

1 Michael Nourmand, Esq. (SBN 198439)
James A. De Sario, Esq. (SBN 262552)
2 **THE NOURMAND LAW FIRM, APC**
8822 West Olympic Boulevard
3 Beverly Hills, California 90211
Telephone (310) 553-3600
4 Facsimile (310) 553-3603

5 Attorneys for Plaintiffs,
LAFAYETTE GRIFFIN, on behalf
6 of himself and all others similarly situated

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE
10

11 LAFAYETTE GRIFFIN, on behalf of himself)
and all others similarly situated)

12 Plaintiffs,)
13)

14 v.)

15 CALPORTLAND COMPANY, a California)
16 corporation; and DOES 1 through 100,)
Inclusive)

17 Defendants.)
18)
19)
20)
21)
22)
23)
24)
25)
26)

CASE NO.: 21STCV18568

SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PAY PREVAILING WAGES;
4. FAILURE TO PROVIDE REST PERIODS;
5. FAILURE TO PAY ALL WAGES UPON TERMINATION;
6. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;
7. UNFAIR COMPETITION;
8. CIVIL PENALTIES LABOR CODE §2699;
9. FAILURE TO PAY PREMIUM WAGES AT REGULAR RATE OF PAY; and
10. FAILURE TO PAY SICK LEAVE WAGES

DEMAND FOR JURY TRIAL

27 ///

28 ///

COMES NOW plaintiff LAFAYETTE GRIFFIN (hereinafter "Mr. Griffin" and/or "Plaintiff") on behalf of himself and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on behalf of Plaintiff and all other current and former similarly situated employees employed by or formerly employed by CALPORTLAND COMPANY, and any subsidiaries or affiliated companies (hereinafter referred to as "Defendants"), within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a pattern and practice of failing on multiple occasions to pay wages, including but not limited to prevailing wages for public work projects, overtime wages based on off-the-clock work and not properly calculating the regular rate of pay, premium wages at the correct regular rate of pay for alleged meal period violations, to Plaintiff and other non-exempt employees in the State of California.

3. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a pattern and practice of failing on multiple occasions to provide Plaintiff and similarly situated employees or former employees within the State of California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to provide compensation for such unprovided rest periods at the regular rate of pay as required by California wage and hour laws.

4. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a pattern and practice of failing on multiple occasions to pay sick leave wages and restitution of the unpaid amount of sick pay leave wages to Plaintiff and similarly situated employees or former employees within the State of California as required by California wage and hour laws.

5. Plaintiff, on behalf of himself and all other similarly situated employees, brings this action pursuant to, including but not limited to, California Labor Code §§ 200, 201, 202, 203, 233 246(1), 246.5, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1771, 2699 et seq., and California Code

1 of Regulations, Title 8, §11070, seeking to recover unpaid wages, including overtime wages,
2 prevailing wages, premium wages at the regular rate of pay, sick leave pay at the regular rate of
3 pay, penalties, and reasonable attorney's fees and costs.

4 6. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant
5 to California Business & Professions Code §§17200-17208 also seeks all monies owed but
6 withheld and retained by Defendants to which Plaintiff and members of the Class are entitled.

7 **PARTIES**

8 **A. Plaintiff**

9 7. Venue as to each defendant is proper in this judicial district, pursuant to California
10 Code of Civil Procedure §395. Defendants operate and do business in California, and each
11 defendant is within the jurisdiction of this court for service of process purposes. The unlawful acts
12 alleged herein have a direct effect on Plaintiff and those similarly situated within the State of
13 California. Defendants employ numerous Class Members in the State of California.

14 8. Plaintiff, LAFAYETTE GRIFFIN, is a resident of the State of California.
15 At all relevant times herein, he has been employed by Defendants as a non-exempt employee in
16 California.

17 **B. Defendants**

18 9. Defendant, CALPORTLAND COMPANY, a California corporation, produced and
19 distributes high quality building materials, within the State of California. Defendant employed
20 Plaintiff and similarly situated persons within the State of California.

21 10. The true names and capacities, whether individual, corporate, associate, or
22 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
23 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
24 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants
25 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
26 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
27 capacities of the defendants designated hereinafter as DOES when such identities become known.

