



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

Superior Court of California, County of Sacramento

720 Ninth Street
Sacramento, CA 95814-1311

PAYMENT RECEIPT

Receipt #: 1098075

Clerk ID: apenn

Transaction No: 2292515

Transaction Date: 09/15/2021

Transaction Time: 11:30:27 AM

Case Number	Fee Type	Qty	Fee Amount\$	Balance Due	Amount Paid	Remaining Balance
34-2021-00307786-CU-OE-GDS	194 - Complaint or other 1st paper	1	\$435.00	\$435.00	\$435.00	\$0.00

Sales Tax: \$0.00

Total: \$435.00 **Total Rem. Bal: \$0.00**

Check Number(s): 69634

Check: \$435.00

Total Amount Tendered: \$435.00

Change Due: \$0.00

Balance: **\$0.00**

ORIGINAL

FOR COURT USE ONLY

Superior Court of California,
Sacramento
09/14/2021
apenn
By _____, Deputy
Case Number:
34-2021-00307786

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Nazo Koulloukian, SBN 263809

KOUL LAW FIRM

3435 Wilshire Blvd., Suite 1710

Los Angeles, CA 90010

TELEPHONE NO.: (213) 761-5484

FAX NO.: (818) 561-3938

ATTORNEY FOR (Name): Plaintiff and the Proposed Classes

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

STREET ADDRESS: 720 9th Street

MAILING ADDRESS: 720 9th Street

CITY AND ZIP CODE: Sacramento 95814

BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse

CASE NAME:

JUNIOR VALDEZ v. AUS DECKING, INC.

CIVIL CASE COVER SHEET

☒ **Unlimited** ☐ **Limited**
(Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ **Counter** ☐ **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): Seven (7)

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 13, 2021

Nazo Koulloukian

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

AUS DECKING, INC. and DOES 1-50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JUNIOR VALDEZ, on behalf of himself, and all others similarly situated, aggrieved employees, and State of CA as a Private Attorneys

General

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California
County of Sacramento, Gordon D. Schaber Courthouse
720 9th Street, Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Nazo Koulloukian, SBN 263809, 3435 Wilshire Blvd., Ste. 1710, Los Angeles, CA 90010, Tel:(213) 761-5484

DATE: **SEP 15 2021**
(Fecha)

Clerk, by **A. PENN**, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

FILED
Superior Court Of California,
Sacramento
09/14/2021
apenn
By _____, Deputy
Case Number:
34-2021-00307786

Nazo Koulloukian, SBN 263809
nazo@koullaw.com
KOUL LAW FIRM
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Sahag Majarian, II, Esq. SBN 146621
LAW OFFICES OF SAHAG MAJARIAN II
18250 Ventura Blvd.,
Tarzana, CA 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorney for Plaintiff,
JUNIOR VALDEZ, and all putative class member,
Aggrieved employees, and the State of California
As a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

JUNIOR VALDEZ, on behalf of himself, and
all others similarly situated, aggrieved
employees, and State of CA as a Private
Attorneys General

Plaintiffs,

vs.

AUS DECKING, INC. and DOES 1-50,
inclusive,

Defendants. _____

Case No.:

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Failure to Pay Wages, Including Overtime
2. Failure to Provide Compliant 1st and 2nd Meal Breaks
3. Failure to Provide Adequate Rest Breaks
4. Failure to Timely Pay All Wages Owed
5. Failure to Provide Timely, Accurate, Itemized Wage Statements
6. Unlawful Business Practices Bus & Prof. Code §17200
7. Private Attorneys General Act Penalties Labor Code §2698 et seq

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff JUNIOR VALDEZ, individually, and on behalf of themselves and all others
2 similarly situated, all aggrieved employees, and as a Private Attorney General for the State of
3 California (collectively "Plaintiff"), alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff brings this wage and hour class action complaint on behalf of themselves, and all
6 others similarly situated against AUS DECKING, INC. and the other Defendants DOES 1-50,
7 inclusive, (hereafter collectively "Defendants"). In this Complaint, Plaintiff alleges that
8 Defendants failed to pay all wages, including overtime wages, owed to employees, failed to
9 provide safe adequate 1st and 2nd meal breaks, failed to provide adequate rest breaks, failed to
10 timely pay all wages owed, failed to provide accurate payroll records, and are liable for waiting
11 time penalties, and engaged in unfair competition. Accordingly, Plaintiff now brings this
12 employment class and PAGA representative action to recover unpaid wages and related relief
13 on behalf of themselves, all others similarly situated. Plaintiff has also provided notice of their
14 claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency
15 ("LWDA") and now brings this First Amended Complaint, including claims for civil penalties
16 under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*

17 2. Plaintiff has filed this as a class action, under Code of Civil Procedure section 382, and/or
18 representative action under Business & Professions Code §§17200 *et seq.* and Labor Code
19 §2699, seeking damages and penalties on behalf of themselves and all other persons who are or
20 have been employed by Defendants from four years prior to the filing of this complaint to the
21 present.

22 3. The "Class Period" is designated as the four-year period prior to the filing of this
23 Complaint through the date of final disposition of this action. From the start of the Class Period
24 through the present, Defendants have had a policy and/or practice of ignoring and violating
25 California wage and hour laws, and workplace safety laws, in their business as more fully set
26 forth below.

27 4. The "PAGA Period" is defined herein commences one year prior to the date of filing the
28 PAGA Notice letter with the LWDA.

