

Craig J. Ackermann (SBN 229832)
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635
cja@ackermanntilajef.com

Tatiana Hernandez (SBN 255322)
LAW OFFICE OF TATIANA HERNANDEZ, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (213) 909-4248
Facsimile: (310) 388-0639
tatiana@thawpc.com

Attorneys for Plaintiffs, the Putative Class, and the PAGA Aggrieved Employees

[Additional counsel listed on next page]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

**BMC WEST LLC WAGE AND HOUR
CASES**

Included actions:

GUSTAVO CHAVEZ FRANCO V. BMC
WEST, LLC;

GEOVANY CISNEROS PALMA, RODOLFO
C. DOMINGUEZ, GERARDO CISNEROS V.
BMC WEST, LLC;

CHRIS ROSILLO V. BMC WEST, LLC.

CASE NO. CIVSB2123090

**STIPULATION OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Superior Court for the County of San Bernardino
Case No.: CIVSB2123090

Eastern District of California
Case No.: 2:21-cv-02005-MCE-AC

Superior Court for the County of Riverside
Case No. CVPS2201581

[Assigned for all purposes to the
Honorable David Cohn, Dept. S-26]

Jonathan Durham (SBN 278227)
Ned B. Ng (SBN 282270)
LAW OFFICES OF DURHAM & NG
4600 Northgate Blvd, Suite 145
Sacramento, CA 95834
Tel: (888) 684-4888

Jonathan Melmed (SBN 290218)
MELMED LAW GROUP, P.C.
1801 Century Park E, Suite 850
Los Angeles, CA 90067
Tel: (310) 824-3828
jm@melmedlaw.com

Douglas Han (SBN 232858)
Shunt Tatayos-Gharajeh (SBN 272164)
Chancellor D. Nobles (SBN 330081)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, CA 91003
Tel: (818) 230-7502
Fax: (818) 230-7259
dhan@justicelawgroup.com
statavos@justicelawgroup.com
cnobles@justicelawgroup.com

Attorneys for Plaintiffs, the Putative Class, and the PAGA Aggrieved Employees

MATTHEW B. GOLPER (SBN 275979)
mgolper@brgslaw.com
DANIEL J. CORBETT (SBN 338544)
tgibbs@brgslaw.com
BALLARD ROSENBERG GOLPER & SAVITT, LLP
15760 Ventura Boulevard, Eighteenth Floor
Encino, California 91436
Telephone: (818) 508-3700
Facsimile: (818) 506-4827

Attorneys for Defendant
BMC WEST, LLC

STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Subject to final approval by the Court, this Stipulation of Class Action and PAGA Settlement (“Joint Stipulation of Settlement” or “Settlement”) is made and entered into by and between Plaintiffs GUSTAVO CHAVEZ FRANCO (“Plaintiff Franco”), GEOVANY CISNEROS PALMA (“Plaintiff Palma”), RODOLFO C. DOMINGUEZ (“Plaintiff Dominguez”), GERARDO CISNEROS (“Plaintiff Cisneros”), GABRIEL RAMOS (“Plaintiff Ramos”), and CHRIS ROSILLO (“Plaintiff Rosillo”) (collectively, “Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated and Defendant BMC WEST, LLC (“Defendant”). Plaintiffs and Defendant are collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE that the actions referenced herein are being compromised and settled, pursuant to the terms and conditions set forth below, subject to the definitions and recitals herein, which by reference became an integral part of this Settlement.as follows:

1. On August 11, 2021, Plaintiff Gustavo Chavez Franco filed the PAGA representative action civil complaint (the “Franco Action”) against Defendant in the Superior Court of California, County of San Bernardino. The Franco Action asserts a cause of action for PAGA Penalties based on Defendant’s violations of Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 256, 510, 1198, 2800 and 2802.

2. On July 23, 2021, Plaintiffs Geovany Cisneros Palma, Rodolfo Cisneros Dominguez, and Gerardo Cisneros filed the putative class action and PAGA representative action civil complaint (the “Palma Action”) against Defendant in the Superior Court of California, County of Sacramento. The Palma Action asserts the following causes of action: or (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6) failure to pay timely wages; (7) failure to pay final wages; (8) failure to reimburse business expenses; (9) failure to issue compliant wage statements; (10) UCL violations; and (11) penalties pursuant to PAGA for alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2698, et seq., 2802, 2804 Defendant removed the Palma Action to the Eastern District of California on October 29, 2021.

3. On August 19, 2021, Plaintiff Gabriel Ramos filed a putative class action complaint (“the

Ramos Action”) against Defendant in the Superior Court of California, County of Los Angeles, asserting claims for: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) failure to timely pay wages; (6) non-compliant wage statements; (7) unreimbursed business expenses; and (8) unfair competition. Defendant removed the Ramos Action to the United States District Court for the Central District of California on September 17, 2021.

4. On September 23, 2021, Plaintiff Chris Rosillo submitted his PAGA Letter to the Labor and Workforce Development Agency (“LWDA”) asserting claims against Defendant, and on April 21, 2022 he filed a PAGA representative action (the “Rosillo Action”) against Defendant in the Superior Court of California, County of Riverside. The Rosillo Action asserts claims against Defendant for (1) failure to pay minimum and overtime wages; (2) failure to pay sick pay; (3) failure to provide meal periods and rest breaks; (4) failure to timely pay wages during employment; (5) failure to timely pay wages; (6) failure to timely pay wages upon termination; (7) failure to provide complete and accurate wage statements; and (8) failure to reimburse business expenses, and seeks civil penalties for Defendants’ alleged violation of Labor Code §§§§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 233, 245.5-249, 256, 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800 and 2802.

5. Collectively, the Franco Action, Palma Action, Ramos Action, and Rosillo Action shall be referred to as the “Complaints” or “Actions.” “Complaints” or “Actions” encompasses the claims and allegations set forth in the Franco Action, Palma Action, Ramos Action, and Rosillo Action, and Plaintiffs’ forthcoming consolidated Complaint is to be filed in the Franco Action.

6. Collectively, the letters sent to the LWDA by Franco, Palma, and Rosillo, along with the amended LWDA letter to be sent adding claims for Defendant’s alleged violations of Labor Code sections 212, 213 and 6400, et seq. shall be referred to as the “PAGA Notices.”

7. On October 7, 2021, counsel for the Actions entered into a joint prosecution agreement to jointly prosecute and represent all Class Members and/or Aggrieved Employees in the Actions and to mediate the matters all at once.

8. On November 4, 2021, Plaintiff Ramos moved to dismiss the Ramos Action , and on November 5, 2021 the Central District Court issued an order dismissing the Ramos Action without prejudice.

1 9. On Friday, July 8, 2022, the Parties mediated the Actions before Paul Grossman, an
2 experienced mediator and accepted the mediator's proposal; agreeing to the material terms of this
3 settlement and the resolution of the Actions.

4 10. For purposes of this Settlement, the "Class," "Settlement Class" or "Class Members"
5 consist of: All individuals who are or were employed by Defendant as hourly non-exempt employees in
6 California from January 19, 2018 to the earlier of September 8, 2022 or the date of preliminary approval
7 (the "Class Period").

8 11. For purposes of this Settlement, the "Class Period" is January 19, 2018 to the earlier of
9 September 8, 2022 or the date of preliminary approval. For purposes of this Settlement, the "PAGA
10 Period" is June 4, 2020 to the earlier of September 8, 2022 or the date of preliminary approval.

11 12. For purposes of this Settlement, "Class Counsel" means ACKERMANN & TILAJEF, P.C.,
12 LAW OFFICE OF TATIANA HERNANDEZ P.C., MELMED LAW GROUP P.C., LAW OFFICES OF
13 DURHAM & NG, and JUSTICE LAW CORPORATION.

14 13. For purposes of this Settlement, "Covered Workweeks" means the workweek(s) during
15 the Class Period that a Class Member was actively employed by Defendant and worked any portion of a
16 workweek for Defendant in a nonexempt position in California. Defendant has represented the Covered
17 Workweeks between January 19, 2018 and December 31, 2021, are approximately 380,078.

18 14. For purposes of this Settlement, "Covered Pay Periods" means the pay periods during the
19 PAGA Period that a Class Member was actively employed and worked any portion of such pay period
20 for Defendant in a non-exempt position in California.

21 15. For purposes of the Settlement, "Defendant's Counsel" means BALLARD ROSENBERG
22 GOLPER & SAVITT, LLP.

23 16. This settlement is a compromise of disputed claims. Notwithstanding the above, Defendant
24 denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the
25 Complaints, or as to any Class Representative or Class Member in any manner. Defendant further denies
26 that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative
27 treatment. With respect to Plaintiffs' claims, Defendant contends, among other things, that it has complied
28 at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare

Commission.

17. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaints.

18. Class Counsel has conducted a thorough investigation into the facts of this class action case, including an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues. Furthermore, while Defendant maintains that the claims alleged do not give rise to liability, Defendant and Defendant's Counsel agree that the Settlement is fair and in the best interest of the Class.

19. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

20. **This Settlement provides for a non-reversionary process requiring Defendant to issue payments to Class Members according to a specified formula based on Covered Workweeks. The maximum total payment under the Settlement, including all attorneys' fees and costs, the service payments to the named Plaintiffs, the costs of settlement administration, and any other payments provided by this Settlement, is \$2,380,000 ("Gross Settlement Amount").**

21. It is understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the Gross Settlement Amount.

TERMS AND CONDITIONS OF SETTLEMENT

22. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

a. It is agreed by and among the Class and Defendant that this case and any claims, damages, or causes of action arising out of the disputes which are the subject of this case, be settled and compromised as between the Class and Defendant, subject to the terms and conditions set forth in this

1 Settlement and the approval of the Court.

2 b. Effective Date: The terms of settlement embodied in this Settlement shall become
3 effective (“Effective Date”) when all of the following events have occurred: (i) this Joint Stipulation of
4 Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given
5 preliminary approval to the Settlement; (iii) the notice has been given to the Class, providing them with
6 an opportunity to dispute information contained in the Notices of Class Action Settlement, to opt out of
7 the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered
8 a final order and judgment certifying the Class and approving this Settlement; and (v) in the event there
9 are written objections filed prior to the formal fairness hearing which are not later withdrawn, the later of
10 the following events: when the period for filing any appeal, writ or other appellate proceeding opposing
11 the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or
12 any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and
13 conclusively with no right to pursue further remedies or relief; or any appeal, writ or other appellate
14 proceeding has upheld the Court’s final order with no right to pursue further remedies or relief (no more
15 appeals). In this regard, it is the intention of the Parties that the Settlement shall not become effective
16 until the Court’s order approving the Settlement and judgment are completely final, and there is no further
17 recourse by an appellant or objector who seeks to contest the Settlement.

18 c. Net Settlement Amount: The Net Settlement Amount shall be calculated by
19 deducting from the Gross Settlement Amount (\$2,380,000) the following sums, subject to approval by the
20 Court: (1) attorneys’ fees in the amount of \$793,333.33, (33% or 1/3 of the Gross Settlement Amount);
21 (2) reasonable litigation costs (not to exceed \$25,000); (3) a service payment for each Plaintiff and Class
22 Representative (not to exceed \$10,000 each, totaling \$60,000); (4) costs of settlement administration
23 (estimated not to exceed \$35,250); (5) the LWDA Payment for PAGA civil penalties (\$178,500) to be
24 paid to the LWDA. The Parties agree to reserve 1% of the Gross Settlement Award (\$23,800) for
25 attorneys’ fees and costs for counsel representing the plaintiff in the *Ricardo Perez Ruelas v. BMC West*,
26
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28

1 *LLC*¹ matter. In the event counsel for Ricardo Perez Ruelas does not accept the 1% payment, the 1% shall
2 remain in the Gross Settlement Amount. The Parties further agree to reserve an additional Class
3 Representative Payment for Ricardo Perez Ruelas. If the Class Representative Payment for Ricardo Perez
4 Ruelas is not accepted by Mr. Ruelas through or by his counsel of record, the \$10,000 payment shall
5 remain in the Gross Settlement Amount.² Individual Settlement Payments to the Class Members will be
6 calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.
7 Any difference between these sums and the sums awarded by the court will be added to the Net Settlement
8 Amount.

9 d. Individual Settlement Payments: Individual Settlement Payments will be paid out
10 of the Net Settlement Amount. Each Class Member will be paid a pro-rata share of the Net Settlement
11 Amount, as calculated by the Settlement Administrator ("Individual Settlement Payment"). The pro-rata
12 Individual Settlement Payment will be determined by comparing the individual Class Member's Covered
13 Workweeks employed during the Class Period in California to the total Covered Workweeks of the Class
14 during the Class Period. Covered Workweeks for Class Members employed by Defendant in a position
15 where they received an incentive payment in a workweek where they also worked overtime will be treated
16 as 10 Covered Workweeks for purposes of the calculation herein. Individual Settlement Payments in the
17 appropriate amounts will be distributed by the Settlement Administrator by mail to the Class Members.

18 e. Allocation Of Individual Settlement Payments: The Parties have agreed that all
19 Individual Settlement Payments will be allocated as follows: payable to eligible Class Members will be
20 allocated from the Net Settlement Amount as thirty percent (30%) as wages for which IRS Forms W-2
21 will issue (the "Wage Component") and seventy percent (70%) as alleged penalties and interest for which
22 IRS Forms 1099-MISC will issue from the Settlement Administrator. The Wage Component shall be
23

24
25 ¹ On April 21, 2022, Plaintiff Ricardo Perez Ruelas filed a PAGA representative action civil Complaint against Defendant in
26 the Superior Court of California, County of Stanislaus, for violations of California's Labor Code Private Attorney General Act
27 of 2004 (Cal. Lab. Code 2698 *et seq.*) resulting from Defendant's alleged violations of wage and hour laws protective of
28 Defendant's aggrieved employees under the California Labor Code and the Industrial Welfare Commission ("IWC") Wage
Orders.

² In exchange for the Class Representative Payment and 1% attorneys' fees payment, Mr. Ruelas and his counsel would agree
not to oppose the Parties' forthcoming Motions for Preliminary and Final Approval of Class Action Settlement and Attorneys'
Fees and Costs. Mr. Ruelas would further agree to the terms of the Released Claims of the Class Representatives herein.

reported on a W-2 Form and will be provided to each participating Settlement Class Member. Defendant will pay the employer's share of payroll taxes due on the wages portion separately and in addition to the Gross Settlement Amount. No withholding shall be made on the non-wage components of the Settlement. Payments.

f. PAGA Payment: Parties have agreed that the amount of \$238,000 from the Gross Settlement Amount is allocated toward civil penalties recoverable under PAGA ("PAGA Portion"), with 75% (or \$178,500) to be paid to the Labor and Workforce Development Agency ("LWDA Payment") and 25% (or \$59,500) (the "Class Member PAGA Payment") to be a part of the Net Settlement Amount for distribution to the Settlement Class Members who worked during the PAGA Period on a *pro rata* basis based on the amount of Covered Pay Periods each Class Member worked during the PAGA Period.

g. Individual Settlement Payments Do Not Trigger Additional Benefits: All Individual Settlement Payments to individual Class Members shall be deemed to be paid to such Class Member solely in the year in which such payments actually are received by the Class Member. It is expressly understood and agreed that the receipt of such Individual Settlement Payments will not entitle any Class Member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching benefits or deferred compensation benefits. It is the intent that the Individual Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

h. Attorneys' Fees and Costs: Subject to approval by the Court, Defendant will not object to Class Counsel's application for attorneys' fees not to exceed 33% or 1/3 of the Gross Settlement Amount (\$793,333.33) and litigation costs not to exceed \$25,000. Should the Court approve Attorney's Fees and Costs in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Attorney's Fees and Costs set forth above shall be added to the Net

1 Settlement Amount.

2 i. Enhancement Awards for Class Representatives: Subject to Court approval, and in
3 exchange for a releases defined herein, Defendant will not object to Class Counsel's application for a
4 Enhancement Award of up to \$10,000 for each Plaintiff for their service as the Class Representatives. It
5 is understood that these Enhancement Awards are in addition to the Settlement Payments to which the
6 Class Representatives are entitled to along with the other Class Members. Defendant or the Settlement
7 Administrator will issue an IRS Form 1099 for the Enhancement Awards to each of the Class
8 Representatives. The Class Representatives will be individually responsible for correctly characterizing
9 this compensation on their personal income tax returns for tax purposes and for paying any taxes on the
10 amounts received. Should the Court approve Enhancement Awards to the Class Representatives in
11 amounts less than that set forth above, the difference between the lesser amount(s) approved by the Court
12 and the Enhancement Award amount(s) set forth above shall be added to the Net Settlement Amount.

