

1 Jace H. Kim, Esq. (SBN 282039)
2 Jace.Kim@Dominguezfirm.com
3 Carlos Andres Perez, Esq. (SBN 285645)
4 Carlos.Perez@Dominguezfirm.com
5 Javier Ramirez, Esq. (SBN 249516)
6 Javier.Ramirez@Dominguezfirm.com
7 **THE DOMINGUEZ FIRM, LLP**
8 3250 Wilshire Boulevard, Suite 2200
9 Los Angeles, CA 90010
10 Telephone: (213) 388-7788
11 Facsimile: (213) 201-8212

12 Attorneys for Plaintiff,
13 HERIBERTO ROJAS

VENTURA
SUPERIOR COURT
FILED

AUG 02 2021

BRENDA L. McCORMICK
Executive Officer and Clerk
By: _____, Deputy
IVONNE PEACOCK

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF VENTURA – HALL OF JUSTICE**

11 HERIBERTO ROJAS, an individual,

12 Plaintiff,

13 v.

14 ERIKSSON TILE & STONE, INC., a California
15 corporation; SANTOS GRANITE LLC, a limited
16 liability company; and DOES 1 through 20,
17 inclusive,

18 Defendants.

Case No. 56-2021-00556805-CU-OE-VTA

COMPLAINT FOR DAMAGES FOR:

1. **FAILURE TO PAY WAGES (CAL. LAB. CODE §§201, 1182.12, 1194, 1194.2, 1197, 558);**
2. **FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194; IWC WAGE ORDER NO. 16-2001, § 3);**
3. **FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE §§226.7, 512);**
4. **FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7, 558);**
5. **FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.; IWC WAGE ORDER NO. 16-2001, § 7);**
6. **WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
7. **RETALIATION (CA LAB. CODE §98.6);**

By FAX

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8. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE §2699, ET SEQ);
AND

9. UNFAIR COMPETITION (BUS. & PROF.
CODE §17200 ET SEQ.).

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, HERIBERTO ROJAS, and for causes of action against Defendants
and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Ventura County, because
Defendants' obligations and liability arise therein, because Defendants maintain offices and transact
business within Ventura County, and because the work that is the subject of this action was performed
by Plaintiff in Ventura County.

THE PARTIES

2. Plaintiff, HERIBERTO ROJAS (hereinafter referred to as "Plaintiff"), is and at all times
relevant hereto was a resident of Ventura County, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Defendant, ERIKSSON TILE & STONE, INC. (hereinafter referred to as "ERIKSSON") was
and is a California corporation, doing business in Ventura County, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Defendant, SANTOS GRANITE LLC (hereinafter referred to as "SANTOS") was and is a limited
liability company doing business in Ventura County, State of California.

5. ERIKSSON and SANTOS are hereinafter collectively referred to as "Defendants" or
"Employers".

6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Defendants own and operate a tile company.

1 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
2 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
3 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
4 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
5 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
6 Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged
7 hereinafter.

8 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
9 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
10 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
11 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
12 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
13 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

14 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
15 of them, including those defendants named as DOES 1-20 and the Individual Defendants, acted in concert
16 with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled
17 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including
18 pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based thereupon
19 alleges, that Defendants, and each of them, including those defendants named as DOES 1-20 and the
20 Individual Defendants, and each of them, formed and executed a conspiracy or common plan pursuant to
21 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part
22 of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

23 10. Whenever and wherever reference is made in this complaint to any act or failure to act by
24 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
25 and/or failures to act by each Defendant acting individually, jointly and severally.

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1 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

2 11. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
3 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
4 defendants have ceased to exist.

5 12. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
6 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same as Defendants,
7 including, but not limited to because:

8 a. Employers are completely dominated and controlled by one another and DOES 1-
9 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
10 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
11 accomplish some other wrongful or inequitable purpose.

12 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
13 through one another's unlawful conduct, and by using one another as the funding source for their own
14 personal expenditures.

15 c. Employers and DOES 1-20, while really one and the same, were segregated to
16 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
17 accomplishing some other wrongful or inequitable purpose.