1 5. During the Class Period, Defendants had an unlawful policy and/or practice of failing: (1)
2 to pay for all hours worked, including overtime hours worked; (2) to provide compliant off-duty
3 first and second meal breaks; (3) to provide adequate rest breaks; (4) to timely pay all wages
4 owed; (5) to provide accurate wage statements and maintain accurate payroll records; (6)
5 engaging in unlawful business practices for unfair competition; and (7) civil penalties pursuant
6 to Labor Code §2698 *et seq.*, Private Attorneys General Act.

7 6. Defendants have treated all persons employed in California in such a way as to violate
8 California's laws governing prompt payment of wages owed. Plaintiffs assert that Defendants
9 have knowingly and with conscious disregard of the law refused to pay the Class Members all
10 wages, including overtime wages, for work performed and due. Class Members are owed their
11 back pay, plus interest and/or premiums and penalties under Business and Professions Code
12 §17203 to compensate Class Members for the delay in receiving wages due.

13 7. Defendants, by and through their actions, have engaged in unfair competition,
14 requiring restitution to persons affected and disgorgement of profits so obtained.

15 16 **THE PARTIES**

17 8. Plaintiff JUNIOR VALDEZ is a resident of the State of California and lives in
18 Sacramento, California. Plaintiff was employed as an hourly, nonexempt employee for
19 Defendants. Plaintiff worked for Defendants until April of 2021, at an hourly wage.

20 9. Defendant AUS DECKING, INC., is a California Corporation registered to do business
21 in California with the capacity to sue and to be sued, and doing business, in the county of
22 Sacramento, State of California.

23 10. Plaintiff is unaware of the true names, capacities, relationships, and extent of
24 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is
25 informed and believes and thereon alleges that said Defendants are legally responsible for the
26 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names,
27 Plaintiff will amend this complaint when their true names and capabilities are ascertained.
28

1 11. Plaintiff is informed and believes and thereon alleges that each Defendants, directly or
2 indirectly, or through agents or other persons, employed Plaintiff and other members of the
3 class, and exercised control over their wages, hours, and working conditions. Plaintiff is
4 informed and believes and thereon alleges that each Defendant acted in all respects pertinent to
5 this action as the agent of the other Defendants, carried out a joint scheme, business plan or
6 policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to
7 the other Defendants.

8 9 **JURISDICTION AND VENUE**

10 12. Venue is proper in this judicial district because Defendants conduct business in this
11 county and Defendants have legal obligations to Plaintiff and many of the class members in this
12 case that arose in this county.

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

18 14. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident
19 of California and Defendants are incorporated in and/or qualified to do business in California and
20 regularly conduct business in California. Further, there is no federal question at issue as the
21 claims herein are based solely on California law.

22 15. Plaintiff has exhausted administrative remedies and this Court has jurisdiction over
23 Plaintiff's and Class Members' claims for penalties for Defendant's Labor Code violations under
24 Labor Code §§2699 and 2699.3.

25 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

26 16. During the Class Period and PAGA Period, Defendants committed various violations of
27 the California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in
28

1 more detail. Defendants enforce multiple policies that violate state law which are intended to
2 increase its own profits to the detriment of its employees.

3 17. Plaintiff and the putative class are employees of Defendants working on their
4 construction sites, specializing in Gyp-Crete, sound-mat, concrete, waterproofing, and deck
5 coating services.

6 18. Plaintiff was denied payment for all hour hours worked, including overtime pay owed,
7 resulting from Defendants' practices of underpaying Plaintiff for each pay period in which meal
8 and rest breaks were denied or inadequate. Defendants participated in practices of not providing
9 adequate first and second meal and rest breaks or denying them completely and inadequately
10 compensating Plaintiff and Class Members for overtime work completed.

11 19. Regarding meal breaks, Defendants failed to maintain a compliant meal period policy and
12 practice, failing to provide all its hourly employees with their right to take a timely, off-duty
13 unpaid 30-minute 1st and 2nd meal period. On many occasions, Plaintiff and Class Members did
14 not receive their first meal break within the first 5 hours of their shift. In addition, Plaintiff never
15 received their second meal period for shifts over 10 hours.

16 20. Regarding rest breaks, Plaintiff and Class Members regularly worked in excess of four
17 hours, or a major fraction thereof, during workdays without being provided at least a ten-minute
18 rest period in which they were relieved of all duties, as required by Cal. Lab. Code §226.7, §512
19 and Wage Order 16. Labor Code §226.7 requires that employers provide rest periods that comply
20 with state laws.

21 21. Defendants also failed to consistently timely pay all wages owed upon termination, and
22 failed to furnish accurate wage statements to Plaintiff, Class Members and Aggrieved
23 Employees. Finally, Defendants engaged in unfair competition.

24 22. Plaintiff brings this action on behalf of themselves, and all other persons similarly situated,
25 to recover from Defendants unpaid overtime pursuant to the Industrial Wage Order 16, alleging
26 that Defendants frequently failed to pay all wages, including overtime wages, owed to
27 employees, failed to provide rest and cool-down recovery breaks, failed to pay minimum wage
28 for all hours worked, failed to provide safe working conditions, failed to provide accurate payroll

1 records, and are liable for waiting time penalties, and engaged in unfair competition under
2 Business and Professions Code § 17200.

3 23. This action has been brought and may properly be maintained as a class action pursuant
4 to the provisions of Code of Civil Procedure § 382 and/or representative action under Business &
5 Professions Code §§17200 et seq. and Labor Code §2699 because the proposed class is
6 ascertainable and there is a well-defined community of interest. Plaintiffs are among in excess of
7 100 employees with like job titles, duties, and hourly wages, who have been similarly injured by
8 Defendants' uniform unlawful conduct.

