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JESUS VILLARREAL on behalf of
themselves, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JESUS VILLARREAL, an individual, on
behalf of themselves, all aggrieved employees,
and the State of CA as a Private Attorney
General,

Plaintiffs,

vs.

BAKER ELECTRIC, INC. and DOES 1-50,
inclusive,

Defendants.

Case No.: 37-2021-00030219-CU-OE-CTL

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff JESUS VILLARREAL brings this PAGA representative action complaint on
behalf of themselves, all aggrieved employees, and the State of California as a Private Attorneys
General, and alleges as follows:

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) **Act of 2004, Cal. Labor Code §2698 *et seq.***

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behalf of themselves, all aggrieved employees, and the State of California as a Private Attorneys
General, and alleges as follows:

NATURE OF THE ACTION

1
2 1. Plaintiff JESUS VILLARREAL worked as a general laborer for defendant BAKER
3 ELECTRIC, INC. and Does 1-50 (collectively “Defendants”). Defendants own and operate a
4 roofing business. Plaintiff brings this action pursuant to the Private Attorneys General Act of
5 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and
6 former employees of Defendant within one year of serving notice on the LWDA to the present
7 are aggrieved employees.

8 2. Defendants failed to comply with California Labor Code requirements due to
9 erroneous, willful and intentional employment practices and policies. Plaintiff brings this
10 representative action on behalf of themselves, all other similarly situated aggrieved employees, and
11 the State of California, based upon the claims articulated below. Plaintiff provided notice of their
12 claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency
13 (“LWDA”) as illustrated by the attached Exhibit, the content of which is expressly incorporated
14 herein. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-
15 day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint
16 for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

17 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all
18 hours worked, including overtime hours worked; (2) failing to provide timely meal breaks; (3)
19 failing to provide adequate rest breaks; (4) failing to provide adequate cool down periods; (5)
20 failing to provide a safe and healthful working environment; (6) failing to provide adequate
21 shade; (7) failing to provide potable water; (8) failing to reimburse for business expenses; (9)
22 failing to timely pay all wages owed and (10) failing to provide accurate wage statements and
23 maintain accurate payroll records. Defendants are therefore liable for civil penalties under the
24 Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et*
25 *seq.*, as described more fully herein.

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27 ///

28 ///

1 **THE PARTIES**

2 4. Plaintiff JESUS VILLARREAL is a resident of the State of California and was
3 employed as an hourly, nonexempt employee of Defendants from in August of 2019 and
4 continued until August of 2020.

5 5. Defendant BAKER ELECTRIC, INC. is a corporation incorporated in the state of
6 California, doing business in California with the capacity to sue and to be sued, and doing
7 business, in the county of San Diego, State of California.

8 6. Plaintiff is unaware of the true names, capacities, relationships, and extent of
9 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is
10 informed and believes and thereon alleges that said Defendants are legally responsible for the
11 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names,
12 Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

13 7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
14 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
15 of the representative class, and exercised control over their wages, hours, and working
16 conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all
17 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
18 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
19 attributable to the other Defendants.

20 **JURISDICTION AND VENUE**

21 8. Venue is proper in this judicial district because Defendants conduct business in this
22 county and each defendant has legal obligations to Plaintiff and many of the aggrieved
23 employees in this case that arose in this county.

24 9. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
25 the Superior Court and will be established according to proof at trial. Based on information,
26 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
27 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
28 (\$25,000).

1 10. The California Superior Court has jurisdiction in this matter because Plaintiff is a
2 resident of California and Defendants are qualified to do business in California and regularly
3 conduct business in California. Further, there is no federal question at issue as the claims herein
4 are based solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 11. During the relevant time-period, Defendants committed various violations of the
7 California Labor Code as alleged below in more detail. Defendants enforce multiple policies that
8 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

9 12. Defendant BAKER ELECTRIC, INC., is a company with its operations based on
10 owning and operating a roofing business. This representative action represents over one hundred
11 current and former aggrieved employees.

12 13. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
13 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
14 numerous Labor Code sections, as set forth more fully below.

15 14. Plaintiff and all current and former employees within one year of filing this action to
16 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
17 code §2699(c).)

