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LOS ANGELES SUPERIOR COURT

AUG 16 2021

FILED
Superior Court of California
County of Los Angeles

AUG 16 2021

5 Attorneys for Plaintiff and the Proposed Class

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Sherri R. Carter, Executive Officer/Clerk

By S. Drew, Deputy
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF LOS ANGELES**

9
10 JAIME MORA, an individual, on behalf of
himself and others similarly situated

11 **PLAINTIFF,**

12 v.

13 HY-TECH TILE, INC.; and DOES 1 thru 50,
inclusive,

14 **DEFENDANTS.**

CASE NO. 21STCV21867

**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 Rest Breaks
Pursuant to Labor Code §§ 226.7
3. Failure to Reimburse Expenses
Pursuant to Labor Code § 2802
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions
Code § 17200
7. Penalties Pursuant to Labor Code
§2699, et seq.

08/16/2021

1 Plaintiff JAIME MORA, an individual, on behalf of himself, all others similarly situated,
2 and on behalf of the people of the State of California and as an "aggrieved employee" under Labor
3 Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter "PAGA"), complains of
4 Defendant HY-TECH TILE, INC. ("Defendant") and each of them, as follows:

5 I.

6 INTRODUCTION

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

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

12 2. From at least four (4) years prior to the filing of this action continuing to the present,
13 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
14 members when they work more than eight hours in a day or forty hours in a week. Plaintiff and
15 other Proposed Class members were not properly compensated for overtime at the appropriate rate
16 of pay because Plaintiff and the Proposed Class only earn compensation when they are installing.
17 As such, when Plaintiff and the Proposed Class take their rest periods (as required by California
18 law) they are not paid any compensation during these periods. As a result, they are entitled to
19 minimum wage for each and every rest period provided by Defendant. Additionally, when
20 Plaintiff and the Proposed Class were paid by the "piece," the piece rate pay was not blended into
21 their regular rate of pay for the purpose of calculating the overtime rate.

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

1 4. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of purchasing
3 specialized tools necessary to perform their job duties. The work performed by Plaintiff and the
4 Proposed Class necessitated the use of special tools. These tools were not provided by Defendant.
5 As a result, Plaintiff and the Proposed Class purchased these tools and Defendant never reimbursed
6 them for the cost.

7 5. For at least one (1) year prior to the filing of this action continuing to the present,
8 Defendants have failed to comply with Industrial Welfare Commission ("IWC") Wage Order 4-
9 2001 and Labor Code § 226(a) by failing to provide itemized wage statements to Plaintiff and the
10 Proposed Class showing the number of piece-rate units earned and any applicable piece rate if the
11 employee is paid on a piece-rate, accurately reporting total hours worked, and all applicable hourly
12 rates in effect during the pay period and the corresponding number of hours worked at each hourly
13 rate by the employee.

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

17 7. Plaintiff, on behalf of himself and all Proposed Class members brings this action
18 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802; Wage
19 Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid
20 wages/overtime, rest period penalties, unreimbursed expenses, accurate itemized wage statements,
21 other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

25 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
26 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
27 PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed
28 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 their 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 rest periods, failure to reimburse Plaintiff and the Proposed Class for business-related expenses, failure to provide accurate itemized wage statements, and failure to pay all wages due at the time of termination.

II.

JURISDICTION AND VENUE

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

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

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

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

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III.
PARTIES

A. PLAINTIFF

14 Plaintiff JAIME MORA is a resident of California.

15 Plaintiff and all Proposed Class members, were regularly required to:

- a. Work without being paid for all hours at the appropriate overtime rate;
- b. Work without being provided *paid* rest periods;
- c. Work without being reimbursed for their out of pocket expenses; and,
- d. Work without being provided accurate itemized wage statements.

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

18 17. As a result of this conduct, Defendant has engaged in unfair competition and
19 unlawful business practices.

20 18. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA
21 are "aggrieved employees" within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
22 §2699(c).)

B. DEFENDANTS

23 19. Defendant HY-TECH TILE, INC. is believed to be a California corporation
24 operating within the State of California. Defendant's corporate address is believed to be 1355
25 Palmyoite Ave, Riverside, CA 92507. Upon information and belief, Defendant employed Plaintiff
26 and similarly situated persons as hourly employees within California. Defendant has done and
27 does business throughout the State of California.