9 24. The "Relevant Time Period" or proposed "Class Period" as defined herein commences
10 four years prior to the date of filing this Complaint.

11 25. The Plaintiff Class: "All current and former hourly, non-exempt employees of Defendant
12 in California, at any time from four years prior to the initiation of this action until the date of
13 certification."

14 26. The proposed Subclasses are defined as follows:

- 15 a. All persons who are employed or have been employed by Defendants in the
16 State of California as hourly, non-exempt workers during the period of the
17 relevant statute of limitations, who worked one or more shifts in excess of five
18 (5) hours.
- 19 b. All persons who are employed or have been employed by Defendants in the
20 State of California as hourly, non-exempt workers during the period of the
21 relevant statute of limitations, who worked one or more shifts in excess of six
22 (6) hours.
- 23 c. All persons who are employed or have been employed by Defendants in the
24 State of California as hourly, non-exempt workers during the period of the
25 relevant statute of limitations, who worked one or more shifts in excess of
26 eight (8) hours.
- 27 d. All persons who are employed or have been employed by Defendants in the
28 State of California as hourly, non-exempt workers during the period of the

relevant statute of limitations, who worked one or more shifts in excess of ten (10) hours.

e. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of twelve (12) hours.

f. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of three and one-half hours (3 ½), but less than or equal to six (6) hours.

g. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

h. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who traveled for work related purposes.

i. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who separated their employment from Defendants.

j. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who received pay for one or more pay periods.

27. Numerosity: Plaintiffs allege on information and belief that the Class Members exceed 100 and therefore are so numerous as to make it impracticable to bring them all before this Court.

1 28. Means of Identifying the Class: Plaintiffs allege on information and belief that the Class
2 Members can readily be identified through a review of Defendants' payroll records and the
3 records of the company that handles payroll for Defendants.

4 29. Common Questions Predominate the Class: The rights which are the subject of this action
5 are common to all the Class Members. There are questions of law and fact presented herein
6 which are common to the Class Members represented by Plaintiff and predominate over any
7 questions that affect only individual members of the class. The common questions of law and
8 fact include, but are not limited to, the following:

- 9 i. Whether Defendants violated wage and hour laws by failing to pay employees
10 for all hours worked;
- 11 ii. Whether Defendants violated wage and hour laws by failure to always properly
12 calculate wages and overtime for shifts;
- 13 iii. Whether Defendants violated wage and hour laws in failing to make 1st and 2nd
14 meal breaks available;
- 15 iv. Whether Defendants violated wage and hour laws by failing to make rest periods
16 available;
- 17 v. Defendants failure to pay the Class Members all wages owed, including
18 overtime, violated Business & Professions Code § 17200;
- 19 vi. Whether Defendants failure to provide the Class Members rest periods violated
20 Business & Professions Code § 17200;
- 21 vii. Whether Defendants failed to provide accurate wage statements to Plaintiffs and
22 the Class as a consequence of the above listed wrongful acts;
- 23 viii. Whether Defendants failed to provide Class Members with correct final wage
24 statements;
- 25 ix. Whether Defendants failed to pay wages, including overtime and final wages, to
26 terminated or quitting employees in the Class on a timely basis;
- 27 x. What is the appropriateness and nature of relief to each Plaintiff Class and
28 Subclass member;
- xi. Whether Defendants' actions violated Business & Professions Code § 17200;

xii. Whether the Class Members are entitled to various penalties from Defendants including, but not limited to, waiting-time penalties under Labor Code §§ 201, 202, 203, 204, 226 and 558;

xiii. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;

xiv. Whether the Class Members are entitled to penalties under Labor Code §2699; and

xv. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass member?

30. Typicality: As alleged above, Plaintiff's claims are typical of the claims of all the Class Members and other members of the Class were subject to the same policies and practices.

31. Adequacy: Plaintiff is an adequate representative of the class in that his claims are typical of the Class Members and he has no interest antagonistic to or in conflict with the interests of the Class Members. Plaintiff is qualified to, and will, fairly and adequately protect the interests of the Class Members. Plaintiff is represented by attorneys who have substantial class action experience in wage-and-hour and class action law.

32. Superiority: Class action adjudication is superior to other available methods because class action will achieve economies of time, effort, and expense as compared to separate lawsuits, and avoid inconsistent outcomes, because the same issues can be adjudicated in the same manner for the entire class. Furthermore, as the damages suffered by each individual member of the class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Plaintiffs are currently unaware of any pending litigation commenced by any of the Class Members involving the same issues in this complaint. Further, it is desirable to concentrate the litigation of such claims in this forum, and there are no difficulties likely to be encountered in the management of the class action.

33. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate

1 records and key testimony of Defendants' corporate representatives. To the extent statistical
2 analysis and representative evidence is necessary, Plaintiff and proposed class counsel will
3 employ competent experts and consultants in the field to determine and review evidence for both
4 issues of liability and damages in a scientifically reliable manner.

5 34. Plaintiffs request, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules of
6 Court, that the absent Class Members be notified by the best notice practicable under the
7 circumstances, including individual notice to all members who can be identified through
8 reasonable effort.

9
10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PAY EARNED WAGES, INCLUDING OVERTIME**
12 **Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199**
13 **(All Plaintiffs Against All Defendants)**

14 35. Plaintiffs reassert and re-allege paragraphs 1 through 32, inclusive, as if fully set forth
15 and incorporate said paragraphs herein by reference.

16 36. Defendants' conduct described in this complaint violates the provisions of Labor Code §§
17 218, 510, 1194.

