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Judge Glenda Sanders

CX-101

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

HECTOR ROJAS and BRYAN ROJAS, on
behalf of themselves, the State of California as
private attorneys general, and all others
similarly situated;

Plaintiffs,

v.

ROOFING STANDARDS, INC., a California
corporation; and DOES 1 through 50, inclusive;

Defendants.

CASE NO:

30-2021-01212242-CU-OE-CXC

**CLASS ACTION AND REPRESENTATIVE
PAGA COMPLAINT FOR:**

1. FAILURE TO PAY MINIMUM WAGES;
2. FAILURE TO PAY OVERTIME WAGES;
3. FAILURE TO PROVIDE COMPLIANT MEAL PERIODS;
4. FAILURE TO PROVIDE COMPLIANT REST BREAKS;
5. FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
6. FAILURE TO PAY DUE WAGES AT SEPARATION OF EMPLOYMENT;
7. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
8. UNFAIR COMPETITION; and
9. PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiffs Hector Rojas and Bryan Rojas (collectively, “Plaintiffs”), on behalf of themselves,
2 the State of California, and all others similarly situated (“Class Members” or “Aggrieved
3 Employees”, each as defined below), complain and allege as follows:

4 **FACTUAL ALLEGATIONS**

5 1. Plaintiffs bring this class action against their former employer, Roofing Standards,
6 Inc., a California corporation, and Does 1 through 50, (collectively, “Defendants”) on behalf of
7 themselves, and all other similarly situated current and former non-exempt employees who worked
8 for Defendants in California stemming from Defendants’ failure to pay minimum and overtime
9 wages for all hours worked, failure to provide compliant meal periods and rest breaks, failure to
10 reimburse employees for necessary business expenses, failure to timely pay all wages due upon
11 separation from employment, failure to provide accurate and itemized wage statements, and unfair
12 competition.

13 2. Plaintiffs also bring a Representative Action under the California Private Attorneys
14 General Act of 2004 (“PAGA”), California Labor Code § 2698, *et seq.*, on behalf of all individuals
15 who are or were employed by Defendants who are or were classified as non-exempt hourly workers
16 within the State of California from May 18, 2020, and continuing into the present (such period, the
17 “PAGA Period”).

18 3. Plaintiffs allege on information and belief that other similarly situated non-exempt
19 employees were subjected to the same policies, procedures, and practices, working conditions, and
20 corresponding wage and hour violations to which Plaintiffs were subjected during their
21 employment.

22 4. Defendants, based in Placentia, California, own and operate a commercial roofing
23 company providing various roofing services for commercial, homeowners association, industrial,
24 residential and new construction project clientele in California. Defendants employ approximately
25 one hundred (100) employees.

26 5. Plaintiffs, the Class Members and the Aggrieved Employees were or are employed
27 as employees with varying duties, including but not limited to, performing roofing, guttering,

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1 waterproofing, metal fabricating and other similar services. Plaintiffs and other non-exempt
2 employees regularly worked more than 8 hours in a workday and 40 hours in a workweek.

3 6. From at least four (4) years prior to the filing of this action and continuing to the
4 present, Defendants failed to compensate Plaintiffs, the Class Members and the Aggrieved
5 Employees, all non-exempt employees, at least the effective minimum wage for all hours worked.
6 Defendants, as a result of its policies and procedures, failed to require its non-exempt employees to
7 clock in or out before, during and after their scheduled work shifts. Defendants compensated these
8 employees according to the employees' standard shift schedules, disregarding the employees' actual
9 time worked. Plaintiffs, the Class Members and the Aggrieved Employees regularly commenced
10 work prior to and/or worked beyond their scheduled shift time. Without any mechanism to keep
11 track of employees' time worked, Defendants failed to account for and compensate its employees
12 when for this off-the-clock work.

13 7. Further, Defendants regularly failed to compensate its employees with at least the
14 effective minimum wage on those days it failed to provide such employees with uninterrupted meal
15 periods of at least 30 minutes in length. Defendants' foremen, on a daily *ad-hoc* basis, would
16 unilaterally determine the time and length of its workers' meal periods for the day. On a consistent
17 and regular basis these meal periods were less than 30 minutes in length. However, Defendants
18 would calculate such meal periods as exactly 30 minutes long. As a result, these employees were
19 not compensated at least the effective minimum wage for the additional time they actually worked
20 when their meal periods were less than 30 minutes.

21 8. From at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendants failed to compensate Plaintiffs, the Class Members and the Aggrieved
23 Employees at the proper overtime rates for all overtime hours worked. As described above,
24 Defendants failed to compensate its employees in accordance with time actually worked but, rather,
25 compensated according to their standard work schedules. Defendants scheduled its employees with
26 standard 8.5-hour shifts, automatically deducting exactly 30 minutes for meal periods and
27 disregarding shifts for which its employees either commenced earlier or ended later than scheduled,
28 or often times both. As a result, these employees worked more than 8 hours in each such day, and

1 over 40 hours in each such workweek, without being compensated at the proper overtime rates for
2 such time.

