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County of Alameda

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

WILBUR FUENTES, an individual on his
own behalf and in his representative
capacity, on behalf of all others similarly-
situated

Plaintiff,

vs.

MCH ELECTRIC, INC., a California
corporation; and DOES 1 through 25,
inclusive,

Defendant.

Case No. **22CV010128**

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF LABOR CODE §2698 Et
Seq. (Private Attorneys General Act of 2004)**

Plaintiff Wilbur Fuentes (“Plaintiff” or Mr. Fuentes”), hereby files this Complaint against Defendant, MCH Electric, Inc. (“MCH” or “Defendant”) and DOES 1 through 25, inclusive. Plaintiff is informed and believes and based thereon, alleges as follows:

INTRODUCTION

1. This action is brought pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General Act of 2004) (the “PAGA”) for Defendant’ violations of Labor Code §§ 200-203, 204, 226(a),

1 226.7, 510, 512, 1174 (d), 1194 (a) and 2802 and the provisions of applicable Industrial Welfare
2 Commission Wage Order No. 16-2001 for unpaid wages, for missed and/or non-compliant, rest
3 and meal break violations, for unpaid premiums for meal and rest break violations, for failure to
4 record and maintain accurate records of all hours worked, failure to pay overtime, for failure to
5 pay all wages when due, for failure to reimburse expenses incurred in the discharge of work
6 related duties, for failure to issue accurately itemized wage statements and for failure to pay all
7 wages due upon discharge or termination of employment, as further detailed herein.

8 2. This complaint challenges Defendant's systemic illegal employment practices resulting in
9 violations of the state provisions of the Labor Code against Plaintiff and similarly-situated,
10 current or former employees of Defendant, ("Aggrieved Employees") during the relevant
11 statutory period.

12 3. Plaintiff is informed and believes and thereon alleges Defendant acted intentionally and
13 with deliberate indifference and conscious disregard to Plaintiff's rights by failing to pay all
14 wages when due, failing to provide compliant rest and meal break, failing to pay meal period
15 wages and rest break premium, failing to record and maintain accurate records of time work,
16 including time worked while off the clock, failing to pay overtime wages, failing to provide
17 accurate wage statements, and failing to reimburse for expenses incurred in the discharge of work
18 related duties and failure to pay all wages due upon termination of employment.

19 **GENERAL ALLEGATIONS**

20 4. Defendant MCH Electric, Inc., is a California corporation, with its principal place of
21 business located at 7693 Longard Road, Livermore, CA 94551.

22 5. MCH Electric, Inc., is an electrical engineering and construction firm that provides
23 residential and commercial underground infrastructure and electrical construction services and
24 installations.

25 6. Plaintiff is unaware of the true names and capacities of Defendants sued as DOES 1
26 through 25, inclusive, and therefore Plaintiff sue these Defendants by fictitious names. Plaintiff is
27 informed and believes and thereupon alleges that each of the fictitiously named Defendants is in
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1 some manner responsible for the wrongful acts and resulting damages to Plaintiff as alleged in
2 this Complaint. Plaintiff will amend this Complaint to show the true names and capacities of
3 these fictitiously named Defendants after their true names and capacities have been ascertained.

4 7. Plaintiff is further informed and believes that all of the acts and conduct described herein
5 below of each named Defendant and DOES 1 through 25, inclusive, were done in the capacity as
6 managing agents, employees, and/or representatives of each other Defendant, and each such
7 Defendant was acting within the scope of such agency, employment and/or representation in
8 doing the wrongful acts alleged herein below and with permission and consent.

9 **The Plaintiff**

10 8. Plaintiff, Wilbur Fuentes was at all relevant times herein a resident of Livermore, California.
11 He was employed by Defendant as a full-time, hourly-compensated, non-exempt laborer, who
12 worked on residential and industrial installations, laying pipe and digging trenches that would
13 house the electrical lines and utility installations at the sites he worked on.

14 **JURISDICTION AND VENUE**

15 9. This action is brought pursuant to the PAGA. The civil penalties sought by Plaintiff
16 exceed the minimum jurisdiction limits of the Alameda County Superior Court and will be
17 established according to proof at trial.