28 11. Plaintiff is informed and believes, and based thereon alleges, that each defendant

1 acted in all respect pertinent to this action as the agent of the other defendant, carried out a joint
2 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
3 legally attributable to the other defendants.

4 **FACTUAL BACKGROUND**

5 12. Plaintiff and other similarly situated employees have not been paid wages on
6 multiple occasions, including but not limited to prevailing wages for public work projects,
7 overtime wages based on off-the-clock work and not properly calculating the regular rate of pay,
8 premium wages at the correct regular rate of pay for alleged meal period violations. For instance,
9 Plaintiff and other similarly situated employees were assigned to prevailing wage jobs and were
10 not paid the required and agreed upon prevailing wage rates; Plaintiff and similarly situated
11 employees were required to call-in for their schedules and were not compensated for this off-the-
12 clock time; Plaintiff and similarly situated employees also worked overtime hours during the same
13 pay period when earning other forms of compensation, including but not limited to
14 incentive/bonus payments, shift differentials, etc., that were not factored into calculated the proper
15 regular rate for the purposes of overtime wages; and Plaintiff and similarly situated employees
16 would be paid meal premiums for alleged meal period violations that would be paid at the
17 incorrect regular rate of pay since employees earned other forms of remuneration.

18 13. Plaintiff and other similarly situated employees have not been paid sick leave wages
19 and restitution of the unpaid amount of sick pay leave wages at the proper regular rate of pay.

20 14. Defendants have had a pattern and practice of on multiple occasions failing to
21 provide Plaintiff and similarly situated employees or former employees within the State of
22 California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
23 thereof and on multiple occasions failing to provide compensation at the regular rate of pay for
24 such unprovided rest periods as required by California wage and hour laws.

25 15. Plaintiff and other similarly situated employees or former employees at all times
26 pertinent hereto were not exempt from the overtime and rest break provisions of California law,
27 and the implementing rules and regulations of the IWC California Wage Orders.

28 ///

16. Defendants have failed to comply with Labor Code §226(a) by not providing itemized wage statements accurately showing, including but not limited to, total hours worked during the pay period, the correct applicable rate of pay for earned overtime wages and pay due at the regular rate of pay for failure to pay premium wages.

17. Defendants have failed to comply with Labor Code §203, in that at the time Plaintiff's employment and the employment of other former employees of Defendants ended, Defendants willfully failed to pay overtime wages, prevailing and minimum wages, and one hour of wages in lieu of each non-compliant rest period as described herein.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action on behalf of himself, and all others similarly situated, as a class action pursuant to California Code of Civil Procedure §382. Plaintiff seeks to represent seven Classes composed of and defined as follows:

Non-Exempt Employee Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Non-Exempt Employee Class").

Prevailing Wage Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who were assigned to prevailing wage jobs (collectively referred to as "Prevailing Wage Class").

Rest Period Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who worked shifts of 4 hours or more (collectively referred to as "Rest Period Class").

Late Pay Class

All former employees of Defendants within the State of California at any time commencing three (3) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who did not receive all their wages upon termination and or resignation of their employment (collectively referred to as "Late Pay Class").

1 **Wage Statement Class**

2 All current and former employees of Defendants within the State
3 of California, to whom, at any time commencing one (1) year
4 preceding the filing of Plaintiff's complaint up until the time that
5 notice of the class action is provided to the class, were provided with
6 wage statements (collectively referred to as "Wage Statement Class").

7 **Sick Leave Employee Class**

8 All current and former employees of Defendants within the State of California at
9 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
10 until the time that notice of the class action is provided to the class that was paid
11 sick leave and paid some form of non-discretionary bonus in the same pay period
12 (collectively referred to as "Sick Leave Employee Class").

13 **Meal Period Premium Class**

14 All current and former employees of Defendants within the State of California at
15 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
16 until the time that notice of the class action is provided to the class that was paid a
17 premium wage for an alleged meal period violation and paid some form of non-
18 discretionary bonus in the same pay period (collectively referred to as "Meal Period
19 Premium Employee Class").

20 19. Plaintiff reserves the right under California Rules of Court Rule 3.765(b), to amend
21 or modify the class description with greater specificity or further division into subclasses or
22 limitation to particular issues.

23 20. This action has been brought and may properly be maintained as a class action
24 under the provisions of California Code of Civil Procedure §382 because there is a well-defined
25 community of interest in the litigation and the proposed Class is easily ascertainable.