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

capacities of the Defendants designated hereinafter as DOES when such identities become known.

21. 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.

22. 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

23. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant. Upon information and belief, Defendant hires employees non-exempt employees who are paid on non-piece rate basis and those who work as piece rate employees who are paid by the "piece."

24. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. § 11040).

25. On a regular and consistent basis, Plaintiff and the Proposed Class members were not paid at the proper rate of compensation. Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class members when they work more than eight hours in a day or forty hours in a week. Plaintiff and other Proposed Class members were not properly compensated for overtime at the appropriate rate of pay because Plaintiff and the Proposed Class only earn compensation when they are installing. As such, when Plaintiff and the Proposed Class take their rest periods (as required by California law) they are not paid any compensation during these periods. As a result, they are entitled to minimum wage for each and every rest period

1 provided by Defendant. Additionally, when Plaintiff and the Proposed Class were paid by the
2 "piece," the piece rate pay was not blended into their regular rate of pay for the purpose of
3 calculating the overtime rate.

4 26. Defendants have had a consistent policy of failing to provide Proposed Class
5 members within the State of California, including Plaintiff, with *paid* rest periods of at least ten
6 (10) minutes per four (4) hours worked or major fraction thereof and failing to pay such employees
7 one (1) hour of pay at the employee's regular rate of compensation for each workday that the *paid*
8 rest period was not provided, as required by California state wage and hour laws. Additionally,
9 Defendants failed to inform Plaintiff and the Proposed Class of their right to take rest periods by
10 way of a lawful policy.

11 27. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
12 properly reimbursed expenses associated with the cost of tools necessary for the completion of
13 their job duties.

14 28. Defendant engaged in a practice of failing to provide accurate itemized wage
15 statements to Plaintiff and the Proposed Class in violation of Labor Code § 226(a)(2), (3), and (9),
16 which require that every employer shall, semimonthly or at the time of each payment of wages,
17 furnish each of his or her employees with an accurate itemized statement in writing showing the
18 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
19 rate, total daily hours worked, and all applicable hourly rates in effect during the pay period and
20 the corresponding number of hours worked at each hourly rate by the employee.

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

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

25 V.

26 CLASS ACTION ALLEGATIONS

27 31. Plaintiff brings this action on behalf of himself and all others similarly situated as
28 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a

1 proposed class composed of and defined as follows:

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

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

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

11 **A. NUMEROSITY**

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

17 35. Plaintiff alleges that Defendant's employment records would provide information
18 as to the number and location of all Proposed Class members. Joinder of all members of the
19 Proposed Class is not practicable.

20 **B. COMMONALITY**

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

24 a. Whether Defendant failed to pay wages and/or overtime compensation as
25 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1194.2, and 1199;

26 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4 -
27 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
28 of their right to take rest periods and failing to provide required rest periods throughout the term

1 of employment and failing to compensate said employees one (1) hours wages in lieu of rest
2 periods;

3 c. Whether Defendant violated Labor Code § 2802 and/or Wage Order 4-2001
4 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost
5 of tools;

6 d. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001
7 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to
8 provide accurate and complete itemized wage statements that reflect the number of piece-rate units
9 earned and any applicable piece rate if the employee is paid on a piece-rate, total hours worked,
10 and all applicable hourly rates in effect during the pay period and the corresponding number of
11 hours worked at each hourly rate by the employee, for Plaintiff and the Proposed Class;

12 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
13 compensation due and owing at the time that any Proposed Class member's employment with
14 Defendant terminated;

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

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

19 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
20 acts alleged herein.

21 **C. TYPICALITY**

22 37. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
23 all members of the Proposed Class sustained injuries and damages arising out of and caused by
24 Defendant's common course of conduct in violation of laws, regulations that have the force and
25 effect of law, and statutes as alleged herein.

26 **D. ADEQUACY OF REPRESENTATION**

27 38. Plaintiff will fairly and adequately represent and protect the interests of the
28 members of the proposed Class.

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

E. SUPERIORITY OF CLASS ACTION

40. 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 rest periods, failing to reimburse expenses, failing to provide accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

41. 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

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

43. 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. California law also requires that any compensation, including a piece rate pay, must be included in the regular rate of pay.

