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KATE BIEKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY: CLERK OF THE COURT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

MARIO RAMIREZ LOPEZ, an individual,
on behalf of himself and others similarly
situated,

PLAINTIFF,

v.

ELECTRIC TECH CONSTRUCTION, INC.;
and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. MSC21-01298

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
4. Failure to Provide Employment Records Violation of Labor Code §§ 226(f) and 1198.5
5. Violation of Labor Code § 226(a)
6. Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff MARIO RAMIREZ LOPEZ, an individual, on behalf of himself, all others
2 similarly situated, and on behalf of the people of the State of California and as an “aggrieved
3 employee” under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter
4 “PAGA”), complains of Defendant ELECTRIC TECH CONSTRUCTION, INC. (“Defendant”)
5 and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

10 All non-exempt employees who are employed or have been
11 employed by Electric Tech Construction, Inc., in the State of
12 California who worked one or more pay periods since four (4) years
prior to the filing of this action to the present. (“Proposed Class”)

13 2. Any limitations period referenced in this complaint is extended pursuant to
14 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
15 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
16 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
17 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
18 that exceed 180 days are tolled from April 6, 2020, until October 16 1, 2020.”] Any reference to
19 the relevant time period or statute of limitations referenced in this complaint is extended into the
20 past by the number of days in which this tolling was in effect.

21 3. From at least four (4) years prior to the filing of this action continuing to the present,
22 Defendant has had a consistent policy of failing to pay for all hours worked by all Proposed Class
23 members. Plaintiff and other Proposed Class members were not properly compensated for all
24 hours worked because Defendant required Plaintiff and members of the Proposed Class to work
25 off the clock. Defendant required Plaintiff and the Proposed Class members to clock out before
26 the end of each employee’s work shift and continue working off the clock. Plaintiff and the
27 Proposed Class were required to report twelve (12) hours rather than the actual time they worked
28 for that shift. As a result, Plaintiff and the Proposed Class were not properly compensated for all

1 hours worked at the appropriate rate of pay.

2 4. From at least four (4) years prior to the filing of this action and continuing to the
3 present, Defendant has had a consistent policy of failing to inform Proposed Class members of
4 their right to take meal periods by way of a lawful policy and requiring Proposed Class members
5 within the State of California, including Plaintiff, to work at least five (5) hours without a meal
6 period. Defendant failed to pay such employees one (1) hour of pay at the employees' regular rate
7 of compensation for each workday that a compliant meal period is not provided or provided after
8 five (5) hours, as required by California state wage and hour laws.

9 5. For at least four (4) years prior to the filing of this action continuing to the present,
10 Defendant has had a consistent policy of failing to inform Proposed Class members of their right
11 to take second meal periods by way of a lawful policy and of requiring all Proposed Class members
12 to work at least ten (10) hours without a second meal period. Defendant failed to pay such
13 employees one (1) hour of pay at the employee's regular rate of compensation for each workday
14 that a compliant second meal period is not provided or provided after ten (10) hours, as required
15 by California state wage and hour laws.

16 6. For at least four (4) years prior to the filing of this action and continuing to the
17 present, Defendant has had a consistent policy of failing to inform Proposed Class members of
18 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
19 members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
20 per four (4) hours worked or major fraction thereof. Defendant failed to pay such employees one
21 (1) hour of pay at the employee's regular rate of compensation for each workday that the rest
22 period was not provided, as required by California state wage and hour laws.

23 7. Defendant willfully failed to provide Plaintiff with his personnel file and pay data
24 after a written request. Plaintiff requested copies or an opportunity to copy his personnel file and
25 his pay records. Defendant refused to comply with this request in violation of Labor Code §§ 226
26 and 1198.5.

27 8. For at least one (1) year prior to the filing of this action continuing to the present,
28 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 16-

2001 and Labor Code § 226(a) by failing to issue accurate itemized wage statements that show the total hours worked by Plaintiff and the Proposed Classes and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

9. For at least three (3) years prior to the filing of this action continuing to the present, Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and the Proposed Class.

10. Plaintiff also brings a claim on behalf of himself only for a violation of Labor Code §§226 and 1198.5. Plaintiff requested the right to review his personnel file and his pay records by sending a letter to Defendant. Defendant refused to provide the requested documentation in violation of the statutes. Plaintiff is seeking penalties and injunctive relief.