26 A. **Numerosity**

27 21. The potential members of the Class as defined are so numerous that joinder of all
28 the members of the Class is impracticable. While the precise number of Class Members has not
29 been determined at this time, Plaintiff is informed and believes that there are at least 100 Class
30 Members employed by Defendants within the State of California.

31 22. Accounting for employee turnover during the relevant periods necessarily increases
32 this number. Plaintiff alleges Defendants' employment records would provide information as to
33 the number and location of all Class Members. Joinder of all members of the proposed Class is not
34 practicable.

1 **B. Commonality**

2 23. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 (1) Did Defendants violate Labor Code §1194 by not compensating Class
5 Members overtime wages?
- 6 (2) Did Defendants violate Labor Code §§ 1194 and 1197 by not paying Class
7 Members minimum wages for all hours worked?
- 8 (3) Did Defendants violate Labor Code §§1198 and 1771 by not paying Class
9 Members prevailing wages?
- 10 (4) Did Defendants violate Labor Code §226.7 by not providing Class Members
11 additional wages at the proper rate of pay for non-compliant meal and rest
12 periods?
- 13 (5) Did Defendants violate Labor Code §§ 201 and 202 by failing to pay Class
14 Members upon termination or resignation all wages earned?
- 15 (6) Are Defendants liable to Class Members for penalty wages under Labor
16 Code § 203?
- 17 (7) Did Defendants violate Labor Code § 226(a) by not furnishing Class
18 Members with accurate wage statements?
- 19 (8) Did Defendants violate the Unfair Competition Law, Business and
20 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
21 herein?
- 22 (9) Are Class Members entitled to restitution of penalty wages under Business
23 and Professions Code § 17203?
- 24 (10) Are Class Members entitled to attorney's fees?
- 25 (11) Are Class Members entitled to interest?

26 **C. Typicality**

27 24. The claims of Plaintiff herein alleged are typical of those claims which could be
28 alleged by any member of the classes, and the relief sought is typical of the relief which would be

1 sought by each of the members of the classes in separate actions. Plaintiff and all members of the
2 Classes sustained injuries and damages arising out of and caused by Defendants' common course of
3 conduct in violation of laws and regulations that have the force and effect of law and statutes as
4 alleged herein.

5 **D. Adequacy of Representation**

6 25. Plaintiff will fairly and adequately represent and protect the interests of the
7 members of the Classes. Counsel who represents Plaintiff is competent and experienced in
8 litigating wage and hour class actions.

9 **E. Superiority of Class Action**

10 26. A class action is superior to other available means for the fair and efficient
11 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
12 questions of law and fact common to the Class predominate over any questions affecting only
13 individual members of the Class. Each member of the Class has been damaged and is entitled to
14 recovery by reason of Defendants' illegal pattern and practice of failing to pay overtime wages,
15 failing to pay minimum and prevailing wages, failing to provide meal and rest breaks or
16 compensation at the proper regular rate of pay in lieu thereof, failing to provide accurate itemized
17 wage statements, and failing to pay all wages due upon termination and/or resignation, failing to
18 pay sick pay leave wages at the regular rate of pay, as described herein.

19 27. Class action treatment will allow those similarly situated persons to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
22 action that would preclude its maintenance as a class action.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES**

25 **(By Plaintiff and the Class Against All Defendants)**

26 28. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs of this Complaint as though fully set forth herein.

28 29. At all times relevant to this complaint, California Labor Code §510 was in effect

1 and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours
2 in one workday and any work in excess of forty hours in any one workweek . . . shall be
3 compensated at the rate of no less than one and one-half times the regular rate of pay for an
4 employee.”

5 30. Overtime pay is computed based on the regular rate of pay. The regular rate of pay
6 includes many different kinds of remuneration. Under California law, the determination of regular
7 rate of pay for purposes of determining overtime pay must include the employee’s commissions,
8 bonuses, or other non-hourly compensation. Labor Code §200 defines wages as “all amounts for
9 labor performed by employees of every description, whether the amount is fixed or ascertained by
10 the standard of time, task, piece, commission basis or other method of calculation.”