18 37. Section 2(J) of Wage Order 16 defines "hours worked" as "the time during which an
19 employee is subject to the control of an employer and including all the time the employee is
20 suffered or permitted to work, whether or not required to do so." Plaintiff and Class Members
21 were not paid for all hours worked, including overtime hours worked because of Defendants'
22 policy of not paying for all travel time spent to and from worksites which were up to two hours
23 away.

24 38. This resulted in many unpaid hours worked for Plaintiff and Class Members, who were
25 required to communicate regarding work matters with their employer while off the clock.
26 Defendants violated Labor Code §§510 1194, and 1198, and Wage Order 16. Defendants are
27 liable for civil penalties pursuant to Labor Code §§558 and 2698 et seq.

28 39. Off-the-Clock Hours Worked. Plaintiff and Class Members frequently worked 10-12
hours per shift, and from time to time more than 12 hours in a shift wherein they were under the
Defendant's control but not compensated for all of their time. Plaintiff and Class Members were
not paid for all time worked, resulting in failure to pay wages, including overtime and minimum

1 wages. Defendant has violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage
2 Order 16. Defendant is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

3 40. Unpaid Overtime and Underpaid Travel Time. Plaintiff's average schedule was 10-12 or
4 more hours per shift. Plaintiff and Class Members frequently worked for 12 or more hours per
5 day and often would not receive double time after the 12th hour as required by Labor Code §510
6 and the Wage Order. Plaintiff and Class Members were consistently not paid for the time spent
7 driving from their last location of the day back to the company facility, and for the time spent
8 unloading at the end of the day. In fact, although employees carpooled in company vehicles to
9 and from worksites, some as far as two hours away, only the driver was paid an hourly rate for
10 time spent driving from the job site back to the company location. Passengers in the car were
11 paid zero wages for required transportation time. Some Employees were not paid for the time
12 spent driving from the company facility to the work site.

13 41. Defendant has a clear policy and practice of failing to pay for all hours worked at the
14 employees' regular rate of pay for required tasks. Defendant did not use any form of electronic
15 timekeeping system. It is Defendant's policy to handwrite the Employee's hours and the hours
16 are not accurately logged, failing to accurately depict all hours worked. This policy is an
17 admission of unlawful conduct and a patent violation of California laws requiring that employers
18 pay for all hours worked.

19 42. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
20 Plaintiff and Class Members all wages earned twice during each calendar month pursuant to
21 Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
22 unlawful employment policies and practices discussed herein. As a result of these practices,
23 Employees were underpaid for hours worked, including overtime and penalty wages, and this
24 underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure,
25 Defendant is liable under Labor Code §210 for failure to pay wages as required by law.

26 43. Plaintiff is informed and believes and, based thereon, alleges that, during the Class
27 period, Defendants failed to pay Plaintiff and Class all of the wages, including overtime wages,
28 that they were due. Specifically, and without limitation, Plaintiff is informed and believes and,
based thereon, alleges that Defendants improperly provided inadequate meal and rest breaks, or

1 denied them altogether for Plaintiff and the other Class Members. The inadequate meal and rest
2 breaks resulted in underpayment of wages and overtime wages worked for Plaintiff and the rest
3 of the Class. The meal and break policy consistently favored Defendants and resulted in
4 uncompensated hours worked for Plaintiff and Class Members. Accordingly, Plaintiff and the
5 Class are entitled to recover from Defendants all damages, penalties and other remedies
6 available.

7 44. Class Members are entitled to recover from Defendants unpaid overtime, plus interest
8 thereon.

9 45. Plaintiffs allege on information and belief that Defendants' failure to pay the Class
10 Members overtime, as alleged in this cause of action, was willful, and thus entitles the Class
11 Members 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 46. Pursuant to Labor Code § 558, Plaintiffs request that this Court award civil penalties as
15 set forth in § 558 for each pay period during which Defendants failed to pay the Class Members
16 as alleged above.

17 47. Plaintiffs further request an award of attorneys' fees pursuant to Labor Code §§ 218.5 and
18 1194 and Code of Civil Procedure § 1021.5.

19 **SECOND CAUSE OF ACTION**
20 **FAILURE TO PROVIDE TIMELY 1ST AND 2ND MEAL BREAKS**
21 **Cal. Labor Code §§226, 226.7, 512, 1199, 2698 *et seq.***
22 **(All Plaintiffs Against all Defendants)**

23 48. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

24 49. Labor Code §512 (a) states: "An employer may not employ and employee for a work
25 period of more than five hours per day without providing the employee with a meal period of not
26 less than 30 minutes, except that if the total work period per day of the employee is no more than
27 six hours, the meal period may be waived by mutual consent of both the employer and
28 employee."

50. IWC Wage Order states, in pertinent part: "No employer shall employ any person for a
work period of more than five (5) hours without a meal period of not less than 30 minutes,

1 except that when a work period of not more than six (6) hours will complete the day's work the
2 meal period may be waived by mutual consent of the employer and the employee. Unless the
3 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
4 considered an on-duty meal period and counted as time worked..." The Wage Order further
5 provides, "[i]f an employer fails to provide an employee a meal period in accordance with the
6 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at
7 the employee's regular rate of compensation for each workday that the meal period is not
8 provided."

9 51. Based on both Labor Code §512(a) and the IWC Wage Order 16-2001, Defendants' meal
10 policy and practice is non-compliant because employees' breaks were frequently missed, began
11 late, or were prematurely interrupted. In addition, when Plaintiffs worked 10-hour shifts,
12 Defendants did not permit a second meal period.