13 j. Settlement Administrator: The third-party Settlement Administrator will be CPT
14 Group, Inc., subject to the approval of the Court. Settlement administration costs are estimated not to
15 exceed \$35,250.00. The costs of the Settlement Administrator for work done shall be paid regardless of
16 the outcome of this Settlement.

17 k. Settlement Funding Date: Defendant will fund the settlement account within
18 twenty-one (21) calendar days of the Effective Date of the Settlement. Defendant will transfer the Gross
19 Settlement Amount and employer's share of payroll taxes due on the wages portion of the Individual
20 Settlement Awards, to the Settlement Administrator no later than thirty (30) calendar days following the
21 Effective Date ("Settlement Funding Date").

22 l. Issuance of Individual Settlement Payments, Attorney's Fees and Costs and Class
23 Representative Enhancement Awards: The Settlement Administrator shall cause the Individual Settlement
24 Payments to be mailed to the Class Members within ten (10) calendar days of the Settlement Funding
25 Date. The Settlement Administrator will pay to Class Counsel the court-approved Attorney's Fees and
26 total Costs within ten (10) calendar days of the Settlement Funding Date. The Settlement Administrator
27 will pay the court-approved Class Representative Enhancement Awards within ten (10) calendar days of
28 the Settlement Funding Date. The Settlement Administrator will pay the LWDA Payment to the Labor

1 and Workforce Development Agency (“LWDA”) within ten (10) calendar days of the Settlement Funding
2 Date.

3 m. Notice of Class Action and PAGA Settlement: For each Class Member in the
4 Settlement Class, there will be pre-printed information on the Notice of Class Action Settlement mailed
5 to the Class Member, in English and Spanish, based on Defendant’s records, stating the Class Member’s
6 Covered Workweeks during the Class Period and the estimated Settlement Payment under the Settlement.
7 The pre-printed information based on Defendant’s records shall be presumed to be correct. A Class
8 Member may dispute the pre-printed information on the Notice of Class Action Settlement as to his or her
9 Covered Workweeks during the Class Period. Class Members will have sixty (60) calendar days from the
10 original date of mailing the Notice of Class Action Settlement to dispute or challenge the information on
11 the Notice of Class Action Settlement as to his or her Covered Workweeks. Unless a disputing Class
12 Member submits documentary evidence in support of his or her dispute, the records of the Defendant will
13 be determinative.

14 n. Escalator Clause: Defendant and Plaintiffs agree that, during the settlement
15 negotiations, the Gross Settlement Amount was determined in part based on Defendant’s representation
16 that there are approximately 380,078 workweeks and approximately 7,202 Settlement Class Members
17 between January 19, 2018 and December 31, 2021. If the total number of Covered Workweeks conveyed
18 to the Settlement Administrator between January 19, 2018 and December 31, 2021 exceeds 380,078 by
19 more than 10%, Defendant will increase the Gross Settlement Amount proportionally for any workweeks
20 above 418,086 (e.g., if the number of Covered Workweeks during the January 19, 2018 through December
21 31, 2021 period increases by 11%, the Gross Settlement Amount will increase by 1%); or (b) at
22 Defendant’s discretion, the parties will agree to an earlier ending of the Class and PAGA Periods. If
23 Defendant chooses to end the Class Period and PAGA Period on an earlier date, Plaintiffs have the option
24 to (but need not) in their sole discretion rescind and void the entire Settlement, before Final Approval by
25 the Court, by providing written notice to Defendant and Defendant’s counsel at least twenty-one (21)
26 calendar days after the date Defendant chooses to end the Class Period and PAGA Period on the earlier
27 date. Prior to terminating the Settlement, the Parties agree to contact the mediator to work with the Parties
28 to attempt to resolve the dispute without the necessity of terminating the Settlement. The Parties will

1 equally split any additional mediator fees. If Plaintiffs exercise this option and void the Settlement,
2 Plaintiffs shall pay the costs of Settlement administration incurred up to that date. Plaintiffs' termination
3 of this Settlement shall have the same effect as would non-approval of the Settlement by the Court: the
4 Parties shall revert to their previous positions, with all Parties to this Settlement to stand in their same
5 position, without prejudice, as if the Stipulation of Settlement had been neither entered into nor filed with
6 the Court, and Defendant will not stipulate to class certification and will contend that a PAGA
7 representative action is not appropriate. Furthermore, Defendant will not have waived, and instead
8 expressly reserves, its rights to demand and/or compel individual arbitration of the alleged claims pursuant
9 to any agreement to arbitrate.

10 **SETTLEMENT ADMINISTRATION**

11 23. Subject to the Court's approval, the Parties have agreed to the appointment of CPT Group,
12 Inc. to perform the customary duties of Settlement Administrator provided, however, the Parties shall have
13 the right to select or substitute a different Settlement Administrator by mutual agreement and approval by
14 the Court. The Settlement Administrator will mail to the Class the Notice of Class Action Settlement to
15 the Class Members. There will be a =sixty (60) day period from the date the Settlement Administrator
16 mails the Notice of Class Action Settlement for Class Members to dispute the information contained
17 therein, to file an objection, or to request exclusion (opt-out) from the Settlement.

18 24. The Settlement Administrator will independently review the class data, including the
19 Covered Workweeks and Covered Pay Periods attributed to each Class Member, and will calculate the
20 amounts due to each Class Member in accordance with this Settlement. The Settlement Administrator
21 shall report, in summary or narrative form, the substance of its findings. The Settlement Administrator
22 shall be granted reasonable access to Defendant's records in order to perform its duties.

23 25. In accordance with the terms of this Settlement, and upon receipt of funds from Defendant,
24 the Settlement Administrator will issue and send out the Individual Settlement Payment checks to the
25 Class Members. Tax treatment of the Individual Settlement Payments will be as set forth herein, and in
26 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
27 performance of its duties shall be referred to the Court, if necessary, which will have continuing
28 jurisdiction over the terms and conditions of this Settlement until all payments and obligations

1 contemplated by this Settlement have been fully carried out.

2 **ATTORNEYS' FEES AND COSTS**

3 26. In consideration for resolving this matter and in exchange for the release of all claims by
4 the Class Members, and subject to approval by the Court, Defendant will not object to Class Counsel's
5 application for attorneys' fees not to exceed 1/3 of the Gross Settlement Amount (\$793,333.33) and
6 litigation costs not to exceed \$25,000. The amounts set forth above will cover all work performed and all
7 fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in
8 connection with the approval by the Court of this Settlement and administration of the Settlement. Should
9 Class Counsel request a lesser amount and/or the Court approve a lesser amount(s) of attorneys' fees
10 and/or attorneys' costs, the difference between the lesser amount(s) and the maximum amount set forth
11 above shall be added to the Net Settlement Amount. The attorneys' fees and costs approved by the Court
12 shall be paid to Class Counsel as set forth above.

13 **NOTICE TO THE CLASS**

14 27. A Notice of Class Action Settlement in approximately the form attached hereto as
15 **Exhibit A**, and as approved by the Court, shall be sent by the Settlement Administrator to the Class
16 Members, in English and Spanish, by first class mail. In addition, a postage prepaid return envelope will
17 be included with the Notice of Class Action Settlement. Any returned envelopes from this mailing with
18 forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

19 a. Within thirty (30) calendar days from the date of preliminary approval of this
20 Settlement by the Court, Defendant shall provide to the Settlement Administrator a Class database
21 containing the following information for each Class Member: (1) name; (2) last known address; (3) last
22 known telephone number; (4) social security number; (5) dates of employment; (6) position worked for
23 Defendant; (7) Covered Workweeks during the Class Period that should be counted as one Covered
24 Workweek, (8) Covered Workweeks during the Class Period that should be counted as ten Covered
25 Workweeks, and (9) Covered Pay Periods during the PAGA Period. This database shall be based on
26 Defendant's payroll and other business records and shall be provided in a format acceptable to the
27 Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the
28 production date to ensure that the format will be acceptable to the Settlement Administrator. The

1 Settlement Administrator will run a check of the Class Members' addresses against those on file with the
2 U.S. Postal Service's National Change of Address List; this check will be performed only once per Class
3 Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or
4 Court order, the Settlement Administrator will keep this database confidential and use it only for the
5 purposes described herein, and will return this database to Defendant upon final approval of the settlement.

6 b. Within fifteen (15) calendar days after the Class database is provided to the
7 Settlement Administrator, the Settlement Administrator will mail the Notices of Class Action Settlement
8 and postage prepaid return envelopes to the Class Members by first class United States mail. There will
9 be a sixty (60) day period from the date the Notices of Class Action Settlement is mailed during which
10 Class Members can dispute the information contained in the Notice of Class Action Settlement, file an
11 objection, or request exclusion (opt-out) from the Settlement.

12 c. Resolution of Disputes: Individual Settlement Payments to Class Members will be
13 determined based on the number of Covered Workweeks worked by all Class Members during the Class
14 Period and Covered Pay Periods worked by all Class Members during the PAGA Period, which shall be
15 based on information provided by Defendant. Defendant's records are presumed to be accurate as they are
16 normal business records. Defendant's Covered Workweek and Covered Pay Period data will be presumed
17 to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator with
18 credible written evidence. In order to be valid and timely, disputes must: (1) contain the Class Member's
19 full name, telephone number, address, and the last four (4) digits of his or her Social Security number; (2)
20 list the case name and number of the Action; (3) clearly state that the Class Member disputes the number
21 of Workweeks attributed to him or her and the number of Workweeks that the Class Member contends is
22 correct; (4) attach any documentation that the Class Member has that supports his or her contention; and
23 (5) be mailed to the Settlement Administrator and postmarked on or before the day that is forty-five (45)
24 calendar days from the original mailing of the Class Notice. All workweek disputes will be resolved and
25 decided by the Settlement Administrator, in consultation with all counsel in this Action, and the Settlement
26 Administrator's decision on all workweek disputes will be final and non-appealable.

27 d. Right Of Class Member To Request Exclusion From The Settlement: Any Class
28 Member may request to be excluded from the Class by mailing a "Request for Exclusion from Settlement"

1 within sixty (60) calendar days from the original date of the mailing of the Notice of Class Action
2 Settlement by the Settlement Administrator, stating:

3 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE BMC
4 WEST LLC WAGE AND HOUR CLASS ACTION LAWSUIT
5 CASES, SAN BERNARDINO COUNTY SUPERIOR COURT
6 CASE NO. CIVSB2123090. I UNDERSTAND THAT IF I ASK
7 TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE
8 ANY MONEY FROM THE SETTLEMENT."

9 Any Request for Exclusion must include the name, address, telephone number and signature of the
10 Class Member requesting exclusion. Any such request must be made in accordance with the terms of the
11 Notice of Class Action Settlement. Class Members will be notified in writing of any deficiencies related
12 to attempts to request exclusion and will be permitted no more than fifteen (15) days to cure all deficiencies
13 in writing. Failure to submit a timely written request to opt-out shall invalidate the request to opt-out. Any
14 Class Member who timely requests exclusion in compliance with these requirements (i) shall not have any
15 rights under this Settlement, including any right to object to the Settlement; (ii) shall not be entitled to
16 receive any Settlement Payments under this Settlement; and (iii) shall not be bound by this Settlement or
17 the Court's Order and Final Judgment. However, even if a class member requests exclusion, a Class
18 Member may not be excluded from the PAGA portion of the Settlement and (1) will be bound by the
19 Released Claims as they relate to PAGA and (2) will receive their portion of the PAGA Payment, if
20 applicable.

21 e. Right of Class Member To Object To The Settlement: Any Class Member who has
22 not submitted a request for exclusion may object to the Settlement. To object, the Class Member can
23 submit a written objection to the Settlement Administrator as set forth in the Notice of Class Action
24 Settlement and/or orally object to the Settlement by appearing at the Final Approval Hearing.

25 f. Notices returned to the Settlement Administrator as non-deliverable during the
26 sixty (60) calendar-day period shall be re-mailed to the forwarding address, if any, on the returned
27 envelope. A returned Notice will be forwarded only once per Class Member by the Settlement
28 Administrator. If there is no forwarding address, the Settlement Administrator will do a computer search
for a new address using the Class Member's social security number; this search will be performed only
once per Class Member by the Settlement Administrator. Upon completion of these steps by the

1 Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied
2 their obligations to provide the Notice of Class Action Settlement to the affected Class Member. The
3 affected Class Member shall remain a member of the Class and shall be bound by all the terms of the
4 Settlement and the Court's Order and Final Judgment.

5 g. Class Counsel shall provide to the Court, at least five (5) court days prior to the
6 final approval hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing
7 with regard to the mailing of the Notices of Class Action Settlement.

8 **ADMINISTRATION OF INDIVIDUAL SETTLEMENT PAYMENTS**

9 28. Each Class Member will have sixty (60) calendar days after the mailing of the Notice of
10 Class Action Settlement within which to postmark to the Settlement Administrator any challenge or
11 dispute to the information therein. No disputes will be honored if they are postmarked after the sixty (60)
12 calendar-day period, unless the parties mutually agree to accept the untimely dispute. Each Class Member
13 is responsible to maintain a photocopy of any documents sent to the Settlement Administrator and a record
14 of proof of mailing.

15 **INDIVIDUAL SETTLEMENT PAYMENT CHECKS**

16 29. Individual Settlement Payment checks shall remain valid and negotiable for one hundred
17 and eighty (180) calendar days from the date of their issuance. Individual Settlement Payment checks will
18 automatically be cancelled by Defendant or the Settlement Administrator if they are not cashed by the
19 Class Member within that time, and the Class Member's claims will remain released by the Settlement.
20 Settlement checks which have expired will not be reissued.

21 30. The checks provided to Class Members shall prominently state the expiration date.
22 Funds associated with such cancelled checks will, pursuant to California Code of Civil Procedure section
23 384, be transmitted to the **Court Appointed Special Advocates (CASA) of San Bernardino County** as
24 the *cy pres* recipient.

25 31. Upon completion of its calculation of Individual Settlement Payments, the Settlement
26 Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amount of
27 all payments to be made to each Class Member. Proof of payment will be filed with the Court and provided
28 to Class Counsel and Defendant's Counsel (to be identified by claim number).

RELEASE BY THE CLASS

32. Upon the funding of the Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion, each fully releases and discharges Defendant, its present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant and its respective present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns ("Released Parties"), from all claims, rights, demands, liabilities, and causes of action, that were pled or could have been pled in the operative Consolidated Complaint and/or Plaintiffs' PAGA Notices based on the facts alleged or ascertained during the pendency of the action arising during the Class Period, including claims for (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment under the California Labor Code, the FLSA or common law; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to maintain accurate employment records; (f) failure to pay sick pay; (g) failure to pay final wages due at separation; (h) failure to reimburse or indemnify all necessary business expenses; (i) unlawful payment of wages by a payroll debit card in violation of Labor Code Sections 212 and 213; (j) failure to provide a safe place of employment during the COVID-19 pandemic in violation of Labor Code Sections 6401, 6402, and 6403; (k) all claims of any nature related to or arising out of the facts alleged in the Consolidated Complaint and the Class Representatives' PAGA Notice(s), including, but not limited to, Defendant's alleged violation of California Labor Code sections 201, 202, 203, 204, 210, 212, 213, 218.5, 221, 226, 226.3, 226.7, 233, 245.5-249, 256, 432, 510, 512, 1174, 1174.5, 1182.12, et seq., 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2804, 6400, et seq. and any applicable Wage Order; (l) claims brought under Business & Professions Code section 17200, *et seq.*, based on the aforementioned, including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendant's competitors and claims of unlawfully gaining an unfair advantage over other businesses (m) any claims under PAGA, Labor Code 2699 et seq

1 based on the aforementioned; (n) penalties of any nature based on the aforementioned; (o) interest based
2 on the aforementioned; and (p) attorneys' fees and costs arising out of the aforementioned. The period of
3 the Release shall extend to the limits of the Class Period. ("Released Claims").