3 9. Further, when Plaintiffs, the Class Members and the Aggrieved Employees protested
4 Defendants' failure to compensate them for overtime hour worked, Defendants provided the illegal
5 response that overtime was only paid for time worked on weekends so said employees allegedly did
6 not qualify for overtime pay. Considering this additional time was incurred after the 8th hour of
7 work on a particular day, this time should have been calculated and compensated as overtime.

8 10. From at least four (4) years prior to the filing of this action and continuing to the
9 present, Defendants failed to provide Plaintiffs, the Class Members and the Aggrieved Employees,
10 with their legally required and/or legally compliant meal periods, or premium payments in lieu
11 thereof. As described above, Defendants' foremen at the respective jobsite would determine the
12 time and length of the employees' meal periods. Such meal periods were consistently less than 30
13 minutes in length and/or after commencement of the employees' fifth (5th) hour of work for that
14 particular shift. On those occasions when employees were not provided with all legally complaint
15 meal periods to which they were entitled, Defendants failed to compensate the employees with the
16 required meal period premium for each workday in which they experienced a meal period violation,
17 as mandated by California Labor Code ("Labor Code") § 226.7.

18 11. From at least four (4) years prior to the filing of this action and continuing to the
19 present, Defendants failed to provide Plaintiffs, the Class Members and the Aggrieved Employees,
20 with their legally required and/or legally compliant rest breaks, or premium payments in lieu
21 thereof. These employees were not provided with any rest breaks during their work shifts. On
22 occasions when Plaintiffs, the Class Members and the Aggrieved Employees worked in excess of
23 ten (10) hours in a shift, Defendants systematically failed to authorize and/or permit a third
24 mandated rest period. As a result, Plaintiff and other non-exempt employees were unable to take
25 compliant rest periods. In addition, Defendants also failed to maintain any mechanism for the
26 payment of rest period premium payments as required by Labor Code § 226.7.

27 12. From at least three (3) years prior to the filing of this action and continuing to the
28 present, Defendants failed to reimburse Plaintiffs, the Class Members and the Aggrieved

1 Employees, for necessary business expenditures or losses incurred on behalf, for the benefit and/or
2 at the direction of Defendants.

3 13. Specifically, employees were required to pay directly for their own tools, safety gear
4 and other devices required to perform their job duties, but Defendants failed to reimburse for the
5 same. Additionally, employees were required to drive to various project worksite locations (*i.e.*,
6 Defendants' clientele sites) but were not reimbursed for expenses and losses incurred therewith,
7 including mileage, fuel and maintenance. Further, employees were often times required by
8 Defendants to use their cellular phones for work purposes, such as instructions to take pictures of
9 the worksite and roofs and send the same their supervisors, were but not reimbursed for cell phone
10 data charges relating to the same.

11 14. As a result of Defendants' failure to pay Plaintiffs, the Class Members and the
12 Aggrieved Employees for all hours worked, including minimum and overtime wages, and premium
13 payments in lieu of compliant meal and rest breaks, Defendants issued wage statements which
14 failed to accurately identify the gross wages earned, the total hours worked, the net wages earned,
15 and the correct corresponding number of hours worked at each hourly rate by the employee, in
16 violation of Labor Code § 226(a)(1, 2, 5, and 9).

17 15. As a further result of Defendants' Labor Code violations as alleged herein,
18 Defendants also failed to pay Plaintiffs, the Class Members and the Aggrieved Employees all wages
19 that were due and owing (including all minimum and overtime wages and premium payments
20 owed) within the required time following the end of their employment in accordance with Labor
21 Code §§ 201-203. As a result, Plaintiffs, the Waiting Time Putative Class (as defined below) and
22 the Aggrieved Employees are entitled to 30 days of wages as a "waiting time penalty."

23 16. Plaintiffs allege that Defendants' violations of the wage and hour components of the
24 California Labor Code and applicable IWC Wage Orders enabled Defendants to decrease expenses
25 and to increase its level of productivity and profits, thereby allowing Defendants to gain an unfair
26 advantage over its competitors.

27 17. Plaintiffs therefore seek declaratory, injunctive, equitable, and monetary relief
28 against Defendants and each of them, on behalf of themselves and other similarly situated non-

1 exempt employees to recover, among other things, unpaid wages and benefits, interest, attorneys’
2 fees, penalties, costs and expenses pursuant to California Labor Code §§ 201, 202, 203, 204, 210,
3 218.6, 226, 226.3, 226.7, 256, 510, 512, 1182.12, 1194, 1194.2, 1197. 1197.1, 1198, 1199, 1199.5,
4 and 2802, among possibly other sections inadvertently omitted.

5 18. Plaintiffs also reserve the right to amend to assert additional Labor Codes as well as
6 name additional representatives should the need arise.

7 19. Defendants’ violations of California’s wage and hour laws and unfair competition
8 laws, as described more fully below, have been ongoing throughout the Class Period and
9 throughout the PAGA Period, and are ongoing to this day.