13 52. Plaintiffs allege on information and belief that Defendants' failure to pay the Meal Period
14 Subclass Members the unpaid balance of these meal period wages upon the termination of their
15 employment, as alleged in this cause of action, was willful, and thus entitles the Class Members
16 to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides that an employee's
17 wages shall continue as a penalty until paid or for a period of up to 30 days from the time they
18 were due, whichever period is shorter.

19 53. Plaintiff will seek restitution pursuant to Labor Code §558(a)(3) for himself and the
20 proposed members of the Meal Period Subclass for each violation of Labor Code §226.7.
21 Further, as a derivative claim of failing to pay the premium pay of one (1) hour of pay at the
22 employee's regular rate of compensation for each workday that the meal period is not provided,
23 Plaintiff will seek statutory penalties under Labor Code §226(a)(1) because the failure to pay
24 such premium wages rendered the gross pay calculations inaccurate in violation of Labor Code
25 §226(e)(2)(B)(i). Plaintiffs further seek reasonable costs of suit and reasonable attorney's fees as
26 provided by the Labor Code and Code of Civil Procedure §1021.5, or other applicable law.

27 ///

28 ///

///

///

///

**THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS
Cal. Labor Code §§226, 226.7, 512, 558, 1198
(All Plaintiffs Against All Defendants)**

54. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

55. California Labor Code § 226.7 provides that it is unlawful to require any employee to work during rest period mandated by an applicable order of the IWC.

56. Plaintiffs allege on information and belief that during the Class Period, as alleged above, Class Members never received rest breaks, this includes not receiving their third rest breaks on shifts of over 10 hours. Employees did not clock out for meal or rest periods, the time spent during the meal and rest periods were manually written in and deducted from wages. This practice was consistent with Defendant manually logging all of Employees hours for shifts worked. Plaintiff was not provided with any third rest periods for shifts over 10 hours during the time of his employment.

57. Rest period violations occurred daily, however no rest period penalty pay is listed on paystubs. Pursuant to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited by the order is unlawful." Accordingly, because employer violated Wage Order provisions requiring rest breaks, employer violated §1198. As a result of these violations, employer is liable for civil penalties pursuant to Cal. Labor Code §. As a derivative claim, Claimant alleges that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558.

58. Defendants failed to pay the Class Members penalty wages for missed rest periods. As a result of the aforementioned conduct, the Class Members have been damaged according to proof at trial.

59. Defendants' failure to pay these wages entitles the Class Members to additional wages, pursuant to § 226.7, which provides that if an employer fails to provide an employee a rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

1 60. Plaintiffs allege on information and belief that Defendants' failure to pay the Class
2 Members the unpaid balance of these rest period wages upon the termination of their
3 employment, as alleged in this cause of action, was willful, and thus entitles the Class Members
4 to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides that an employee's
5 wages shall continue as a penalty until paid or for a period of up to 30 days from the time they
6 were due, whichever period is shorter.

7 61. Plaintiff will seek restitution pursuant to Labor Code §558(a)(3) for themselves and the
8 proposed Class Members for each violation of Labor Code §226.7. Further, as a derivative claim
9 of failing to pay the premium pay of one (1) hour of pay at the employee's regular rate of
10 compensation for each workday that the meal period is not provided, Plaintiff will seek statutory
11 penalties under Labor Code §226(a)(1) because the failure to pay such premium wages rendered
12 the gross pay calculations inaccurate in violation of Labor Code §226(e)(2)(B)(i). Plaintiff
13 further seeks prejudgment interest, reasonable costs of suit and reasonable attorney's fees as
14 provided by the Labor Code and Code of Civil Procedure §1021.5, or other applicable law.

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO TIMELY PAY ALL WAGES OWED**
17 **Cal. Lab. Code §§201, 202, 203, 204, 210 and 1199**
18 **(All Plaintiffs Against All Defendants)**

19 62. Plaintiff incorporates all preceding paragraphs as if set forth in full herein.

20 63. As set forth above, due to Defendant's unlawful employment practices, Defendant
21 knowingly and willfully failed to pay all compensation due and owing to Plaintiff at the time
22 employment terminated. Defendant willfully failed to pay Plaintiff and Class Members who are
23 no longer employed by it all compensation due upon termination of employment as required by
24 Cal. Lab. Code §§201 and 202. Pursuant to §§203, Claimant and similarly situated individuals
25 are now also entitled to recover up to thirty (30) days of wages due to employer's failure to
26 comply with the statutory requirements of §§201 and 202 of the Labor Code.

27 64. Defendant also failed to pay all wages owed twice per month. Defendant was required to
28 pay Plaintiff and Class Members all wages earned twice during each calendar month pursuant to
Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the

1 unlawful employment policies and practices discussed herein. As a result of these practices,
2 Plaintiff and Class Members were underpaid for hours worked, including overtime and penalty
3 wages, and this underpayment resulted in a failure to pay all wages owed twice per month
4 resulting in liability under Labor Code §210 for violation of §204.

5
6 **FIFTH CAUSE OF ACTION**
7 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS AND**
8 **MAINTAIN ACCURATE RECORDS**
9 **Cal. Labor Code §§ 226, 1174, and 1199**
10 **(All Plaintiffs Against All Defendants)**

11 65. Plaintiff incorporates all preceding paragraphs as if set forth in full herein.

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

21 67. Labor Code § 226(a) further provides that “[t]he deductions made from payments of
22 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day,
23 and year, and a copy of the statement or a record of the deductions shall be kept on file by the
24 employer for at least three years at the place of employment or at a central location within the
25 State of California.”