18 d. Employers do not comply with all requisite corporate formalities to maintain a
19 legal and separate corporate existence.

20 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
21 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
22 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
23 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
24 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
25 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
26 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
27 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
28 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

13. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

14. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendants' business was and is conducted.

15. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

FACTUAL ALLEGATIONS

16. On or around March 2016, Plaintiff was hired by Defendants as an installer. At all relevant times, Plaintiff was a full-time, non-exempt employee, who performed all of his job duties satisfactorily until on or about February 3, 2021 when he was retaliated against and wrongfully terminated.

17. Plaintiff was covered under one or more IWC Wage Orders and/or the California Labor Code provisions relating to wage-and-hour laws, and other applicable wage orders, regulations, and statutes, which imposed an obligation on the part of Defendant, among other things, to provide overtime pay, uninterrupted rest periods, to pay wages for all hours worked, and to provide accurate wage statements.

18. Between January 1, 2016 through February 2021, Plaintiff worked five days per week for approximately 11 hours per day.

1 19. In the last four years, Plaintiff worked approximately up to 11 hours of overtime each
2 week but received only his regular hourly wage rate for these hours, with no overtime premium. Indeed,
3 Defendants failed to pay the overtime premium wages for all hours worked beyond 8 hours in a day or
4 40 hours in a week.

5 20. Also, throughout Plaintiff's employment, he did not receive uninterrupted statutory 30-
6 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
7 worked. One or more of Plaintiff's 30-minute meal periods were not provided and/or interrupted
8 approximately 5 times per week, and/or taken at or after the 5th hour.

9 21. Further, throughout Plaintiff's employment, Plaintiff was not permitted to, and not
10 advised of his right to take statutory 10-minute rest breaks for every four hours worked or substantial
11 portion thereof. Defendants had no policy, procedure, or practice for Plaintiff to report missed rest breaks
12 or recover lost wages, and Defendants had no policy, procedure, or practice to provide one hour of
13 additional wages for each workday that the rest break was not provided.

14 22. Throughout Plaintiff's employment, for each pay period, Plaintiff received inaccurate
15 paystubs that did not comply with Labor Code § 226, because they failed to show the correct amount of
16 overtime hours Plaintiff worked, failed to show pay for missed meal and rest periods, failed to show the
17 amount of wages earned and owed to Plaintiff.

18 23. When Plaintiff complained about being owed unpaid wages and accurate paystubs, he was
19 retaliated against and his employment was terminated.

20 24. As a direct result and proximate result of the unlawful actions of Defendants, Plaintiff has
21 suffered, and continues to suffer, from loss of earnings in amounts as yet unascertained, but subject to
22 proof at trial, and within the jurisdiction of this Court.

23
24 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

25 25. At all relevant times, PAGA was applicable to Plaintiff and his employment with
26 Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and Workforce
27 Development Agency ("LWDA").

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1 26. Plaintiff and other employees of Defendants are “aggrieved employees” as defined by
2 PAGA, because they are all current or former employees of Defendants, and one or more of the alleged
3 violations were committed against them.

4 27. On or about May 10, 2021, Plaintiff gave written notice of Defendants’ violations of
5 various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA
6 by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

7 28. The LWDA did not provide notice of its intention to investigate Defendants’ violations
8 within 65 calendar days of the May 10, 2021 notice.

9 29. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to recover
10 civil penalties against Defendants, in addition to the other remedies, for violations of California Labor
11 Code §§ 226 (inaccurate itemized wage statements), 510 (overtime pay), 226.7 (rest break violations),
12 512 (meal breaks), 98.6 (retaliation) as well as IWC Wage Order No. 16-2001.

13
14 **FIRST CAUSE OF ACTION**

15 **FOR FAILURE TO PAY WAGES DUE**

16 **LABOR CODE §§201, 1182.12, 1194, 1194.2, 1197, 558**

17 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

18 30. Plaintiff re-alleges and incorporates by reference the above as though set forth in full
19 herein.

20 31. At all relevant times, Defendants failed and refused to pay Plaintiff’s earned and due
21 wages required by 8 Code of Regulations §11050, as set forth hereinabove.