4 **CLASS REPRESENTATIVE INDIVIDUAL RELEASES**

5 33. As of the Funding Date, for the consideration set forth in this Agreement, including the
6 Class Representative Payments, in addition to in individually releasing each of the Released Claims
7 described above, each Class Representative expressly additionally releases all claims relating to their
8 respective employment with Defendant, conditions of employment, or the termination of that employment,
9 including but not limited to, claims for, breach of contract, breach of the covenant of good faith and fair
10 dealing, negligent or intentional infliction of emotional distress; defamation; wrongful discharge;
11 retaliation; harassment; violation of public policy; constructive discharge; whistleblowing; interference
12 with prospective economic advantage or contractual relations; unfair business practices; unfair
13 competition; or other tort or personal injury; violation of any federal, state, or other governmental statute,
14 regulation, or ordinance, including, without limitation violation of Title VII of the Civil Rights Act of
15 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, the California Fair
16 Employment and Housing Act, the California Family Rights Act, the California Labor Code or any
17 Industrial Welfare Commission Wage Order, and vested benefits under the Employee Retirement Income
18 Security Act. Plaintiffs expressly waive and relinquish all rights and benefits afforded by Section 1542 of
19 the Civil Code of the State of California and does so understanding and acknowledging the significance
20 of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

21 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
22 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
23 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
24 **AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
25 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
26 **PARTY.**

27 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
28 complete release and discharge of Defendant and Released Parties, Plaintiffs expressly acknowledge that

1 this Settlement is intended to include in its effect all claims that Plaintiffs knows of, as well as all claims
2 that each/either does not know or suspect to exist in his/her favor against Defendant and Released Parties,
3 and that this Settlement contemplates the extinguishment of any such claims. The period of the Release
4 shall extend to the limits of the Class Period.

5 **RELEASE OF PAGA REPRESENTATIVE CLAIMS**

6 34. Upon Defendant's fulfillment of its payment obligations, this settlement forever bars
7 Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to,
8 any and all Class Members, during the Class Period, from pursuing any action under PAGA arising from
9 the factual allegations in the Consolidated Complaint, and the PAGA Notice(s), against the Released
10 Parties. This includes, but is not limited to, a release of all liability, causes of action and/or claims for civil
11 penalties arising or accruing that were or reasonably could have been alleged based on the facts in the
12 Consolidated Complaint and the PAGA Notice(s), including, but not limited to: (a) Defendant's alleged
13 violation of Labor Code sections 201, 202, 203, 204, 210, 212, 213, 218.5, 221, 226, 226.3, 226.7, 233,
14 245.5-249, 256, 432, 510, 512, 1174, 1174.5, 1182.12, et seq., 1185, 1194, 1194.2, 1197, 1197.1, 1198,
15 1198.5, 1199, 2800, 2802, 2804, 6400, et seq. and any applicable Wage Order; and (b) claims and/or
16 liability for interest, and (c) all attorneys' fees and costs available under the PAGA.

17 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

18 35. Plaintiffs will send an amended LWDA letter in the form attached as **Exhibit C**, and
19 thereafter file a consolidated complaint in the Franco Action in the form attached as **Exhibit B**, to add
20 the claims, facts and theories of the Palma and Rosillo Actions, and also to add claims for Defendant's
21 alleged violation of California Labor Code sections 212, 213, and 6400, et seq. along with facts supporting
22 such alleged violations. Plaintiffs will seek approval of this agreement through the Franco Action.

23 36. The Parties shall submit this Joint Stipulation of Settlement to the Court in support of
24 Plaintiffs' unopposed motion for preliminary approval for determination by the Court as to its fairness,
25 adequacy, and reasonableness. Upon execution of this Joint Stipulation of Settlement, the Parties shall
26 apply to the Court for the entry of an order:

27 a. Scheduling a final approval and fairness hearing on the question of whether the
28 proposed Settlement, including payment of attorneys' fees and costs, and the Class Representatives'

Enhancement Awards, should be finally approved as fair, reasonable, and adequate as to the members of the Class;

- b. Certifying a Class;
- c. Approving as to form and content the proposed Notice of Class Action Settlement;
- d. Directing the mailing of the Notice; and
- e. Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

37. Following final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will submit a proposed final order and judgment in the following form:

- a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- b. Approving Class Counsel's application for an award of attorneys' fees and costs;
- c. Approving the Enhancement Awards to the Class Representatives; and
- d. Entering a final judgment in the action.

36. Dismissal of the Palma Action and the Rosillo Action. Within fourteen (14) calendar days of the disbursement of the Settlement checks required pursuant to this Agreement, Plaintiffs will request that the putative class and PAGA representative claims in the Palma Action be dismissed without prejudice, and the PAGA claims in the Rosillo Action be dismissed without prejudice.

NULLIFICATION AND TERMINATION

38. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; or (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to any attorney fee award, cost award, the administration Costs, or the Class Representative Payments; or (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

39. Right to Rescission: If five percent (5%) or more of the Class Members request exclusion or opt out of this Settlement, then Defendant in its sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiffs' Counsel written notice no later than fifteen (15) calendar days after the opt-out period has expired.

40. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

PARTIES' AUTHORITY

41. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

42. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement.

NO PRIOR ASSIGNMENTS

43. The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

NO ADMISSION OF LIABILITY

44. The Parties enter into this Settlement Agreement to resolve the Actions and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that it has: violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; or engaged in any other unlawful conduct or wrongdoing with respect to their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law. Furthermore, the Parties agree that the settlement of this action on a class and representative action basis shall not impact the enforceability of any agreement to arbitrate or class or representative action waiver entered into between Defendant and any Class Member. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a noncompliance with, federal, state, local or other applicable law. In addition, as set forth herein, the Parties intend this settlement to be contingent upon the Preliminary Approval and Final Approval of this Settlement Agreement; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend the Actions as if this Settlement Agreement never existed in the event the settlement is not finally approved as set forth herein.

ENFORCEMENT ACTIONS

45. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

NOTICES

46. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of

the third business day after mailing by United States registered or certified mail, return receipt requested,
addressed as follows:

Class Counsel:

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635
cja@ackermanntilajef.com

Tatiana Hernandez
LAW OFFICE OF TATIANA HERNANDEZ, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (213) 909-4248
Facsimile: (310) 388-0639
tatiana@thawpc.com

Jonathan Durham
Ned B. Ng
LAW OFFICES OF DURHAM & NG
4600 Northgate Blvd, Suite 145
Sacramento, CA 95834
Telephone: (888) 684-4888

Jonathan Melmed
MELMED LAW GROUP, P.C.
1801 Century Park E, Suite 850
Los Angeles, CA 90067
Telephone: (310) 824-3828
jm@melmedlaw.com

Douglas Han
Shunt Tatayos-Gharajeh
Chancellor D. Nobles
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, CA 91003
Telephone: (818) 230-7502
Facsimile: (818) 230-7259
ghan@justicelawgroup.com
statavos@justicelawgroup.com
cnobles@justicelawgroup.com

///

Counsel for Defendant:

MATTHEW B. GOLPER

mgolper@brgslaw.com

DANIEL J. CORBETT

dcorbett@brgslaw.com

BALLARD ROSENBERG GOLPER & SAVITT, LLP

15760 Ventura Boulevard, Eighteenth Floor

Encino, California 91436

Telephone: (818) 508-3700

Facsimile: (818) 506-4827

47. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

48. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

49. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

50. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

BINDING ON ASSIGNS

51. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

CLASS COUNSEL SIGNATORIES

52. It is agreed that because the members of the Class are so numerous, it is impossible or

1 impractical to have each member of the Class execute this Settlement. The Notice of Class Action
2 Settlement, **Exhibit A** hereto, will advise all Class Members of the binding nature of the release, and the
3 release shall have the same force and effect as if this Settlement were executed by each member of the
4 Class.

5 COUNTERPARTS

6 53. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
7 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
8 deemed an original, and, when taken together with other signed counterparts, shall constitute one
9 Settlement, which shall be binding upon and effective as to all Parties.

10 NON-PUBLICITY

11 54. The Class Representatives and Class Counsel agree they will not make any disparaging
12 comments about Defendant relating to this Settlement or disclose or publicize the settlement, including
13 the fact of the settlement, its terms or contents, and the negotiations underlying the settlement, in any
14 manner or form, directly or indirectly, to any person or entity, except to potential Class Members and as
15 shall be contractually required to effectuate the terms of the settlement. The Class Representatives and
16 Class Counsel shall only disclose matters of public record. The Parties agree to make no comments to the
17 media or otherwise publicize the terms of the Settlement, other than in court filings, unless ordered by the
18 Court. Class Counsel will take all steps necessary to ensure the Class Representatives are aware of, and
19 will adhere to, the restrictions against any public disclosure of the Settlementt. For the avoidance of doubt,
20 this section means Class Representative and Class Counsel agree not to issue press releases, communicate
21 with, or respond to any media or publication entities, publish information in any manner or form, whether
22 printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or
23 any other medium, with any person or entity concerning the settlement, including the fact of the settlement,
24 its terms or contents and the negotiations underlying the settlement, except as shall be contractually
25 required to effectuate the terms of the settlement. If the Parties or their counsel are contacted by the press,
26 media or any industry association, they will respond only that the case has been amicably resolved to the
27 parties' mutual satisfaction. This provision will not prevent Plaintiffs or Class Counsel from discussing
28 the allegations in the Action with Class Members. In the event of a proven breach of this no-publicity

provision, the breaching party(ies) will be required to pay the prevailing party's reasonable attorneys' fees and costs incurred in enforcing this no-publicity provision (through an action for injunctive relief or otherwise). The Parties acknowledge their intention that the provisions of this no-publicity provision create no liability for disclosures made (i) by persons from information contained within Court filings and the public record or (ii) as otherwise compelled by operation of law. This provision does not preclude Class Counsel from referring to any information in the public record for purposes of proving their adequacy or seeking approval of unrelated settlements.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement as set forth below:

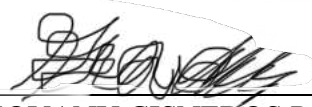
IT IS SO STIPULATED.

Plaintiffs & Class Representatives:

Dated: 10/14/2022 | 5:38 PM PDT

DocuSigned by:
GUSTAVO CHAVEZ
GUSTAVO CHAVEZ FRANCO

Dated: 10/27/22


GEOVANY CISNEROS PALMA

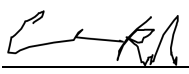
Dated: 10/27/22


RODOLFO CISNEROS DOMINGUEZ

Dated: 10/27/22


GERARDO CISNEROS

Dated: 11/09/2022


CHRIS ROSILLO

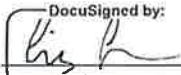
Dated: 11/04/2022


GABRIEL RAMOS

Class Counsel:

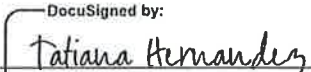
Dated: 10/14/2022 | 1:46 PM PDT

ACKERMANN & TILAJEF, P.C.

By: 
Craig J. Ackerman

Dated: 10/17/2022 | 2:51 PM PDT

LAW OFFICE OF TATIANA HERNANDEZ P.C.

By: 
Tatiana Hernandez

Attorneys for Plaintiff
GUSTAVO CHAVEZ FRANCO

Dated: 11/1/22

MELMED LAW GROUP P.C.

By: 
Jonathan Melmed

Dated: 10/28/2022

LAW OFFICES OF DURHAM & NG

By: 
Jonathan Durham
Ned B. Ng

Attorneys for Plaintiffs
GEOVANY CISNEROS PALMA, RODOLFO CISNEROS
DOMINGUEZ, AND GERARDO CISNEROS

Dated: 11/10/22

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles

Attorneys for Plaintiffs
GABRIEL RAMOS AND CHRIS ROSILLO

1 **Defendant:**

2
3 Dated: 11-15-22

BMC WEST, LLC.

4 Jane Perelman, SVP & ABC
Print Name

5 Jane Perelman
Signature

6
7 SVP, Asst General Counsel
Title

9
10 **Defendant's Counsel:**

11 Dated: 11-15-22

BALLARD ROSENBERG GOLPER & SAVITT, LLP

12
13 By: Matthew B. Golper
Matthew B. Golper

14
15 Attorneys for Defendant
BMC WEST, LLC.

EXHIBIT A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

IMPORTANT LEGAL NOTICE **PLEASE READ THIS NOTICE CAREFULLY**

IF YOU ARE OR WERE EMPLOYED BY BMC WEST, LLC IN CALIFORNIA AS AN HOURLY, NON-EXEMPT EMPLOYEE AT ANY TIME FROM JANUARY 19, 2018 TO SEPTEMBER 8, 2022, YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT. PLEASE READ THIS NOTICE CAREFULLY

A court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

On [REDACTED], the San Bernardino Superior Court (“Court”) granted preliminary approval of a proposed settlement, as set forth in the Stipulation of Class and PAGA Representative Action Settlement (“Settlement”) between PLAINTIFFS GUSTAVO CHAVEZ FRANCO, GEOVANY CISNEROS PALMA, RODOLFO C. DOMINGUEZ, GERARDO CISNEROS, GABRIEL RAMOS, AND CHRIS ROSILLO (“Plaintiffs”) and DEFENDANT BMC WEST, LLC (“BMC West” or “Defendant”), concerning the lawsuit noted above (the “Lawsuit”). The purpose of this Notice is to inform you of the proposed Settlement of this class action and your potential rights and options regarding it. The proposed settlement covers the following individuals (“Class Members” or “Settlement Class”):

ALL INDIVIDUALS WHO ARE OR WERE EMPLOYED BY BMC WEST AS HOURLY, NON-EXEMPT EMPLOYEES IN CALIFORNIA FROM JANUARY 19, 2018 TO SEPTEMBER 8, 2022.

You are receiving this Notice because, according to BMC West’s records, you are a Class Member and you may be entitled to receive money from this proposed class action settlement.

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE

The Court has preliminarily approved the Settlement and conditionally certified a class for purposes of the Settlement only. You have received this Notice because BMC West’s employment records indicate that you are a member of the Settlement Class. This notice is designed to inform you about **your options in this Settlement**, all of which are dependent on the Court’s final approval of the Settlement.

YOUR ESTIMATED SETTLEMENT SHARE

According to Defendant’s records, you worked a total of <<Workweeks>> qualifying workweeks¹ during the Class Period. Your estimated settlement share as a Class Member is \$<<est. Class payment>>.

You may have worked additional Workweeks for Defendant prior to the January 19, 2018 to September 8, 2022 period or in a position was not nonexempt, but those workweeks are not included for purposes of this Settlement. As described below, covered Workweeks for Class

Please note: The actual amount of your Settlement Payment may increase or decrease based on several factors, including, but not limited to, the number of individuals who exclude themselves from the settlement.

DEFENDANT CANNOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING, EXCLUDING YOURSELF, OR OBJECTING TO THIS SETTLEMENT

SUMMARY OF YOUR OPTIONS IN THIS SETTLEMENT

- 1. Participate In The Settlement As A Class Member, Which Requires You To Do Nothing At This Time:** You **WILL** receive money from the Settlement and you will release all claims you may have against BMC West that are covered by this Settlement.
- 2. Submit A Timely Written Request For Exclusion:** You have the option to exclude yourself from the class settlement. If you do so, you will **NOT** receive any money from this Settlement, except for a portion of the PAGA Payment if you worked for BMC West during the PAGA Period.
- 3. Object To The Settlement:** If you believe the Settlement is unfair or inadequate in any respect, you may object to the Settlement by filing a written objection or appearing at the Final Approval Hearing, as set forth below.
- 4. Dispute Your Settlement Share:** If you believe the amount of weeks you worked for BMC West in California during the Class is incorrect, you must contact the Settlement Administrator and provide documentation that you believe demonstrates that this number is incorrect and authorize the Settlement Administrator to review your records and related documents.

1. BACKGROUND OF THE LAWSUIT

On June 4, 2021, Plaintiff Franco submitted his PAGA Letter to the LWDA asserting claims against Defendant for a cause of action for PAGA Penalties based on Defendant's violations of Labor Code sections 201, 202, 203, 204, 210, 226(a), 510, 1198, and 2802. On August 11, 2021, Plaintiff Franco filed his PAGA representative action complaint in San Bernardino Superior Court (the "Franco Action"). On July 23, 2021, Plaintiff Palma filed his class and PAGA representative action complaint in Sacramento County Superior Court. On September 30, 2021 Plaintiff Palma filed his First Amended Complaint adding two new Plaintiffs, Plaintiff Dominguez and Plaintiff Cisneros, alleging causes of action for (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods; (4) failure to provide meal periods; (5) failure to maintain accurate employment records; (6) failure to pay timely wages; (7) failure to pay final wages; (8) failure to reimburse business expenses; (9) failure to issue compliant wage statements; (10) UCL violations; and (11) penalties pursuant to PAGA (the "Palma Action"). Defendant removed the Palma Action to the Eastern District of California on October 29, 2021. On August 19, 2021, Plaintiff Ramos filed a putative class action complaint (the "Ramos Action") against Defendant in the Superior Court of California, County of Los Angeles, asserting claims for: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) failure to timely pay wages; (6) non-compliant wage statements; (7) unreimbursed business expenses; and (8) unfair competition. Defendant removed the Ramos Action to the United States District Court for the Central District of California on September 17, 2021. On November 4, 2021, Plaintiff Ramos moved to dismiss the Ramos Action pursuant to the joint prosecution agreement, and on November 5, 2021 the Central District Court issued an order dismissing the Ramos Action without prejudice. On September 23, 2021, Plaintiff Rosillo submitted his PAGA Letter to the LWDA asserting claims against Defendant. On October 7, 2021, counsel for the three Actions entered into a joint prosecution agreement to jointly prosecute and represent all Class Members and/or Aggrieved Employees in the

Members employed by Defendant in a position where they received an incentive payment in a workweek where they also worked overtime will be treated as 10 Covered Workweeks for purposes of the calculation herein.

three Actions, and to mediate the matters all at once. On Friday, July 8, 2022, the Parties mediated the matters collectively before Paul Grossman, an experienced mediator and resolved the Actions.