18 10. This Court has jurisdiction of this action pursuant to the California Constitution, Article
19 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those
20 given by statute to other courts. The statutes under which this action of brought do not specify any
21 other basis for jurisdiction.

22 11. This Court has jurisdiction over the violations of the PAGA and Cal. *Lab. Cod.* §§ 200-
23 203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1194 (a) and 2802 and applicable Wage Order No.
24 16-2001 of the Industrial Wage Commission (“IWC No. 16”).

25 12. This Court has jurisdiction over Defendant, MCH and Does 1 – 25, inclusive, because
26 upon information and belief, each party has sufficient minimum contacts in California or
27 otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction
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1 over it by the California courts consistent with traditional notions of fair play and substantial
2 justice.

3 13. Venue is proper in this Court because, upon information and belief, the named Defendant
4 transacts business and/or has offices in this county and the acts and omissions alleged herein took
5 place in this county.

6 GENERAL ALLEGATIONS

7 14. Plaintiff realleges and incorporates by reference each and every allegation contained
8 in the preceding paragraphs as though fully set forth herein.

9 15. Plaintiff was employed by Defendant from on or about May 16, 2019 to February 3,
10 2021. During the relevant statutory period, Plaintiff worked for Defendant as a full-time,
11 hourly, non-exempt employee at multiple and various MCH construction jobsites
12 throughout Alameda County and outlying areas in Northern California.

13 16. Throughout the PAGA liability period, other similarly situated current or former
14 nonexempt employees of Defendant, (the "Aggrieved Employees") similarly labored for
15 MCH at MCH's various construction retail locations throughout the State of California.

16 17. As a full-time non-exempt employee and owing to voluminous workloads, Plaintiff
17 and similarly situated Aggrieved Employees worked regularly scheduled shifts often
18 working anywhere between forty to sixty hours per week.

19 18. Defendant, however instructed employees such as Plaintiff and the Aggrieved
20 Employees to clock out after eight hours, no matter how many hours they actually worked.
21 Thus Defendant, actively and knowingly failed to keep accurate records of hours worked
22 and by their instructions and operational policies maintained an unlawful scheme in an
23 attempt to avoid paying overtime wages.

24 19. In addition some of the overtime hours were directly attributable to work related
25 travel, as and when Plaintiff and the Aggrieved Employees were instructed to travel to
26 different job location, many times traveling a distance of more than an hour's drive to reach.
27 This work related travel to distant jobsites, was mandated *at least three times weekly* during
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1 Plaintiff's employment and such was also true for a substantial number of similarly situated
2 Aggrieved Employees. MCH not only failed to compensate or reimburse Plaintiff and these
3 Aggrieved Employees for their mileage and gasoline expenses, MCH also failed to pay or
4 compensate them for their lawfully due overtime wages for the extended travel time.

5 20. Rest breaks and meal breaks were routinely missed. Because of the deadlines to
6 complete installations and work volume Defendant and its managing supervisors often failed to
7 permit uninterrupted, ten-minute rest breaks after each fourth hour of labor worked. On the
8 rare occasions a rest break was taken, it was more often than not, cut short by Defendant, who
9 would demand that Plaintiff and Aggrieved Employees "get back to work."

10 21. The same was true for meal breaks. Lunch breaks were not timely provided after the
11 fifth hour of labor performed and were routinely cut short by demanding foremen who would
12 actively harass Plaintiff for taking a lunch break and demand that he "get back to work." In
13 fact, despite being on a meal break.... The breaks were in Defendant's mind, "on duty",
14 subject to their demands and workflows. Accordingly, Plaintiff and similarly situated
15 Aggrieved Employees were required to continue to work, even while off the clock, during meal
16 breaks.

17 22. Furthermore, although Defendant is/was aware of the rest and meal break violations,
18 Defendant failed to pay Plaintiff and the Aggrieved Employees the obligatory premium pay
19 wage equal to one hour of pay at their regular hourly rate of pay for each missed rest or
20 meal break during each and every pay period during the statutory period.