10 20. Plaintiffs on behalf of themselves, the State of California, and all Aggrieved
11 Employees, pursuant to Labor Code §2699, also seek penalties for each and every pay period
12 during the PAGA Period where Defendants violated the provisions of the California Labor Code §§
13 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 1182.12, 1194, 1194.2, 1197.
14 1197.1, 1198, 1199, 1199.5, and 2802 as well IWC Wage Orders.

15 **JURISDICTION AND VENUE**

16 21. This Court has jurisdiction over the claims for relief of Plaintiffs, the Class Members
17 and the Aggrieved Employees pursuant to the Labor Code and the applicable IWC Wage Orders,
18 among other sections.

19 22. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
20 Procedure § 395(a). Defendants are headquartered and transact business in Orange County and the
21 unlawful acts alleged herein have a direct effect on Plaintiffs, the Class Members and the Aggrieved
22 Employees—all non-exempt employees of Defendants’—including those in Orange County.
23 Furthermore, Defendants employed or employ other non-exempt employees in Orange County.

24 **PARTIES**

25 **Plaintiffs**

26 23. Plaintiffs, the Class and Aggrieved Employees’ Representatives Hector Rojas and
27 Bryan Rojas were employed by Defendants as “roofers” responsible for various roles essential to
28 Defendants’ operations.

1 24. Plaintiffs represent the State of California as well as the following group of
2 aggrieved employees: all individuals who are or were employed by Defendants in California from
3 May 18, 2020, and continuing through the present (“Aggrieved Employees”).

4 **Defendants**

5 25. Plaintiffs are informed and believe and thereon allege that defendant Roofing
6 Standards, Inc., is a California corporation authorized to and doing business in, among others,
7 Orange County, California, and is and/or was the legal employer of Plaintiffs, the Class Members
8 and the Aggrieved Employees during the applicable statutory periods.

9 26. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
10 participation in the conduct herein alleged, of Defendants sued herein as Does 1 through 50,
11 inclusive, but on information and belief allege that those Defendants are legally responsible for the
12 payment of penalties and damages to Plaintiffs, the Class Members and the Aggrieved Employees
13 by virtue of Defendants’ unlawful actions and practices and therefore sues these Defendants by
14 such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of
15 the Doe Defendants when ascertained.

16 27. Plaintiffs also allege that they, the Class Members and the Aggrieved Employees
17 worked under the joint direction and control of Defendants and that Defendants, and each of them,
18 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
19 scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are
20 legally attributable to the other Defendants. On information and belief, a unity of interest and
21 ownership between each Defendant exists such that all Defendants acted as a single employer of
22 Plaintiffs, the Class Members and the Aggrieved Employees.

23 28. Furthermore, on information and belief, Defendants are an integrated enterprise and
24 should be treated as a single employer because Defendants share an interrelation of operations, with
25 common human resources and personnel policies and shared common offices and facilities. Upon
26 information and belief, Defendants share common management, a centralized control of labor
27 operations, and common ownership or financial control.

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1 29. Plaintiffs are informed and believe and thereon allege that the Defendants sued
2 herein as Does 1-50 are now and at all material times herein mentioned were the owner/owners of
3 certain Defendants and the actual employer of Plaintiffs, the Class Members and the Aggrieved
4 Employees or, in the alternative, were individuals employed by Defendants as a managerial and/or
5 supervisory employee and/or agent. In addition, Plaintiffs allege that at all relevant times herein the
6 Defendants sued herein as Does 1-50 had the authority, in the interest of certain Defendants, to
7 exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other
8 similar actions against Plaintiffs, the Class Members and the Aggrieved Employees, and were in
9 their respective chains of command at the time of and direct participants in the wrongful conduct
10 which constitutes the basis of Plaintiffs' complaint herein.

11 30. Plaintiffs also allege that the Defendants sued herein as Does 1-50 and certain
12 Defendants are the agents, servants, employees, partners, affiliates, and/or representatives of each
13 other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such
14 relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in
15 conducting themselves in the manner described herein, the Defendants sued herein as Does 1-50
16 and certain Defendants were acting in active concert with on another such that the acts of each were
17 fully attributable to the other in all material respects. Plaintiffs also allege that certain Defendants
18 were merely the alter ego of the Defendants sued herein as Does 1-50 in that there existed a unity of
19 interest and ownership such that any separateness between them ceased to exist and the Defendants
20 sued herein as Does 1-50 exercised undue dominance, control, influence, and management over
21 certain Defendants. Plaintiffs further allege that, at all relevant times, certain Defendants have been
22 inadequately capitalized to conduct business, have failed to follow appropriate corporate
23 formalities, and have simply been a shell and instrumentality through which Defendants sued herein
24 as Does 1-50 have conducted their personal affairs. Accordingly, the corporate veil should be
25 pierced, and any liability attached to certain Defendants should be imposed jointly and severally
26 against the Defendants sued herein as Does 1-50. Adherence to the fiction of the separate existence
27 of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud
28 and promoting injustice.