11 31. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
12 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
13 forty hours in a work week and on multiple occasions these employees have not been paid overtime
14 wages, such that in the aggregate employees are underpaid overtime wages as a result of
15 Defendants’ pattern and practice of failing to compensate Plaintiff and Non-Exempt Employees for
16 the time required to call-in for their schedule, as well as not being paid overtime wages at the
17 proper rate of pay on account of failing to include other forms of remuneration, such as bonus pay
18 or shift differential pay, when determining the regular rate of pay for overtime purposes.

19 32. Accordingly, by requiring Plaintiff and Non-Exempt Employee Class to work in
20 excess of eight hours per day and/or forty hours per week and without properly compensating
21 overtime wages, as described herein, Defendants willfully violated the provisions of Labor Code
22 §1194.

23 33. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt
24 Employee Class have been deprived of overtime wages in an amounts to be determined at trial, and
25 are entitled to recovery of such amounts, plus interest and penalties thereon, attorney’s fees, and
26 costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and Civil Code
27 §3287.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(By Plaintiff and the Class Against All Defendants)

34. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

35. At all relevant times, Plaintiff and the members of the Non-Exempt Employee Class were employees of Defendants covered by Labor Code §1197 and applicable Wage Orders.

36. Pursuant to Labor Code §1197 and applicable Wage Orders, Plaintiff and the members of the Non-Exempt Employee Class were entitled to receive minimum wages for all hours worked.

37. At all times herein mentioned, to the extent that Plaintiff and Non-Exempt Employee Class worked for Defendants during shifts that were less than eight hours in a work day and/or less than forty hours in a work week, on multiple occasions these employees have not been paid minimum wage for the time they were required to call-in for their schedule. Defendants failure to pay Plaintiff and members of the Non-Exempt Employee Class minimum wages for all hours worked, as described herein, is in violation of Labor Code §1197 and applicable Wage Orders. As a result of Defendants' pattern and practice, Plaintiff and members of the Non-Exempt Employee Class have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked.

38. Pursuant to Labor Code §§ 1194 and 1194.2 Plaintiff and members of the Non-Exempt Employee Class are entitled to recover the full amount of unpaid minimum wages, prejudgment interest, liquidated damages, reasonable attorney's fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO PAY PREVAILING WAGES

(By Plaintiff and the Class Against All Defendants)

39. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

///

1 40. Defendants failed to pay minimum prevailing wages for all hours worked.
2 California Labor Code §1771 states, in relevant part, "Except for public works projects of one
3 thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for
4 work of a similar character in the locality in which the public work is performed, and not less than
5 the general prevailing rate of per diem wages for holiday and overtime work fixed as provided this
6 chapter, shall be paid to all workers employed on public works . . ." Labor Code §1174 states
7 "The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not
8 less than the specified prevailing rates of wages to all workman employed in the execution of the
9 contract."

10 41. At all times relevant herein, Defendants knowingly failed to Plaintiff and the
11 Prevailing Wage Class all prevailing wages for the hours they worked. Defendants' failure to pay
12 prevailing wages to Plaintiff and Prevailing Wage Class is a violation of California's minimum
13 wage law. Labor Code §1194. "It is well established that California's prevailing wage law is a
14 minimum wage law." *Road Sprinkler Fitters Local Union No. 669 v. G&G Fire Sprinklers, Inc.*
15 (2002) 102 Cal.App.4th 765, 778. "[B]ecause the prevailing wage law is a minimum wage law
16 mandated by statute and serves important public policy goals, section 1194 provides an employee
17 with a private statutory right to recover unpaid prevailing wages from an employer who fails to pay
18 the minimum wage." *Id.* at 779; *accord Reyes v. Van Elk Ltd.* (2007) 148 Cal.App.4th 604, 612.

19 42. Accordingly, Plaintiff and other members of the Prevailing Wage Class are entitled
20 to recover prevailing wages for hours worked for Defendants under Labor Code §1194.

21 43. Plaintiff is informed and believes, and based thereon alleges, that the per diem
22 wages and prevailing wages required to be paid pursuant to Labor Code §§1194, 1771, and 1774
23 are set forth in annual and semi-annual bulletins published by the California Department of
24 Industrial Relations.