21 23. Accordingly, actual hours worked and corresponding wages due are/were not
22 accurately itemized or reflected on Plaintiff and the Aggrieved Employees' wage
23 statements every two weeks during the statutory period.

24 24. At no time did Plaintiff ever validly waive his meal breaks.

25 25. Further, upon information and belief, and thereupon Plaintiff alleges that at no time did
26 the Aggrieved Employees validly waive their meal breaks.
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1 26. It is relevant to mention that Plaintiff is an immigrant from Guatemala. Accordingly,
2 he was not familiar with his employment rights or California Labor laws. As a result, his
3 foreman took extreme advantage of Plaintiff and routinely bullied and enjoyed conjuring up
4 ways to humiliate Plaintiff. Forcing Plaintiff into buying lunch for everyone was just one of
5 those ways. During lunch periods, Plaintiff was routinely instructed by his supervising foreman
6 to go pick up lunch or (for breakfast) or drinks for the supervisor and other co-workers.
7 Plaintiff was never, EVER reimbursed for these inordinate expense demands that were placed
8 on him by his foreman. Following many such demands plaintiff attempted to refuse his
9 foreman's demands. When he did, his supervisor threatened him with termination. The
10 supervisor further threatened him to keep his mouth shut and told him if he told the owner
11 about being forced to buy lunches and drinks that he would be fired. To continue the
12 extortion, the foreman had Plaintiff followed by two of his "thug" friends who threatened
13 Plaintiff's life "if he ever snitched about the lunches." Accordingly, Plaintiff never reported
14 the behavior to human resources out fear and did not dare request reimbursement for the
15 expenses he incurred for the purchase of lunches that were extorted out of him by his foreman.

16 27. On other occasions, Plaintiff was told by the boss to run multiple other errands for the
17 office. On one occasion, Plaintiff was forced to purchase 100 Rockstar beverages for staff.
18 Another time he was required by his employer to purchase and spent over \$300 for glasses.
19 Each time he spent monies for these supplies for the company, he was never reimbursed.

20 28. Also, Plaintiff and the Aggrieved Employees routinely utilized their personal cell
21 phones for work related communications. They needed to utilize their personal cell phones to
22 make or receive phone calls from their supervisors concerning work related job issues,
23 locations, and communications regarding equipment or supplies relative to projects they
24 worked on. Despite the utilization of their personal cell phones and the expenses they incurred
25 in using them in the discharge of their job duties, at no time did Defendant ever reimburse
26 Plaintiff and the Aggrieved Employees for their personal cell phone expenses.
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1 29. As a consequence of the above-described actions and working conditions, Plaintiff
2 and the Aggrieved Employees are/were not being properly paid all of the wages they were
3 due twice monthly on the pay dates set by Defendant, for each and every pay period, during
4 the statutory period, as none of their pay stubs ever reflected all the wages they earned,
5 including time worked during their rest and meal breaks and overtime hours worked as a
6 result. In addition to the failure to accurately itemize such earnings, Defendant failed to
7 include premium pay penalties to which Plaintiff and the Aggrieved Employees were
8 entitled for the rest and meal break violations.

9 30. Plaintiff and a substantial number of the Aggrieved Employees' employment with
10 Defendant ended during the statutory period. Plaintiff's employment with Defendant ended
11 on February 3, 2021. As a result of the forgoing-described violations of law, Plaintiff was
12 not paid all outstanding wages he was due in accordance with Labor Code Section 201
13 upon his termination of employment.

14 31. Because of outstanding and unpaid wages due, upon information and belief,
15 Plaintiff alleges thereon, that at the time of separation of employment of similarly situated
16 Aggrieved Employees, they were also not paid their full wages due in accord with Labor
17 Code Sections 201-202, either, immediately upon termination or discharge or, for such
18 employees not having a written contract for a definite period of time, and who quit, no later
19 than 72 hours thereafter, as applicable.