18 15. Defendants, and each of them, have committed the following violations of the
19 California Labor Code:

20 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

21 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 2698 *et seq.*, and Wage Order 16)

22 16. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 17. Section 2(J) of Wage Order 16 defines “hours worked” as “the time during which an
25 employee is subject to the control of an including all the time the employee is suffered or
26 permitted to work, whether or not required to do so.” When employees like Plaintiff and his
27 coworkers earning wages at or near minimum wage do not receive payment for all hours
28 worked, the result is that they are earning less than the statutory minimum wages for all hours

1 worked. Employer has been engaged in many unlawful employment practices which resulted in
2 underpayment for hours worked each pay period, including shaving time from their timecards
3 due to employer rounding.

4 18. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently worked
5 off the clock and were routinely subjected to periods wherein they were under the Employer's
6 control but not compensated for their time. Plaintiff and aggrieved employees would often arrive
7 at the company location between 5:30-6 am to organize and prepare the trucks for the day's
8 work. They would then drive to the job site, where they must arrive by 7 am. Time was kept by
9 the supervisor, who would write down that the employees started at 7 am, although they spent
10 significant time preparing the trucks and under the employers control before 7 am. At the end of
11 the day, Plaintiff and aggrieved employees would leave the job site at 3:30pm, at which time the
12 supervisor would clock them out. However, Plaintiff still had to drive back to the company
13 location to return and empty the truck. Employees were also contacted during non-working hours
14 to arrange schedules. When Plaintiff was promoted to crew lead, he was required to work on and
15 arrange the next day's schedules and text employees during his unpaid time in the evening.
16 Plaintiff was underpaid for 2.5-3 hours every day, and this experience was similar for aggrieved
17 employees.

18 19. Plaintiff and aggrieved employees were not paid for this time worked, resulting in
19 failure to pay wages, including overtime and minimum wages. Employer has violated Labor
20 Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 16. Employer is liable for civil
21 penalties pursuant to Labor Code §2698 *et seq.*

22 20. Pre and Post Shift Work and Time-Shaving and Rounding. Plaintiff and aggrieved
23 employees frequently were under the Employers' control but not compensated for their time. As
24 previously stated, Employees would arrive at work up to an hour and a half before their hours
25 were written down by the lead employee and that person would systematically round employee's
26 timecard minutes, causing Plaintiff and aggrieved employees to be underpaid on a daily basis.

27 21. When it comes to time shaving and rounding, the California Supreme Court has
28 rejected the de minimis argument frequently echoed by employers, confirming that employees

1 are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a
2 “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such
3 a manner that it will not result, over a period of time, in failure to compensate the employees
4 properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018)
5 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) Employer rounds all clock in
6 and clock out entries on Plaintiff and aggrieved employees’ timecard.

7 22. The policy utilized by Employer is neither fair nor neutral, as it consistently shaved
8 time from Plaintiff and aggrieved employees’ hours worked, resulting in a failure to compensate
9 Plaintiff and aggrieved employees for all hours and overtime hours worked.

10 23. Work Performed During Unpaid Meal Periods. As more fully set forth below,
11 Employer often failed to permit Plaintiff and others to take timely, off-duty, first meal breaks of
12 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
13 §§226.7 and 512. From time-to-time Employees were not given their meal break within the
14 statutory time period required or Employees experienced a disrupted meal break and were not
15 given the entire 30-minute period for their meal break.

16 24. When employees like Plaintiff and aggrieved employees earning minimum wage do
17 not receive payment for all hours worked, including off-the-clock and overtime hours worked,
18 the result is that they are earning less than the statutory minimum wages for all hours worked, in
19 violation of Labor Code §1197.

20 25. Failure to Pay Overtime Wages. Employer has required Plaintiff and aggrieved
21 employees to work hours in excess of eight hours in a day and forty in a week but has not paid
22 these employees overtime compensation as required by their collective bargaining agreement in
23 violation of labor Code §222. As a result, Plaintiff and aggrieved employees have been denied
24 payment for all hours worked as required by Cal. Labor Code. §222, §1194, §1198. Employer is
25 liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.* Additionally, Employer
26 has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission
27 Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a
28 violation of the labor code to fail to comply with a wage order.

1 26. Failure to Pay All Wages Owed Twice Per Month. Employer was required to pay
2 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
3 to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the
4 unlawful employment policies and practices discussed herein. As a result of these practices,
5 Employees were underpaid for hours worked, including overtime and penalty wages, and this
6 underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure,
7 Employer is liable under Labor Code §210 for failure to pay wages as required by law and as a
8 result of these practices, Plaintiff and aggrieved employees were underpaid for hours worked,
9 including overtime and penalty wages, and this underpayment resulted in a failure to pay all
10 wages owed twice per month, as more fully set forth below. As a result of these violations,
11 Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

12 **Failure to Provide Timely & Compliant Meal Breaks**

13 (Civil Penalties under Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 16)

14 27. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
15 incorporate said paragraphs herein by reference.