31. Plaintiffs fully and completely exhausted their administrative remedies under PAGA prior to proceeding with this action. On or around May 18, 2021, Plaintiff Hector Rojas filed his PAGA Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* On or around May 27, 2021, Plaintiff Hector Rojas filed a supplemental PAGA Notice setting forth additional facts and theories and adding Bryan Rojas as co-representative of the Aggrieved Employees. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA Notice. Plaintiffs are therefore entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Code of Civil Procedure § 382.

33. The relevant time period for this class action is defined as the time period beginning four (4) years prior to the filing of this action until judgment is entered (the “Relevant Time Period”).

34. The Classes that Plaintiffs seek to represent are defined as follows:

Non-Exempt Employee Class

All current and former hourly non-exempt employees employed in California by Defendants at any time during the Relevant Time Period. (“Non-Exempt Employee Class”)

Waiting Time Penalty Class

All hourly non-exempt employees who separated from their employment in California with Defendants during the period commencing three (3) years before the filing of this action and ending when final judgment is entered.

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1 **Wage Statement Class**

2 All current and former hourly non-exempt employees who are or were
3 employed in California by Defendants who received at least one wage
4 statement during the period commencing one (1) year before the filing of this
5 action and ending when final judgment is entered. (“Wage Statement Class”;
6 Non-Exempt Employee Class, Waiting Time Penalty Class, and Wage
7 Statement Class, collectively, the “Classes”)

8 27. Plaintiffs reserve the right to amend or modify the class descriptions with greater
9 specificity or further division into subclasses or limitation to particular issues as appropriate.

10 28. Plaintiffs, as Class Representatives, are members of the Classes that they seek to
11 represent.

12 29. This action has been brought and may properly be maintained as a class action under
13 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
14 litigation and the proposed class is easily ascertainable from Defendants’ personnel and payroll
15 records.

16 30. **Numerosity:** The potential members of the Classes as defined are so numerous that
17 a joinder of all similarly situated non-exempt would be unfeasible and not practicable. The
18 membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the
19 Classes is comprised of greater than one hundred (100) individuals. The identity of such
20 membership is readily ascertainable via inspection of Defendants’ employment and payroll records.

21 31. **Commonality:** There are questions of law and fact common to the Classes which
22 predominate over any questions affecting only individual members of the Classes, including
23 without limitation:

24 i. Whether Defendants violated the California Labor Code and applicable IWC
25 Wage Orders by failing to pay wages to Plaintiffs and the Classes for all hours worked, including
26 minimum and overtime wages;

27 ii. Whether Defendants violated the California Labor Code and applicable IWC
28 Wage Order by failing to provide compliant meal periods to Plaintiffs and the Non-Exempt
29 Employee Class, and whether Defendants failed to compensate Plaintiffs and the Non-Exempt

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1 Employee Class with one additional hour of premium pay for each instance when a compliant meal
2 period was not provided;

3 iii. Whether Defendants violated the California Labor Code and applicable IWC
4 Wage Order by failing to provide compliant rest breaks to Plaintiffs and the Non-Exempt Employee
5 Class, and whether Defendants failed to compensate Plaintiffs and the Non-Exempt Employee
6 Class with one additional hour of premium pay for each instance when a compliant rest break was
7 not provided;

8 iv. Whether Defendants violated Labor Code § 2802 by not reimbursing
9 Plaintiffs and the Non-Exempt Employee Class for necessary business expenses incurred;

10 v. Whether Defendants violated the California Labor Code by failing to pay all
11 wages due upon separation of employment between Defendants and Plaintiffs and the Waiting
12 Time Penalty Class, whether such separation was voluntary or involuntary;

13 vi. Whether Defendants violated the California Labor Code by failing to provide
14 Plaintiffs and the Classes with complete, accurate, itemized wage statements;

15 vii. Whether Defendants violated California Business & Professions Code §
16 17200 *et seq.* due to the: failure to pay minimum and overtime wages, and failure to timely pay
17 final wages;

18 viii. Whether Defendants violated § 17200 *et seq.* of the California Business and
19 Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 204, 210, 218.6,
20 226, 226.3, 226.7, 256, 510, 512, 1182.12, 1194, 1194.2, 1197. 1197.1, 1198, 1199, 1199.5, and
21 2802, among possibly other sections inadvertently omitted, and the applicable IWC Wage Orders,
22 which violations constitute false, fraudulent, unlawful, and unfair business practices;

23 ix. Whether Plaintiffs and the Classes are entitled to restitution of penalty wages
24 under Business and Professions Code §§ 17200, *et seq.*; and

25 x. Whether Plaintiffs and the Classes are entitled to equitable relief pursuant to
26 California Business & Professions Code § 17200 *et seq.*

27 32. **Typicality:** Plaintiffs' claims, as the Class Representatives, are typical of the claims
28 of the Classes. Plaintiffs, like other members of the Classes, were subjected to Defendants'

1 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay minimum
2 and overtime wages, failure to provide compliant meal periods and rest breaks or premium
3 payments in lieu thereof, failure to reimburse employees for necessary business expenses, failure to
4 timely pay final wages, and failure to provide accurate itemized wage statements.