20 32. As a result of Defendant' failure to properly compensate Plaintiff and the Aggrieved
21 Employees proper compensation for all hours worked, including overtime pay, for
22 premiums for missed rest periods and meal breaks and for the work-related expenses they
23 necessarily incurred in the performance of their job duties, Plaintiff and the Aggrieved
24 Employees have been denied the use and enjoyment of the monies they are owed by
25 Defendant, and have been forced to incur attorney's fees and costs of suit.
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1 **FIRST CAUSE OF ACTION**
2 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004,**
3 **LABOR CODE § 2698 ET SEQ.**

4 **(Against Defendant and DOES 1 through 25, inclusive)**

5 33. Plaintiff realleges and incorporates by reference, all of the foregoing paragraphs, as
6 though fully set forth herein.

7 34. The Private Attorney Generals Act of 2004 (the “PAGA”) expressly establishes that any
8 provision of the California Labor Code which provides for a civil penalty to be assessed and
9 collected by the Labor and Workforce Development Agency (the “LWDA”), or any of its
10 departments, divisions, commissions, boards, agencies or employees for a violation of the
11 California Labor Code, may be recovered through a civil action brought by an aggrieved
12 employee on behalf of himself or herself, and other current or former employees.

13 35. On May 4, 2021, Plaintiff provided written notice to the LWDA and Defendant of the
14 specific provisions of the Labor Code Plaintiff contend were violated, and the theories supporting
15 their contentions. A true and correct copy of the May 4, 2021 notice is attached hereto as
16 **Exhibit A**. More than sixty-five days have elapsed since Plaintiff provided notice to the
17 Defendant and the LWDA. To date, Plaintiff has not received a response from the LWDA
18 indicating its intent to investigate Plaintiff’s claims.

19 36. Plaintiff and the similarly situated employees are/ were non-exempt, hourly compensated
20 employees and are “aggrieved employees” as defined by California Labor Code § 2699(c) in that
21 they are all former employees of Defendant, and one or more of the alleged violations was
22 committed against them.

23 **Failure to Pay Wages**

24 37. Labor Code § 200(a) defines “wages” as “all amounts for labor performed by employees
25 of every description, whether the amount is fixed or ascertained by the standard of time, task,
26 piece, commission basis, or other method of calculation.”

27 38. Under Labor Code § 1194, employees must be separately paid an hourly wage for each
28 and every hour worked, including time worked while off the clock.

39. Plaintiff was at all times subject to the protections of California’s laws and regulations

1 protecting employees' entitlement to be paid and presumption to be paid all wages earned for
2 labor performed, including an hourly wage for each and every hour worked.

3 40. As set forth above, California law requires employers, such as Defendant to pay a
4 separate hourly wage to all nonexempt employees for each and every hour worked. Labor Code
5 § 1194 provides that employees are entitled to wages and compensation for work performed, at
6 the legal rate, including straight time, overtime, and double time.

7 41. At all relevant times herein, Defendant was required to compensate Plaintiff for all hours
8 worked pursuant to Labor Code § 1194.

9 42. By uniformly impeding Plaintiff and the Aggrieved Employees from taking their
10 lawfully entitled rest and meal breaks, through which they were forced to work, yet failing to
11 record and compensate them for such hours they worked, including overtime, Defendant was
12 able to skim wages from Plaintiff and the Aggrieved Employees by not paying them a separate
13 hourly wage for each and every hour worked.

14 43. Through this unlawful and illegal policy and practice, Defendant failed to pay Plaintiff
15 and similarly situated Aggrieved Employees all wages they were owed.

16 **Failure to Timely Pay Wages When Due**

17 44. Pursuant to Labor Code Section 204, all wages earned by Plaintiffs and the Aggrieved
18 Employees were and are "due and payable twice during each calendar month, on days
19 designated in advance by the employer as regular paydays." For "[l]abor performed between
20 the 1st and 15th days, inclusive of any calendar month" payment is due no later than the 26th
21 day of the month. "...For labor performed between the 16th and the last day, inclusive, of any
22 calendar month, payment is due no later than the 10th day of the following month..." By failing
23 to pay Plaintiffs and the Aggrieved Employees properly, Defendant deprived them of timely
24 payment of all wages earned, when due and owing at these regularly scheduled intervals
25 throughout their employment in violation of Labor Code Section 204.