16 28. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
17 period of more than five hours per day without providing the employee with a meal period of not
18 less than 30-minutes . . .” Labor Code § 226.7(a) provides, “[n]o employer shall require an
19 employee to work during any meal . . . period mandated by an applicable order of the Industrial
20 Welfare Commission.” Paragraph 10 of Wage Order 16 provides, in pertinent part, “[u]nless an
21 employee is relieved of all duty during a 30 minute meal period, the meal period shall be
22 considered an ‘on duty’ meal period and counted as time worked.” Pursuant to Labor Code
23 §1198, “the employment of any employee . . . under conditions of labor prohibited by the order
24 is unlawful.”

25 29. In this case, Plaintiff claims that although he and his coworkers frequently worked 8-
26 hour shifts, he was not always provided a full, uninterrupted 30-minute break. Meal periods for
27 Plaintiff and aggrieved employees were recorded by the supervisor, who automatically entered a
28 full 30 minute meal period regardless of whether or when a meal period was taken.

1 30. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-
2 duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in
3 violation of Labor Code §§226.7 and 512. Although meals were routinely late and always
4 noncompliant, Defendants never paid penalty pay to Plaintiff and others. As a derivative claim,
5 Plaintiff alleges that their pay statements were inaccurate, failing to include required meal period
6 penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations,
7 Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et. seq.*

8 31. Plaintiff alleges on information and belief that that Defendants’ failure to pay
9 aggrieved employees the unpaid balance of these meal period wages upon the termination of
10 their employment, as alleged in this cause of action, was willful, and thus entitles aggrieved
11 employees to penalties under Labor Code §203. Specifically, Labor Code §203 provides that an
12 employee's wages shall continue as a penalty until paid or for a period of up to 30 days from the
13 time they were due, whichever period is shorter.

14 32. Plaintiff seeks penalties pursuant to Labor Code §558 in this representative action for
15 each violation of Labor Code §226.7. Further, as a derivative claim for failing to pay the
16 premium pay of one (1) hour of pay at the employee’s regular rate of compensation for each
17 workday that the meal period is not provided, Plaintiff will seek statutory penalties under Labor
18 Code §226(a)(1) because the failure to pay such premium wages rendered gross pay calculations
19 inaccurate in violation of Labor Code §226(e)(2)(B)(i).

20 **Failure to Provide Rest Breaks**

21 (Cal. Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 16)

22 33. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 34. Employer has failed to maintain a policy and practice that provides or permits its
25 employees to take off-duty rest periods as required by California law. Employees are entitled to
26 at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab.
27 Code §226.7, §512 and Wage Order 16.

28 35. Plaintiff and aggrieved employees were not given rest periods during their work
shifts. Plaintiff explains that they never received a rest period and they were not incorporated

1 into daily schedules. Employer failed to pay Plaintiff and similarly situated employees all
2 premium compensation (one hour of pay at the employee's regular rate of pay for missed or
3 untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a
4 derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to include required
5 rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result
6 of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and
§2698 *et. seq.*

7
8 **Failure to Provide Proper Cool-Down Rest Periods**
(Cal. Labor Code §§ 226.7, 1198, 2699 *et seq*, CCR, Title 8, §3395)

9 36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
10 incorporate said paragraphs herein by reference.

11 37. California Code of Regulations, Title 8, section 3395, subdivision (d)(3) provides in
12 part that employees working for employers that maintain "outdoor places of employment shall be
13 allowed and encouraged to take a preventative cool-down rest in the shade when they feel the
14 need to do so to protect themselves from overheating."

15 38. Labor Code section 226.7, subdivision (c) further provides that:

16 If an employer fails to provide an employee a... recovery period in
17 accordance with a state ., law, including, but not limited to an
18 applicable statute or applicable regulation, standard, or order of the
19 Occupational Safety and Health Standards Board, or the Division
20 of Occupational Safety and Health, the employer shall pay the
21 employee one additional hour of pay at the employee's regular rate
22 of compensation for each workday that the meal or rest or recovery
23 period is not provided.