11. Plaintiff, on behalf of himself and all Proposed Class members brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226, 226.7, 510, 512, 1194, 1198.5, and 1199; Wage Order 16-2001; and California Code of Regulations, Title 8, Section 11160, seeking unpaid wages/overtime, meal and rest period penalties, accurate itemized wage statements, wages due upon termination, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

12. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

13. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in his PAGA notice letter (see Exhibit "1"), brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant's failure to pay all wages and/or overtime, failure to provide lawful meal

1 periods, failure to provide lawful rest periods, failure to provide accurate itemized wage
2 statements, and failure to pay all wages due at the time of termination.

3 **II.**

4 **JURISDICTION AND VENUE**

5 14. This Court has subject matter jurisdiction over all causes of action asserted herein
6 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
7 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
8 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
9 State of California or is subject to adjudication in the courts of the State of California.

10 15. This Court has personal jurisdiction over Defendant because Defendant has caused
11 injuries in the County of Contra Costa and the State of California through their acts, and by their
12 violation of the California Labor Code, California state common law, and California Business &
13 Professions Code § 17200, *et seq.*

14 16. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
15 Civil Procedure § 395. Defendant operates within California and does business within Contra
16 Costa County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed
17 Class members within the State of California and the county of Contra Costa.

18 17. This case should be classified as complex according to Rule 3.400 of the California
19 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
20 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
21 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
22 require substantial post judgment judicial supervision.

23 **III.**

24 **PARTIES**

25 **A. PLAINTIFF**

26 18. Plaintiff MARIO RAMIREZ LOPEZ is a resident of California.

27 19. Plaintiff and all Proposed Class members, were regularly required to:

28 a. Work without being paid for all hours worked at the appropriate rate of pay;

1 b. Work without being provided compliant meal periods;
2 c. Work without being provided compliant rest periods;
3 d. Work without being provided accurate itemized wage statements that show
4 total hours worked and all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.

6 20. Defendant willfully failed to compensate Plaintiff and all Proposed Class members
7 for wages at the termination of their employment with Defendant.

8 21. Additionally, Plaintiff requested copies or an opportunity to copy his personnel file
9 and his pay records. Defendant refused to comply with this request in violation of Labor Code §§
10 226 and 1198.5.

11 22. As a result of this conduct, Defendant has engaged in unfair competition and
12 unlawful business practices.

13 23. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
14 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
15 §2699(c).)

16 **B. DEFENDANTS**

17 24. Defendant ELECTRIC TECH CONSTRUCTION, INC. is believed to be a Nevada
18 corporation operating within the State of California. Defendant’s corporate address is believed to
19 be 1910 Mark Ct Ste 130, Concord, CA 94520. Upon information and belief, Defendant employed
20 Plaintiff and similarly situated persons as hourly employees within California. Defendant has done
21 and does business throughout the State of California.

22 25. The true names and capacities, whether individual, corporate, associate, or
23 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
24 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
25 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
26 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
27 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
28 capacities of the Defendants designated hereinafter as DOES when such identities become known.

26. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class members.

27. Furthermore, Defendants acted in all respects as the employers or joint employers of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

IV.

FACTUAL BACKGROUND

28. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant.

29. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 16-2001 (Title 8 Cal. Code of Regs. § 11160).

30. On a regular and consistent basis, Plaintiff and the Proposed Class members were not paid for all hours worked. Plaintiff and Proposed Class members were not properly compensated for all hours worked because Defendant required Plaintiff and the Proposed Class to work off the clock. Plaintiff and all Proposed Class members were required to clock out before the end of each working shift and report twelve (12) hours rather than the actual time they worked for that shift. Plaintiff and the Proposed Class were required to continue working off the clock after clocking out. As a result, Plaintiff and the Proposed Class were not properly compensated for that time worked.

31. Defendant failed to inform Plaintiff and the members of the Proposed Class of their right to take compliant first and second meal periods by way of a lawful policy.

32. Defendant failed to provide Plaintiff and all Proposed Class members with a thirty

(30) minute uninterrupted meal break within the first five (5) hours of work. Plaintiff and all Proposed Class members were not compensated one (1) hour of pay at the regular rate of compensation for each workday that a compliant meal period was not provided all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders.

33. Defendant failed to provide Plaintiff and all Proposed Class members who worked over ten (10) hours in one day with a second thirty (30) minute uninterrupted meal break period. Defendant failed to compensate Plaintiff and all Proposed Class members one (1) hour of pay at the regular rate of compensation for each workday that a compliant second meal period was not provided all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders.

34. Defendant failed to inform Plaintiff and the Proposed Class of their right to take rest periods by way of a lawful policy.

35. Plaintiff and the Proposed Class have been required to work four hour increments or major fractions thereof without being provided compliant first, second, and third rest periods of ten (10) minutes as required California labor laws, regulations, and Industrial Welfare Commission Wage Orders.