BMC West denies all of the allegations in the Lawsuit and denies that it violated any law. BMC West has denied, and continues to deny, the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs' claims. BMC West contends that at all times it has complied with federal, state and local laws and that the Lawsuit could not properly be maintained as a class action if it were litigated.

The parties have agreed to resolve these claims asserted in the Lawsuit, without trial, in order to avoid the uncertainties, expense and time that would be required to litigate the claims of each potential Class Member. By agreeing to settle, BMC West is not admitting liability on any of the factual allegations or legal claims in the case or that the case can or should proceed as a class action. BMC West has agreed to settle the case as part of a compromise with Plaintiffs. The Settlement represents a compromise and resolution of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by BMC West that the claims in the Lawsuit have merit or that it has any liability to Plaintiffs or the Class Members for the claims included in this settlement.

The Lawsuit is being settled as a "class action." A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as "class representatives," assert claims on behalf of the entire class. This avoids the necessity for a large number of individual lawsuits and enables the court to resolve similar claims efficiently. In a class action, the court supervises the prosecution of class claims by class counsel to ensure fairness.

The Parties have entered into a Stipulation of Class and PAGA Representative Action Settlement ("Settlement" or "Settlement Agreement"), which was preliminarily approved by the Court on [REDACTED]. According to the terms of the proposed Settlement, and for purposes of settlement only, BMC West has agreed to stipulate to a settlement class of all current and former hourly non-exempt employees who worked for BMC West at any time from January 19, 2018 to September 8, 2022 (the "Class Period"). For purposes of this Settlement, the "PAGA Period" is June 4, 2020 to September 8, 2022. Based on BMC West's records, you are/were employed by BMC West in California as a non-exempt hourly employee during the Class Period. Therefore, you are a Class Member in the Lawsuit and you may receive money from the proposed settlement.

The Court has made no ruling on the merits of the claims asserted by Plaintiffs and has only determined preliminarily that Plaintiffs have satisfied the requirements to maintain the Lawsuit as a class action for settlement purposes only. The Court has, for settlement purposes, certified a Settlement Class in the Lawsuit. If the Court approves the proposed Settlement at the Final Approval Hearing scheduled for [REDACTED], the Settlement will bind all Class Members who have not excluded themselves from the proposed settlement. If the Court does not approve the proposed Settlement, the Settlement Agreement will have no effect or precedential value in any subsequent proceedings in the Lawsuit or in any other litigation.

2. WHO IS INCLUDED IN THE SETTLEMENT?

You are included in the Settlement if you were employed by BMC West in California as a non-exempt hourly employee at any time during the time period of January 19, 2018 to September 8, 2022.

3. CAN I BE DISCIPLINED IF I PARTICIPATE IN THE SETTLEMENT?

No. Whether you are a current or former employee, your decision to participate in the proposed settlement will in no way affect your employment with BMC West. It is against the law for BMC West to retaliate against you in any way or discipline you for participating in the proposed settlement.

4. SUMMARY OF THE MATERIAL TERMS OF THE CLASS SETTLEMENT

Gross Settlement Amount and Net Settlement Amount: The maximum settlement amount to be paid by BMC West is \$2,380,000 (the “Gross Settlement Amount”). The following sums, subject to approval by the Court, will be paid from the Gross Settlement Amount: (1) Class Counsel’s attorneys’ fees (not to exceed 33.33% or \$793,333.33 of the Gross Settlement Amount); (2) Class Counsel’s litigation costs and expenses (not to exceed \$25,000); (3) Class Representatives’ service payments (not to exceed \$10,000 each, totaling \$60,000) for services in the Lawsuit; (4) the Settlement Administrator’s fees and expenses for the cost of administering the Settlement (estimated not to exceed \$35,250); and (5) the Labor and Workforce Development Agency’s (“LWDA”) payment pursuant to the PAGA in the amount of \$178,500 (which is the LWDA’s 75% share of the total PAGA penalties of \$238,000). The portion of the Gross Settlement Amount remaining after subtracting these payments is called the “Net Settlement Amount.”

Amount and Calculation of Settlement Payments: Each Class Member will be paid a pro-rata share of the Net Settlement Amount, as calculated by the Settlement Administrator. Each Class Member’s settlement share will be calculated based on the number of weeks that he or she was employed by BMC West as a non-exempt employee during the Class Period. The pro-rata share will be determined by comparing the individual Class Member’s covered workweeks employed during the Class Period in California to the total covered workweeks of the class during the Class Period. Covered Workweeks for Class Members employed by Defendant in a position where they received an incentive payment in a workweek where they also worked overtime will be treated as 10 Covered Workweeks for purposes of the calculation herein. Class Members will be paid settlement payments based on the shares as calculated by the Settlement Administrator.

The estimated amount of your settlement payment is set forth on this Notice. This Notice sets forth (according to BMC West’s employment records) the number of weeks that you were employed as a non-exempt employee during the applicable Class Period. It also includes an estimate of your settlement payment assuming that the Court finally approves the Settlement, all Class Members participate in the Settlement, and the Court approves the amounts sought for the Class Representative service payments, Class Counsel attorney’s fees, Class Counsel litigation costs, the payment to the Labor Workforce Development Agency of the State of California, and the Settlement Administrator’s fees and expenses. Your actual settlement payment may be higher or lower than estimated depending on these variables.

Allocation of Settlement Payments: Each individual settlement payment will be allocated as thirty percent (30%) wages, for which IRS Forms W-2 will issue (the “Wage Component”), and seventy percent (70%) as alleged penalties and interest for which IRS Forms 1099-MISC will issue from the Settlement Administrator

Payroll Taxes or Withholding Taxes: Defendant will pay the employer’s share of payroll taxes due on the wages portion separately and in addition to the Gross Settlement Amount. No withholding shall be made on the non-wage components of the Settlement Payments.

Settlement Funding Date: Defendant will fund the settlement account within twenty-one (21) calendar days of the Effective Date of the Settlement (“Settlement Funding Date”).

Mailing of Settlement Payments: The Settlement Payments and other amounts will be issued by the Settlement Administrator after the Court has issued final approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement. Once that process is complete, individual settlement payments will be mailed to the Class Members by the Settlement Administrator at the address that is on file with the Settlement Administrator. If the address to which this Notice was mailed is NOT correct, OR if you move after you receive this Notice, you must make sure to provide your mailing address to the Settlement Administrator in a timely fashion, to ensure receipt of payment that you may be entitled to. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within ten (10) calendar days of the Settlement Funding Date.

Uncashed Settlement Checks: Funds from un-cashed checks will be transmitted to the Court Appointed Special Advocates (CASA) of San Bernardino County based on a 180-day void date.

Class Representative Service Payments: In consideration for services in connection with the Lawsuit, in addition

to their share as participating Class Members, Plaintiffs Gustavo Chavez Franco, Geovany Cisneros Palma, Rodolfo C. Dominguez, Gerardo Cisneros, and Chris Rosillo and Gabriel Ramos will seek approval from the Court for payment of \$10,000 each for their services as the Class Representatives. This payment will be made out of the Gross Settlement Amount as set forth above. The Settlement Administrator will pay the court-approved Class Representatives Service Payment within ten (10) calendar days of the Settlement Funding Date.

Class Counsel Attorney's Fees and Class Counsel Litigation Costs and Expenses: Class Counsel has been prosecuting the Lawsuit on behalf of Plaintiffs and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. As part of the final approval hearing, ACKERMANN & TILAJEF, P.C., LAW OFFICE OF TATIANA HERNANDEZ P.C, MELMED LAW GROUP P.C., LAW OFFICES OF DURHAM & NG, and JUSTICE LAW CORPORATION as Class Counsel, will request up to a maximum of \$793,333.33 (or 33.33% of the Gross Settlement Amount) for attorneys' fees in connection with their work in this case, and not more than \$25,000 in reimbursement of the litigation costs and expenses that were advanced in connection with the Lawsuit. Class Members are not personally liable for any attorney's fees and costs. These amounts constitute full and complete compensation for all legal fees and litigation costs and expenses of Class Counsel, including costs and expenses resulting from experts and other vendors retained by Class Counsel in connection with the litigation and all work done through the completion of the litigation, whatever date that may be. Class Members will not be required to pay Class Counsel for any other attorney's fees or litigation costs or expenses out of their own pockets if this class settlement and the fee request are finally approved by the Court. Class Counsel's attorneys' fees and litigation costs and expenses as approved by the Court will be paid out of the Gross Settlement Amount, as set forth above. Class Members, Class Counsel, and the Class Representative are not liable for payment of attorney's fees and litigation costs and expenses incurred by BMC West, and no such payments will be made to BMC West or its counsel from this settlement. The Settlement Administrator will pay to Class Counsel the court-approved Attorney's Fees and total Costs within ten (10) calendar days of the Settlement Funding Date.

Payment to LWDA for PAGA Penalties: The parties have agreed that the Labor and Workforce Development Agency of the State of California (the "LWDA") will be paid \$178,500 out of the settlement as the LWDA's share of the settlement of civil penalties (which is the LWDA's 75% share of the total PAGA penalties of \$238,000). The Settlement Administrator will pay the LWDA Payment to the Labor and Workforce Development Agency ("LWDA") within ten (10) calendar days of the Settlement Funding Date.

Costs of Settlement Administration: Subject to Court approval, the Settlement Administrator's reasonable fees and expenses incurred in administering the settlement will be paid out of the settlement (estimated not to exceed \$35,250). These services, including the expense of notifying the Class Members of the Settlement, processing requests for exclusion submitted by Class Members, calculating individual settlement shares, and distributing settlement payments, shall be paid from the Gross Settlement Amount.

Plaintiffs and Class Counsel's Support of the Settlement: Plaintiffs as the Class Representatives and Class Counsel support the Settlement. Their reasons include the risk of an unsuccessful outcome on the merits of Plaintiffs' claims and the inherent delays and uncertainties associated with litigation. Based on its experience litigating similar cases, Class Counsel believes that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believes that the Settlement is fair, reasonable, and adequate.

5. WHAT ARE MY RIGHTS AND OPTIONS AS A CLASS MEMBER?

OPTION #1 – PARTICIPATE IN THE SETTLEMENT:

If you want to receive money from the Settlement, you do not have to do anything. You will automatically receive your individual settlement payment as indicated herein, unless you decide to exclude yourself from the Settlement. Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the

Settlement and any final judgment that may be entered by the Court based thereon, and you will be deemed to have released the claims against Defendant and the Released Parties as described above in this Notice. As a member of the Class, you will not be separately responsible for the payment of attorney's fees or reimbursement of litigation expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

OPTION #2 – EXCLUDE YOURSELF FROM THE SETTLEMENT:

If you do not wish to participate in the Settlement described in this Notice, you may request to be excluded from the Class and Settlement by submitting a written request for exclusion ("Request for Exclusion") to the Settlement Administrator by mail, postmarked on or before [REDACTED], at the following address:

SETTLEMENT ADMINISTRATOR
ADDRESS
ADDRESS
(XXX) XXX-XXXX

A Request for Exclusion must contain the name, address, last four digits of your Social Security number or employee ID number, telephone number, signature, and a statement clearly indicating your intention to be excluded from the Settlement, in substantially the form as follows:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE BMC WEST LLC WAGE AND HOUR CLASS ACTION LAWSUIT CASES, SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVSB2123090. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT."

If the Court grants Final Approval of the Settlement, any Class Member who requests exclusion from the Settlement: (i) will not have any rights under this Settlement, including any right to object to the Settlement; (ii) will not be entitled to receive any payment from the Settlement; (iii) will not be entitled to object to the Settlement; (iv) will not be bound by the Settlement Agreement or the Release of Claims as described above; (v) will not have any right to appeal the Settlement; and (vi) will not be bound by the Court's final order approving the Settlement or judgment. Notwithstanding this, even if a Class Member requests exclusion, a Class Member may not be excluded from the PAGA portion of the Settlement and will be bound by the Released Claims as they relate to PAGA, and will receive their portion of the PAGA Payment, if applicable. Accordingly, any person who files a complete and timely exclusion from Settlement will not receive any money from this Settlement, except for a portion of the PAGA Payment if you worked for BMC West as a non-exempt employee during the PAGA Period. An incomplete Request for Exclusion from Settlement will be deemed invalid.

Any Class Member who does not request exclusion from the Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement, including those pertaining to the Release of Claims as described above, as well as any judgment that may be entered by the Court.

OPTION #3 – OBJECT TO THE SETTLEMENT:

You can object to the terms of the Settlement as long as you have not submitted a request to be excluded from the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. To object, you can submit a written objection to the Settlement Administrator as set forth below and/or orally object to the Settlement by appearing at the Final Approval Hearing.

To object in writing, you can submit a written objection that contains the following: your name, address, reason(s) for objecting, and a statement of whether you plan to appear at the Final Approval Hearing. You must sign, date, and submit the written objection to the Settlement Administrator by mail, postmarked on or before [REDACTED], at the following address:

SETTLEMENT ADMINISTRATOR
ADDRESS

ADDRESS
(XXX) XXX-XXXX

You may also appear and orally object to the Settlement at the Final Approval Hearing. If you appear at the Final Approval Hearing, you may (but are not required to) enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. If you choose to have your own attorney, you will be solely responsible for the fees and costs of your own attorney. You do not need to appear at the Final Approval Hearing to have your written objection considered by the Court.

OPTION #4 – DISPUTE YOUR SETTLEMENT SHARE:

Correcting or disputing the number of Covered Workweeks stated on this Notice: The Court has appointed [REDACTED] to act as an independent Settlement Administrator and to resolve any dispute concerning the calculation of a Class Member’s entitlement to a settlement share. If you disagree with the information shown on this Notice about your workweeks, you must ask the Settlement Administrator to resolve the matter. In order to do so, you must communicate, in writing, to the Settlement Administrator by the deadline the fact of the dispute and the basis for your contention that the information is incorrect (including any documentary evidence that you have to support your contention). In the event of such a dispute, BMC West will review its payroll and personnel records to verify the information. BMC West’s records will have a rebuttable presumption of correctness. After consultation with you, Class Counsel, and BMC West, the Settlement Administrator will make a determination of the issue in dispute and that determination will be final, binding on you and BMC West, and non-appealable. If you do not provide any documents or other evidence to support your challenge, the Settlement Administrator will reject it.

If you dispute the information on your Notice, write to the Settlement Administrator what you contend is the correct information and return your letter and supporting documents to the Settlement Administrator by mail, postmarked on or before [REDACTED] at the following address:

CLAIMS ADMINISTRATOR
ADDRESS
ADDRESS
(XXX) XXX-XXXX

6. WHAT CLAIMS ARE BEING RELEASED AS PART OF THE SETTLEMENT?

Released Claims. Upon the funding of the Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion, each fully releases and discharges Defendant, its present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant and its respective present and former parent companies, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns (“Released Parties”), from all claims, rights, demands, liabilities, and causes of action, that were pled or could have been pled in the operative Consolidated Complaint and/or Plaintiffs’ PAGA Notices based on the facts alleged or ascertained during the pendency of the action arising during the Class Period, including claims for (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment under the California Labor Code, the FLSA or common law; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to maintain accurate employment records; (f) failure to pay sick pay; (g) failure to pay final wages due at separation; (h) failure to reimburse or indemnify all necessary business expenses; (i) unlawful payment of wages by a payroll debit card in violation of Labor Code Sections 212 and 213; (j) failure to provide a safe place of employment during the COVID-19 pandemic in violation of Labor Code Sections 6401, 6402, and 6403; (k) all claims of any nature related to or arising out of the facts alleged in the Consolidated Complaint and the Class Representatives’ PAGA Notice(s), including, but not limited to, Defendant’s alleged violation of California Labor Code sections 201, 202, 203, 204, 210, 212, 213, 218.5, 221, 226, 226.3, 226.7, 233, 245.5-249, 256, 432, 510, 512, 1174, 1174.5, 1182.12,

et seq., 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2804, 6400, et seq. and any applicable Wage Order; (l) claims brought under Business & Professions Code section 17200, *et seq.*, based on the aforementioned, including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendant's competitors and claims of unlawfully gaining an unfair advantage over other businesses (m) any claims under PAGA, Labor Code 2699 et seq based on the aforementioned; (n) penalties of any nature based on the aforementioned; (o) interest based on the aforementioned; and (p) attorneys' fees and costs arising out of the aforementioned.. The period of the Release shall extend to the limits of the Class Period. ("Released Claims").