24 39. The nature of Plaintiff and aggrieved employees' work required them
25 to consistently work outside (on roofs), where temperatures often exceed eighty
26 (80) degrees Fahrenheit in the hot Southern California sun. Employers neither
27 allowed nor encouraged Plaintiff and aggrieved employees to take cool-down rest
28 periods when such employees were feeling overheated, exposing employees to a

1 high risk of suffering heat illness so that their life, safety, and health were
2 jeopardized by Employer's conduct, violating California Code of Regulation,
3 Title, section 3395 and Labor Code §§ 226.7 and 1198.

4 **Failure to Provide Place Of Employment That Is Safe And Healthful**

5 (Cal. Labor Code §§6400, 6401, 6401.7, 6402, 6403, 2699 *et seq.*)

6 40. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 41. Employer failed to timely make changes to the workplace at the onset of COVID.
9 Employer provided only one mask to Plaintiff and aggrieved employees and required that they
10 provide their own. Employer did not have a covid safety protocol in place. Employees did not
11 take temperatures at start of shift, did not provide additional handwashing facilities, no covid
12 screening program or plan was implemented. As a result of these practices, Employers have
13 violated Cal. Labor Code §§6400, 6401, 6401.7, 6402, 6403, for failure to provide a safe and
14 healthful environment for their Employees. Employers are liable for civil penalties pursuant to
15 Cal. Labor Code §2699 *et seq.*

16 **Failure to Provide Proper Shade**

17 (Cal. Labor Code section 226.7, 2699 *et seq.*, 6300, 6310, 6400; CCR, Title 8, § 3395.)

18 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 43. Labor Code §226.7 requires that employers provide rest periods that comply with
21 state laws, including those that require adequate shade. When employees did receive rest breaks,
22 they were also not compliant because the workplace lacked adequate shade as required by Cal.
23 Code Regs. Tit. 8 §3395(d).

24 44. California Code of Regulations, Title 8, section 3395, subdivision (d) provides in part
25 that employees working for employers that maintain "outdoor places of employment" shall have
26 access to shade and provides the conditions under which such shade must be provided, both
27 when the temperature exceeds 80 degrees Fahrenheit and when the temperature is below 80 ,
28 degrees Fahrenheit, as follows:

1 (1) Shade shall be present when the temperature exceeds 80 degrees
2 Fahrenheit. When the outdoor temperature in the work area exceeds 80
3 degrees Fahrenheit, the employer shall have and maintain one or more areas
4 with shade at all times while employees are present that are either open to
5 the air or provided with ventilation or cooling. The amount of shade present
6 shall be at least enough to accommodate the number of employees on
7 recovery or rest periods, so that they can sit in a normal posture fully in the
8 shade without having to be in physical contact with each other. The shade
9 shall be located as close as practicable to the areas where employees are
10 working. Subject to the same specifications, the amount of shade present
11 during meal periods shall be at least enough to accommodate the number of
12 employees on the meal period who remain onsite.

13 (2) Shade shall be available when the temperature does not exceed 80
14 degrees Fahrenheit. When the outdoor temperature in the work area does
15 not exceed 80 degrees Fahrenheit employers shall either provide shade as
16 per subsection (d)(1) or provide timely access to shade upon an employee's
17 request.

18 45. Labor Code sections 6300, 6310 and 6400, et seq. requires all employers take
19 reasonable steps to provide a safe and secure workplace. Because Defendants did not provide
20 shade required by 8 CCR § 3395 at their “outdoor places of employment,” Plaintiff and aggrieved
21 employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety,
22 and health. Defendants are liable for extensive damages and PAGA penalties pursuant to Labor
23 Code § 226.7.

24 **Failure to Provide Potable Drinking Water**

25 (Cal. Labor Code section 226.7, 1524, 2241, 3363, 2699 et seq, 6300, 6310, 6400, 6712; CCR,
26 Title 8, §§ 2295, 3395.)

27 46. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
28 incorporate said paragraphs herein by reference.

1 47. Labor Code §226.7 requires that employers provide rest periods that comply with
2 state laws, including those that require potable drinking water. Labor Code §226.7 requires that
3 employers provide rest periods that comply with state laws, including those that require adequate
4 shade and accessible water. Labor Code sections 6300, 6310 and 6400, et seq. requires all
5 employers take reasonable steps to provide a safe and secure workplace.