5 33. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
6 steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Class
7 Counsel is ready, willing and able to fully and adequately represent the members of the Classes.
8 Plaintiffs' attorneys have prosecuted numerous wage-and-hour class actions in state and federal
9 court in the past and are committed to vigorously prosecuting this action on behalf of the members
10 of the Classes.

11 34. **Superiority of Class Action:** Class certification is appropriate because a class
12 action is superior to other available means for the fair and efficient adjudication of this controversy.
13 Individual joinder of all similarly situated non-exempt employees is not practicable, and questions
14 of law and fact common to the Classes predominate over any questions affecting only individual
15 members of the Classes. Each class member has been damaged and is entitled to recovery by
16 reason of Defendants' illegal policies and practices set forth above. Class action treatment will
17 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
18 economical for the parties and the judicial system.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

21 (Labor Code §§ 1194, 1194.2, 1197; IWC Wage Order § 4)

22 (*Plaintiffs and All Classes Against All Defendants*)

23 35. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

24 36. As a result of Defendants' policies or practices described herein above, Plaintiffs and
25 members of the Classes were required to perform off-the-clock work that Defendants either knew or
26 should have known they were performing.

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1 37. Consequently, Defendants violated California Labor Code laws and minimum wage
2 laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, applicable IWC Wage Orders, § 4, and
3 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

4 38. Plaintiffs are informed and believe and thereon allege that Defendants intentionally,
5 willfully, and improperly failed to pay wages to Plaintiffs and members of the Classes for each hour
6 worked in violation of Labor Code §§ 221-223, 1194 and 1197.

7 39. Defendants' conduct was willful, as Defendants knew that Plaintiffs and members of
8 the Classes were entitled to be paid wages throughout the statutory period for each hour worked,
9 including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

10 40. At all material times, Defendants were and/or are the employers of Plaintiffs and
11 members of the Classes, or were persons acting on behalf of said employer(s), within the meaning
12 of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a
13 provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days
14 of work respectively.

15 41. At all relevant times, Defendants failed to pay all wages to which Plaintiffs and
16 members of the Classes were entitled, thereby receiving an economic benefit.

17 42. As a result of Defendants' wrongful conduct, Plaintiffs and members of the Classes
18 have been damaged in amounts to be proven at trial.

19 43. Plaintiffs, on behalf of themselves and members of the Classes, seek recovery of all
20 unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit,
21 pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY ALL OVERTIME WAGES**

24 (Labor Code §§ 1194, 1194.2, 1197; IWC Wage Order § 3)

25 *(Plaintiffs and All Classes Against All Defendants)*

26 44. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

27 45. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and
28 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime

1 hours worked and provide a private right of action for the failure to pay all overtime compensation
2 for overtime work performed.

3 46. As a result of Defendants' uniform policies or practices described herein above,
4 Plaintiffs and members of the Classes were required to perform off-the-clock work that Defendants
5 either knew or should have known they were performing. Defendants failed to mandate or keep
6 track of employees' clocking in/out records and, rather, calculated its employees' pay in accordance
7 with their standard work schedules, regardless of the time actually worked. Defendants attributed
8 standard 8.5-hour workdays to each employee, automatically deducted exactly 30 minutes for meal
9 periods, netting exactly 8 hours worked per day. For those routine shifts where Plaintiffs and the
10 Class Members actually started their shift prior to their scheduled start time, received less than a 30-
11 minute meal period, and/or worked beyond their scheduled shift end time, these employees received
12 no compensation for such time worked as this off-the-clock work was disregarded by Defendants.
13 Correctly calculating in such unpaid time into the employees' time worked for each shift and
14 workweek results in overtime hours worked by Plaintiffs and the Class Members for which they
15 were not compensated at the proper overtime rates by Defendants.

16 47. At all times relevant herein, Defendants were required to properly pay Plaintiffs and
17 members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194
18 and applicable Wage Orders. Section 3 of the Wage Order requires an employer to pay an
19 employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8
20 hours per workday and/or in excess of forty (40) hours of work in the workweek. Section 3 further
21 requires an employer to pay an employee double the employee's regular rate of pay for work in
22 excess of twelve (12) hours each workday and/or for work in excess of eight (8) hours on the
23 seventh consecutive day of work in the workweek. As alleged herein, Defendants caused Plaintiffs
24 and the Class Members to work overtime hours but did not compensate Plaintiffs or the Class
25 Members at one and one-half times their regular rate of pay for such hours worked.