22 32. As alleged herein, Defendants routinely failed to pay Plaintiff for one hour of pay at
23 Plaintiff’s regular hourly rate of pay for Plaintiff’s entitled rest break periods.

24 33. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
25 Code of Regulations §11050, and Industrial Welfare Commission Order No. 16-2001.

26 34. Plaintiff has been deprived of his rightfully earned compensation as a direct and
27 proximate result of Defendants’ failure and refusal to pay said compensation. Plaintiff is entitled to
28 recover such amounts, plus interest thereon, attorney fees, and costs.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **CAL. LABOR CODE §§ 510, 558, 1194 ET SEQ., 1197.1, 1198,**

4 **IWC WAGE ORDER NO. 165-2001, § 3**

5 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

6 35. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
7 though set forth in full herein.

8 36. Labor Code §510 requires employers to pay their non-exempt employees one and one-
9 half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or
10 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of
11 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime
12 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
13 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
14 consecutive day of work.

15 37. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
16 compensation required by Labor Code §510, 8 Code of Regulations §11050, and Industrial Welfare
17 Commission Order No. 16-2001.

18 38. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
19 and/or more than 40 hours per workweek. Despite this, Defendants failed to pay Plaintiffs the requisite
20 overtime wages in each of the following ways in the four years immediately preceding the filing of this
21 complaint.

22 39. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
23 Code §510, 8 Code Regulations §11050, and Industrial Welfare Commission Order No. 16-2001.

24 40. Defendants violated Labor Code § 558 on approximately 26 pay periods, the first of which
25 Defendants are penalized \$50.00, and the remainder of which Defendants are penalized \$100.00 each,
26 for a total due in Labor Code §558 penalties of \$2,550.00. As such and based on the above periods,
27 Defendants owe Plaintiff a total of \$2,550.00 for Defendants' Labor Code §558 violations.

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1 41. Plaintiff has been deprived of his rightfully earned overtime compensation as a direct and
2 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
3 recover such amounts, plus interest thereon, attorney fees, and costs.

4
5 **THIRD CAUSE OF ACTION**
6 **FOR FAILURE TO PROVIDE MEAL BREAKS**

7 **(CAL. LABOR CODE §§226.7, 512)**

8 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

9 42. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
10 forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

11 43. Labor Code § 512 requires employers to provide every employee with an uninterrupted
12 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

13 44. Plaintiff was required to work through or cut short his meal breaks due to Defendants'
14 failure to maintain adequate staffing levels. Defendants required Plaintiff to perform his job duties as an
15 installer non-stop and was not allowed to enjoy a timely, uninterrupted meal breaks. Defendants failed
16 to properly staff enough employees to help make sure all employees could be relieved to take a meal
17 break without pressure to forego or delay their meal breaks.

18 45. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
19 such amounts pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

20 46. Pursuant to California Labor Code § 226.7, Plaintiff has sustained economic damages,
21 including, but not limited to, unpaid wages and lost interest, in an amount according to proof at trial, and
22 are entitled to recover one-hour of premium pay for each day in which a lawful meal period was not
23 provided. Plaintiff is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and
24 pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees
25 and costs relating to their claims for civil penalties due to Defendants' violation of the California Labor
26 Code and IWC Wage Order No. 16-2001.

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FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST PERIODS

(CAL. LABOR CODE §§226.7, 512)

BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

47. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though set forth in full herein.

48. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion thereof.

49. Plaintiff regularly worked in excess of five hours per day, and was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest periods on each day of work.

50. Defendants failed and refused to provide Plaintiff with rest periods, and failed to compensate Plaintiff for missed rest periods, as required by Labor Code §§226.7 and the applicable 8 Code of Regulations section, and Industrial Welfare Commission Order No. 16-2001.

51. As alleged herein, Plaintiff is not exempt from the rest period requirements of the applicable 8 Code of Regulations section, and Industrial Welfare Commission Order No. 16-2001. Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that Plaintiff was denied such rest periods.

52. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for rest periods as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

53. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover such amounts pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

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FIFTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
(CAL. LABOR CODE §§226, ET SEQ.)
BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

54. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though set forth in full herein.

55. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-exempt employees with itemized statements showing total hours worked, hourly wages, gross wages, total deductions and net wages earned. An employer who violates these code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

56. In addition, thereto, pursuant to Labor Code §226.3, an employer who willfully violates Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

57. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, overall deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none of the required information, including hours actually worked.

58. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

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1 59. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
2 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
3 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
4 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
5 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
6 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
7 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
8 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

9 60. Plaintiff was paid on a bi-monthly basis, and therefore Defendants violated Labor Code
10 §226 approximately 91 times during the last year that Plaintiff worked for Defendants.

11 61. Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties
12 in the statutory maximum amount of \$4,000.00, whichever is greater.

13 62. In addition, thereto, for Defendants' 91 violations, Defendants are penalized \$250.00 for
14 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due
15 in Labor Code §226.3 penalties of \$91,250.00 (\$250.00 + \$1,000.00 x 91 subsequent pay periods).

16 63. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
17 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
18 applicable provisions, as well as attorneys' fees and costs.

19
20 **SIXTH CAUSE OF ACTION**

21 **FOR WAITING TIME PENALTIES LABOR CODE §§201-203**

22 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

23 64. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
24 set forth in full herein.

25 65. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
26 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
27 total deductions and net wages earned. An employer who violates these code sections is liable to its
28 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the

1 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
2 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
3 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
4 at all.

5 66. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
6 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
7 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

8 67. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
9 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
10 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
11 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
12 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
13 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
14 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
15 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
16 of the required information, including hours actually worked.

17 68. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

18 69. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
19 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
20 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
21 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
22 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
23 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
24 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
25 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

26 70. Defendants knowingly and intentionally failed to furnish Plaintiff with timely, itemized
27 statements as required by California Labor Code § 226(a) and IWC Wage Order 16, § 7(B). As a result,
28 Plaintiff has been damaged in an amount according to proof at trial, and seek all wages earned and due,

1 plus interest thereon. Additionally, Plaintiff is entitled to all available statutory penalties, including but
2 not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an
3 award of costs, expenses, and reasonable attorneys' fees, as well as other available remedies. Pursuant
4 to California Labor Code § 1194.5, Plaintiff is also entitled to preliminary and permanent injunctive relief
5 against further violations of these laws and wage orders.

6
7 **SEVENTH CAUSE OF ACTION**

8 **RETALIATION**

9 **LABOR CODE §98.6**

10 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 71. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
12 though set forth in full herein.

13 72. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
14 employee for political activities; for complaining that he or she is owed unpaid wages, for
15 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
16 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
17 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
18 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
19 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
20 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
21 against an employee who, among other things, has exercised her or her rights under that Chapter,
22 including the right to take meal breaks, and/or made a written or oral complaint that he or she is owed
23 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code
24 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
25 thousand dollars (\$10,000.00) for each violation of that section.

26 73. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
27 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not
28 being paid all wages due. Defendants' retaliatory animus is evidenced by, among other things, the

1 following facts: On or about February 3, 2021, Plaintiff complained about owed wages including
2 overtime pay, meal and rest periods. Nonetheless, Defendants refused to pay him and falsely terminated
3 his employment for accidentally breaking the stone he was installing.

4 74. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
5 Defendants, and Defendants' officers and/or managing agents, including, and those identified herein as
6 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy for
7 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
8 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
9 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
10 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
11 and designated herein as DOES 1-20, inclusive.

12 75. As a result of Defendants' actions, Plaintiffs are each entitled to a civil penalty not to
13 exceed \$10,000.00 for Defendants' violations of Labor Code §§ 98.6 and/or 1102.

14 76. Because the acts taken toward Plaintiff were carried out by managerial employees acting
15 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiffs' rights and
16 in order to injure and damage them, Plaintiffs requests that punitive damages be levied against Defendants
17 and each of them, in sums in excess of the jurisdictional minimum of this court.