6 48. California’s Heat Illness Prevention statute, Title 8 Section 3395(d), obligates
7 employers to provide training and access to shade and adequate drinking water for employees
8 like Plaintiff and aggrieved employees, many of whom work outdoors in high heat conditions.

9 49. California Labor Code § 2241 requires employers to provide fresh, free, and pure
10 drinking water for employees, at reasonable and convenient times and places. 8 CCR 2295
11 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and
12 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably
13 cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision
14 of potable drinking water and single use cups. Plaintiff and aggrieved employees were not
15 provided with adequate potable drinking water, not nearly sufficient to meet the needs of the
16 large number of employees working throughout the duration of the shift. Pursuant to §2241,
17 “[a]ny violation of this section is punishable for each offense by a fine of not less than fifty
18 dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than
19 30 days, or by both the fine and imprisonment.” Pursuant to Cal. Labor Code §6712, “any
20 employer who fails to provide the facilities required by the field sanitation standard shall be
21 assessed a civil penalty . . . of not less than seven hundred fifty dollars (\$750) for each
22 violation.” Defendants are liable for civil penalties pursuant to Labor Code §226.7.

23 **Failure to Reimburse For Required Business Expenses**

24 (Cal. Labor Code §§1198, 2802, 2699 et seq.)

25 50. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.

27 51. Labor Code §2802 requires employers to indemnify employees for necessary
28 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,

1 Employer required Plaintiff and employees to utilize their personal transportation during their
2 workday, to get to their assignments, but failed to reimburse Plaintiff and employees for this use
3 as required by the Labor Code. Plaintiff and aggrieved employees were also required to use their
4 cell phones to communicate with their Employer for work purposes. Finally, Plaintiff and
5 employees provided their own masks and PPE to keep themselves safe from covid. Accordingly,
6 Employer is liable for civil penalties under PAGA §2698 *et seq.*

7
8 **Failure to Timely Pay Final Wages**

9 (Cal. Labor Code §§201, 202, 203, 256, and 2698 *et seq.*)

10 52. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
11 incorporate said paragraphs herein by reference.

12 53. Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an
13 employee, the wages earned and unpaid at the time of discharge are due and payable
14 immediately.” Labor Code section 202 states, in pertinent part, “[i]f an employee not having a
15 written contract for a definite period quits his or her employment, his or her wages shall become
16 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
17 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
18 wages at the time of quitting.”

19 54. Defendants knowingly and willfully failed to pay Plaintiff and aggrieved employees
20 all compensation due and owing upon separation of employment, including but not limited to, all
21 earned regular and overtime wages. Defendants willfully failed to pay employees who are no
22 longer employed by it all compensation due upon termination of employment as required by Cal.
23 Lab. Code §§201 and 202.

24 55. Plaintiff believes that other employees who separated from the company, whether
25 voluntary or involuntary, were also denied payment of wages in a timely manner as required by
26 §203. Plaintiff seeks civil penalties pursuant to §558 (a)(3) for each violation of §203 and civil
27 penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and
28 Development Agency (LWDA).

56. Pursuant to §203, Plaintiff and similarly situated individuals are now also entitled to
recover up to thirty (30) days of wages due to Defendants’ “willful” failure to comply with the

1 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
2 violated §§201, 202 and 203, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
3 § 2698 *et. seq.*

4 57. Labor Code section 256, in pertinent part, provides that a civil penalty shall be
5 imposed in an amount not exceeding 30 days' pay as waiting time under the terms of Section
6 203.

7 58. Defendants were required to pay Plaintiff and aggrieved employees all wages earned
8 twice during each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all
9 wages earned to employees as a result of the unlawful employment policies and practices
10 discussed herein. As a result of these practices, aggrieved employees were underpaid for hours
11 worked, including overtime and penalty wages, and this underpayment resulted in a failure to
12 pay all wages owed twice per month. As a result of these violations, Defendants are liable for
13 civil penalties pursuant to Cal. Lab. Code §§558 and 2698 *et seq.*

14 **Civil Penalties for Failure to Furnish and Maintain Accurate Payroll Records**

15 (Cal. Labor Code §§ 226, 1174, 2698 *et seq.*)

16 59. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
17 incorporate said paragraphs herein by reference.

18 60. California Labor Code §226(a) provides that “[e]very employer shall, semimonthly or
19 at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
20 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of
21 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
22 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the
23 employee is paid, (7) the name of the employee and his or her social security number..., (8) the
24 name and address of the legal entity that is the employer, and (9) all applicable hourly rates in
25 effect during the pay period and the corresponding number of hours worked at each hourly rate
26 by the employee.” (Emphasis added.)

27 61. Labor Code §1174 provides that “[e]very employer employing labor in this state shall
28 ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages
of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at

1 which employees are employed, payroll records showing the hours worked daily by and the
2 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
3 employees employed at the respective plants or establishments. These records shall be kept in
4 accordance with rules established for this purpose by the commission, but in any case shall be
5 kept on file for not less than two years.”

6 62. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
7 wage statements to Plaintiff and the aggrieved employees, and maintain accurate records, in
8 accordance with Labor Code §§226 and 1174. As a result of the unlawful employment practices
9 discussed herein, Defendants maintained and issued inaccurate wage statements, failing to
10 include required overtime hours worked and misrepresenting actual regular hours on the final
11 wage statement. Further, Defendants failed to include meal and rest period penalties, thus failing
12 the requirements of Labor Code §226(a). Such failures caused injury to Plaintiff and others, by,
13 among other things, impeding them from knowing the total hours worked and the amount of
14 wages to which they are and were entitled.

15 63. Labor Code §226.3 provides, “[a]ny employer who violates subdivision (a) of Section
16 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
17 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
18 each violation in a subsequent citation, for which the employer fails to provide the employee a
19 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
20 The civil penalties provided for in this section are in addition to any other penalty provided by
21 law.” Plaintiff seeks penalties as permitted under Labor Code §226 for themselves and other
22 aggrieved employees for each violation.

23 64. Through this representative action, Plaintiff will advance the interests of hundreds of
24 current and former employees, such that joinder is impracticable. These current and former
25 employees can be readily be identified through a review of Defendants’ payroll records and the
26 records of the company that handles payroll for Defendants.

1 65. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
3 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

4 **FIRST CAUSE OF ACTION**

5 **Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)**
6 **(California Labor Code §2698 *et seq.*)**

7 66. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporate said paragraphs herein by reference.

9 67. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by
10 Defendants during the applicable statutory period and suffered one or more of the Labor Code
11 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all
12 other current and former aggrieved employees of Defendants, the civil penalties provided by
13 PAGA, plus reasonable attorneys’ fees and costs.

14 68. Plaintiff seeks to recover the PAGA civil penalties through a representative action
15 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
16 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

17 69. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
18 Code provisions:

- 19 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
20 Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);
- 21 b. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§226(a), 226.7, 512,
22 558, 1198, 2698 *et seq.*);
- 23 c. Failure to Provide Adequate Rest Breaks and Cool Down Periods (Cal. Labor
24 Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*);
- 25 d. Failure to Provide Adequate Cool Down Periods (Cal. Labor Code §§ 226.7,
26 1198, 2699 *et seq.*, CCR, Title 8, §3395);
- 27 e. Failure to Provide Safe and Healthful Working Environment (Cal. Labor Code
28 §§6400, 6401, 6401.7, 6402, 6403, 2699 *et seq.*);

- f. Failure to Provide Proper Shade (Cal. Labor Code section 226.7, 2699 et seq, 6300, 6310, 6400; CCR, Title 8, § 3395.);
- g. Failure to Provide Potable Drinking Water (Cal. Labor Code section 226.7, 1524, 2241, 3363, 2699 et seq, 6300, 6310, 6400, 6712; CCR, Title 8, §§ 2295, 3395.);
- h. Failure to Reimburse Business Expenses (Cal. Labor Code §§1198, 2802, 2699 et seq.);
- i. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§201, 202, 203, 256, 2698 *et seq.*);
- j. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records (Cal. Labor Code §§226, 1174, 1174.5, 2698 *et seq.*).

70. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

71. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

72. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

73. Plaintiff and the other current and former employees of Defendants are aggrieved employees. They were or are employed by Defendants, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of themselves and all other current and former aggrieved employees.

74. At the time of each violation, Defendants employed one or more employees.

1 75. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of
2 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
3 determined at trial, pre-judgment interest, costs and attorneys' fees.

4 76. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
5 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
6 Workforce Development Agency ("LWDA") and served by certified mail upon Defendants,
7 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
8 provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice
9 within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies.
10 Pursuant to Labor Code §2699.3, Plaintiff may now pursue their PAGA claims in this action on
11 behalf of aggrieved employees and the State of California.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays
3 for judgement against Defendants as follows:

- 4 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
5 determined at trial, but at least the jurisdictional amount of this Court;
- 6 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
7 §2699(g) and/or other applicable law;
- 8 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
9 law;
- 10 4. Pre-judgement and post-judgement interest as provided by law; and
- 11 5. Such other and further relief that the Court may deem just and proper.