7. FINAL APPROVAL HEARING FOR CLASS SETTLEMENT

The Court will hold a final approval hearing on [REDACTED] 2023 at [REDACTED] : [REDACTED] a.m./p.m. in Department S-26 of the Superior Court of the State of California, County of San Bernardino, San Bernardino Justice Center, 247 West Third Street, San Bernardino, CA 92415, to determine whether the settlement should be finally approved as fair, reasonable, and adequate. If no objections to the settlement are made by class members, the date of the hearing may be expedited. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of litigation costs and expenses, the service payments to the Plaintiffs, and payment of settlement administration costs to the Settlement Administrator.

The hearing may be postponed without further notice to the class. **It is not necessary for you to appear at this hearing.** If you have given notice of your objection to the settlement, you may appear at the hearing at your option so long as you have timely filed a notice of intent to appear

8. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms of the Settlement Agreement, you should review the detailed "Stipulation of Class and PAGA Representative Action Settlement" which is on file with the Court.

The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk at Superior Court of the State of California, County of San Bernardino, 247 W. Third Street, San Bernardino, CA 92415, or you may also contact the Settlement Administrator [REDACTED] at (XXX) XXX-XXXX. You can also contact Class Counsel or Counsel for BMC West for more information on the Lawsuit and/or the proposed Settlement:

Class Counsel:

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035

Telephone: (310) 277-0614
Facsimile: (310) 277-0635
cja@ackermanntilajef.com

Jonathan Melmed
MELMED LAW GROUP P.C.
1801 Century Park E, Suite 850
Los Angeles, CA 90067
Telephone: (310) 824-3828
jm@melmedlaw.com

Tatiana Hernandez
LAW OFFICE OF TATIANA HERNANDEZ,
P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (213) 909-4248
Facsimile: (310) 388-0639
tatiana@thawpc.com

Jonathan Durham
Ned B, Ng
LAW OFFICES OF DURHAM & NG
4600 Northgate Blvd Suite 125
Sacramento, CA 95834
Telephone: (888) 684-4888

Douglas Han
Shunt Tatayos-Gharajeh
Chancellor D. Nobles
JUSTICE LAW CORPORATION
751 N Fair Oaks Ave, Suite 101
Pasadena, CA 91103
Telephone: (818) 230-7502
ghan@justicelawcorp.com
statavos@justicelawgroup.com
cnobles@justicelawgroup.com

Counsel for Defendant:

Matthew B. Golper
BALLARD ROSENBERG GOLPER & SAVITT, LLP
15760 Ventura Boulevard, 18th Floor
Encino, CA 91436
Telephone: (818) 508-3700
Facsimile: (818) 506-4827
mgolper@brgslaw.com

You can also obtain records on the Court's website at <http://www.sb-court.org/>.

**PLEASE DO NOT CALL OR CONTACT THE COURT WITH QUESTIONS ABOUT
THE CASE, THE PROPOSED CLASS SETTLEMENT OR THE SETTLEMENT
ADMINISTRATION PROCESS**

* * * * *

EXHIBIT B

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann, CA Bar No. 229832

cja@ackermanntilajef.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (310) 277-0614

Facsimile: (310) 277-0635

LAW OFFICE OF TATIANA HERNANDEZ, P.C.

Tatiana Hernandez, CA Bar No. 255322

tatiana@thlawpc.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (213) 909-4248

Facsimile: (310) 388-0639

Attorneys for Plaintiff, the Class Members, the LWDA, and the other Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

GUSTAVO CHAVEZ FRANCO, an
individual, the State of California, as a
private attorney general, and on behalf of
all Aggrieved Employees,

PLAINTIFFS,

v.

BMC WEST, LLC, a Delaware limited
liability company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. CIVSB2123090

**FIRST AMENDED CLASS AND PAGA
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) FAILURE TO PAY MINIMUM WAGES (LABOR CODE § 1194, 1194.2 1197, 1197.1, 1198, 1199);
- (2) FAILURE TO PAY OVERTIME WAGES (LABOR CODE § 510, 1194, 1199);
- (3) FAILURE TO PROVIDE REST PERIODS AND PAY MISSED REST PERIOD PREMIUMS (LABOR CODE § 226, 226.7);
- (4) FAILURE TO PROVIDE MEAL PERIODS AND PAY MISSED MEAL PERIOD PREMIUMS (LABOR CODE § 226.7, 512);
- (5) FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS (LABOR CODE § 226, 226.3, 1174, 1198);
- (6) FAILURE TO PAY TIMELY WAGES (LABOR CODE § 204, 210);
- (7) FAILURE TO PAY FINAL WAGES (LABOR CODE § 201, 202, 203, 204, 256);
- (8) FAILURE TO REIMBUSE BUSINESS EXPENSES (LABOR CODE § 2800, 2802, 2804);
- (9) FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS (LABOR CODE § 226, 226.3);
- (10) FAILURE TO PAY SICK PAY (LABOR CODE § 246)
- (11) UNLAWFUL COLLECTION OF BACK WAGES (LABOR CODE § 221);
- (12) UNLAWFUL PAYMENT OF WAGES BY A PAYROLL DEBIT CARD (LABOR

1 CODE §§ 212, 213);
2 (13) FAILURE TO PROVIDE A SAFE
3 PLACE OF EMPLOYMENT (LABOR
4 CODE §§ 6401, 6402, 6403);
5 (14) UCL VIOLATIONS (CAL. BUSINESS
6 AND PROFESSIONS CODE 17200); AND
7 (15) PENALTIES PURSUANT TO PRIVATE
8 ATTORNEYS GENERAL ACT OF 2004
9 (“PAGA”) (LABOR CODE §§ 2698 – 2699.5)

10
11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs GUSTAVO CHAVEZ FRANCO, GEOVANY CISNEROS PALMA, RODOLFO
14 CISNEROS DOMINGUEZ, GERARDO CISNEROS, GABRIEL RAMOS, and CHRIS ROSILLO
15 (collectively “Plaintiffs”), on behalf of themselves, the Aggrieved Employees, the State of California
16 (hereinafter “Aggrieved Employees”), and all other similarly situated employees within the State of
17 California (hereinafter “Class Members”), complain and allege of Defendants BMC WEST, LLC and
18 DOES 1 to 50 (collectively, “Defendants” or “BMC West”) and each of them, and alleges the
19 following upon information and belief:

20 **INTRODUCTION**

21 1. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as
22 a class action, as a representative action pursuant to the California Private Attorneys General Act,
23 Labor Code § 2699, *et seq.*, on behalf of the State of California against Defendants for (1) failure to
24 pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods and
25 pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period
26 premiums; (5) failure to maintain accurate employment records; (6) failure to pay timely wages; (7)
27 failure to pay final wages; (8) failure to reimburse business expenses; (9) failure to provide accurate
28 and itemized wage statements; (10) failure to pay sick pay; (11) unlawful collection of back wages;
(12) unlawful payment of wages by a payroll debit card; (13) failure to provide a safe place of
employment during the COVID-19 pandemic; (14) unfair and/or unlawful business practices based
on the foregoing; and (15) penalties based on the foregoing pursuant to the Private Attorneys General
Act (“PAGA”). As a result of the foregoing, Defendants have violated California statutory law as
described below.

2. The “Class Period” is designated as the period from July 23, 2017 through the trial date. The PAGA Period is one year from the date of Plaintiffs’ PAGA letter to the LWDA (i.e., from June 4, 2020) through the present and on-going. Defendants’ violations of California’s wage hour laws and unfair competition laws, as described more fully below, have been ongoing throughout the Class Period and PAGA Period.

THE PARTIES

3. At all relevant times, Plaintiffs, who are over the age of 18, were and currently are citizens of California residing in the State of California. Defendants employed Plaintiffs as non-exempt hourly employees.

4. Plaintiffs bring this action on behalf of themselves and the following class pursuant to section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by Defendants as hourly non-exempt employees in California during the Class Period* (the “Class Members”).

5. Plaintiffs also bring this action on behalf of themselves and the State of California, as private attorneys general, and on behalf of the following group of aggrieved employees: *All individuals who are or were employed by Defendants as hourly non-exempt employees in California during the PAGA Period* (the “Aggrieved Employees”).

6. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or were employees of Defendants during the relevant statutory period.

7. Defendant BMC West is a construction company that operates principally in the South and West Regions of the United States. Defendants employed Plaintiffs and similarly situated persons as employees within California during the Class and PAGA Periods. Defendant has done and does business throughout the State of California including in San Bernardino County.

8. 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. Plaintiffs are informed and believe, 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. Plaintiffs

1 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
2 Defendants designated hereinafter as DOES when such identities become known.

3 9. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
6 legally attributable to the other Defendants. Accordingly, all Defendants engaged, suffered and
7 permitted Plaintiffs, the Class, and all other Aggrieved Employees to perform services from which
8 they benefitted. Moreover, the aforementioned entities had the right to exercise control over the
9 wages, hours and/or working conditions over Plaintiffs, the Class, and all Aggrieved Employees at
10 all relevant times herein, so as to be considered the joint employers of all of the Aggrieved
11 Employees. By reason of their status as joint employers, they are each liable for civil penalties for
12 violation of the California Labor Code as to the Plaintiffs, the Class, and other Aggrieved Employees
13 as set forth herein

14 **JURISDICTION AND VENUE**

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

20 11. This Court has personal jurisdiction over Defendants because Defendants have caused
21 injuries in the County of San Bernardino and State of California through their acts, and by their
22 violation of the California Labor Code and California state common law. The federal courts also lack
23 Article III standing to hear this case, since it involves solely claims for statutory penalties.

24 12. Defendants are within the jurisdiction of this Court. Defendants conduct business by
25 operating a construction business in California. Thus, Defendants have obtained the benefits of the
26 laws of the State of California. In addition, Plaintiffs assert no claims arising under federal law.
27 Rather, Plaintiffs bring causes of action based solely on, and arising from, California law. The claims
28 of the class are also based solely on California law described herein. Furthermore, the total amount

1 at issue in this case, inclusive of attorneys' fees, is less than \$5 million. Therefore, jurisdiction is
2 appropriate in San Bernardino County Superior Court.

3 13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
4 Procedure § 395. Defendants operate within California and do business within San Bernardino
5 County, California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all
6 "employees" within the State of California and San Bernardino County. Many of the acts alleged
7 herein including Defendants' failure to pay minimum wages, failure to pay overtime wages, failure
8 to provide rest period and pay missed rest period premiums, failure to provide meal periods and pay
9 missed meal period premiums, failure to pay timely wages, failure to pay final wages, failure to
10 reimburse business expenses, and failure to provide accurate and itemized wage statements occurred
11 in San Bernardino County. Venue is therefore proper in San Bernardino County.

12 **COMMON ALLEGATIONS**

13 14. Plaintiffs and the other Class Members (collectively, the "Class Members") are, and
14 were at all relevant times, employed by the Defendants within the State of California.

15 15. Likewise, Plaintiffs and the other Aggrieved Employees (collectively, the "Aggrieved
16 Employees") are, and were at all relevant times, employed by the Defendants within the State of
17 California.

18 16. The Class Members and the Aggrieved Employees are, and were, at all relevant times,
19 non-exempt employees for the purposes of minimum wages, overtime wages, rest breaks, meal
20 periods, and the other claims alleged in this complaint.

21 17. Specifically, Plaintiffs were employed by Defendants within the statutory Class
22 Period and PAGA Period, working as hourly, non-exempt construction employees for Defendants.

23 **MINIMUM WAGE VIOLATIONS**

24 18. Labor Code section 1197 requires employees to be paid at least the minimum wage
25 fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor
26 Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover
27 in a civil action the unpaid balance of the full amount of this minimum wage." Likewise, the
28 Applicable Wage Orders also obligate employers to pay each employee minimum wages for all hours

1 worked. (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.) Labor Code section
2 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders
3 prohibit.

4 19. These minimum wage standards apply to each hour that employees work. Therefore,
5 an employer's failure to pay for any particular time worked by an employee is unlawful, even if
6 averaging an employee's total pay over all hours worked, paid or not, results in an average hourly
7 wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

8 20. Here, Defendants failed to fully conform their pay practices to the requirements of the
9 law during the relevant statutory periods. The Class Members and the Aggrieved Employees were
10 not compensated for all hours worked including, but not limited to, all hours they were subject to the
11 control of Defendants and/or suffered or permitted to work under the California Labor Code and the
12 Applicable Wage Orders.

13 21. Additionally, the Class Members and the Aggrieved Employees were not paid all
14 wages for all hours worked due to Defendants' uniform payroll policies and practices that unfairly
15 rounded employees' wages to the detriment of the Class Members and the Aggrieved Employees.
16 This rounding policy routinely failed to capture the entirety of the hours the Class Members and the
17 Aggrieved Employees worked and was structured in a way that in favored underpayment. (See *See's*
18 *Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result, the Class
19 Members and the Aggrieved Employees suffered periodic shortages in the hours for which they were
20 compensated. This uncompensated time violated California's requirement that employees be
21 compensated for all hours worked. As a result of this practice, the Class Members and the Aggrieved
22 Employees were not compensated their minimum wages for all hours worked.

23 22. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that
24 an employer who has failed to pay its employees the legal minimum wage is liable to pay those
25 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
26 to the wages due and interest thereon.

27 23. When employees, such as the Class Members, are not paid for all hours worked under
28 Labor Code section 1194, they are entitled to recover minimum wages for the time which they

1 received no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015)
2 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages
3 under Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

4 24. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
5 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among
6 other damages, as follows:

7 (1) “For any initial violation that is intentionally committed, one hundred dollars
8 (\$100) for each underpaid employee for each pay period for which the employee
9 is underpaid.”

10 (2) “For each subsequent violation for the same specific offense, two hundred fifty
11 dollars (\$250) for each underpaid employee for each pay period for which the
12 employee is underpaid regardless of whether the initial violation is intentionally
13 committed.” (Lab. Code, § 1197.1, subd. (a).)

14 25. As set forth above, Defendants failed to fully compensate the Class Members and the
15 Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to
16 recover liquidated damages for violations of Labor Code section 1197.1.

17 26. Based upon these same factual allegations, the Class Members are likewise entitled to
18 penalties under Labor Code sections 1199.

19 OVERTIME WAGE VIOLATIONS

20 27. Labor Code § 510 requires an employer to compensate an employee who works more
21 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
22 worked on the seventh consecutive day no less than one and one-half times the “regular rate of Pay”
23 for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less
24 than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or
25 more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code
26 §§ 1194, Plaintiffs, the Class Members, and the other Aggrieved Employees could not agree to work
27 for a lesser wage than the amount proscribed by Labor Code § 1194.

28 28. Here, Defendants violated their duty to accurately and completely compensate the

1 Class Members and the Aggrieved Employees for all overtime worked. The Class Members and the
2 Aggrieved Employees periodically worked hours that entitled them to overtime compensation under
3 the law but were not fully compensated for those hours.

4 29. Moreover, during the relevant statutory periods, Defendants had a policy and practice
5 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when
6 Defendants paid overtime wages to the Class Members and the Aggrieved Employees, Defendants
7 failed to include all compensation when calculating the regular rate of pay used in overtime
8 calculations and when paying overtime.