25 44. Plaintiff and the Prevailing Wage Class' employment periods, hours worked, and
26 trade classifications are based on their individual employment. Plaintiff and the Prevailing Wage
27 Class' assignment on the projects arose out of the contractual relationship between Defendants with
28 each of the State of California entities and/or political subdivisions of the State of California that

1 awarded the contract.

2 45. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
3 each of them, violated Labor Code §§ 1194, 1771 and 1774 by failing and refusing to comply with
4 the statutory duty to pay Plaintiff and the Prevailing Wage Class prevailing wages as required by
5 the contracts and by statute, or ensure that Plaintiff and the Prevailing Wage Class were paid
6 prevailing wages as required by the contracts and by statute. Pursuant to these section, Plaintiff and
7 the Prevailing Wage Class are entitled to recover the unpaid balance of their minimum wage
8 compensation, as well as their attorney's fees, interest and costs.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS**

11 **(By Plaintiff and the Class Against All Defendants)**

12 46. Plaintiff realleges and incorporates by reference all of the allegations contained in
13 the preceding paragraphs of this Complaint as though fully set forth herein.

14 47. California law and applicable Wage Orders require that employers "authorize and
15 permit" employees to take paid 10 minute rest periods in about the middle of each 4-hour work
16 period "or major fraction thereof." Accordingly, employees who work shifts of 3 ½ to 6 hours
17 must be provided 10 minutes of paid rest period, employees who work shifts of more than 6 and up
18 to 10 hours must be provided with 20 minutes of paid rest period, and employees who work shifts
19 of more than 10 hours must be provided 30 minutes of paid rest period. Plaintiff and other
20 members of the Rest Period Class on multiple occasions were not provided with requisite rest
21 periods as contemplated under the law nor were they paid premium wages at the regular rate of pay.

22 48. Pursuant to Labor Code §226.7, if an employer fails to provide an employee with a
23 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 additional hour of pay at the employee's
25 regular rate of compensation for each work day that the meal period or rest period is not provided.

26 49. By their failure to provide Plaintiff and other members of the Rest Period Class
27 with the rest periods contemplated by California law, and failing to provide compensation for such
28 unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor

1 Code §226.7 and applicable Wage Orders.

2 50. As a result of Defendants' unlawful conduct Plaintiff and the other members of the
3 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were not
4 paid additional pay owed for missed rest periods.

5 51. Plaintiff and the other members of the Rest Period Class are entitled to recover the
6 full amount of their unpaid additional pay for missed rest periods. Pursuant to Code of Civil
7 Procedure §1021.5, Plaintiff and the other members of the Rest Period Class are entitled to recover
8 reasonable attorney's fees and costs of suit.

9 52. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Rest Period
10 Class are entitled to recover prejudgment interest on the additional pay owed for missed rest
11 periods.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

14 **(By Plaintiff and the Class Against All Defendants)**

15 53. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs of this Complaint as though fully set forth herein.

17 54. At all relevant times, Plaintiff and other members of the Late Pay Class were
18 employees of Defendants covered by Labor Code §§ 201 and 202.

19 55. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of the Late Pay
20 Class were entitled upon termination to timely payment of all wages earned and unpaid prior to
21 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior
22 to discharge immediately upon termination. Employees who resigned were entitled to payment of
23 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
24 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
25 unpaid at the time of resignation.

26 56. Defendants failed to pay Plaintiff and other members of the Late Pay Class all
27 wages earned and unpaid prior to termination in accordance with Labor Code §§ 201 or 202.
28 Plaintiff and other members of the Late Pay Class are informed and believe and thereon allege that

1 within the applicable limitations period, Defendants had a pattern and practice of not paying upon
2 termination, the wages owed to them as a consequence of failing to pay overtime wage and
3 overtime wages at the proper rate of pay on account of failing to include all forms of remuneration
4 when determining the regular rate of pay for overtime purposes, prevailing and minimum wage,
5 premium wages at the regular rate of pay for rest/meal period violations on account of employees
6 earning other forms of remuneration that were not factored into the calculation of the regular rate of
7 pay for premiums, sick pay wages at the regular rate of pay on account of employees earning other
8 forms of remuneration that were not factored into the calculation of the regular rate of pay for
9 payment of sick pay, as described herein.