12 DATED: July 14, 2021

13 **KOUL LAW FIRM**
14 **LAW OFFICES OF SAHAG MAJARIAN II**

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16 _____

17 BY: Nazo Koulloukian, Esq.
18 Attorneys for Plaintiff JESUS VILLARREAL, and
19 all aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

May 3, 2021

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Baker Electric, Inc.
1298 Pacific Oaks Place
Escondido, CA 92029

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Jesus Villarreal
Employers: Baker Electric, Inc.

Dear Sir or Madam:

Claimant Jesus Villarreal has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent him for wage and hour claims against his former employers Baker Electric, Inc. (collectively “Baker Electric” or “Employers”).

Employer is a California corporation doing business in the roofing business in the State of California. Mr. Villarreal began working for Baker Electric in August of 2019 and continued until August of 2020. Claimant and aggrieved employees worked as general laborers to support Baker Electric in the roofing industry.

Baker Electric has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*,
Wage Order 16)

Section 2(J) of Wage Order 16 defines “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers earning wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including shaving time from their timecards due to employer rounding.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimant and aggrieved employees would often arrive at the company location between 5:30-6 am to organize and prepare the trucks for the day’s work. They would then drive to the job site, where they must arrive by 7 am. Time was kept by the supervisor, who would write down that the employees started at 7 am, although they spent significant time preparing the trucks and under the employers control before 7 am. At the end of the day, Claimant and aggrieved employees would leave the job site at 3:30pm, at which time the supervisor would clock them out. However, Claimant still had to drive back to the company location to return and empty the truck. Employees were also contacted during non-working hours to arrange schedules. When Claimant was promoted to crew lead, he was required to work on and arrange the next day’s schedules and text employees during his unpaid time in the evening. Claimant was underpaid for 2.5-3 hours every day, and this experience was similar for aggrieved employees.

Claimant and aggrieved employees were not paid for this time worked, resulting in failure to pay wages, including overtime and minimum wages. Employer has violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 16. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq*

Pre and Post Shift Work and Time-Shaving and Rounding

Claimant and aggrieved employees frequently were under the Employers’ control but not compensated for their time. As previously stated, Employees would arrive at work up to an hour and a half before their hours were written down by the lead employee and that person would systematically round employee’s timecard minutes, causing claimant and aggrieved employees to be underpaid on a daily basis.

When it comes to time shaving and rounding, the California Supreme Court has rejected the de minimis argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a

“rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) Employer rounds all clock in and clock out entries on Claimant and aggrieved employees’ timecard.

The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer often failed to permit Claimant and others to take timely, off-duty, first meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. From time-to-time Employees were not given their meal break within the statutory time period required or Employees experienced a disrupted meal break and were not given the entire 30-minute period for their meal break.

When employees like Claimant and aggrieved employees earning minimum wage do not receive payment for all hours worked, including off-the-clock and overtime hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked, in violation of Labor Code §1197.

Failure to Pay Overtime Wages

Employer has required claimant and aggrieved employees to work hours in excess of eight hours in a day and forty in a week but has not paid these employees overtime compensation as required by their collective bargaining agreement in violation of labor Code §222. As a result, Claimant and aggrieved employees have been denied payment for all hours worked as required by Cal. Labor Code. §222, §1194, §1198. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2699 *et seq.*, Wage Order 16)

Labor Code §512 provides, “[a]n employer may 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...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 10 of Wage Order 16 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

In this case, Claimant claims that although he and his coworkers frequently worked 8-hour shifts, he was not always provided a full, uninterrupted 30-minute break. Meal periods for Claimant and aggrieved employees were recorded by the supervisor, who automatically entered a full 30 minute meal period regardless of whether or when a meal period was taken.

Section 10 of Wage Orders 16 requires employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that his pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 16.

Claimant and aggrieved employees were not given rest periods during their work shifts. Claimant explains that he never received a rest period and they were not incorporated into daily schedules. Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Proper Cool-Down Rest Periods

(Cal. Labor Code §§ 226.7, 1198, 2699 *et seq.*, CCR, Title 8, §3395)

California Code of Regulations, Title 8, section 3395, subdivision (d)(3) provides in part that employees working for employers that maintain “outdoor places of employment shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating.”