44. Plaintiff and the Proposed Class were forced to work on a regular and consistent

1 basis without receiving compensation for all hours worked at the proper rate. Specifically, Plaintiff
2 and the Proposed Class were not paid at the proper overtime rate when they were working more
3 than eight (8) hours in one day or forty (40) hours in one week because when Plaintiff and the
4 Proposed Class were paid by the "piece," the piece rate pay was not blended into their regular rate
5 of pay when calculating overtime.

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

10 46. As piece rate employees, Plaintiff and the Proposed Class only earn compensation
11 when they are taking their ten-minute rest period. As such, when Plaintiff and the Proposed Class
12 take their rest periods (as required by California law) they are not paid any compensation during
13 these periods. As a result, they are entitled to minimum wage for each and every rest period
14 provided by Defendant.

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

19 **VII.**

20 **SECOND CAUSE OF ACTION**

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

22 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

23 **LABOR CODE § 226.7**

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

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

1 failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

2 50. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks, and
3 Defendant failed to maintain an accurate policy advising Plaintiff and the Proposed Class of these
4 rest breaks and failed to provide Plaintiff and the Proposed Class with rest breaks of not less than
5 ten (10) minutes as required by the Labor Code during the relevant time period.

6 51. Plaintiff and the Class worked shifts where their rest periods were unpaid. As
7 explained above, as a result of Defendant's common policy of paying Plaintiff and the Proposed
8 Class by the "piece," Plaintiff and the Proposed Class were not compensated for their rest periods.

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

12 **VIII.**

13 **THIRD CAUSE OF ACTION**

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

15 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

16 **LABOR CODE § 2802**

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

19 54. Labor Code § 2802 requires employers to indemnify employees for all necessary
20 expenditures incurred by employees in the discharge of their duties.

21 55. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of
22 using tools that were not provided by Defendant but were necessary for the performance of
23 Plaintiff and the Proposed Class' job duties.

24 56. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class
25 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
26 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

27 ///

28 ///

IX.

FOURTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

VIOLATION OF LABOR CODE § 226(A)

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

58. California Labor Code § 226(a) requires employers to issue wage statements that accurately show the number of piece-rate units earned, total hours worked, and accurately report appropriate rates of pay and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2), (3), and (9).)

59. Labor Code § 226(a)(2) 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 the total hours worked by the employee. Plaintiff and the Proposed Class are issued wage statements that do not include the total hours worked by the employee.

60. Labor Code § 226(a)(3) 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 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis. Plaintiff and the Proposed Class are issued wage statements that do not show the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis.

61. 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.

62. As a result of Defendant's failure to pay wages as described above, Defendant has

1 failed to include the appropriate rates of pay and the accurate hours worked on itemized wage
2 statements for Plaintiff and the Proposed Class.

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

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

11 **X.**

12 **FIFTH CAUSE OF ACTION**

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

14 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

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

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

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

23 68. Defendant has failed to pay Plaintiff and others a sum certain at the time of
24 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
25 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
26 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
27 members' daily wage multiplied by thirty (30) days.

28 ///

XI.

SIXTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

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

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

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

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

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

74. 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,

06/23/2021

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

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

5 76. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
6 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
7 § 17200, *et seq.* of the Business & Professions Code.

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

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

17 **XII.**

18 **SEVENTH CAUSE OF ACTION**

19 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

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

22 43. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
23 seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§
24 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, 2802; IWC 4-2001; and California Code
25 of Regulations, Title 8, Section 11040, which call for civil penalties.

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

- 28 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 HY-TECH TILE, INC.'s entity address, which is 1355 Palmyoita Ave, Riverside, CA 92507, as proscribed by the Code on June 10, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, and 2802. (*see* Exhibit "1.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2").

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 members' hourly wage for each rest period missed or taken late 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' unreimbursed out of pocket expenses as a requirement of employment;

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

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>).

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1 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
2 an aggregate penalty of four thousand dollars (\$4,000);

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

5 6. An award of prejudgment and post judgment interest;

6 7. An order enjoining Defendant and its agents, servants, and employees, and all
7 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
8 overtime, rest periods, reimbursement of expenses, accurate itemized wage statements, and wages
9 upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194,
10 1194.2, 1199, 2802, and IWC 4-2001;

11 8. For restitution for unfair competition pursuant to Business & Professions Code
12 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

13 9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
14 Code §§ 201, 202, 203, 226(a), 226.7, 510, 1194, 1194.2, 1199, 2802, and IWC 4-2001.