10 57. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages
11 earned prior to termination in accordance with Labor Code §§ 201 and 202 was wilful. Defendants
12 had the ability to pay all wages earned by Plaintiff and other members of the Late Pay Class at the
13 time of termination in accordance with Labor Code §§ 201 and 202, but intentionally adopted
14 policies or practices incompatible with the requirements of Labor Code §§ 201 and 202.

15 58. Pursuant to Labor Code §§ 201 and 202 Plaintiff and other members of the Late
16 Pay Class are entitled to all wages earned prior to termination that Defendants failed to pay them.

17 59. Pursuant to Labor Code § 203, Plaintiff and other members of the Late Pay Class
18 are entitled to penalty wages from the date their earned and unpaid wages were due, upon
19 termination, until paid, up to a maximum of 30 days.

20 60. As a result of Defendants' unlawful conduct Plaintiff and other members of the
21 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
22 paid for all wages earned prior to termination.

23 61. As a result of Defendants' unlawful conduct Plaintiff and the other members of the
24 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
25 paid all penalty wages owed under Labor Code § 203.

26 62. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the other members of the
27 Late Pay Class are entitled to recover the full amount of their unpaid wages, penalty wages under
28 Labor Code § 203, reasonable attorney's fees, and costs of suit. Pursuant to Labor Code § 218.6 or

1 Civil Code § 3287(a), Plaintiff and the other members of the Late Pay Class are entitled to recover
2 prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

5 **(By Plaintiff and the Class Against All Defendants)**

6 63. Plaintiff realleges and incorporates by reference all of the allegations contained in
7 the preceding paragraphs of this Complaint as though fully set forth herein.

8 64. At all relevant times, Plaintiff and the other members of the Wage Statement Class
9 were employees of Defendants covered by Labor Code § 226.

10 65. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage
11 Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages, an
12 accurate itemized statement showing gross wages earned, net wages earned, all applicable hourly
13 rates in effect during the pay period and the corresponding number of hours worked at each hourly
14 rate by the employee.

15 66. Defendants failed to provide Plaintiff and the other members of the Wage
16 Statement Class accurate itemized wage statements in accordance with Labor Code § 226(a).

17 67. Plaintiff and the other members of the Wage Statement Class are informed and
18 believe and thereon allege that at all relevant times, Defendants maintained and continue to
19 maintain a policy and practice of issuing wage statements that do not show, including but not
20 limited to, pay due and owing for rest break law violations and payment, premium wages paid at
21 the correct hourly rate, sick pay wages not paid at the correct hourly rate, hours worked that were
22 not listed and/or paid at appropriate rates of pay, as described herein. Defendants' practices
23 resulted and continue to result in, the issuance of Wage Statements to Plaintiff and other members
24 of the Class that do not comply with the itemization requirements.

25 68. Defendants' failure to provide Plaintiff and other members of the Wage Statement
26 Class with accurate Wage Statements was knowing and intentional. Defendants had the ability to
27 provide Plaintiff and the other members of the Wage Statement Class with accurate Wage
28 Statements, but intentionally provided wage statements that Defendants knew were not accurate.

1 premium wages at the regular rate of pay for meal/rest violations, not being paid sick pay wages at
2 the regular rate of pay, as described herein.

3 75. Pursuant to Business & Professions Code § 17203 Plaintiff and similarly situated
4 Class Members are entitled to restitution of all wages and other monies owed to them under the
5 Labor Code, including interest thereon, in which they had a property interest which Defendants
6 failed to pay them but withheld and retained for themselves. Restitution of the money owed to
7 Plaintiff and similarly situated Class Members is necessary to prevent Defendants from becoming
8 unjustly enriched by their failure to comply with the Labor Code.

9 76. Plaintiff and similarly situated Class Members are entitled to recover reasonable
10 attorney's fees in connection with their unfair competition claims pursuant to Code of Civil
11 Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

12 EIGHTH CAUSE OF ACTION

13 PRIVATE ATTORNEYS GENERAL ACT

14 (By Plaintiff and Class Members Against All Defendants)

15 77. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs of this Complaint as though fully set forth herein.

17 78. During the period beginning one year period preceding the filing of the Complaint in
18 this action (the "Civil Penalty Period"), Defendants violated, including but not limited to Labor
19 Code §§ 200, 201, 202, 203, 233 246(1), 246.5, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1771.