26 **Failure to Pay Overtime Wages**

27 45. At all times relevant herein, Defendant was required to compensate its non-exempt
28 employees' wages for all hours worked, including overtime wages for all hours worked in excess

1 of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the statutory mandates
2 of Labor Code §§ 510, 1194, 1198 and IWC No. 16, Section 3.

3 46. At all times relevant herein, Defendant was required to compensate non-exempt
4 employees at a rate of one and one-half times their respective regular rates of pay for hours
5 worked in excess of eight hours in a single day, or for the first eight hours worked on the seventh
6 workday in a workweek, and twice the respective regular rates of pay for any work in excess of
7 eight hours on the seventh workday in a workweek, pursuant to Labor Code §§ 510 and 1198.

8 47. As a pattern and practice, Defendant failed to compensate Plaintiff and the Aggrieved
9 Employees for all hours worked, including hours worked during rest and meal break periods,
10 resulting in a failure to pay all wages due, including overtime wages earned.

11 **Failure to Provide Meal Periods and Rest Breaks**

12 48. In accordance with Labor Code §§ 226.7, 512 and IWC No. 16 Sections 10 and 11,
13 Defendant was required to authorize and permit their non-exempt employees to take a 10-minute
14 rest break for every four (4) hours worked or major fraction thereof and were further required
15 to provide their non-exempt employees with a uninterrupted, 30-minute, duty free meal period
16 for every five (5) hours worked. Failure to provide an employee with their rest and meal breaks
17 under these provisions requires an employer to pay the employee one (1) hour of pay at the
18 employee's regular rate of compensation for each workday that the rest or meal break periods
19 are not provided.

20 49. As a pattern and practice, Defendant systemically failed to provide Plaintiff and the
21 Aggrieved Employees with lawful, labor code compliant timely, duty-free meal periods and rest
22 breaks and failed to comply with the labor code and IWC No. 16 requirements to pay proper
23 premium pay penalties for the violations that occurred throughout the statutory period.

24 **Failure to Maintain Accurate Records of Hours Worked and Wages Paid**

25 50. California Labor Code § 1174 (d), which was in force and effect at all relevant times
26 herein, provides in pertinent part, that "Every person employing labor in this state shall keep...
27 "at a central location in the state or at the plants or establishments at which employees are
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1 employed, payroll records showing the hours worked daily by and the wages paid to, and the
2 number of piece-rate units earned by and any applicable piece rate paid to, employees
3 employed at the respective plants or establishments. These records shall be kept in accordance
4 with rules established for this purpose by the commission, but in any case shall be kept on file
5 for not less than three years. An employer shall not prohibit an employee from maintaining a
6 personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

7 51. Defendant knowingly and intentionally instructed its employees not to record anything
8 over eight hours of work in a day. Defendant intentionally omitted inclusion of hours the
9 Plaintiff and Aggrieved Employees were working during breaks, while off the clock and
10 overtime and travel to long-distance jobsites and affirmatively failed in their statutory
11 obligation to maintain accurate records of all hours that the Plaintiff and the Aggrieved
12 Employees worked and wages earned in violation of section 1174(d).

13 **Failure to Provide Accurate Wage Statements**

14 52. At all times relevant herein, Defendant was required to keep *accurate* records regarding
15 their California employees pursuant to the mandates of Labor Code § 1174(d) as discussed supra.

16 53. Furthermore, at all relevant times hereto, Labor Code section 226(a) was in full force and
17 effect and provides that, semimonthly or at the time of each payment of wages an employer shall,
18 “*furnish each of [its] employees, either as a detachable part of the check, draft, or voucher*
19 *paying the employee’s wages, or separately when wages are paid by personal check or cash, an*
20 *itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the*
21 *employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is*
22 *paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding*
23 *number of hours worked at each hourly rate by the employee.*”

24 54. As a result of Defendant’s failure record and maintain accurate records of all hours
25 worked and wages earned in violation of Labor Code Section 1174 (d) Defendant, consequently,
26 intentionally and knowingly failed in its affirmative obligation issue accurately itemized wage
27 statements each and every pay period that reflected gross wages earned, the total hours worked, at
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1 the correct respective rates of pay in violation of Labor Code Section 226(a).