36. Defendant willfully failed to provide Plaintiff with his personnel file and pay data after a written request. Plaintiff requested copies or an opportunity to copy his personnel file and his pay records. Defendant refused to comply with this request in violation of Labor Code §§ 226 and 1198.5.

37. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 16-2001(7) and Labor Code § 226(a) by failing to issue Plaintiff and the Proposed Class accurate itemized wage statements that show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

38. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff’s and Class Members’ rights.

39. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

V.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All non-exempt employees who are employed or have been employed by Electric Tech Construction, Inc., in the State of California who worked one or more pay periods since four (4) years prior to the filing of this action to the present. (“Proposed Class”)

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

42. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. NUMEROSITY

43. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of Proposed Class members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed over 50 members of the Proposed Class.

44. Plaintiff alleges that Defendant’s employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

45. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class members. These common questions of law and fact include, without limitation:

1 a. Whether Defendant failed to pay wages and/or overtime compensation as
2 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

3 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 16-
4 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
5 of their right to take meal periods and by failing to provide required meal periods throughout the
6 term of employment and failing to compensate said employees one (1) hours wages in lieu of meal
7 periods;

8 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 16
9 -2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
10 of their right to take rest periods and failing to provide required rest periods throughout the term
11 of employment and failing to compensate said employees one (1) hours wages in lieu of rest
12 periods;

13 46. Whether Defendants violated Labor Code § 226(a) and Wage Order 16-2001 or
14 other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11160 by failing to issue
15 Plaintiff and the Proposed Class accurate itemized wage statements that show total hours worked
16 and all applicable hourly rates in effect during the pay period and the corresponding number of
17 hours worked at each hourly rate by the employee;

18 a. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
19 compensation due and owing at the time that any Proposed Class Member's employment with
20 Defendant terminated;

21 b. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
22 Code by engaging in the acts previously alleged; and

23 c. Whether Plaintiff and the members of the Proposed Class are entitled to
24 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

25 d. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
26 acts alleged herein.

27 **C. TYPICALITY**

28 47. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and

all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

48. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Class.

49. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

50. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to pay all wages due, failing to provide meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

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

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PAY WAGES AND/OR OVERTIME UNDER

LABOR CODE §§ 510, 1194, AND 1199

52. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

53. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its

employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

54. Plaintiff and the Proposed Class were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate.

55. Defendant required Plaintiff and the Proposed Class members to work off the clock. Defendant required Plaintiff and the Proposed Class members to clock out before the end of each employee's work shift and continue working off the clock. Plaintiff and the Proposed Class were not paid for the actual time they worked for each shift at the appropriate rate of pay.

56. By their policy of requiring Plaintiff and members of the Proposed Class to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

57. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class members have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VII.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO

LABOR CODE § 226.7 AND LABOR CODE § 512

58. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

59. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after

no more than ten (10) hours of work.

60. Defendant failed to maintain a valid policy informing Plaintiff and the Proposed Class of these rights.

61. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours. Defendant failed to provide Plaintiff and the Proposed Class with compliant, uninterrupted, timely meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period.

62. Plaintiff and the Proposed Class consistently worked shifts over ten (10) hours. Defendant failed to provide Plaintiff and the Proposed Class with compliant, uninterrupted, timely meal periods of not less than thirty (30) minutes within the first ten (10) hours for shifts over ten (10) hours work as required by the Labor Code during the relevant time period.

63. Defendant failed to pay such employees one (1) hour of pay at the employee's regular rate of compensation for each workday that all required meal periods were not provided, as required by California state wage and hour laws.

64. Pursuant to Labor Code § 226.7, Plaintiff and the Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

VIII.

THIRD CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO ALLOW REST PERIODS PURSUANT TO

LABOR CODE § 226.7

65. Plaintiff, on behalf of himself and the proposed Class, realleges and incorporates by reference all previous paragraphs.

66. Labor Code § 226.7 requires an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or major fraction thereof.

67. Defendant failed to maintain a valid policy informing Plaintiff and the Proposed

1 Class of this right.

2 68. Defendant failed to provide Plaintiff and the Class with rest breaks of not less than
3 ten (10) minutes as required by the Labor Code during the relevant time period.

4 69. Defendant failed to pay such employees one (1) hour of pay at the employee's
5 regular rate of compensation for each workday that all required rest periods were not provided, as
6 required by California state wage and hour laws.

7 70. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
8 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
9 at trial.