15 10. An award providing for payment of costs of suit;

16 11. An award of attorneys' fees; and

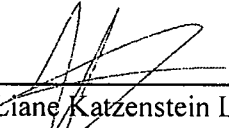
17 12. Such other and further relief as this Court may deem proper and just.

18 **DEMAND FOR JURY TRIAL**

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

20
21 DATED: August 16, 2021

KINGSLEY & KINGSLEY, APC

22
23 By: 

Liane Katzenstein Ly

24 Attorneys for Plaintiff Jaime Mora and the Proposed
25 Class
26
27
28

00:23:00

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

June 10, 2021

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

Hy-Tech Tile, Inc.
1355 Palmyoita Ave
Riverside, CA 92507

Re: Jaime Mora v. Hy-Tech Tile, Inc
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Jaime Mora ("Plaintiff") and a proposed group of current and former employees working for Hy-Tech Tile, 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 Hy-Tech Tile, 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, 1194.2 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 has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. The pay periods issued to Plaintiff and the aggrieved employees include an hourly rate, but in actuality, Plaintiff and the aggrieved employees are paid a piece rate based on installations. Plaintiff and the aggrieved employees were not properly compensated for overtime because when they were paid by the "piece," the piece rate pay was not blended into their regular rate of pay for the purpose of calculating the overtime rate. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants has violated §§ 510, 1194, 1194.2 and 1199 with respect to Plaintiff and all aggrieved employees.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 10, 2021

Page 2 of 3

the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Plaintiff and all other aggrieved employees were not properly compensated for all hours worked because Defendant does not provide paid rest periods to Plaintiff and the aggrieved employees. As piece rate employees, when Plaintiff and the aggrieved employees took their ten-minute rest periods, they were not compensated in any way. As such, they are entitled to the ten minutes of pay. Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages for each unpaid rest period as required by labor Code § 226.7. Defendant failed to provide Plaintiff and the aggrieved employees with lawful rest periods due to the fact that they were unpaid. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated § 226.7 with respect to Plaintiff and all aggrieved employees.

In addition, Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal tools for business related purposes. Defendant required that Plaintiff and the aggrieved employees purchase tools/equipment to perform their installations, and this was necessary to perform their job duties. These tools/equipment were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal tools/equipment.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which 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 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate, accurately reporting 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 § 226(a)(2) 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 the total hours worked by the employee. Plaintiff and the employees are issued wage statements that do not include the total hours worked by the employee.

Labor Code § 226(a)(3) 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 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis. Defendant issues Plaintiff and the aggrieved employees wage statements that do not include number of piece-rate units earned and any applicable piece rate.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

June 10, 2021

Page 3 of 3

Also, Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that did 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, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not applicable show all hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated § 226(a) with respect to Plaintiff and all aggrieved employees.

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.

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, 2802, 510, 1194, 1194.2, 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: _____


Liane Katzenstein Ly

LKL/gm

- Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
2. Hy-Tech Tile, Inc via USPS Certified Mail # 7019 2970 0001 4016 5097

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 *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley

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

Your Email Address *

service@kingsleykingsley.com

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd Ste 12

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 *

Jaime Mora

Plaintiff/Aggrieved Employee Occupation *

Installer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

Hy-Tech Tile, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

1355 Palmyoita Ave

Employer City

Riverside

Employer State

California

Employer Zip/Postal Code

92507

Employer Industry *

Other

Employer Industry for "Other" *

Tile Installation

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

06/23/2021

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)

06/23/2021

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.com

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Visa

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

PAGA Letter - ...h Tile 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](#)

06/23/2021

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

06/23/2021

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: Service Email
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, June 10, 2021 9:25:41 AM

6/10/2021

LWDA Case No. LWDA-CM-834597-21

Law Firm : Kingsley & Kingsley

Plaintiff Name : Jaime Mora

Employer: Hy-Tech Tile, 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

06/23/2021

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: [Service Email](#)
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Thursday, June 10, 2021 9:25:51 AM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-834597-21

Order Number: ORD-000112843

Total: \$75.00

Card Type: Visa

Date: 6/10/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436

06/23/2021