2 **Failure to Reimburse Expenses Incurred in the Discharge of Work-Related Duties**

3 55. At all times relevant, California Labor Code section 2802 was in force and effect. Section
4 2802(a) provides in pertinent part that: “*An employer shall indemnify his or his employee for all*
5 *necessary expenditures or losses incurred by the employee in direct consequence of the discharge*
6 *of his or his duties ...*”

7 56. As alleged above, Defendant required Plaintiff and the Aggrieved Employees to incur
8 work related expenses that were never reimbursed, including but not limited to: purchase of office
9 supplies, lunches, beverages, gasoline/mileage for work related travel and utilization of personal
10 cells phones for work related communications with supervisors, managers and colleagues. At no
11 time has/did Defendant ever reimburse Plaintiff and the Aggrieved Employees for such work-
12 related expenses in violation of Labor Code Section 2802.

13 57. Plaintiff and the Aggrieved Employees seek reimbursement for all business-related
14 expenses they incurred in the performance of their job duties for Defendant, all applicable PAGA
15 civil penalties, together with interest thereon, as well as their attorneys’ fees and costs.

16 58. All unreimbursed expenses and penalties owed by Defendant to Plaintiff and the
17 Aggrieved Employees may be recovered through this PAGA action; no class certification is
18 required for Plaintiff to obtain a recovery on behalf of himself and on behalf of the Aggrieved
19 Employees. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 970-975.)

20 **Failure to Pay Wages Due Upon Termination or Separation**

21 59. Labor Code §§ 201 and 202 require employers such as Defendant to pay their employees
22 all wages due within the time specified by law. California Labor Code § 203 provides that if an
23 employer willfully fails to timely pay such wages, the employer must continue to pay the
24 employee’s subject wages until the back wages are paid in full or an action is commenced, up to
25 a maximum of 30 calendar days of wages.

26 60. As alleged supra, Plaintiff did not all outstanding wages due upon his separation of
27 employment from Defendant in February of 2021. Indeed, Plaintiff and the Aggrieved
28 Employees who ceased employment with Defendant during the statutory period were entitled to

1 be timely and fully paid *all outstanding wages each was due* upon separation or termination of
2 employment.

3 61. More than 30 days have passed since Plaintiff and such Aggrieved Employees have left
4 Defendant's employment

5 62. As a consequence of Defendant's willful conduct Defendant is in violation of Labor
6 Code Sections 201-203 and will and do hereby seek all available civil penalties under the
7 PAGA..

8 **Damages**

9 63. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by
10 the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

11 64. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to recover
12 from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved
13 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
14 aggrieved employee per pay period for each subsequent violation; and

15 65. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
16 statute.

17 66. As alleged supra, notice of these violations were provided pursuant to Labor Code
18 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
19 have passed since notice was provided and Plaintiff has not received any notification from the
20 LWDA that it intends to investigate the alleged violations. Therefore, the representative
21 Plaintiff is entitled to prosecute the PAGA claims under Labor Code §2699, et seq.

22 67. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
23 Employees, whether a part of this action or not. Further this claim needs no certification to
24 proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

25 68. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in
26 his favor including civil penalties under California Labor Code §2699 in the amount of one
27 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
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1 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each
2 subsequent violation during the relevant period, according to proof.

3 69. Plaintiff as the personal representative of the Aggrieved Employees, will and does seek
4 to recover any and all penalties for each and every violation shown to exist or to have occurred
5 during the liability period, in an amount according to proof, as to those penalties that are
6 otherwise only available to public agencies. Said fund recovered will be distributed in
7 accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed
8 to the State of California and the LWDA.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff pursuant to PAGA, prays for judgment as follows:

12 1. Upon the Cause of Action, for civil penalties and wages pursuant to statute as set forth in
13 Labor Code § 2698 *et seq.*, for Defendant's violations of Labor Code §§ 201-203, 204, 226(a),
14 226.7, 510, 512(a), 1174(d), 1194, 2802 and applicable IWC No. 16-2001.