26 68. Labor Code § 226(e) provides that “[a]n employee suffering injury as a result of a
27 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
28 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 (\$4000), and
is entitled to an award of costs and reasonable attorney's fees.”

1 69. Labor Code § 1174 provides that “[e]very employer employing labor in this state shall ...
2 (c) [k]eep a record showing the names and addresses of all employees employed and the ages of
3 all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
4 which employees are employed, payroll records showing the hours worked daily by and the
5 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
6 employees employed at the respective plants or establishments. These records shall be kept in
7 accordance with rules established for this purpose by the commission, but in any case shall be
8 kept on file for not less than two years.”

9 70. Labor Code § 1174.5 provides that “[a]ny person employing labor who willfully fails to
10 maintain the records required by subdivision (c) of Section 1174 or accurate and complete
11 records maintained by subdivision (d) of Section 1174, or to allow any member of the
12 commission or employees of the division to inspect records pursuant to subdivision (b) of
13 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

14 71. Plaintiffs allege on information and belief that Defendants knowingly and intentionally
15 failed to furnish Plaintiff and Class Members with accurate itemized statements from time to
16 time for each pay period that they worked, and frequently failed to maintain accurate payroll
17 records of the Class Members as mandated by Labor Code §§ 226 and 1174. Inaccuracies in the
18 wage statements and payroll records were caused, among other reasons, by Defendants’ unlawful
19 timekeeping practices that resulted in underreporting hours worked and overtime hours worked.
20 Plaintiffs allege on information and belief that as a result of Defendants’ conduct, the Class
21 Members sustained damages. As such, the Class Members are entitled to civil penalties and an
22 award of costs and attorney's fees under § 226(e). In addition, the Class Members are entitled to
23 recover civil penalties under § 1174.5.

24 **SIXTH CAUSE OF ACTION**
25 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**
26 **California Business and Professions Code section 17200, et seq.**
27 **(All Plaintiffs Against All Defendants)**

28 72. Plaintiffs incorporates all preceding paragraphs as if set forth in full herein.

73. The unlawful timekeeping practices resulting in unpaid wages, unpaid overtime, failure
to provide 1st and 2nd meal breaks, failure to provide rest breaks, and failure to pay wages as

1 required twice per month and timely upon termination, constitute unlawful and unfair business
2 acts and/or practices within the meaning of Business and Professions Code §17200 *et seq.*,
3 including but not limited to violations of the applicable State of California Industrial Welfare
4 Commission Wage Orders, regulations and statutes, or are practices which are otherwise unfair,
5 deceptive and unlawful.

6 74. Indeed, Defendants' failure to pay the wages to Plaintiff and other Class Members as
7 alleged above constitutes an unlawful, unfair or fraudulent business act or practice, in violation
8 of Business & Professions Code § 17200 *et seq.*

9 75. Pursuant to Business & Professions Code § 17203, the members of the UCL Subclass are
10 entitled to restitution of premium wages and other pay owed, including penalty pay, where such
11 wages were due during the Class Period, according to proof.

12 76. In addition, unless the Court imposes an injunction against Defendants requiring
13 Defendants to pay full wages in the future, Plaintiff and Class Members will suffer immediate
14 and irreparable harm and will have no adequate remedy at law. Accordingly, the Class Members
15 request that this Court enter a preliminary and permanent injunction requiring Defendants to
16 cease and desist from their unlawful business practices and pay compensation as required by
17 California law.

18 77. This cause of action is brought as a cumulative remedy as provided in Business and
19 Professions Code §17205, and is intended as an alternative remedy for restitution for Plaintiff
20 and members of the relevant subclasses for any portion of time commencing within three (3)
21 years before filing this complaint, and as the primary remedy for Plaintiff, and the relevant
22 subclasses, for any portion of time during the *fourth year* before filing this Complaint, as this
23 period of time exceeds the general statute of limitations on statutory wage claims.

24 78. Plaintiff, on behalf of themselves and the proposed Class requests the violations of each
25 defendant be enjoined, and other equitable relief provided, as this court deems proper, including
26 an order requiring Defendants to make tax contributions on the accrued wages in the form of
27 FICA, Social Security, Medicare, Unemployment Insurance or other applicable payments.
28 Defendants' conduct, business acts and practices undermined competition and was done in order

1 to avoid costs other lawful employers comply with in order to avoid payment of full
2 compensation, ages and statutory penalties owed.

3 79. Plaintiff and the Class Members request relief, as described below, including restitution
4 owed, in an amount according to proof, and for reasonable costs of suit and reasonable attorney's
5 fees as provided by the Labor Code and the Code of Civil Procedure § 1021.5, or other
6 applicable law.

7 **SEVENTH CAUSE OF ACTION**

8 **STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEY GENERAL** 9 **ACT, LABOR CODE §2698 et seq. AGAINST ALL DEFENDANTS**

10 80. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding
11 paragraphs as though fully set forth herein.

12 81. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
13 aggrieved employee, on behalf of themselves and other current or former employees, may recover
14 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
15 are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved
16 employee under PAGA.

17 82. As set forth above, Defendants have committed numerous violations for which the Labor
18 Code provides for penalties, including violations of all applicable Labor Code provisions set
19 forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned Labor
20 Code provisions as statutes to which §2699.3's procedural requirements must be met before a
21 penalty may be assessed under §2699(f). Plaintiffs have complied with the procedural
22 requirements specified in §2699.3 by providing written notice to the Defendants and the Labor &
23 Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and
24 correct copy of the Notice correspondence showing compliance with §2699.3. No notice of
25 intent to investigate the alleged violations was provided within the statutory period.
26 Consequently, Plaintiffs have exhausted administrative remedies, and on behalf of themselves
27 and all other aggrieved current and former employees of Defendants. Plaintiffs, therefore, now
28 pursue this cause of action as permitted by §2698, et seq.