26 48. Defendants failed to conform their pay practices to the requirements of the law. This
27 unlawful conduct includes but is not limited to Defendants' uniform policies and procedures of
28 failing to keep track of employees' time actually worked, automatically deducting 30 minutes for

1 meal periods when such periods were regularly less than 30 minutes, and failing to compensate for
2 time actually worked prior to and after the employees' standard work schedule times, all which
3 resulted in these individuals not being paid for all hours actually worked. The foregoing policies
4 and practices are unlawful and create entitlement to recovery by Plaintiffs and the members of the
5 Classes in a civil action for the unpaid amount of overtime premiums owing, including interest
6 thereon, statutory penalties, attorneys' fees, and costs of suit according to California Labor Code
7 §§ 204, 510, 558, 1194, and 1198, applicable IWC Wage Orders, and Code of Civil Procedure
8 § 1021.5.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

11 (Labor Code §§ 226.7 and 512; IWC Wage Order § 1)

12 (*Plaintiffs and All Classes Against All Defendants*)

13 49. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

14 50. Labor Code Labor Code § 512(a), in part, provides that employers, including
15 Defendants, may not employ an employee for a work period of more than five (5) hours per day
16 without providing the employee the opportunity to take an uninterrupted meal period of not less
17 than thirty (30) minutes, except that if the total work period per day of the employee is no more
18 than six (6) hours, the meal period may be waived by mutual consent of both the employer and the
19 employee. Employers may not employ an employee for a work period more than ten (10) hours per
20 day without providing the employee with a second meal period of not less than thirty (30) minutes.
21 Furthermore, Labor Code 512(b) requires employers to provide uninterrupted meal periods to
22 employees prior to the commencement of the employees' sixth (6th) hour of work.

23 51. Pursuant to Labor Code § 226(b) and the applicable IWC Wage Order, Defendants
24 shall pay an employee one (1) additional hour of pay at the employee's regular rate of
25 compensation for each meal period that is missed.

26 52. At all relevant times herein, Plaintiffs and the Class Members were denied the timely
27 30-minute off-duty meal periods to which they were entitled. Specifically, Defendants failed to

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1 relieve Plaintiffs and the Class Members of all of their duties for full, uninterrupted 30-minute meal
2 periods and/or prior to the commencement of the sixth hour of their work.

3 53. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order
4 every pay period with respect to Plaintiffs and the Class Members because Plaintiffs and the Class
5 Members were not provided with all mandatory meal periods and Defendants failed to pay
6 Plaintiffs and the Class Members one (1) additional hour of compensation in lieu of each such
7 missed period.

8 54. On information and belief, Plaintiffs and the Class Members did not voluntarily or
9 willfully waive the mandated meal periods. Any express or implied waivers obtained from
10 Plaintiffs and the Class Members were not willfully obtained, were not voluntarily agreed to, were a
11 condition of employment, or were a part of a contract of unlawful adhesion. Defendants did not
12 permit or authorize Plaintiffs and the Class Members to take meal periods in accordance with
13 California law.

14 55. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
15 and the applicable IWC Wage Order, Defendants, and each DOE, are liable to Plaintiffs and the
16 Class Members for unpaid wage premiums, penalties, costs and interest.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**

19 (Labor Code § 226.7 and 512; IWC Wage Order § 1)

20 (*Plaintiffs and All Classes Against All Defendants*)

21 56. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

22 57. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks
23 to their non-exempt employees as mandated by Order of the IWC.

24 58. Section 12 of applicable IWC Wage Order states, in part, that every employer shall
25 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
26 middle of each work period. Employees shall receive a 10-minute rest period every four hours or
27 major fraction thereof that they are required to work. Authorized rest period time shall be counted,
28 as hours worked, for which there shall be no deduction from wages.

1 59. Furthermore, in an eight-hour (8) shift, rest breaks should fall on either side of the
2 meal break, absent factors rendering such scheduling impossible.

3 60. Pursuant to Labor Code § 226.7(b) and the above-referenced sections of the
4 applicable Wage Order, Defendants shall pay Plaintiffs and the Class Members one additional
5 hour of pay at their regular rates of compensation for each day that a compliant rest period was
6 not provided.

7 61. At all relevant times, Plaintiffs and the Class Members were not provided with
8 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
9 mandated by California law. Rather, Defendants failed to provide any rest periods to Plaintiffs and
10 the Class Members. Accordingly, Plaintiffs and the Class Members were regularly denied their rest
11 breaks in violation of Labor Code § 226.7 and 512, as well as the applicable IWC Wage Order. As
12 a result, Plaintiffs and the Class Members were not provided with net rest periods of at least 10
13 minutes for each 4-hour work period, or major fraction thereof.

14 62. Defendants violated Labor Code §§ 226.7 and the applicable IWC Wage Order
15 every pay period with respect to Plaintiffs and the Class members because said employees were not
16 provided with all mandatory rest periods and Defendants failed to pay these employees one
17 additional hour of compensation at their regular rate of pay in lieu of each such missed rest period.

18 63. By their failure to provide Plaintiffs and the Class Members with rest breaks as
19 required by California law, and failing to pay one hour of additional wages in lieu of each rest break
20 not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and the above reference
21 IWC Wage Order. Accordingly, Defendants are liable for one hour of additional wages at the
22 employees' regular rate of compensation for each workday a rest break was not lawfully provided
23 in an amount to be proven at time of trial.

24 64. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512
25 and the applicable IWC Wage Order, Defendants are liable to Plaintiffs and the Class Members for
26 unpaid wage premiums, penalties, costs and interest.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 (Labor Code § 2802)

4 (*Plaintiffs and All Classes Against All Defendants*)

5 65. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

6 66. Pursuant to Labor Code § 2800 and 2802, an employer must reimburse its employees
7 for all necessary expenditures incurred by the employee in direct consequence of the discharge of
8 his or her job duties or in direct consequence of his or her obedience to the directions of the
9 employer.