15 2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §
16 2699.3 and any other applicable statute; and

17 3. For such other and further relief the court may deem just and proper.

18
19 Dated: April 19, 2022

WHITEHEAD EMPLOYMENT LAW

20 By: 
21 Jacob N. Whitehead, Esq.
22 Meghan Higday, Esq.
23 Attorneys for Plaintiff and
24 Aggrieved Employees
25
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27
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EXHIBIT A



May 4, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

First Class Mail

Mr. James Matthew Humphrey, CEO
MCH Electric, Inc.
7693 Longard Road
Livermore, California 94550

Via Certified Return Receipt Mail

James Matthew Humphrey
Registered Agent for
MCH Electric, Inc.
7693 Longard Road
Livermore, California 94550

Re: Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Wilbur Fuentes ("Plaintiff") has retained Whitehead Employment Law to represent him and other similarly situated current and former employees (collectively, the "Aggrieved Employees") of MCH Electric, Inc., a California corporation, and Does 1-25 (collectively hereinafter "Defendants") regarding multiple violations of the California Labor Code and other applicable laws.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as hourly, nonexempt, Laborers, Foremen, Mangers, or other similarly situated positions (the "Covered Positions.") This notice formally serves to inform Defendants of Plaintiff's intent to file a Complaint against Defendants, bring causes of action for violations of the California Labor Code, and Plaintiffs seek to bring an action for civil penalties under the Private Attorney Generals Act of 2004 (the "PAGA") and for injunctive relief for the violations further detailed below.

Factual Summary

Plaintiff Wilbur Fuentes was formerly employed by Defendants from on or about May 16, 2019 to approximately February 3, 2021 as an hourly, nonexempt "Laborer". As a "Laborer" the Plaintiff's job duty entailed traffic signal installation, utility joint trench work, installation of

utility boxes in both residential and industrial lands, among other things. Plaintiff worked approximately 40 to 60 hours per week, and his hourly wage is \$18 per hour.

Approximately three times a week, Plaintiff had to travel to various work sites that were over an hour away in order to perform his work-related job duties. Plaintiff and the Aggrieved Employees were required to use their own personal vehicles without reimbursement for the mileage and gas used to reach the different locations. Defendants' work sites would be anywhere from twenty to fifty miles away from Defendants' office location. Plaintiff would travel to perform work-related duties several times a week. However, as a matter of practice Defendants did /does not reimburse Plaintiff and the Aggrieved Employees for the mileage spent to reach the destination to complete their work-related tasks and duties or for the time it takes for Plaintiff and the Aggrieved Employees to reach these job sites. During the relevant statutory period, Plaintiff and the Aggrieved Employees also had to utilize their personal cell phones for work related duties and work-related communications, with the use of their personal cell phones an essential part of the job. Although some foremen used provided radios, many foremen required the use of a cell phone to communicate. Plaintiff and the Aggrieved Employees regularly used personal cell phones to receive phone calls from supervisors regarding job site locations, requests, information regarding supplies, and job site updates. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal vehicles and personal cell phones.

Furthermore, because of Defendants' policies and procedures, Defendants have failed to maintain accurate records of all hours actually worked and subsequently did not pay Plaintiff and the Aggrieved Employees for overtime worked. Defendants required Plaintiff and the Aggrieved Employees to clock out after eight hours of work per day. Defendants routinely only recorded and paid for eight hours of work per day, with all hours exceeding eight hours per day being unrecorded and unpaid. Plaintiff and the Aggrieved Employees would routinely work two to three hours of overtime multiple times per week as a result of having a large workload. The overtime worked was nearly never recorded by Defendant and as a result the Defendants failed to pay Plaintiff and the Aggrieved Employees the overtime that they were entitled to.