9 30. When calculating an employee's regular rate, California and federal courts, with
10 limited exceptions, look to the federal Fair Labor Standards Act ("FLSA"). *Huntington Mem'l Hosp.*
11 *v. Sup. Ct.*, 131 Cal. App. 4th 893, 902 (2005).¹² Under the FLSA, the regular rate of pay includes
12 all forms of remuneration, including non-discretionary bonuses, shift differentials, and pay for
13 completing certain tasks. *See* 29 U.S.C. § 207(e); *Huntington Mem'l*, 131 Cal. App. 4th at 90 (holding
14 that shift differential must be included in the regular rate when calculating and paying overtime).
15 "Under [29 C.F.R.] § 778.224(a), a payment may not be excluded from the regular rate or pay
16 pursuant to § 207(e)(2) if it is generally understood as compensation for work, even though the
17 payment is not tied to specific hours worked by an employee." *Id.*

18 31. The Ninth Circuit summarized in *Flores v. City of San Gabriel*, 824 F.3d 890, 895
19 (9th Cir. 2016) that "the question of whether a particular payment falls within the 'other similar

20 ¹ *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1129 (C.D. Cal. 2011) (using FLSA standards to determine the regular
21 rate of pay in a Cal. Labor Code § 510 overtime claim); *Advanced—Tech Sec. Servs., Inc. v. Sup. Ct.*, 163 Cal. App. 4th
22 700, 707 (2008). The DLSE routinely "takes the position that the failure of the [IWC] to define the term 'regular rate'
23 indicates the Commission's intent that in determining what payments are to be included in or excluded from the
24 calculation of the regular rate of pay, California will adhere to the standards adopted by the U.S." (*Huntington Mem'l*,
supra, 131 Cal. App. 4th at p. 902-903; *Advanced—Tech*, *supra*, 163 Cal.App.4th at p. 707; *see also*, Division of Labor
25 Standards Enforcement, Enforcement and Interpretations Manual, § 49.1.2 [noting "in not defining the term 'regular rate
of pay', the Industrial Welfare Commission has manifest its intent to adopt the definition of regular rate of pay set out in
the Fair Labor Standards Act."].) In addition, numerous DLSE opinion letters take the position California will adhere to
the standards adopted by the U.S. Dept. of Labor when determining an employee's regular rate. (*See also*, Cal. Dept.
26 Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Jan. 29, 2003) pp.
2, fn. 1, 3, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of
Pay in Cases Involving Piece Rate (Feb. 22, 1993) p. 2 & fn. 2; Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell,
27 Jr., opinion letter, Explicit Wage Agreements (Jan 29, 1992) p. 1, Cal. Dept. Industrial Relations, DLSE, H. Thomas
Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Mar. 6, 1991) p. 1.)

28 ² *Cf. Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 568 (2018) (explaining that for the purposes of
calculating the per hour value of an employer's flat sum attendance bonuses that California, unlike the FLSA, uses the
non-overtime hours worked during the pay period as the divisor instead of all hours worked during the pay period).

1 payments' clause does not turn on whether the payment is tied to an hourly wage, but instead turns
2 on whether the payment is a form of compensation for performing work.” *Id.* Nor, as the Ninth Circuit
3 explained, need compensation paid be measured by the number of hours worked. *Id.* (explaining “that
4 the key point is whether payment is ‘compensation for work’” and that “even if payments to
5 employees are not measured by the number of hours spent at work, that fact does not qualify for them
6 for exclusion under Section 207(e)(2).” *Id.* (citing *Local 246 Utility Workers Union of America v.*
7 *Southern California Edison, Co.*, 83 F.3d 295. In addition to paying an hourly rate to Plaintiffs, Class
8 Members, and the Aggrieved Employees throughout the Class and PAGA Periods, Defendant also
9 paid Plaintiffs, Class Members, and the Aggrieved Employees, who were installers, certain “installer
10 incentive pay”, which was essentially a regularly paid bonus. See **Exhibit A** hereto for a highlighted
11 excerpt from Defendant’s Spanish Employee Handbook under the header “California Construction
12 Services Compensation,” which, consistent with the FLSA’s approach to including bonuses in the
13 regular rate of pay to calculate overtime rates and overtime pay owed, translates as follows:
14 “Overtime will be calculated using the employee’s gross wages (including production bonus
15 compensation) divided by the total hours worked and multiplied by 1.5 for hours in excess of 8 or
16 multiplied by 2.0 for hours in excess of 12 on any workday. Employee paystubs will be itemized for
17 the following payments: regular hourly wages; the earnings from rest and recovery; paid sick time,
18 installer incentive earnings (production incentive bonus); extra time.” See *Id.* Thus, it is clear that
19 the “installer incentive earnings” was a form of regularly paid production incentive bonus that needed
20 to be included in the regular rate for overtime purposes.

21 32. On a regular basis, Plaintiffs, Class Members, and the Aggrieved Employees worked
22 more than 8 hours in a day and more than 40 hours in a week, but Defendants regularly failed to
23 include their installer incentive earnings (listed on the wage statements as “CA[lifornia] Ins[taller]
24 Inc[entive]” in the calculation for determining Plaintiffs’, Class Members’ and the Aggrieved
25 Employees’ regular rate of pay for then calculating appropriate overtime rates. Attached hereto as
26 **Exhibit B** is a sampling of Plaintiff Franco’s wage statements showing Plaintiff Franco’s base hourly
27 rate of \$23.00 and overtime rate of \$34.50, which is simply 1.5x the base hourly rate, as opposed to
28 the correct formula outlined in the Handbook of gross wages, including production bonuses, divided

1 by total hours worked, which generates the “regular rate of pay” from which overtime is subsequently
2 calculated In sum, Plaintiff Franco’s overtime rate represents only 1.5x Plaintiff Franco’s base hourly
3 rate of \$23.00 and consistently fails to include the \$957.75 in pay itemized as “CA Ins Inc” in the
4 calculation of Plaintiff Franco’s “regular rate,” which would then be multiplied by 1.5 to get the
5 proper overtime rate. Therefore, Defendants violated Labor Code § 510 and Section 3(A) of the
6 applicable IWC Wage Order by failing to pay all overtime hours at the legally applicable overtime
7 rate.

8 33. These actions were and are in clear violation of California’s overtime laws as set forth
9 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit.
10 8, §§ 11010, 11040, 11050, 11070, 11160.) As a result of Defendants’ faulty policies and practices,
11 the Class Members and the Aggrieved Employees were not compensated for all hours worked or paid
12 accurate overtime compensation.

13 **REST BREAK VIOLATIONS**

14 34. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
15 were and are required to provide the Class Members and the Aggrieved Employees with
16 compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours
17 worked. Under the Applicable Wage Orders, an employer must authorize and permit all employees
18 to take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code
19 of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.)

20 35. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
21 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
22 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code,
23 § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees
24 one additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or
25 recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage Orders set when
26 and for how long the rest period must take place and the Labor Code establishes that violations of the
27 IWC Wage Orders are unlawful and sets forth the premium pay employer must pay their employees
28 when employers fail to provide rest periods.

1 36. The California Supreme Court has held that, during required rest periods, “employers
2 must relieve their employees of all duties and relinquish any control over how employees spend their
3 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
4 control over employees during rest periods requires that employees be “free to leave the employer’s
5 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
6 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
7 policy:

8 “An employer is required to authorize and permit the amount of rest break time
9 called for under the wage order for its industry. If it does not—if, for example,
10 it adopts a uniform policy authorizing and permitting only one rest break for
11 employees working a seven-hour shift when two are required—it has violated
12 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012)
13 53 Cal.4th 1004, 1033.

14 37. Here, Defendants periodically did not permit the Class Members and the Aggrieved
15 Employees to take compliant duty-free rest breaks, free from Defendants’ control as required by
16 Labor Code section 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v.*
17 *ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods
18 employers must relieve employees of all duties and relinquish control over how employees spend
19 their time.”].) At all relevant times, the Class Members and the Aggrieved Employees were
20 periodically not provided with legally-compliant and timely rest periods of at least ten minutes for
21 each four hour work period, or major fraction thereof due to Defendants’ unlawful rest period
22 policies/practices. The Class Members and the Aggrieved Employees were often expected and
23 required to continue working through rest periods to meet the expectations Defendants set and finish
24 the workday. In some cases when the Class Members and the Aggrieved Employees worked more
25 than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period.
26 As a result, the Class Members and the Aggrieved Employees were periodically unable to take
27 compliant rest periods.

28 38. In such cases where Defendants did not offer the Class Members and the Aggrieved

1 Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude
2 employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care*
3 (2015) 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or
4 rest breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker*
5 *Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest
6 break that was required by law but never authorized; if a break is not authorized, an employee has no
7 opportunity to decline to take it.”].)

8 39. In addition to failing to authorize and permit compliant rest periods, the Class
9 Members and the Aggrieved Employees were not compensated with one hour’s worth of pay at their
10 regular rate of compensation when they were not provided with a compliant rest period in accordance
11 with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section
12 226.7 and the Applicable Wage Orders.

13 40. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
14 non-exempt employees, rest period premiums and penalties.

15 **MEAL BREAK VIOLATIONS**

16 41. Labor Code section 512 and the Applicable Wage Orders require employers to provide
17 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
18 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period
19 of more than five hours per day without providing the employee with a meal period of not less than
20 30 minutes”]; Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160 [“No employer
21 shall employ any person for a work period of more than five (5) hours without a meal period of not
22 less than 30 minutes”].) Additionally, an employee who works more than ten hours per day is
23 entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, §
24 512, subd. (a) [“An employer shall not employ an employee for a work period of more than 10 hours
25 per day without providing the employee with a second meal period of not less than 30
26 minutes”].)

27 42. “An on-duty meal period is permitted only when the nature of the work prevents an
28 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal

break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved before requiring an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

43. Here, the Class Members and the Aggrieved Employees were never asked to sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal periods within the first five hours of work for the Class Members and the Aggrieved Employees.

44. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

45. During the applicable statutory periods here, the Class Members and the Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of

1 Defendants' uniform meal period policies and practices, the Class Members and the Aggrieved
2 Employees were often not permitted to take complaint first meal periods before the end of the fifth
3 hour of work. The Class Members and the Aggrieved Employees were also periodically not
4 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated
5 Labor Code section 512 and the Applicable Wage Orders by failing to advise, authorize, or permit
6 the Class Members and the Aggrieved Employees to receive thirty-minute, off-duty meal periods
7 within the first five hours of their shifts.

8 46. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
9 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
11 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further
12 obligate employers to pay employees one additional hour of pay at the employee’s regular rate of
13 compensation for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c);
14 Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160 [“If an employer fails to provide
15 an employee a meal period in accordance with the applicable provisions of this order, the employer
16 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
17 workday that the meal period is not provided.”].)

18 47. Accordingly, for each day that the Class Members and the Aggrieved Employees did
19 not receive compliant meal periods, they were and are entitled to receive meal period premiums
20 pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendants, however, failed
21 to pay the Class Members and the Aggrieved Employees applicable meal period premiums for many
22 workdays that the employees did not receive a compliant meal period. Thus, Defendants have
23 violated Labor Code section 226.7 and the Applicable Wage Orders.

24 48. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
25 non-exempt employees, meal period premiums and penalties.

26 **FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

27 49. By failing to implement a clock in and clock out policy, Defendants also failed to
28 keep accurate payroll records pertaining to Plaintiffs’, the Class Members’ and the Aggrieved

1 Employees' time worked. Defendants' method of record keeping for the time worked consisted of a
2 supervisor keeping paper records which failed to accurately reflect the actual time worked by
3 Plaintiffs, Class Members, and the Aggrieved Employees. Therefore, Defendants violated Labor
4 Code Section 1198 which requires employers to maintain accurate payroll records. Defendants are
5 also violating Section 6 of the applicable IWC Wage Order, which requires that an employer
6 maintain "[t]ime records showing when the employee begins and ends each work period."
7 Defendants never accurately recorded when Plaintiffs, Class Members, and the Aggrieved
8 Employees began and ended their shifts in violation of the Labor Code and the applicable IWC Wage
9 Order.

10 50. Labor Code section 226, subdivision (a), requires employers to keep an accurate
11 record of, among other things, all hours worked by employees. Labor Code section 226.3 provides,
12 in pertinent part, as follows:

13 "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty
14 in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
15 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
16 citation, for which the employer fails to provide the employee a wage deduction statement
17 or fails to keep the records required in subdivision (a) of Section 226. The civil penalties
18 provided for in this section are in addition to any other penalty provided by law." (Lab.
19 Code, § 226.3, emphasis added.)

20 51. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
21 including Defendants, to:

22 "Keep, at a central location in the state or at the plants or establishments at which employees
23 are employed, payroll records showing the hours worked daily by and the wages paid to, and
24 the number of piece-rate units earned by and any applicable piece rate paid to, employees
25 employed at the respective plants or establishments. These records shall be kept in
26 accordance with rules established for this purpose by the commission, but in any case shall
27 be kept on file for not less than three years. An employer shall not prohibit an employee
28 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-
rate units earned." (Lab. Code, § 1174, subd. (d), emphasis added.)

25 52. As explained in detail above, Defendants failed to provide the Class Members and the
26 Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because
27 they failed to accurately track hours worked by the Class Members and the Aggrieved Employees.
28 Defendants have thus failed to keep accurate records of the "total hours worked by the employee[s]"

1 in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties
2 provided by Labor Code section 226.3. These penalties are “in addition to any other penalty provided
3 by law.” (Lab. Code, § 226.3.)

4 53. The failure to accurately track hours worked also resulted in a failure of Defendants
5 to keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
6 including Plaintiffs and the other Class Members, in violation of Labor Code section 1174,
7 subdivision (d).

8 **FAILURE TO PAY TIMELY WAGES**

9 54. Labor Code section 204 expressly requires employers who pay employees on a
10 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
11 following the close of the payroll period.” Labor Code section 210, subdivision (a), makes
12 employers who violate Labor Code section 204 subject to a penalty of:

- 13 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
14 pay each employee.
15 “(2) For each subsequent violation, or any willful or intentional violation,
16 two hundred dollars (\$200) for each failure to pay each employee, plus
25 percent of the amount unlawfully withheld.” (Lab. Code, § 210,
subd. (a).)

17 55. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
18 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, §
19 210, subd. (a).)

20 56. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees
21 the wages described herein, along with rest and meal break premiums and sick pay, Defendants failed
22 to timely pay the Class Members and the Aggrieved Employees within seven calendar days following
23 the close of payroll in accordance with Labor Code section 204 on a regular and consistent basis.
24 (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL
25 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums
26 can support claims under Labor Code sections 203 and 204].)

27 57. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
28 employment are due and payable twice during each calendar month, on days designated in advance

1 by the employer as the regular paydays.”

2 58. Due to Defendants’ failure to pay Plaintiffs and all Aggrieved Employees on a timely
3 and bi-monthly basis for all applicable overtime wages at the proper rate, Defendants failed to timely
4 pay Plaintiffs, Class Members, and all Aggrieved Employees all wages owed within seven (7) days
5 of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent
6 basis.

7 59. Labor Code § 210 provides that “in addition to, an entirely independent and apart
8 from, any other penalty provided in this article, every person who fails to pay the wages of each
9 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
10 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
11 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
12 failure to pay each employee, plus 25% of the amount unlawfully withheld.”

13 60. As a result of the faulty compensation policies and practices described in detail above
14 and Defendants’ failure to pay Plaintiffs, Class Members, and all Aggrieved Employees for all
15 overtime wages at the proper rate within seven (7) days of the close of the payroll period, the State
16 of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v.*
17 *Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of Labor Code Section
18 210 penalties under PAGA due to the employer’s failure to timely pay wages at the proper rate in
19 accordance with a local wage ordinance).

20 **FAILURE TO PAY FINAL WAGES**

21 61. Under Labor Code §§ 201-202, an employer must provide an employee wages at the
22 time of discharge or within up to seventy-two (72) hours of their resignation.

23 62. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
24 of an employee who is discharged or who quits, the wages of the employee shall continue as a
25 penalty” for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)
26 As a result of Defendants’ failure to pay the Class Members and the Aggrieved Employees for the
27 wages described herein, along with rest and meal break premiums and sick pay, Defendants violated
28 and continue to violate Labor Code section 203.

1 63. Due to Defendants’ faulty pay policies, those former Class Members whose
2 employment with Defendants concluded were not compensated for each and every hour worked at
3 the appropriate rate. Defendants have failed to pay former Class Members whose sums were certain
4 at the time of termination within seventy-two hours of their resignation and have failed to pay those
5 sums for thirty days thereafter.

6 64. In addition, Labor Code § 256 provides that the Labor Commissioner “shall impose
7 a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section
8 203. The California Supreme Court and California Court of Appeal have both specifically recognized
9 the ability of an aggrieved employee to recover civil penalties under Labor Code § 256 for a
10 defendant’s willful violation of Labor Code § 201 and 202 under PAGA. In *Iskanian v. CLS*
11 *Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014), the California Supreme Court
12 acknowledged that PAGA penalties for the untimely payment of wages included the 30 days of pay
13 as waiting time pursuant to Labor Code § 256. *See also Esparza v. KS Industries, L.P.* 13 Cal.App.5th
14 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer’s failure
15 to timely pay wages upon separation was willful is a “civil penalty” “recovered or imposed by the
16 Labor Commissioner.”).

17 65. As described in detail above, Defendants failed to pay Plaintiffs, Class Members, and
18 other Aggrieved Employees whose employment with Defendants has now ended all minimum
19 wages, overtime wages owed at the proper rate, and meal and rest period premiums within the time
20 constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus,
21 as result of Defendants’ faulty policies described herein, Plaintiffs, Class Members, and all
22 Aggrieved Employees left their employment with Defendants without being compensated for each
23 and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203.