20 79. Labor Code §2699(a) and (g) authorize an aggrieved employee, on behalf of
21 himself and other current and former employees, to bring a civil action to recover civil penalties
22 pursuant to the procedures specified in Labor Code §2699.3.

23 80. Plaintiff has complied with the procedures for bringing suit specified in Labor
24 Code §2699.3. On May 14, 2021, Plaintiff gave written notice to the Labor and Workforce
25 Development Agency ("LWDA") and to Defendants of the specified provisions of the Labor Code
26 alleged to have been violated and the LWDA has elected not to investigate.

27 ///

28 ///

81. Pursuant to Labor Code §2699(a) and (f), Plaintiff and the Class he seeks to represent are entitled to recover civil penalties for Defendants' violations of the specified Labor Code sections during the Civil Penalty Period in the amount of one hundred dollars (\$100) for each employee per pay period for the initial violation and two hundred dollars (\$200) for each employee per pay period for each subsequent violation.

6 82. Pursuant to Labor Code §2699(g), Plaintiff and the Class he seeks to represent are
7 entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil
8 penalties.

NINTH CAUSE OF ACTION
FAILURE TO PAY PREMIUM WAGES FOR MEAL PERIODS
AT REGULAR RATE OF PAY

12 (By Plaintiff and Class Members Against All Defendants)

13 83. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though fully set forth herein.

15 84. Pursuant to Labor Code §226.7, if an employer fails to provide an employee with a
16 meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
17 Commission, the employer shall pay the employee one additional hour of pay at the employee's
18 regular rate of compensation for each work day that the meal period or rest period is not provided.

19 85. Plaintiff contends that Defendants paid Plaintiff and other members of the Meal
20 Period Premium Employee Class for alleged meal period violations; however, Defendants
21 intentionally failed to comply with Labor Code §226.7 as Plaintiff and other members of the Meal
22 Period Premium Employee Class were not paid premium wages at the regular rate of pay when they
23 were also were paid other forms of compensation.

24 86. Plaintiff and the other members of the Meal Period Premium Employee Class are
25 entitled to recover the full amount of their unpaid additional pay for meal premiums that were not
26 paid at the correct hourly rate. Pursuant to Code of Civil Procedure §1021.5, Plaintiff and the other
27 members of the Meal Period Premium Employee Class are entitled to recover reasonable attorney's
28 fees and costs of suit.

1 87. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Meal Period
2 Premium Employee Class are entitled to recover prejudgment interest on the additional pay owed
3 for premium wages that were not paid at the correct regular rate of pay.

4 **TENTH CAUSE OF ACTION**

5 **FAILURE TO PAY SICK LEAVE WAGES**

6 **(By Plaintiff and Class Members Against All Defendants)**

7 88. Plaintiff realleges and incorporates by reference all of the allegations contained in
8 the preceding paragraphs of this Complaint as though fully set forth herein.

9 89. Labor Code Section 246(l) requires that employers pay sick time pay to non-exempt
10 employees at the employee's "regular rate of pay." Employers must calculate paid sick leave for
11 nonexempt employees (1) "in the same manner as the regular rate of pay for the workweek in
12 which the employee uses paid sck time, whether or not the employee actually works overtime in
13 that workweek" or (2) "by dividing the employee's total wages, not including overtime premium
14 pay, by the employee's total hours worked in the full pay period of the prior 90 days of
15 employment." Labor Code §246(l).

16 90. The "regular rate of pay" includes all remuneration for employment paid to
17 the employee with the exception of overtime pay and includes, but is not limited to base hourly
18 wages, shift differential, assignment based differentials, longevity differentials, and other forms of
19 non-discretionary wages.

20 91. According to the California Supreme Court, sick pay is a form of wages.
21 *Murphy v. Kenneth Cole Prods.* (2007) 40 Cal.4th 1094, 1103.

22 92. Subsection (a) of Labor Code Section 204 provides: "All wages, other than
23 those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any
24 employment are due and payable twice each calendar month, on days designated in advance by the
25 employer as the regular paydays."

26 93. At all times herein mentioned, Plaintiff, and other members of the Sick Leave
27 Employee Class on multiple occasions accumulated and were paid sick leave by Defendants and on
28 these multiple occasions employees have not been paid all accrued sick leave pay as a result of

1 Defendants' pattern and practice of failing to include all forms of remuneration, including but not
2 limited to bonus pay, differential pay, etc. in determining the regular rate of pay for purposes of
3 sick leave pay.