1 83. Enforcement of statutory provisions enacted to protect workers and to ensure proper and
2 prompt payment of wages due to employees is a fundamental public interest in California.
3 Consequently, Plaintiff's success in this action will result in the enforcement of important rights
4 affecting the public interest and will confer a significant benefit upon the general public. Private
5 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
6 enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be
7 against the interests of justice to require payment of attorneys' fees and costs from any recover
8 that might be obtained herein, pursuant to, inter alia, Labor Code §§2698, *et seq.*, and Code of
9 Civil Procedure §1021.5

10 84. In addition, if Plaintiffs succeed in enforcing these rights affecting the public interest,
11 then attorneys' fees may be awarded to Plaintiffs and against Defendants under Code of Civil
12 Procedure §1021.5 and other applicable law in part, because:

13 a. A successful outcome in this action will result in the enforcement of important
14 rights affecting the public interest by requiring Defendants to comply with the wage and hour
15 laws and California's unfair business practice law;

16 b. This action will result in a significant benefit to Plaintiff, the Class, and the
17 general public by bringing to a halt unlawful and/or unfair activity;

18 c. Unless this action is prosecuted, members of the Class and general public will not
19 recover those moneys, and many of Defendants' employees would not be aware that the acts and
20 practices they were subjected to by Defendants were wrongful;

21 d. Unless this action is prosecuted, Defendants will continue to mislead their
22 employees about the true nature of their rights and remedies under the wage and hour laws; and

23 e. An award of attorneys' fees and costs is necessary for the prosecution of this
24 action and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers
25 in general, by preventing Defendants from continuing to circumvent the wage and hour statutes
26 and frustrate the long-standing recognition by the California legislature and the courts that such
27 statutes, as pled herein, are not merely a matter of private concern between employer and
28 employee to be eviscerated by considerations of waiver, contributory negligence, good or bad
faith, and private agreements. Rather, the wage and hour statutes have been described as a matter

1 of public concern, were designed to provide minimum substantive guarantees to individual
2 workers and are essential to public welfare.

3 **PRAYER FOR RELIEF**

4 That Plaintiff, Class Members, and aggrieved employees receive an award in the amount of
5 unpaid wages owed, including interest thereon, and penalties as follows:

6 For Causes of Action 1-6:

- 7 1. That the Court determine that this action may be maintained as a class action under
8 Code of Civil Procedure § 382;
- 9 2. Provision of class notice to all members of the Class;
- 10 3. That Defendant is found to have violated the above-referenced provisions of the Labor
11 Code, CCR and IWC Wage Order 16-2001 as to Plaintiff, Class Members and aggrieved
employees;

12 For the First Cause of Action- Failure to Pay Wages:

- 13 1. For compensatory damages according to proof at trial;
- 14 2. For prejudgment interest, at the legal rate;
- 15 3. For penalties pursuant to Labor Code §§ 203, 510, 558;
- 16 4. For attorneys' fees;
- 17 5. For costs of suit incurred herein; and
- 18 6. For such other and further relief as the Court may deem appropriate.

19 For the Second Cause of Action- Meal Period Violation:

- 20 1. For compensatory damages according to proof at trial;
- 21 2. For additional wages pursuant to Labor Code § 512, 226.7;
- 22 3. For penalties pursuant to Labor Code §§ 203 and 558;
- 23 4. For attorneys' fees;
- 24 5. For costs of suit incurred;
- 25 6. For prejudgment interest; and
- 26 7. For such other and further relief as the Court deems proper.

27 For the Third Cause of Action- Failure to Provide and/or Authorize Rest Breaks:

- 28 1. For compensatory damages according to proof at trial;
2. For additional wages pursuant to Labor Code § 226.7;

3. For penalties pursuant to Labor Code §§ 203 and 558;
4. For attorneys' fees;
5. For costs of suit incurred;
6. For prejudgment interest; and
7. For such other and further relief as the Court deems proper.

For the Fourth Cause of Action- Failure to Timely Pay All Wages Owed:

1. For compensatory damages according to proof at trial;
2. For the wages of each Class Member at their regular daily rate up to a maximum of thirty (30) days;
3. For penalties pursuant to Labor Code §§ 203 and 558;
4. For attorneys' fees pursuant to Labor Code §§ 218.5 and 226, and any other applicable statute;
5. For all costs of suit herein incurred;
6. For an award of interest, including prejudgment interest, as provided by law and according to proof at trial; and
7. For such other relief, in law or in equity, as this Court deems just and proper.

For the Fifth Cause of Action- Inaccurate Payroll Records:

1. For compensatory damages according to proof at trial;
2. For penalties pursuant to Labor Code §§ 226 and 1174;
3. For attorneys' fees;
4. For costs of suit incurred;
5. For prejudgment interest; and
6. For such other and further relief as the Court deems proper.

For the Sixth Cause of Action- Unfair Business Practices:

1. For a preliminary and permanent injunction requiring Defendants to (1) pay all owed wages; (2) adopt a lawful timekeeping practice; (3) provide meal and rest periods; (4) provide safe working conditions; and (5) provide and maintain appropriate payroll records;

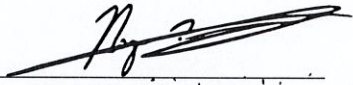
2. For compensatory damages according to proof at trial;
3. For attorneys' fees;
4. For costs of suit incurred;
5. For prejudgment interest; and
6. For such other and further relief as the Court deems proper.