10 67. Plaintiffs and the Class Members incurred necessary business-related expenses and
11 costs that were not fully reimbursed by Defendants. Defendants failed to reimburse Plaintiffs and
12 the Class Members for all necessary business-related expenses and costs including, but not limited
13 to, failing to reimburse these employees for their incurred expenses and/or losses relating to the
14 purchase of tools, safety gear and other devices necessary to the performance of their roofing duties,
15 for those relating to gas, mileage and vehicular maintenance, and mandated cell phone data charges.

16 68. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
17 Class Members for all necessary business-related expenses and costs. Plaintiffs and the Class
18 Members are entitled to recover from Defendants their business- related expenses and costs
19 incurred during the course and scope of their employment, plus interest accrued from the date on
20 which the employee incurred the necessary expenditures at the same rate as judgments in civil
21 actions in the State of California as well as penalties, reasonable attorneys' fees and costs of suit.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO TIMELY PAY FINAL WAGES**

24 (Labor Code §§ 201–203)

25 (*Plaintiffs and the Waiting Time Penalty Class Against All Defendants*)

26 69. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

27 70. Labor Code § 201 requires that the employer immediately pay any wages, without
28 abatement or reduction, to any employee who is discharged. Likewise, Labor Code § 202 requires

1 that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72
2 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at
3 least a 72-hour notice was provided.

4 71. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore is
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 72. At all relevant times here, Defendants did not provide Plaintiffs and the Waiting
8 Time Penalty Class Members with all wages due and owing upon separation of employment,
9 including, but not limited to, minimum and overtime wages, and premium pay in lieu of missed
10 meal periods and rest breaks, within the time specified by Labor Code §§ 201 – 203.

11 73. Plaintiffs allege that, at all times material to this action, Defendants had a pattern and
12 practice of failing to timely pay to Plaintiffs and the Waiting Time Penalty Class all wages due and
13 owing upon separation of employment as required by Labor Code §§ 201 and 202. Consequently,
14 pursuant to Labor Code § 203, Defendants owe Plaintiffs and the Waiting Time Penalty Class the
15 above-described waiting time penalty, all in an amount to be shown according to proof at trial and
16 within the jurisdiction of this Court.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

19 (Labor Code § 226)

20 *(Plaintiffs and The Wage Statement Class Against All Defendants)*

21 74. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

22 75. Labor Code § 226(a) requires that employers furnish its employees with written
23 itemized wage statements that show the gross wages earned, total hours worked, all deductions, net
24 wages earned, and all applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate by the employee.

26 76. Defendants violated Labor Code § 226(a) every pay period with respect to Plaintiffs
27 and the Wage Statement Class because Defendants failed to provide a wage statement to Plaintiffs
28 and the Wage Statement Class that complied with the requirements of Labor Code § 226(a) by

1 failing to accurately state gross wages earned, failure to accurately state total hours worked, failure
2 to accurately state all deductions, failure to accurately state net wages earned, and failure to state all
3 applicable hourly rates in effect during the pay period and the corresponding number of hours at
4 each hourly rate by the employee.

5 77. Defendants' failure to provide the required writing deprived Plaintiffs and the Wage
6 Statement Class of the ability to know, understand, and question the calculation and rate of pay and
7 hours used to calculate the wages paid by Defendants. Therefore, Plaintiffs and the Wage Statement
8 Class had no way to dispute the resulting miscalculation of wages, all of which resulted in an
9 unjustified economic enrichment to said Defendants. As a direct result, Plaintiffs and the Wage
10 Statement Class have suffered and continue to suffer, substantial losses related to the use and
11 enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to
12 compel Defendants to fully perform its obligation under state law, all to their respective damages in
13 amounts according to proof at trial.

14 78. As a result of Defendants' knowing and intentional failure to comply with Labor
15 Code § 226(a), Plaintiffs and the Wage Statement Class have suffered an injury in that each was
16 prevented from knowing, understanding and disputing the wage payments paid to them.
17 Furthermore, Plaintiffs and the Wage Statement Class have each and all suffered an injury in that
18 the failure to show all wages earned on the itemized wage statements resulted these employees
19 being denied all necessary deductions, payments, and withholdings owed by the employer,
20 including, but not limited to, the failure to make all necessary contributions for unemployment
21 benefits, social security benefits, proper payment of taxes and withholdings, and other mandated
22 state and federal benefits.

23 79. Plaintiffs have also been injured as a result of having to bring this action to attempt
24 to obtain correct wage information following Defendants' refusal to comply with many of the
25 mandates of California's Labor Code and related laws and regulations.

26 80. Labor Code § 226(e) requires said Defendants to pay the greater of all actual
27 damages or fifty dollars (\$50) per employee for the initial pay period in which a violation occurred,
28 and one hundred dollars (\$100) per employee for each violation in subsequent pay periods, plus

1 attorneys' fees and costs, to Plaintiffs and the Wage Statement Class who were injured by
2 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable
3 penalty is all in an amount to be shown according to proof at trial.