24 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

25 66. At all relevant times herein, Defendants were subject to Labor Code section 2802,
26 which states that “an employer shall indemnify his or her employees for all necessary expenditures
27 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
28 his or her obedience to the directions of the employer.” The purpose of this section is to “prevent

1 employers from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-*
2 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

3 67. At all relevant times herein, Defendants were subject to Labor Code section 2804,
4 which states that “any contract or agreement, express or implied, made by any employee to waive the
5 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
6 employee or his personal representative of any right or remedy to which he is entitled under the laws
7 of this State.”

8 68. Thus, the Class Members and the Aggrieved Employees were and are entitled to
9 reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse
10 even extends to the use of equipment the employee may already own and would be required to pay
11 for anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The
12 threshold question in this case is this: Does an employer always have to reimburse an employee for
13 the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement
14 obligation limited to the situation in which the employee incurred an extra expense that he or she
15 would not have otherwise incurred absent the job? The answer is that reimbursement is always
16 required. Otherwise, the employer would receive a windfall because it would be passing its operating
17 expenses on to the employee.”].)

18 69. Here, Defendants failed to fully reimburse the Class Members and the Aggrieved
19 Employees for necessary expenditures incurred as a direct consequence and requirement of
20 performing their job duties, including the costs associated with their personal cell phone and personal
21 vehicle they required to perform their work. Consequently, Defendants failed to comply with Labor
22 Code section 2802.

23 70. Likewise, Defendants do not maintain an expense reimbursement policy and/or
24 practice stating that Defendants will affirmatively reimburse Plaintiffs, Class Members, and the
25 Aggrieved Employees for their business expenses incurred on behalf of Defendants, including a
26 reasonable portion of monthly cell phone expenses as required by Labor Code Sections 2802(a) and
27 (c) and the holding of *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug.
28 12, 2014. The employer’s obligation to reimburse employees for monthly cell phone expenses arises

1 when an employer “knew or should have known” that employees are or were using their cell phones
2 to answer work related COVID-19 questions. See *Stuart v. RadioShack Corp.*, 2009 U.S. Dist. Lexis
3 41658 (N.D. Cal. 2009).

4 71. Specifically, California Labor Code Section 2802 requires an employer in California
5 to "indemnify his or her employee for all necessary expenditures or losses incurred by that employee
6 in direct consequence of the discharge of his or her duties." See Cal. Labor Code Section
7 2802(a); *see also* 2802(c) where “necessary” is defined to include all “reasonable” costs. "The
8 elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred losses;
9 (ii) the expenditures or losses were incurred in direct consequence of the employee's discharge of his
10 or her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses were
11 reasonable and necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
12 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the
13 employer ‘must either know or have reason to know that the employee has incurred [the] expense.’"
14 *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an employer
15 has knowledge that employees are incurring a reimbursable expense, the employer must “exercise
16 due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an employee to
17 expense reimbursements from his or her employer is not waivable. *See* Cal. Labor Code Section
18 2804; *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008).

19 72. Furthermore, under California Labor Code Section 2802, employers must reimburse
20 employees for all reasonable work-related expenses, including a reasonable portion of their work-
21 related monthly cell phone expenses, regardless of whether or not employees incurred any additional
22 out-of-pocket cost from work-related use. *See, Cochran v. Schwan’s Home Service, Inc.*, 228
23 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must use their personal cell
24 phones for work-related calls, Labor Code Section 2802 requires the employer to reimburse
25 them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the
26 reimbursement owed is a reasonable percentage of their cell phone bills.”); *see also Ritchie v. Blue*
27 *Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen)
28 (certifying class of claim processors working from home with Section 2802 claims for landline phone

1 reimbursements where their employer required them to work from home and to have a home landline
2 for work).

3 73. Here, Defendants' supervisors texted messages to Plaintiffs, Class Members, and the
4 Aggrieved Employees on their personal cell phones with routes and addresses that Plaintiffs, Class
5 Members, and the Aggrieved Employees needed to go for work. Additionally, Plaintiffs, Class
6 Members, and the Aggrieved Employees received numerous phone calls and text messages on their
7 personal cell phones throughout the day from Defendants' supervisors for updates on where to go
8 for work. Lastly, Defendants failed to provide personal protective equipment during the COVID-19
9 pandemic to Plaintiffs, Class Members, and the Aggrieved Employees, including masks. Defendants
10 did not affirmatively reimburse Plaintiffs, Class Members, and the Aggrieved Employees in any
11 amount for any such cell phone expenses and mask expenses incurred throughout the PAGA and
12 Class Periods.

13 74. In short, Defendants' policies and/or practices require and expect, and/or with
14 Defendants' knowledge thereof permit, Plaintiffs, Class Members, and the Aggrieved Employees to
15 pay for cell phone expenses and mask expenses incurred in direct consequence of discharging their
16 duties on behalf of Defendants, without reimbursement by Defendants for such expenses.
17 Defendants have maintained their policies and/or practices of denying reimbursement of Plaintiffs'
18 and the Aggrieved Employees' necessarily incurred business expenses, or substantially similar
19 policies, throughout California and throughout the PAGA Period and Class Period.

20 75. Defendants are aware or should have been aware that Plaintiff and the Aggrieved
21 Employees regularly incur and have incurred cell phone business expenses and mask expenses in the
22 discharge of their duties, since they regularly sent text messages and made phone calls to Plaintiffs',
23 the Class', and the Aggrieved Employees' personal cell phones and failed to provide masks.
24 Defendants nevertheless have, throughout the PAGA and Class Periods, failed and refused to
25 reimburse Plaintiffs, the Class, and the Aggrieved Employees for such cell phone business expenses
26 and mask expenses incurred by them in connection with their work

27 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**

28 76. As to Plaintiffs, Class Members, and all Aggrieved Employees, Defendants failed to

1 provide accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code §
2 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
3 statement in writing showing:

- 4 (1) gross wages earned;
- 5 (2) total hours worked by the employee;
- 6 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
on a piece rate;
- 7 (4) all deductions, provided that all deductions made on written orders of the employee may
be aggregated and shown as one item;
- 8 (5) net wages earned;
- 9 (6) the inclusive dates of the period for which the employee is paid;
- 10 (7) the name of the employee and only the last four digits of his or her social security number
or an employee identification number other than a social security number;
- 11 (8) the name and address of the legal entity that is the employer...;
- 12 (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...

11 Similarly, Labor Code § 226(e) provides:

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

15 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

16 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
17 employer fails to provide accurate and complete information as required by any one
or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
18 promptly and easily determine from the wage statement alone one or more of the
following:

19 (i) The amount of the gross wages or net wages paid to the employee during
the pay period or any of the other information required to be provided on the
20 itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
subdivision (a).

21 (ii) Which deductions the employer made from gross wages to determine the
net wages paid to the employee during the pay period. Nothing in this
22 subdivision alters the ability of the employer to aggregate deductions
consistent with the requirements of item (4) of subdivision (a).

23 (iii) The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address
24 of the legal entity that secured the services of the employer during the pay
period.

25 (iv) The name of the employee and only the last four digits of his or her social
security number or an employee identification number other than a social
26 security number.

27 77. Defendants knowingly and intentionally failed to pay Plaintiffs, Class Members, and
28 all Aggrieved Employees all minimum wages, overtime wages due at the proper overtime rate, as

outlined in Defendant's Handbook compensation policy (which Defendant ignored and did not follow), and all meal and rest period premiums. Moreover, Plaintiffs, Class Members, and the Aggrieved Employees were unable to determine the actual and accurate total gross wages earned, the accurate net wages earned, and the accurate applicable hourly rates, including proper overtime rates, in violation of Section 226(a)(9), (1), and (2), since Defendants failed to pay all minimum wages owed, failed to include pay itemized as "Cal Ins Inc" in the calculation of Plaintiffs' and Aggrieved Employees' overtime rates (See **Exhibit B**), and failed to pay meal and rest period premiums.

78. Plaintiffs, Class Members, and the Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code Section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of Section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a Section 226(e) claim do not apply to a PAGA claim for a violation of Section 226(a).”).

79. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiffs, Class Members, and the other Aggrieved Employees with accurate itemized wage statements. Accordingly, Plaintiffs, Class Members, and the other Aggrieved Employees may recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code § 226(a).

FAILURE TO PAY SICK PAY

80. At all times relevant herein, Defendants were required to provide their employees with paid sick leave of not less than one hour per every thirty (30) hours worked, pursuant to the mandate of Labor Code § 246.

1 81. In accordance with the mandates of Labor Code § 246(l), Defendants were required
2 to pay non-exempt employees' paid sick leave at a rate calculated by dividing the employee's total
3 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
4 periods of the prior ninety (90) days of employment.

5 82. As a policy and a practice, Defendants failed to pay Plaintiffs, Class Members, and
6 other aggrieved current and former non-exempt employees' paid sick leave at their regular rate of
7 pay or at a rate calculated by dividing the employee's total wages, not including overtime premium
8 pay, by the employee's total hours worked in the full pay periods of the prior ninety (90) days of
9 employment.

10 **UNLAWFUL COLLECTION OF BACK WAGES**

11 83. At all relevant times herein, Defendants were subject to Labor Code § 221, which
12 provides that it "shall be unlawful for any employer to collect or receive from an employee any part
13 of wages theretofore paid by said employer to said employee."

14 84. Upon information and belief, at all relevant times, Defendants made certain
15 collections or recoveries from Plaintiffs, Class Members, and/or other aggrieved current and former
16 non-exempt employees of wages already paid during the relevant time periods that constitute a
17 violation of Labor Code § 221.

18 **UNLAWFUL PAYMENT OF WAGES BY A PAYROLL DEBIT CARD**

19 85. At all relevant times herein, Defendants were subject to Labor Code section 212(a)(1),
20 which prohibits the payment of wages by:

21 Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness,
22 unless it is negotiable and payable in cash, on demand, without discount, at some established
23 place of business in the state, the name and address of which must appear on the instrument,
24 and at the time of its issuance and for a reasonable time thereafter, which must be at least 30
25 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding
26 with the drawee for its payment.

27 86. Labor Code section 213(d) limits the scope of section 212, stating:

28 [n]othing contained in Section 212 shall ... [p]rohibit an employer from depositing wages due
or to become due or an advance on wages to be earned in an account in any bank, savings
and loan association, or credit union of the employee's choice with a place of business located

1 in this state, provided that the employee has voluntarily authorized that deposit. If an
2 employer discharges an employee or the employee quits, the employer may pay the wages
3 earned and unpaid at the time the employee is discharged or quits by making a deposit
4 authorized pursuant to this subdivision, provided that the employer complies with the
provisions of this article relating to the payment of wages upon termination or quitting of
employment.

5 87. Upon information and belief, at all relevant times, Defendants failed to pay Plaintiffs,
6 Class Members, and/or other aggrieved current and former non-exempt employees all wages
7 pursuant to Labor Code sections 212 and 213 because it issued payroll debit cards which were only
8 allowed to be used to withdraw funds at specific locations without incurring a fee and limited
9 employees to a maximum \$600 withdrawal per day.

10 **FAILURE TO PROVIDE A SAFE WORKPLACE DURING THE COVID-19 PANDEMIC**

11 88. Labor Code section 6401 provides that every employer shall furnish and use safety
12 devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes
13 which are reasonably adequate to render such employment and place of employment safe and
14 healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety,
15 and health of employees.

16 89. Labor Code section 6402 provides that no employer shall require, or permit any
17 employee to go or be in any employment or place of employment which is not safe and healthful.

18 90. Labor Code section 6403 provides that no employer shall fail or neglect to do any of
19 the following:

20 (a) To provide and use safety devices and safeguards reasonably adequate to render the
21 employment and place of employment safe.

22 (b) To adopt and use methods and processes reasonably adequate to render the employment
23 and place of employment safe.

24 (c) To do every other thing reasonably necessary to protect the life, safety, and health of
25 employees

26 Labor Code section 6409.6(a)(1) provides that "COVID-19" means severe acute respiratory
27 syndrome coronavirus 2 (SARS-CoV-2).

28 91. In early 2020, COVID-19 spread rapidly throughout California, affecting the health
and safety of thousands of individuals, especially hourly paid employees in the workplace.
Recognizing the severity of the COVID-19 pandemic, in or around March of 2020, Governor Gavin

1 Newsom issued a stay at home order to protect the health and well-being of all Californians to slow
2 the spread of COVID-19. Moreover, in recognizing the severity of COVID-19, the Legislature
3 passed Labor Code section 6409.6 which provides procedures for employers to follow if there is
4 potential exposure to COVID-19.

5 92. Upon information and belief, at all relevant times, Defendants failed to provide
6 Plaintiffs, Class Members, and/or other aggrieved current and former non-exempt employees with a
7 reasonably safe place of employment by failing to provide and use safeguards reasonably adequate
8 to render the place of employment safe during their employment in the COVID-19 pandemic as
9 required by the Labor Code. For example, Defendants failed to ask Plaintiffs, Class Members, and/or
10 other aggrieved current and former non-exempt employees whether they had fever or COVID-19
11 symptoms or if they had been exposed to anyone who exhibited COVID-19 symptoms, during their
12 shifts. Such measures, if adopted, would have enhanced the safety and well-being of employees at
13 Defendants' locations. As such, Defendants did not take actions, reasonably necessary to protect the
14 life, safety, and health of Plaintiffs, Class Members, and/or other aggrieved current and former non-
15 exempt employees.

16 CLASS ACTION ALLEGATIONS

17 93. As mentioned above, Plaintiffs bring this action on behalf of themselves and the Class
18 Members pursuant to section 382 of the Code of Civil Procedure. Plaintiffs seek to represent a Class
19 composed of: *All individuals who are or were employed by Defendants as hourly non-exempt*
20 *employees in California during the Class Period.*

21 94. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of
22 all members would be unfeasible and not practicable. According to Defendants, the Class consists
23 of more than 7,000 individuals. The identity of such membership is readily ascertainable via
24 inspection of Defendants' employment records.

25 95. **Common Questions of Law and Fact Predominate/Well Defined Community of**
26 **Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated
27 non-exempt employees, which predominate over questions affecting only individual members
28 including, without limitation to:

- a. Whether Defendants' pay policies/practices resulted in a failure to pay the Class Members for all hours worked, including all minimum wages;
- b. Whether Defendants' pay policies/practices resulted in a failure to pay the Class Members for all required overtime wages at the Class Members' regular rate of pay;
- c. Whether Defendants' rest period policies and practices afforded legally compliant rest periods or compensation in lieu thereof;
- d. Whether Defendants' meal period policies and practices afforded legally compliant meal periods or compensation in lieu thereof;
- e. Whether Defendants maintained accurate employment records;
- f. Whether Defendants timely paid all wages during employment;
- g. Whether Defendants timely paid all wages earned and unpaid at separation or employment;
- h. Whether Defendants indemnified their employees for all necessary business expenditures;
- i. Whether Defendants furnished legally-compliant wage statements to the Class Members pursuant to Labor Code section 226;
- j. Whether Defendants failed to pay sick pay; and
- k. Whether Defendants' violations of the Labor Code and the Applicable Wage Orders amounted to a violation of California's UCL.

96. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual Class Members. The common questions of law set forth above are numerous and substantial and stem from Defendants' uniform policies and practices applicable to each individual class member, such as Defendants' uniform policy and practice of failing to pay for all hours worked, Defendants' uniform policies and practices which failed to provide complaint rest periods, Defendants' uniform policies and practices which failed to provide complaint meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such, the common questions predominate over individual questions concerning each

1 individual class member's showing as to his or her eligibility for recovery or as to the amount of his
2 or her damages.

3 97. **Typicality:** The claims of Plaintiffs are typical of the claims of the Class Members
4 because Plaintiffs were employed by Defendants as non-exempt employees in California during the
5 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged
6 herein, Plaintiffs, like the other Class Members, were deprived of minimum, regular, and overtime
7 wages because of Defendants' unlawful timekeeping policies and practices, were deprived of rest
8 periods and premium wages in lieu thereof, were deprived of meal periods and premium wages in
9 lieu thereof, were not provided accurate itemized wage statements, were not paid all wages in full
10 and on time, and were subject to other similar policies and practices to which the Class Members
11 were subject.

12 98. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps
13 to represent fairly and adequately the interests of the Class Members. Moreover, Plaintiffs' attorneys
14 are ready, willing, and able to fully and adequately represent the Class Members and Plaintiffs.
15 Plaintiffs' attorneys have prosecuted numerous wage-and-hour class actions in state and federal court
16 in the past and are committed to vigorously prosecuting this action on behalf of the Class Members.