For the Seventh Cause of Action- PAGA

1. For penalties pursuant to the Private Attorneys General Act, Labor Code §2698 et seq.
2. For attorneys' fees;
3. For costs of suit incurred;
4. For such other and further relief as the Court deems proper.

DATED: September 13, 2021

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

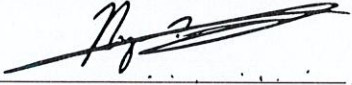

BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff JUNIOR VALDEZ
and putative class members

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of themselves and the putative class, hereby demands trial by jury to the full extent permitted by law.

DATED: September 13, 2021

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


BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff JUNIOR VALDEZ
and putative class members

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

EXHIBIT 1



www.koullaw.com

Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

June 22, 2021

Via E-filing:

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

Via Certified U.S. Mail:

AUS Decking, Inc.
2999 Promenade St. Ste. 100
West Sacramento, Ca 95691

Re: PAGA Notice Pursuant to California Labor Code §2699

Claimant: Junior Valdez

Employer: AUS Decking, Inc.

Dear Sir or Madam:

Junior Valdez has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for wage and hour claims against his employer, AUS Decking, Inc. (hereafter collectively referred to as “Employer.”)

Employer is a construction company that specializes in Gyp-Crete, sound-mat, concrete, waterproofing, and deck coating services throughout northern California. (www.ausdecking.com) Claimant’s proposed PAGA representative action would represent numerous aggrieved employees. Claimant worked for Employer as a crew head earning \$24/hour until April 8, 2021.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and 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 Comply with California Law Concerning Payment for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(J) of Wage Order 16 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked 10-12 hours per shift, and from time to time more than 12 hours in a shift wherein they were under the Employer’s control but not compensated for all of their time. Claimant and aggrieved employees were not paid for all 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.*

Unpaid Overtime and Underpaid Travel Time

Claimant’s average schedule was 10-12 or more hours per shift. Claimant and aggrieved employees frequently worked for 12 or more hours per day and often would not receive double time after the 12th hour as required by Labor Code §510 and the Wage Order. Claimant and aggrieved employees were consistently not paid for the time spent driving from their last location of the day back to the company facility, and for the time spent unloading at the end of the day. In fact, although employees carpooled in company vehicles to and from worksites, some as far as two hours away, only the driver was paid an hourly rate for time spent driving from the job site back to the company location. Passengers in the car were paid zero wages for required transportation time. Some Employees were not paid for the time spent driving from the company facility to the work site.

Employer has a clear policy and practice of failing to pay for all hours worked at the employees’ regular rate of pay for required tasks. Employer did not use any form of electronic timekeeping system. It is Employer’s policy to handwrite the Employee’s

hours and the hours are not accurately logged, failing to accurately depict all hours worked. This policy is an admission of unlawful conduct and a patent violation of California laws requiring that employers pay for all hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *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, Uninterrupted Meal Breaks and Second Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1199, 2698 *et seq.*)

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all its hourly employees with their right to take all required timely, off-duty, unpaid 30-minute meal periods. 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...An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

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." 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." Labor Code §1198 makes it unlawful for an employer to employ an employee for longer hours than those fixed by the wage order or under conditions of labor prohibited by the order.

On many occasions, Claimant did not receive their first meal break within the first 5 hours of their shift. In addition, Claimant never received their second meal period for shifts over 10 hours. Employer failed to assure Claimant and others 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, 512, and 1198. As a derivative claim, Claimant alleges that 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, Employer is 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, 2698 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that he and his coworkers never received their third rest breaks on shifts of over 10 hours. Employees did not clock out for meal or rest periods, the time spent during the meal and rest periods were manually written in and deducted from wages. This practice was consistent with Employer manually logging all of Employees hours for shifts worked. Claimant was not provided with any third rest periods for shifts over 10 hours during the time of his employment.

Employer did not authorize or permit all of its hourly employees to take at least a ten-minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 16-2001 11(A). According to Claimant, he never received his third rest break during shifts of 10 or more hours, and this experience is consistent with that of other aggrieved employees. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Moreover, although Wage Order 16 permits late or skipped breaks, “in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work,” even in those instances, the missed rest period must be made up in that same day or the Employer must compensate the employee for the missed ten (10) minutes of rest time at his regular rate of pay. Because Employer violated the Wage Order, Employer is liable under Labor Code §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 Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202 and 2698 et seq.)

Failure to Pay Wages Due Upon Termination

Pursuant to Cal. Lab. Code § 202 (a), “[i]f 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.” An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer’s unlawful employment practices as described herein,

Employer failed to pay aggrieved employees who are no longer employed by Employer all wages due in a timely manner upon termination.

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Further knowing that they were not being paid for all hours worked, including meal/rest periods and overtime pay. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §203, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records

(Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq*)

California Labor Code § 226(a) provides that "[e]very 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 (1) gross wages earned, (2) total hours worked..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the name of the employee and his or her social security number..., (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

Labor Code § 1174 provides that "[e]very employer employing labor in this state shall ... (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 which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years."

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and 1174. As a result of the unlawful employment practices discussed herein, the statements provided to Claimant and aggrieved employees have not accurately reflected

actual gross wages earned, including overtime and meal/rest premiums and total regular, overtime, and double time hours worked.

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. Employer's unlawful employment practices were knowing and intentional, and thus Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has 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 Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant