21 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
22 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
23 applicable IWC Wage Orders, and California law.

24 55. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have
25 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
26 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194
27 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

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SECOND CAUSE OF ACTION

3

(Failure to Pay Minimum Wages – Against All Defendants)

4

56. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

6

57. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

8

58. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiffs and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

11

59. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to leave work late without being able to clock in for all that time; to suffer under Employer's control due to having to complete post-shift tasks after clocking out, to clock out for meal periods and continue working, and to make phone calls or drive off the clock; and detrimental rounding of employee time entries and editing and/or manipulation of time entries to show less hours than actually worked to the detriment of Plaintiffs and Class Members.

20

60. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked or otherwise due.

23

61. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

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2 **THIRD CAUSE OF ACTION**

3 **(Failure to Provide Meal Periods – Against All Defendants)**

4 62. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
5 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

6 63. At all relevant times, Plaintiffs and Class Members were employees or former
7 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

8 64. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
9 employ an employee for a work period of more than five (5) hours without a timely meal break of
10 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
11 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
12 per day without providing the employee with a second timely meal period of not less than thirty (30)
13 minutes in which the employee is relieved of all of his or her duties.

14 65. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
15 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
16 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
17 of compensation for each workday that the meal period is not provided.

18 66. For four (4) years prior to the filing of the Complaint in this Action through the
19 present, Plaintiffs and Class Members were, at times, not provided complete, timely 30-minute,
20 duty-free uninterrupted meal periods every five hours of work without waiving the right to take
21 them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay
22 at the Class Member's regular rate of compensation on the occasions that Class Members were not
23 provided compliant meal periods.

24 67. By their failure to provide Plaintiffs and Class Members compliant meal periods as
25 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
26 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
27 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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2 68. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
3 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
4 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

5 69. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
6 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
7 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
8 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

9 **FOURTH CAUSE OF ACTION**

10 **(Failure to Provide Rest Periods – Against All Defendants)**

11 70. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
12 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

13 71. At all relevant times, Plaintiffs and Class Members were employees or former
14 employees of Defendants covered by applicable Wage Orders.

15 72. California law and applicable Wage Orders require that employers "authorize and
16 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
17 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
18 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
19 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
20 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
21 thirty (30) minutes of paid rest period.

22 73. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
23 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
24 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
25 regular rate of compensation for each work day that the rest period is not provided.

26 74. For four (4) years prior to the filing of the Complaint in this Action through the
27 present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete,
28 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction

1 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
2 Member's regular rate of compensation on the occasions that Class Members were not authorized
3 or permitted to take compliant rest periods.

4 75. By their failure, at times, to authorize and permit Plaintiffs and Class Members to
5 take rest periods contemplated by California law, and one (1) additional hour of pay at the
6 employee's regular rate of compensation for such unprovided rest periods, as alleged above,
7 Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage
8 Orders.

9 76. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
10 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
11 owed for rest periods that they were not authorized or permitted to take.

12 77. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
13 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
14 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
15 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

16 **FIFTH CAUSE OF ACTION**

17 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

18 78. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
19 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

20 79. At all relevant times, Plaintiffs and Class Members were employees or former
21 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
22 Wage Orders.

23 80. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were
24 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
25 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
26 discharge immediately upon termination. Class Members who resigned were entitled to payment
27 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
28 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and

1 unpaid at the time of resignation.

2 81. Plaintiffs are informed and believe, and based thereon allege, that in the three (3)
3 years before the filing of the Complaint in this Action through the present, Defendants, due to the
4 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiffs and Class
5 Members all wages earned prior to resignation or termination in accordance with Labor Code
6 sections 201 or 202.

7 82. Plaintiffs are informed and believe Defendants' failure, at times, to pay Plaintiffs and
8 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
9 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiffs
10 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
11 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
12 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
13 or resignation.

14 83. Pursuant to Labor Code section 203, Plaintiffs and Class Members are entitled to
15 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
16 resignation, until paid, up to a maximum of thirty (30) days.

17 84. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
18 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
19 prior to termination or resignation.

20 85. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
21 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
22 waiting time penalties, interest, and their costs of suit, as well.

23 **SIXTH CAUSE OF ACTION**

24 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

25 86. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
26 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

27 87. At all relevant times, Plaintiffs and Class Members were employees or former
28 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

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2 88. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members
3 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
4 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
5 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
7 employer, among other things.

8 89. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
9 before the filing of the Complaint in this Action through the present, Defendants failed to comply
10 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
11 failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that
12 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
13 all applicable hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
15 other things.

16 90. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate
17 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
18 Plaintiffs and the other Class Members with accurate wage statements, but, at times, willfully
19 provided wage statements that Defendants knew were not accurate.

20 91. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
21 suffered injury. The absence of accurate information on Class Members' wage statements at times
22 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
23 mathematical computations to determine the amount of wages owed; causes difficulty and expense
24 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
25 about wages and amounts deducted from wages to state and federal governmental agencies, among
26 other things.

27 92. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs and Class Members
28 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor

1 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
2 pay period, not to exceed an aggregate \$4,000.00 per employee.

3 93. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
4 Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to
5 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
6 attorneys' fees, and costs of suit.

7 **SEVENTH CAUSE OF ACTION**

8 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

9 94. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
10 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

11 95. At all relevant times, Plaintiffs and Class Members were employees or former
12 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

13 96. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
14 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
15 during which the labor was performed, and labor performed between the 16th and the last day,
16 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
17 month.”

18 97. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
19 independent and apart from, any other penalty provided in this article, every person who fails to pay
20 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
21 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
22 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
23 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
24 percent of the amount unlawfully withheld.”

25 98. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
26 before the filing of the Complaint in this Action through the present, Defendants employed policies
27 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
28 Labor Code section 204.

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2 99. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to
3 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one
4 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
5 for each subsequent violation in connection with each payment that was made in violation of Labor
6 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

7 100. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
8 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
9 penalties, interest, and their costs of suit, as well.

10 **EIGHTH CAUSE OF ACTION**

11 **(Violation of Labor Code § 2802 – Against All Defendants)**

12 101. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
13 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

14 102. At all relevant times, Plaintiffs and Class Members were employees or former
15 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

16 103. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
17 his or her employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties . . .”

19 104. For three (3) years prior to the filing of the Complaint in this Action through the
20 present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times,
21 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
22 obedience to the directions of Defendants that included, without limitation: mileage and/or gas costs
23 incurred in driving personal vehicles for work-related purposes; using cellular phones for work-
24 related purposes; and purchasing tools necessary to perform work duties.

25 105. During that time period, Plaintiffs are informed and believe, and based thereon
26 allege, that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiffs
27 and Class Members for those losses and/or expenditures.

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2 106. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
3 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
4 herein-described losses and/or expenditures.

5 107. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
6 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
7 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
8 costs of suit.

9 **NINTH CAUSE OF ACTION**

10 **(Unfair Competition – Against All Defendants)**

11 108. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
12 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

13 109. Plaintiffs are informed and believe, and based thereon allege, that the unlawful
14 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
15 and Professions Code section 17200. Due to their unlawful business practices in violation of the
16 Labor Code, Defendants have gained a competitive advantage over other comparable companies
17 doing business in the State of California that comply with their obligations to compensate employees
18 in accordance with the Labor Code.

19 110. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class
20 Members have suffered injury in fact and lost money or property.

21 111. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class
22 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
23 Code and requiring the establishment of appropriate and effective means to prevent further
24 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
25 including interest thereon, in which they had a property interest and which Defendants nevertheless
26 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
27 to Plaintiffs and Class Members is necessary to prevent Defendants from becoming unjustly
28 enriched by their failure to comply with the Labor Code.

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2 112. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
3 Procedure section 1032 and interest under Civil Code section 3287.

4 **TENTH CAUSE OF ACTION**

5 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

6 113. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
7 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

8 114. At all relevant times herein, Labor Code section 204, requires and required that:
9 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
10 between the 16th and 26th day of the month during which the labor was performed, and labor
11 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
12 between the 1st and 10th day of the following month.”

13 115. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
14 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
15 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
16 204, 204(b), 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
17 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(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 percent of the amount unlawfully withheld.”

20 116. At all relevant times herein, Defendants have had a consistent policy or practice of
21 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
22 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other
23 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
24 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
25 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
26 for each subsequent violation in connection with each payment that was made in violation of Labor
27 Code section 204.”

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2 **ELEVENTH CAUSE OF ACTION**

3 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

4 117. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
5 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

6 118. Defendants had and have a policy or practice of failing to comply with Labor Code
7 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
8 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
9 wages earned; the name and address of each employer with whom they have been placed to work;
10 all applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate; the legal name of the employer; and other such information as required
12 by Labor Code section 226, subdivision (a).

13 119. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
14 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
15 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
16 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
17 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

18 120. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
19 this section are in addition to any other penalty provided by law.”

20 121. Plaintiffs is informed and believes, and based thereon alleges, that Defendants had
21 and have a policy or practice of failing to furnish non-exempt employees, including, without
22 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
23 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
24 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
25 name of the employer; and other such information as required by Labor Code section 226,
26 subdivision (a).

27 122. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are
28 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision

1 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
2 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
3 period for each subsequent violation.

4 **TWELFTH CAUSE OF ACTION**

5 **(Violation of Labor Code § 558 – Against All Defendants)**

6 123. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
7 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

8 124. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
9 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
10 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
11 penalty as follows:

- 12 1. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
13 pay period for which the employee was underpaid in addition to an amount sufficient
14 to recover underpaid wages;
- 15 2. For each subsequent violation, one hundred dollars (\$100) for each underpaid
16 employee for each pay period for which the employee was underpaid in addition to
17 an amount sufficient to recover underpaid wages;
- 18 3. Wages recovered pursuant to this section shall be paid to the affected employee.”

19 125. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
20 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
21 causing Plaintiffs and other Aggrieved Employees not to: be paid overtime wages and minimum
22 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
23 their employment and after their employment separation; receive accurate, itemized wage
24 statements; be provided with the opportunity to inspect employment records; be provided with
25 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
26 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
27 of pay.

28 126. As a direct and proximate result of the herein-described Labor Code violations,

1 pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to
2 recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty
3 dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred
4 dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

5 **THIRTEENTH CAUSE OF ACTION**

6 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

7 127. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
8 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

9 128. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
10 every person employing labor in California to “[a]llow any member of the commission or the
11 employees of the Division of Labor Standards Enforcement free access to the place of business or
12 employment of the person to secure any information or make any investigation that they are
13 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
14 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
15 or papers of the person.”

16 129. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
17 every person employing labor in California to “[k]eep a record showing the names and addresses of
18 all employees employed and the ages of all minors.”

19 130. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
20 every person employing labor in California to “[k]eep, at a central location in the state or at the
21 plants or establishments at which employees are employed, payroll records showing the hours
22 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
23 piece rate paid to, employees employed at the respective plants or establishments. These records
24 shall be kept in accordance with rules established for this purpose by the commission, but in any
25 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
26 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
27 earned.”

28 131. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully

1 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
2 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
3 member of the commission or employees of the division to inspect records pursuant to subdivision
4 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

5 132. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
6 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
7 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
8 inspection of records as required by Labor Code subdivision (b).”

9 133. As a direct and proximate result of the herein-described Labor Code violations,
10 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees are entitled to
11 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
12 hundred dollars (\$500) per violation per Aggrieved Employee.

13 **FOURTEENTH CAUSE OF ACTION**

14 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

15 134. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
16 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

17 135. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
18 person acting either individually or as an officer, agent, or employee of another person, who pays
19 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
20 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
21 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
22 Section 203 as follows:

- 23 1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
24 for each underpaid employee for each pay period for which the employee is
25 underpaid. This amount shall be in addition to an amount sufficient to recover
26 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable
27 penalties imposed pursuant to Section 203.
28 2) For each subsequent violation for the same specific offense, two hundred fifty dollars

1 (\$250) for each underpaid employee for each pay period for which the employee is
2 underpaid regardless of whether the initial violation is intentionally committed. This
3 amount shall be in addition to an amount sufficient to recover underpaid wages,
4 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
5 pursuant to Section 203.

6 3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
7 Section 203, recovered pursuant to this section shall be paid to the affected
8 employee.”

9 136. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
10 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
11 without limitation, at times, failing to pay Plaintiffs or other Aggrieved Employees’ wages for all
12 hours worked or otherwise under Defendants’ control due to, without limitation, to accurately track
13 and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage;
14 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
15 by requiring employees: to leave work late without being able to clock in for all that time; to suffer
16 under Employer’s control due to having to complete post-shift tasks after clocking out, to clock out
17 for meal periods and continue working, and to make phone calls or drive off the clock; and
18 detrimental rounding of employee time entries and editing and/or manipulation of time entries to
19 show less hours than actually worked.

20 137. As a direct and proximate result of the herein-described Labor Code violations,
21 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to
22 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
23 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
24 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
25 subsequent violation.

26 **FIFTEENTH CAUSE OF ACTION**

27 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

28 138. Plaintiffs reallege and incorporate by reference all of the allegations contained in the

1 preceding paragraphs of this Second Amended Complaint as though fully set forth hereat.

2 139. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
3 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
4 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
5 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
6 action brought by an aggrieved employee on behalf of himself or herself and other current or former
7 employees pursuant to the procedures specified in Labor Code section 2699.3.

8 140. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
9 Code except those for which a civil penalty is specifically provided, the established civil penalty for
10 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
11 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
12 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
13 employee per pay period for each subsequent violation.

14 141. Plaintiffs are informed and believe and based thereon allege that Defendants, and
15 each of them, violated the Labor Code sections described herein, including, without limitation, for
16 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
17 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
18 employment and after employment separation; provide employees the opportunity to inspect
19 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
20 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
21 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
22 separation at the proper rate of pay; entitling Plaintiffs and other Aggrieved Employees to civil
23 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
24 2699, subdivision (f).

25 142. Moreover, Plaintiffs and other Aggrieved Employees within the State of California
26 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
27 connection with their herein-described claims for civil penalties.

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1 **DEMAND FOR JURY TRIAL**

2 143. Plaintiffs demand a trial by jury on all causes of action contained herein.

3 **PRAYER**

4 WHEREFORE, on behalf of Plaintiffs, Class Members and Aggrieved Employees,
5 Plaintiffs pray for judgment against Defendants as follows:

- 6 A. An order certifying this case as a Class Action;
- 7 B. An Order appointing Plaintiffs as Class representatives and appointing Plaintiffs'
- 8 counsel as class counsel;
- 9 C. Damages for all wages earned and owed, including minimum wages and overtime
- 10 wages, under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- 11 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 12 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 13 among other Labor Code sections, 512, 558.1 and 226.7;
- 14 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 15 subdivision (e) and 558.1;
- 16 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 17 H. Penalties to timely pay wages under Labor Code section 210;
- 18 I. Damages under Labor Code sections 2802 and 558.1;
- 19 J. Preliminary and permanent injunctions prohibiting Defendants from further
- 20 violating the California Labor Code and requiring the establishment of appropriate
- 21 and effective means to prevent future violations;
- 22 K. Restitution of wages and benefits due which were acquired by means of any unfair
- 23 business practice, according to proof;
- 24 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 25 M. For attorneys' fees in prosecuting this action;
- 26 N. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 27 1174.5, 1197.1, and 2699;
- 28 O. An award of civil penalties under Labor Code section 98.6

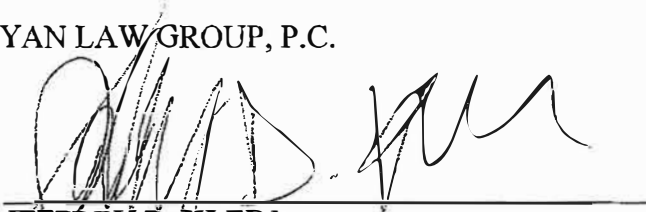
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- P. For costs of suit incurred herein; and
- Q. For such other and further relief as the Court deems just and proper.

Dated: October 6, 2021

BIBIYAN LAW GROUP, P.C.

BY:



JEFFREY D. KLEIN

Attorneys for Plaintiffs HECTOR IRAHETA and
JOHN ANTHONY VASQUEZ on behalf of
themselves and all others similarly situated and
aggrieved

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On October 6, 2021, I caused a true and correct copy of the following document(s) described as: **PLAINTIFF'S SECOND AMENDED CLASS ACTION AND REPRESENTATIVE COMPLAINT** to be served by electronic transmission via File & ServeXpress to the parties and/or counsel who are registered to use File & ServeXpress and set forth in the below service list:

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Counsel for Legacy Framers, Inc. and Cemcon, Inc., and David J. Guttridge

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on October 6, 2021 at Beverly Hills, California.



Rosemary Martir