During the relevant statutory period, Plaintiff and the Aggrieved Employees regularly did not receive rest breaks. Defendants rarely provided Plaintiff and the Aggrieved Employees the ability to take rest breaks, instead requiring Plaintiff and the Aggrieved Employees to work through meal and rest breaks to meet deadlines. On the few occasions Plaintiff and the Aggrieved Employees were able to take rest breaks, they were never duty free as they were regularly disturbed and interrupted by Defendants and the break were often cut short by their employer's demands. Plaintiff and the Aggrieved Employees were also not provided proper undisturbed lunch breaks and were routinely interrupted by supervisors, who harassed them during their lunch breaks and who unlawfully demanded that they get back to work. Plaintiff was routinely instructed by his supervisor to pick up lunch for the supervisor and other co-workers during his lunch break. Whenever Plaintiff attempted to refuse, Defendants threatened his job. Due to these circumstances, Plaintiff and the Aggrieved Employees, were required to continue to work while off the clock during their lunch breaks. Defendant have never paid Plaintiff and the Aggrieved employees premium pay to which they were entitled for the missed and non-compliant rest and meal breaks. At no time did Plaintiff or the Aggrieved Employees agree to waive their rest and meal break periods.

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Rest/Meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Orders, “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. See, IWC No. 16, Section 12 (A) & (B).

As stated, during the relevant statutory period, the Plaintiff and the Aggrieved Employees, were rarely able to take rest or meal breaks, as Defendants directed Plaintiff and the Aggrieved Employees to work during lunch breaks, and/or commanded them to cut their breaks

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

short. Defendants actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendants have not ever paid premium pay penalties for the missed and non-compliant rest and meal breaks.

This is a clear violation of the provisions of the Labor Code and the IWC No. 16 which set forth California employers' affirmative obligation to provide timely, duty-free rest and meal break periods

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 16, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *"All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."*

Under Labor Code §1194 (a) *"Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."*

As stated above, Defendants failed to record or compensate Plaintiff and the Aggrieved Employees for time worked. Defendants violated Labor Codes §§ 204 and 1194 (a), as a result Plaintiff and the Aggrieved Employees are entitled to recover all wages for hours worked, and for late payment of wages with penalties and interest thereon, as well as their attorney's fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."*

As indicated above, the Plaintiff and the Aggrieved Employees often worked off the clock, which meant they were working more than an eight-hour shift most of the time but were not paid overtime wages. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney's fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are*

employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

As indicated above, due to Defendants' operational policies, procedures and practices, Defendants did not maintain accurate records of hours worked by Plaintiff and Aggrieved Employees. Plaintiff and the Aggrieved Employees often worked overtime, which was not tracked properly or at all therefore Plaintiff and Aggrieved Employees worked many hours for free. Defendants violated Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants' derelict record keeping and unlawful business and compensation practices, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226(a) requires Defendant to "*furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.*"

As indicated above, Plaintiff and the Aggrieved Employees were working shifts longer than 8 hours, and over 40 hours a week. However, Defendants never recorded or compensated Plaintiff and Aggrieved Employees for any of that time working during shifts that lasted longer than 8 hours. Thus, due to Defendants' unlawful and inaccurate time keeping policies and practices, the time and hours worked is / was not reflected on wage statements nor compensated for during the statutory period.

In failing to knowingly and willfully account and compensate with accuracy all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendants violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an

employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when Plaintiff and certain of the Aggrieved Employees' employment relationships with Defendants terminated, Defendants knowingly and willfully failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants have failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, "*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*"

As described above, the Plaintiff and the Aggrieved Employees frequently and almost daily utilized their own personal vehicles and personal cell phone in the course of performing their work-related duties without being reimbursed by the Defendants. Defendants have violated Labor Code §2802 and the Plaintiff and the similarly situated Aggrieved Employees seek reimbursement of these work-related expenses necessarily incurred in the discharge of their job duties, as well as their attorneys' fees, penalties and interest thereon as permitted by §2802.

Conclusion

In sum, as has been factually alleged, Defendants have violated Labor Codes §§ 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194 (a), 2802, and Industrial Welfare Commission Wage Order No. 16-2001 (IWC No. 16). Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest as provided by California law and attorneys' fees and civil penalties as provided for under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Meghan Higday, Esq.

-MNH/anb