10 **IX.**

11 **FOURTH CAUSE OF ACTION**

12 **PLAINTIFF ON BEHALF OF HIMSELF**

13 **VIOLATION OF LABOR CODE §§ 226 and 1198.5**

14 71. Plaintiff, on behalf of himself only, realleges and incorporates by reference all
15 previous paragraphs.

16 72. On April 12, 2021, Plaintiff mailed to Defendant his first written request to his
17 employer to copy or to receive a copy of his personnel file and payroll records. The letter cited
18 Labor Code §§ 226 and 1198.5. Defendant signed Plaintiff's certified mail receipt on April 15,
19 2021.

20 73. Defendant did not provide the documentation requested by Plaintiff within the
21 statutory time frames causing Plaintiff to mail a second written request to Defendant on May 20,
22 2021. On June 1, 2021, Plaintiff received a returned certified mail receipt signed by Defendant
23 indicating receipt of Plaintiff's second written request.

24 74. Defendant did not provide the documentation requested by Plaintiff in his second
25 written request.

26 75. Labor Code § 226(f) provides that "[a] failure by an employer to permit a current
27 or former employee to inspect or copy records within the. . ." statutory time frame ". . . entitles the
28 current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar

1 (\$750) penalty from the employer.”

2 76. Additionally, Labor Code §226(h) permits an employee to bring an action for
3 injunctive relief to ensure compliance Labor Code § 226 and states that employee is entitled to an
4 award of costs and reasonable attorney’s fees.

5 77. Labor Code § 1198.5(a) states: “Every current and former employee, or his or her
6 representative, has the right to inspect and receive a copy of the personnel records that the
7 employer maintains relating to the employee’s performance or to any grievance concerning the
8 employee.”

9 78. Labor Code § 1198.5(k) provides that if an employer fails to permit an inspection
10 or fails to permit an employee to copy personnel records within the times specified, the current or
11 former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

12 79. Additionally, Labor Code § 1198.5(l) permits an employee to bring an action for
13 injunctive relief to obtain compliance with this section, and may recover costs and reasonable
14 attorney’s fees in such an action.

15 80. As such, Defendant has violated Labor Code §§ 226 and 1198.5 and Plaintiff is
16 entitled to production of the documents requested, penalties, and attorney’s fees and costs.

17 **X.**

18 **FIFTH CAUSE OF ACTION**

19 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

20 **VIOLATION OF LABOR CODE § 226(A)**

21 81. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
22 by reference all previous paragraphs.

23 82. California Labor Code § 226(a) requires employers to issue accurate wage
24 statements showing specific information to all employees.

25 83. Labor Code § 226(a)(2) requires that every employer shall semimonthly or at the
26 time of each payment of wages, furnish each of his or her employees, an accurate itemized
27 statement in writing showing the total hours worked by the employee. Plaintiff and the Proposed
28 Class are issued wage statements that do not include the total hours worked by the employee.

84. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Proposed Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

85. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

86. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

XI.

SIXTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

WAITING TIME PENALTIES UNDER LABOR CODE § 203

87. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

88. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

89. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to penalties under Labor Code § 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

90. Defendant has failed to pay Plaintiff and others a sum certain at the time of

1 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
2 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
3 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
4 members' daily wage multiplied by thirty (30) days.

5
6 **XII.**

7 **SEVENTH CAUSE OF ACTION**

8 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

9 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

10 91. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
11 by reference all previous paragraphs.

12 92. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
13 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
14 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
15 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
16 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
17 interest within the meaning of Code of Civil Procedure § 1021.5.

18 93. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
19 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
20 appropriate equitable relief.

21 94. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
22 practices.

23 95. California's wage and hour laws express fundamental public policies. Providing
24 employees with proper wages and compensation are fundamental public policies of this State and
25 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
26 vigorously minimum labor standards, to ensure that employees are not required or permitted to
27 work under substandard and unlawful conditions, and to protect law-abiding employers and their
28 employees from competitors who lower their costs by failing to comply with minimum labor

standards.

96. Defendant has violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

97. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in violation of § 17200, *et seq.* of the Business & Professions Code.

98. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care, should have known that the conduct was unlawful. As such it is a violation of § 17200, *et seq.* of the Business & Professions Code.

99. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

100. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendant has unlawfully failed to pay.

XIII.

EIGHTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

42. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

43. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, *et seq* use of Defendant's violation of Labor Code §§

201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199; Wage Order 16-2001; and California Code of Regulations, Title 8, Section 11160, which call for civil penalties.

44. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

45. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

46. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant ELECTRIC TECH CONSTRUCTION, INC.'s entity address, which is 1910 Mark Ct Ste 130, Concord, CA 94520-1280, as proscribed by the Code on June 28, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199. (*see* Exhibit "1.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2").

47. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

members' hourly wage for each meal period that Defendant failed to provide as required by California law from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each Proposed Class members' hourly wage for each rest period that Defendant failed to provide as required by California law from at least four (4) years prior to the filing of this action to the present as may be proven;

4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

5. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

6. On behalf of himself only, Plaintiff requests penalties pursuant to Labor Code §§ 226(f) and 1198.5(k) and injunctive relief pursuant to Labor Code §§ 226(h) and 1998.5(k) for violation of Labor Code §§ 226 and 1998.5;

7. An award of prejudgment and post judgment interest;

8. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and IWC 16-2001;

9. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

10. For penalties under Labor Code § 2699, *et seq.* for Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199, and Wage Order 16-2001;

11. An award providing for payment of costs of suit;

12. An award of attorneys' fees; and

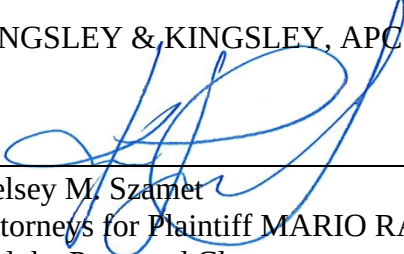
1 13. Such other and further relief as this Court may deem proper and just.

2
3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

5 DATED: September 1, 2021

KINGSLEY & KINGSLEY, APC

6
7 By: 

Kelsey M. Szamet
Attorneys for Plaintiff MARIO RAMIREZ LOPEZ
and the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

June 28, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Electric Tech Construction, Inc.
1910 Mark Ct Ste 130
Concord, CA 94520-1280

Re: Mario Ramirez Lopez v. Electric Tech Construction, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Mario Ramirez Lopez (“Plaintiff”) and a proposed group of current and former employees working for Electric Tech Construction, Inc. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All non-exempt employees who are employed or have been employed by Electric Tech Construction, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Defendant failed to pay all wages and/or overtime for all hours worked by Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked because Defendant required Plaintiff and all aggrieved employees to work off the clock. Defendant required Plaintiff and all aggrieved employees to clock out before the end of each employee’s working shift and continue to work off the clock. As a result, Plaintiff and all aggrieved employees were not properly compensated for that time worked at the appropriate rate of pay.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each compliant meal period the employer fails to provide. Employees are entitled to a first meal

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 28, 2021

Page 2 of 3

period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendant failed to maintain a valid policy informing Plaintiff and the aggrieved employees of these rights. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to provide timely meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the aggrieved employees with compliant meal periods within the first five hours of each shift; (2) required Plaintiff and the aggrieved employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes; and (3) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that all required meal periods were not provided.

Pursuant to Labor Code § 226.7 and Wage Order 16-2001, Defendant is required to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with all such required rest periods. Defendant failed to compensate Plaintiff and the aggrieved employees with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Defendant failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall furnish each of his or her employees, an accurate itemized statement in writing showing total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code § 203 provides that if "an employer willfully fails to pay...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 therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

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LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

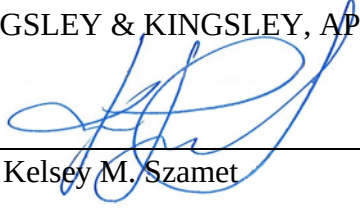
June 28, 2021

Page 3 of 3

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
Kelsey M. Szamet

KMS/km

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Electric Tech Construction, Inc. via USPS Certified Mail # 7018 1130 0001 5815 3608

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Mario Ramirez Lopez

Plaintiff/Aggrieved Employee Occupation *

Construction Worker

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Electric Tech Construction, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

1910 Mark Ct Ste 130

Employer City

Concord

Employer State

California



Employer Zip/Postal Code

94520-1280

Employer Industry *

Other



Employer Industry for "Other" *

Industrial Services

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

Child Labor – Specify Ages

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED]

Credit Card Number *

[REDACTED]

CVV Number *

[REDACTED]

Credit Card Expiration Month *

[REDACTED]

mm

Credit Card Expiration Year *

[REDACTED]

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

LWDA Letter – ...ction Inc.pdf

Other Attachment – (if any) (must be a .pdf)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, June 28, 2021 11:55 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

6/28/2021

LWDA Case No. LWDA-CM-836279-21
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Mario Ramirez Lopez
Employer: Electric Tech Construction, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, June 28, 2021 11:55 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-836279-21

Order Number: ORD-000119303

Total:\$75.00

Card Type: 

Date: 6/28/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Ste 1200

Encino, California

91436