18
19 **EIGHTH CAUSE OF ACTION**
20 **FOR PRIVATE ATTORNEY GENERAL ACT**
21 **(CAL. LABOR CODE §2699, ET SEQ)**
22 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

23 77. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
24 set forth in full herein.

25 78. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
26 Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties
27 for Defendants' violations of the California Labor Code.

28 ///

1 79. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
2 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
3 previously pleaded in this Complaint.

4 80. On May 10, 2021, more than 65 calendar days before filing this Complaint, Plaintiff
5 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
6 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
7 satisfying the requirements of Labor Code §2699.3(a). These violations included the above-stated Labor
8 Code sections, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

9 81. As of the filing of this Complaint, Plaintiff has not received any response from the Labor
10 and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,
11 Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

12 82. As a direct and proximate result of Defendants' California Labor Code violations as set
13 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
14 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
15 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
16 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
17 provide for a penalty, §§226.3, 226.7, and 512.

18 83. Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

19 84. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
20 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

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1 **NINTH CAUSE OF ACTION**

2 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

3 **CAL. BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

4 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

5 85. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set
6 forth fully herein.

7 86. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
8 predicated on the violation of any state or federal law. Defendants' policies, activities, and actions as
9 alleged herein, are violations of California law and constitute unlawful business acts and practices in
10 violation of California Business and Professions Code §§ 17200, *et seq.* Defendants have engaged and
11 continue to engage in unfair and unlawful business practices in California by practicing, employing, and
12 utilizing the employment practices outlined above, including failing to pay reporting time pay, and failing
13 to provide rest breaks in violation of the applicable IWC Wage Order and California Labor Code.

14 87. Defendants' violations of California wage and hour laws constitute a business practice
15 because Defendants' aforementioned acts and omissions were done repeatedly over a significant period
16 of time, and in a systematic manner, to the detriment of Plaintiff.

17 88. Defendants have avoided payment of wages, rest break premium payments, and other
18 benefits as required by the California Labor Code, the California Code of Regulations, and the applicable
19 IWC Wage Order. Furthermore, Defendants have failed to record, report, and pay the correct sums of
20 assessment to the state authorities under the California Labor Code and other applicable regulations.

21 89. Defendants' unfair and unlawful business practices, as alleged in this Complaint, have
22 allowed Defendants to reap in unfair and illegal profits at the expense of Plaintiff, and members of the
23 public. Defendants should be made to disgorge their ill-gotten gains and restore them to Plaintiff.
24 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of the
25 California Code of Civil Procedure § 1021.5.

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90. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff is entitled to restitution of the wages withheld and retained by Defendants; an award of attorneys' fees pursuant to California Labor Code § 1194; and California Code of Civil Procedure § 1021.5; interest; and an award of costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an award and judgment against Defendants jointly and severally, as follows:

1. For payment of unpaid overtime compensation pursuant to Labor Code §§ 201, 510, 1194, the applicable industrial Welfare Commission Order, and the applicable 8 Code of Regulation sections;
2. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512;
3. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;
4. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no less than \$91,250.00;
5. For waiting time penalties pursuant in the amount of no less than \$4,080.00 to Labor Code §§ 201-203;
6. For statutory penalties pursuant to Labor Code §2699(f), on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved employees;
7. For punitive damages, pursuant to Civil Code §3294 in amounts sufficient to punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the future
8. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the California Labor Code and IWC Wage Order No. 16-2001 and from engaging in the unlawful business practices complained of herein;
9. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter.
10. For post-judgment interest;

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1 11. For an order appointing Plaintiff as class representative and Plaintiff's counsel as class
2 counsel; and

3 12. For any other relief that is just and proper.
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5 DATED: July 30, 2021

THE DOMINGUEZ FIRM, LLP

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7 By: 

Jace H. Kim, Esq.
Carlos A. Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff,
HERIBERTO ROJAS

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12 **JURY TRIAL DEMANDED**

13 Plaintiff, HERIBERTO ROJAS, demands trial of all issues by jury.
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15 DATED: July 30, 2021

THE DOMINGUEZ FIRM, LLP

16
17 By: 

Jace H. Kim, Esq.
Carlos A. Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff,
HERIBERTO ROJAS