Labor Code section 226.7, subdivision (c) further provides that:

If an employer fails to provide an employee a... recovery period in accordance with a state ., law, including, but not limited to an applicable statute or applicable regulation, standard, or order of the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The nature of Claimant and aggrieved employees’ work required them to consistently work outside (on roofs), where temperatures often exceed eighty (80) degrees Fahrenheit in the hot Southern California sun. Employers neither allowed nor encouraged Claimant and aggrieved employees to take cool-down rest periods when such employees were feeling overheated, exposing employees to a high risk of suffering heat illness so that their life, safety, and health were jeopardized by Employer’s conduct, violating California Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and 1198.

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6401.7, 6402, 6403, 2699 *et seq.*)

Employer failed to timely make changes to the workplace at the onset of COVID. Employer provided only one mask to Claimant and aggrieved employees and required that they provide their own. Employer did not have a covid safety protocol in place. Employees did not take temperatures at start of shift, did not provide additional handwashing facilities, no covid screening program or plan was implemented. As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6401.7, 6402, 6403, for failure to provide a safe and healthful environment for their Employees. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Provide Proper Shade

(California Labor Code section 226.7, 2699 *et seq.*, 6300, 6310, 6400; CCR, Title 8, § 3395.)

Labor Code §226.7 requires that employers provide rest periods that comply with state laws, including those that require adequate shade. When employees did receive rest breaks, they

were also not compliant because the workplace lacked adequate shade as required by Cal. Code Regs. Tit. 8 §3395(d).

California Code of Regulations, Title 8, section 3395, subdivision (d) provides in part that employees working for employers that maintain "outdoor places of employment" shall have access to shade and provides the conditions under which such shade must be provided, both when the temperature exceeds 80 degrees Fahrenheit and when the temperature is below 80 , degrees Fahrenheit, as follows:

(1) Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling. The amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other. The shade shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the amount of shade present during meal periods shall be at least enough to accommodate the number of employees on the meal period who remain onsite.

(2) Shade shall be available when the temperature does not exceed 80 degrees Fahrenheit. When the outdoor temperature in the work area does not exceed 80 degrees Fahrenheit employers shall either provide shade as per subsection (d)(1) or provide timely access to shade upon an employee's request.

Labor Code sections 6300, 6310 and 6400, et seq. requires all employers take reasonable steps to provide a safe and secure workplace. Employer's failure to provide adequate shade violates the above provisions.

Failure to Provide Potable Drinking Water

(California Labor Code section 226.7, 2699 et seq, 6300, 6310, 6400; CCR, Title 8, § 3395.)

Labor Code §226.7 requires that employers provide rest periods that comply with state laws, including those that require potable drinking water. Labor Code §226.7 requires that employers provide rest periods that comply with state laws, including those that require adequate shade and accessible water. Labor Code sections 6300, 6310 and 6400, et seq. requires all employers take reasonable steps to provide a safe and secure workplace.

California's Heat Illness Prevention statute, Title 8 Section 3395(d), obligates employers to provide training and access to shade and adequate drinking water for employees like Claimant and aggrieved employees, many of whom work outdoors in high heat conditions.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Employer required Claimant and employees to utilize their personal transportation during their workday, to get to their assignments, but failed to reimburse Claimant and employees for this use as required by the Labor Code. Claimant and aggrieved employees were also required to use their cell phones to communicate with their Employer for work purposes. Finally, Claimant and employees provided their own masks and PPE to keep themselves safe from covid. Accordingly, Employer is liable for civil penalties under PAGA §2698 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.* Wage Order 1)

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Employer willfully failed to pay Claimant and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages, due to the practices discussed above. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Employer violated Labor Code sections 201 and/or 202.

As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Paystub and Record Keeping Violations

(Cal. Lab. Code §§226, 1174, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

Based on and as a result of the above-mentioned Labor Code violations, Employers maintained and issued inaccurate wage statements, failing to include the correct legal name of

the employer (wage statements state Baker Electric Home Energy although no such entity exists), the required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Claimant will seek penalties as permitted under Labor Code §226 for herself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that she may pursue him claims as a representative action in civil court.

Respectfully Submitted,



Nazo Koulloukian
KOUL LAW FIRM
Attorneys for Claimant