4 94. As sick leave pay is form of wages due under Labor Code Section 204,
5 Defendants failed to pay all wages earned by Plaintiff and other members of the Sick Leave
6 Employee Class due and payable twice during each calendar month in which the class member was
7 (1) paid sick leave and (2) paid some form of non-discretionary remuneration in addition to the
8 base hourly wages, such as a shift differential, etc., in either (a) the same workweek in which the
9 person took paid sick leave or (b) during any of the full pay periods in the 90 days prior to the
10 person taking paid sick leave.

11 95. Labor Code Section 233 provides that "any employer who provides sick leave for
12 employees shall permit an employee to use in any calendar year the employee's accrued and
13 available sick leave entitlement, in an amount not less than sick leave that would be accrued during
14 six months at the employee's then current rate of entitlement, for the reasons specified in
15 subdivision (a) of Section 246.5."

16 96. At all times herein mentioned, Defendants intentionally and willfully failed to pay
17 Plaintiff and other members of the Sick Leave Employee Class their sick leave at the regular rate of
18 pay. Accordingly, Plaintiff and other members of the Sick Leave Employee Class did not receive
19 the full amount of paid sick leave that they were entitled to receive by law, and therefore denied the
20 right to use sick leave within the meaning of Labor Code §§ 233(a) and (c).

21 97. Any employer who violates Labor Code § 233 is liable to employees for the greater
22 of one days' pay or actual damages, reasonable equitable relief and reasonable attorney's fees and
23 costs. Labor Code §§233(d) and (e).

24 98. Labor Code Section 218 authorizes a private right of action to recover unpaid
25 wages, including under section 204 and 233.

26 ///

27 ///

28 ///

1 99. As a result of the unlawful acts of Defendants, Plaintiff and members of the Sick
2 Leave Employee Class have been deprived of sick leave pay in amounts to be determined at trial,
3 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees,
4 and costs, pursuant to Labor Code §§218, 218.5, 233, 246, 246.5, 558 and 2698; and Code of Civil
5 Procedure §1021.5; and Civil Code §3287.

PRA YER

7 WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for
8 judgment against Defendants as follows:

9 A. An order certifying that Plaintiff may pursue his claims against Defendants as a
10 class action on behalf of the Class Members;

11 B. An order appointing Plaintiff as Class representative and appointing Plaintiff's
12 counsel as class counsel;

13 C. Penalties for inaccurate wage statements under Labor Code §226(e);

14 D. Damages for unpaid wages under Labor Code §§201 or 202;

15 E. Damages for unpaid penalty wages under Labor Code §203;

16 F. Damages for failing to pay prevailing wages as required under Labor Code §§ 1194
17 and 1771;

18 G. Damages for unpaid wages for premium wages at the regular rate of pay under
19 Labor Code §226.7;

20 H. Damages for minimum wages;

21 I. Damages for premium wages;

22 J. Liquidated damages for unpaid minimum wages;

23 K. Damages for unpaid overtime wages under Labor Code §1194;

24 L. Restitution under Business and Professions Code §17203;

25 M. Pre-judgment interest;

26 N. Costs:

27 O. Reasonable attorney's fees;

28 P. For all penalties provided by Labor Code §2699(a)-(f); and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Q. Such other and further relief as the Court deems just and proper.

DATED: March 20, 2024

THE NOURMAND LAW FIRM, APC

By: /s/ James A. De Sario
Michael Nourmand, Esq.
James A. De Sario, Esq.
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 18 and not a party to the within entitled action; my business address is 8822 West Olympic Boulevard, Beverly Hills, California 90211.

On March 26, 2024, I served the following document(s) described as:

SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND RESTITUTION

on the interested parties in this action as follows:

Aaron H. Cole, Esq.
Noel M. Hernandez, Esq.
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, California 90071

BY NOTICE OF ELECTRONIC FILING THROUGH CASE ANYWHERE: I caused a true and correct copy of the above listed document(s) to be served by electronic transmission to the parties and/or counsel who are registered above and set forth in said service list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this Proof of Service was executed on March 26, 2024, at Beverly Hills, California.

/s/ Alejandra Beltran
Alejandra Beltran