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR AND UNLAWFUL COMPETITION**

6 (Business and Professions Code § 17200 *et seq.*)

7 (*Plaintiffs and All Classes Against All Defendants*)

8 81. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

9 82. Defendants have engaged and continue to engage in unfair and/or unlawful business
10 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
11 failing to pay for all hours worked, including all minimum and overtime wages, by failing to
12 provide all legally required meal and rest periods or make premium payments in lieu thereof, by
13 failing to reimburse for all necessary business expenditures, by failing to provide accurate wage
14 statements to Plaintiffs and members of the Classes.

15 83. Defendants' utilization of these unfair and/or unlawful business practices deprived
16 and continued to deprive Plaintiffs and members of the Classes of compensation to which they are
17 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
18 over Defendants' competitors who have been and/or are currently employing workers and
19 attempting to do so in honest compliance with applicable wage and hour laws.

20 84. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged
21 herein, Plaintiffs for themselves and on behalf of the members of the Classes, seeks full restitution
22 of monies, as necessary and according to proof, to restore any and all monies withheld, acquired
23 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

24 85. The acts complained of herein occurred within the last four years immediately
25 preceding the filing of the Complaint in this action.

26 86. Plaintiffs were compelled to retain the services of counsel to file this court action to
27 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
28 Defendants' current hourly non-exempt employees and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
2 which he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **NINTH CAUSE OF ACTION**

4 **FOR PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.* FOR VIOLATIONS**
5 **OF LABOR CODE §§ 201, 202, 203, 226, 226.7, 512, 2802**

6 *(Plaintiffs and All Aggrieved Employees Against All Defendants)*

7 87. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

8 88. Based on the above allegations incorporated by reference, Defendants violated Labor
9 Code §§ 201, 202, 203, 204, 210, 218.6, 226, 226.3, 256, 510, 512, 1182.12, 1194, 1194.2, 1197.
10 1197.1, 1198, 1199, and 1199.5, as well as the applicable IWC Wage Order.

11 89. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs and
12 all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial
13 subject to the following formula:

- 14 • \$100 for the initial violation per employee per pay period; and
- 15 • \$200 for each subsequent violation per employee per pay period.

16 These penalties will be allocated 75% to the LWDA and 25% to the affected employees.

17 90. In addition, as set forth above, Defendants failed to provide Plaintiffs and the
18 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code §
19 226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section
20 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
21 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
22 each violation in a subsequent citation, for which the employer fails to provide the employee a
23 wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

24 91. Further, Plaintiffs, as aggrieved employees, need not demonstrate or prove that
25 Defendants' conduct in refusing to provide accurate and itemized wage statements was knowing,
26 intentional, or willful.

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92. As a result of the acts alleged above, Plaintiffs and the Aggrieved Employees seek penalties under Labor Code § 2699, *et seq.* because of Defendants' violations of Labor Code §§ 226 and 226.3.

93. Pursuant to Labor Code § 2699.3(a), on or about May 18, 2021, and May 27, 2021, by way of supplemental PAGA filing, Plaintiffs gave written notice by certified mail to Defendants, and to the LWDA of their claims, including the facts and theories supporting all claims outlined in this Class and PAGA Action Complaint. Accordingly, Plaintiffs have fulfilled all administrative prerequisites to the pursuit of her PAGA claim on behalf of themselves and all Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, the Class Members and the Aggrieved Employees, as applicable, pray for judgment and relief against Defendants, jointly and severally, as follows:

1. That the First through Eighth Causes of Action be certified as a class action;
2. That Plaintiffs be appointed as Class Representatives;
3. That counsels for Plaintiffs be appointed as Class Counsel;
4. For all applicable statutory penalties recoverable under the law;
5. For reasonable attorneys' fees, costs of suit, and interest under the First through Ninth Causes of Action to the extent permitted by law;
6. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
7. For a declaratory judgment that Defendants have violated various Labor Code sections outlined herein;
8. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
9. Upon the Ninth Cause of Action, for civil penalties due to Plaintiffs, according to proof, in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the Labor Code for Plaintiffs and for each of the Aggrieved

1 Employees during all of the pay periods in the PAGA Period; and all penalties available pursuant to
2 Labor Code § 226.3 of the and the Private Attorneys General Act of 2004;

3 10. For pre- and post-judgment interest; and

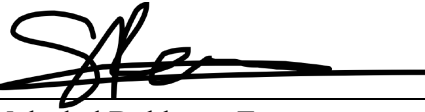
4 11. For such other relief as the Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

6 **WHEREFORE**, Plaintiffs, on behalf of themselves, the Class Members and the Aggrieved
7 Employees, hereby demand a jury trial as to the First through Ninth Causes of Action pled herein.

8 Dated: July 23, 2021

BOKHOUR LAW GROUP, P.C.
VENTURE LAW, P.C.

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10
11 By: 
12 Mehrdad Bokhour, Esq.
13 Sam Rezvani, Esq.
14 Attorneys for Plaintiffs, the Putative Classes and the
15 Aggrieved Employees
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