17 99. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
18 important public interest in establishing minimum working conditions and standards in California.
19 These laws and labor standards protect the average working employee from exploitation by
20 employers who have the responsibility to follow the laws and who may seek to take advantage of
21 superior economic and bargaining power in setting onerous terms and conditions of employment.
22 The nature of this action and the format of laws available to Plaintiffs and the Class Members make
23 the class action format a particularly efficient and appropriate procedure to redress the violations
24 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
25 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm
26 the limited resources of each individual plaintiff with their vastly superior financial and legal
27 resources.

28 100. Moreover, requiring each Class Member to pursue an individual remedy would also

1 discourage the assertion of lawful claims by employees who would be disinclined to file an action
2 against their former or current employer for real and justifiable fear of retaliation and permanent
3 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
4 the individual Class Members, even if possible, would create a substantial risk of inconsistent or
5 varying verdicts or adjudications with respect to the individual Class Members against Defendants
6 herein, and which would establish potentially incompatible standards of conduct for Defendants or
7 legal determinations with respect to individual Class Members which would, as a practical matter,
8 be dispositive of the interest of the other Class Members not parties to adjudications or which would
9 substantially impair or impede the ability of the Class Members to protect their interests.

10 101. Further, the claims of the individual Class Members are not sufficiently large to
11 warrant vigorous individual prosecution considering the concomitant costs and expenses attending
12 thereto. As such, the Class Members identified above are maintainable as a class under section 382
13 of the Code of Civil Procedure.

14 **EXHAUSTION OF REMEDIES**

15 102. Plaintiffs have fully and completely exhausted administrative remedies under PAGA
16 prior to proceeding with the PAGA claims stated in this complaint. Plaintiffs filed a PAGA notice
17 online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail
18 to Defendants setting forth the facts and theories of the violations alleged against Defendants, as
19 prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

20 103. As required by PAGA, Plaintiffs submitted the \$75.00 filing fee with the LWDA by
21 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received
22 by Plaintiffs from the LWDA evidencing its intention to investigate within sixty-five calendar days
23 of the postmark date of the PAGA notice. Plaintiffs are therefore entitled to commence and proceed
24 with a civil action pursuant to Labor Code section 2699.

25 **FIRST CAUSE OF ACTION** 26 **FAILURE TO PAY ALL OVERTIME WAGES** 27 **[Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198, and 1199]** 28 **On behalf of Plaintiffs and the Class Against Defendants**

104. Plaintiffs reallege and incorporate by reference all previous paragraphs.

1 105. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish the
2 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
3 (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.) Labor Code
4 sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not
5 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
6 balance, together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
7 equal to the unpaid wages and interest accrued thereon.

8 106. Here, Defendants failed to fully conform their pay practices to the requirements of
9 the law during the relevant statutory periods. Plaintiffs and the other Class Members were not
10 compensated for all hours worked including, but not limited to, all hours they were subject to the
11 control of Defendants and/or suffered or permitted to work under the Labor Code and the Applicable
12 Wage Orders.

13 107. Labor Code section 1198 makes unlawful the employment of an employee under
14 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and
15 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal
16 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as
17 liquidated damages in an amount equal to the wages due and interest thereon.

18 108. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
19 Plaintiffs and the other Class Members have sustained economic damages, including but not limited
20 to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to
21 recover economic and statutory damages and penalties and other appropriate relief because of
22 Defendants' violations of the Labor Code and Applicable Wage Orders.

23 109. Defendants' practices and policies regarding illegal employee compensation are
24 unlawful and create an entitlement to recovery by Plaintiffs and the other Class Members in a civil
25 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
26 statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5,
27 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

28 ///

SECOND CAUSE OF ACTION
FAILURE TO PAY ALL OVERTIME WAGES
[Cal. Labor Code §§ 510, 1194, and 1199]
On behalf of Plaintiffs and the Class Against Defendants

110. Plaintiffs reallege and incorporate by reference all previous paragraphs.

111. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed. At all times relevant herein, Defendants were required to properly pay Plaintiffs and the other Class Members for all overtime wages earned pursuant to Labor Code section 1194 and the Applicable Wage Orders. Defendants caused Plaintiffs and the other Class Members to work overtime hours but did not compensate them at one and one-half times their regular rate of pay for such hours in accordance with California law. Likewise, Defendants caused Plaintiffs and the other Class Members to work double-time hours but did not compensate them at twice their regular rate of pay for such hours in accordance with California law.

112. Defendants failed to fully conform their pay practices to the requirements of California law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay policies and practices of failing to accurately record all the time that non-exempt employees were under the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow Plaintiffs and the other Class Members to recover in a civil action the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
[Cal. Labor Code §§ 226 and 226.7]
On behalf of Plaintiffs and the Class Against Defendants

113. Plaintiffs reallege and incorporate by reference all previous paragraphs.

114. Section 12 of the Applicable Wage Orders, and Labor Code section 226.7 establish the right of employees to be provided with a rest period of at least ten minutes for each four hour

1 period worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050,
2 11070, 11160.)

3 115. Due to Defendants' unlawful rest period policies and practices described in detail
4 above, Defendants did not authorize and permit Plaintiffs and the other Class Members to take all
5 rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have
6 not paid an additional hour of pay to Plaintiffs and the other Class Members at their respective regular
7 rates of pay for each violation, in accordance with California Labor Code section 226.7

8 116. The foregoing violations create an entitlement to recovery by Plaintiffs and the other
9 Class Members in a civil action for the unpaid amount of rest period premiums owing, including
10 interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders, and
11 California Labor Code section 226.7.

12
13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE MEAL PERIODS**
15 **[Cal. Labor Code §§ 226.7 and 512]**

16 **On behalf of Plaintiffs and the Class Against Defendants**

17 117. Plaintiffs reallege and incorporate by reference all previous paragraphs.

18 118. Plaintiffs are informed and believe and thereon allege, that Defendants failed in their
19 affirmative obligation to provide their hourly non-exempt employees, including Plaintiffs and the
20 other Class Members, with all required meal periods in accordance with the mandates of the Labor
21 Code and the Applicable Wage Orders, for the reasons set forth herein above. Despite Defendants'
22 violations, Defendants have not paid an additional hour of pay to Plaintiffs and the other Class
23 Members at their respective regular rates of pay for each violation, in accordance with California
24 Labor Code section 226.7.

25 119. As a result, Defendants are responsible for paying premium compensation for meal
26 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
27 Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
28 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.).

///

FIFTH CAUSE OF ACTION
FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS
[Cal. Labor Code §§ 226, 226.3, 1174, and 1198]
On behalf of Plaintiffs and the Class Against Defendants

120. Plaintiffs reallege and incorporate by reference all previous paragraphs.

121. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and wages paid to employees employed at the respective plants or establishments. These records must 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.

122. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

123. Defendant has intentionally and willfully failed to keep accurate and complete records showing the hours worked daily and wages paid to Plaintiffs and the other Class Members. Thus, Plaintiffs and the other Class Members have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, employees at those respective locations pursuant to Labor Code 1174.

SIXTH CAUSE OF ACTION
FAILURE TO PAY TIMELY WAGES
[Cal. Labor Code §§ 204 and 210]
On behalf of Plaintiffs and the Class Against Defendants

124. Plaintiffs reallege and incorporate by reference all previous paragraphs.

125. Labor Code section 200 provides that "wages" include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all wages earned by any person in any employment are payable twice during the calendar month and must be paid not more than seven days following the close of the period when

1 the wages were earned. Labor Code section 210, subdivision (a), makes employers who violate
2 Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay each
3 employee's full wages and \$200 for each subsequent violation, plus 25% of the amount unlawfully
4 withheld.

5 126. Labor Code section 216 establishes that it is a misdemeanor for any person, with
6 regards to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with
7 intent to secure himself, his employer or other person, any discount upon such indebtedness, or with
8 intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is
9 due."

10 127. Defendants as a matter of established company policy and procedure in the State of
11 California, scheduled, required, suffered, and/or permitted Plaintiffs and the other Class Members,
12 to work without full compensation, to work without legally-compliant off-duty meal periods, to work
13 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiffs and the
14 other Class Members within seven days of the close of payroll, as required by law.

15 128. Defendants, as a matter of established company policy and procedure in the State of
16 California, falsely deny they owe Plaintiffs and the other Class Members these wages, with the intent
17 of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
18 and/or defraud Plaintiffs and the other Class Members.

19 129. Defendants' pattern, practice, and uniform administration of its corporate policy of
20 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiffs
21 and the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of
22 the compensation owed to them in a civil action and any applicable penalties, attorney fees, and
23 interest owed to them pursuant to Labor Code sections 210 and 218.5.

24
25 **SEVENTH CAUSE OF ACTION**
26 **FAILURE TO PAY FINAL WAGES**
27 **[Cal. Labor Code §§ 201, 202, 203, 204, and 256]**
28 **On behalf of Plaintiffs and the Class Against Defendants**

130. Plaintiffs reallege and incorporate by reference all previous paragraphs.

1 131. The actionable period for this cause of action is three years prior to the filing of this
2 complaint through the present, and ongoing until the violations are corrected or the class is certified.
3 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole*
4 *Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code
5 sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due
6 and owing to its former employees (including the formerly-employed Class Members) during the
7 actionable period for this cause of action at or around the time that their employment is or was
8 terminated, or ended.

9 132. Section 203 of the Labor Code provides that if an employer willfully fails to pay
10 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
11 employer is liable for penalties in the form of continued compensation up to thirty workdays.

12 133. Due to Defendants' faulty pay policies, those Class Members whose employment
13 with Defendants has concluded were not compensated for each and every hour worked at the
14 appropriate rate. Defendants have willfully failed to pay those formerly-employed Class Members
15 whose sums were certain at the time of termination within seventy-two hours of their resignation and
16 have failed to pay those sums for thirty days thereafter as required by Labor Code sections 201
17 through 203.

18 134. As a result, Defendants are liable to the formerly-employed Class Members for
19 waiting time penalties amounting to thirty days wages for the formerly-employed Class Members
20 pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of
21 wages due upon termination entitles an employee to recover waiting time penalties].)

22
23 **EIGHTH CAUSE OF ACTION**
24 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
25 **[Cal. Labor Code §§ 2800, 2802, and 2804]**
26 **On behalf of Plaintiffs and the Class Against Defendants**

27 135. Plaintiffs reallege and incorporate by reference all previous paragraphs.

28 136. California Labor Code Section 2802 states that employers must "indemnify" an
employee for "all necessary expenditures or losses incurred by the employee in direct consequence

1 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”
2 Likewise, Labor Code section 2804 states that “any contract or agreement, express or implied, made
3 by any employee to waive the benefits of this article or any part thereof, is null and void, and this
4 article shall not deprive any employee or his personal representative of any right or remedy to which
5 he is entitled under the laws of this State.”

6 137. Here, Plaintiffs and the other Class Members paid out of pocket for necessary
7 business expenditures incurred as a direct consequence and requirement of performing their job
8 duties, including the costs associated with their personal cell phone and personal vehicle they
9 required to perform their work. Despite knowing that Plaintiffs and the other Class Members
10 incurred these necessary business expenses, and requiring Plaintiffs and the other Class Members to
11 use such items, Defendants did not reimburse them.

12 138. Thus, Plaintiffs and the other Class Members are entitled to recover the cost of such
13 necessary business expenses, plus interest from the date each incurred such business expenses, plus
14 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

15
16 **NINTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS**
18 **[Cal. Labor Code §§226 and 226.3]**
19 **On behalf of Plaintiffs and the Class Against Defendants**

20 139. Plaintiffs reallege and incorporate by reference all previous paragraphs.

21 140. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
22 time of each payment to furnish an itemized wage statement in writing showing:

- 23 (1) The gross wages earned;
- 24 (2) The total hours worked by the employee;
- 25 (3) The number of piece-rate units earned and any applicable piece rate if
26 the employee is paid on a piece rate basis;
- 27 (4) All deductions, provided that all deductions made on written orders of
28 the employee may be aggregated and shown as one item;
- (5) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her
social security number or an employee identification number other than a
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

1 corresponding number of hours worked at each hourly rate by the employee.

2 141. As set forth above, Defendants issued and continues to issue wage statements to its
3 non-exempt employees including Plaintiffs and the other Class Members that are inadequate under
4 Labor Code section 226, subdivision (a). By failing to pay Plaintiffs and the other Class Members
5 properly as described herein, Defendants failed to include required information on their wage
6 statements, including, but not limited to, the gross wages earned, the net wages earned in violation
7 of Labor Code section 226, subdivision (a).

8 142. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
9 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

10 143. As a result of Defendants' issuance of inaccurate itemized wage statements to
11 Plaintiffs and the other Class Members in violation of Labor Code section 226, subdivision (a),
12 Plaintiffs and the other Class Members are each entitled to recover an initial penalty of \$50, and
13 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
14 Plaintiff and per each Class Member from Defendants pursuant to Labor Code section 226,
15 subdivision (e), along with costs and reasonable attorneys' fees.

16
17 **TENTH CAUSE OF ACTION**
18 **FAILURE TO PAY SICK PAY**
19 **[Cal. Labor Code § 246]**

20 **On behalf of Plaintiffs and the Class Against Defendants**

21 144. At all times relevant herein, Defendants were required to provide their employees
22 with paid sick leave of not less than one hour per every thirty (30) hours worked, pursuant to the
23 mandate of Labor Code § 246.

24 145. In accordance with the mandates of Labor Code § 246(l), Defendants were required
25 to pay non-exempt employees' paid sick leave at a rate calculated by dividing the employee's total
26 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
27 periods of the prior ninety (90) days of employment.

28 146. As a policy and a practice, Defendants failed to pay Plaintiffs and other aggrieved
current and former non-exempt employees' paid sick leave at their regular rate of pay or at a rate

1 calculated by dividing the employee's total wages, not including overtime premium pay, by the
2 employee's total hours worked in the full pay periods of the prior ninety (90) days of employment.

3
4 **ELEVENTH CAUSE OF ACTION**
5 **UNLAWFUL COLLECTION OF BACK WAGES**
6 **[Cal. Labor Code § 221]**

7 **On behalf of Plaintiffs and the Class Against Defendants**

8 147. At all relevant times herein, Defendants were subject to Labor Code § 221, which
9 provides that it "shall be unlawful for any employer to collect or receive from an employee any part
10 of wages theretofore paid by said employer to said employee."

11 148. Upon information and belief, at all relevant times, Defendants made certain
12 collections or recoveries from Plaintiffs, Class Members, and/or other aggrieved current and former
13 non-exempt employees of wages already paid during the relevant time periods that constitute a
14 violation of Labor Code § 221.

15 **TWELFTH CAUSE OF ACTION**
16 **UNLAWFUL PAYMENT OF WAGES BY PAYROLL DEBIT CARD**
17 **[Cal. Labor Code §§ 212, 213]**

18 **On behalf of Plaintiffs and the Class Against Defendants**

19 149. At all relevant times herein, Defendants were subject to Labor Code section 212(a)(1),
20 which prohibits the payment of wages by:

21 Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness,
22 unless it is negotiable and payable in cash, on demand, without discount, at some established
23 place of business in the state, the name and address of which must appear on the instrument,
24 and at the time of its issuance and for a reasonable time thereafter, which must be at least 30
25 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding
26 with the drawee for its payment.

27 150. Labor Code section 213(d) limits the scope of section 212, stating:

28 [n]othing contained in Section 212 shall ... [p]rohibit an employer from depositing wages due
or to become due or an advance on wages to be earned in an account in any bank, savings and
loan association, or credit union of the employee's choice with a place of business located in
this state, provided that the employee has voluntarily authorized that deposit. If an employer
discharges an employee or the employee quits, the employer may pay the wages earned and
unpaid at the time the employee is discharged or quits by making a deposit authorized
pursuant to this subdivision, provided that the employer complies with the provisions of this
article relating to the payment of wages upon termination or quitting of employment.

1 151. Upon information and belief, at all relevant times, Defendants failed to pay Plaintiffs,
2 Class Members, and/or other aggrieved current and former non-exempt employees all wages
3 pursuant to Labor Code sections 212 and 213 because it issued payroll debit cards which were only
4 allowed to be used to withdraw funds at specific locations without incurring a fee and limited
5 employees to a maximum \$600 withdrawal per day.

6
7 **THIRTEENTH CAUSE OF ACTION**
8 **FAILURE TO PROVIDE A SAFE WORKPLACE DURING THE COVID-19 PANDEMIC**
9 **[Cal. Labor Code §§ 6401,6402, 6403]**
10 **On behalf of Plaintiffs and the Class Against Defendants**

11 152. Labor Code section 6401 provides that every employer shall furnish and use safety
12 devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes
13 which are reasonably adequate to render such employment and place of employment safe and
14 healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety,
15 and health of employees.

16 153. Labor Code section 6402 provides that no employer shall require, or permit any
17 employee to go or be in any employment or place of employment which is not safe and healthful.

18 154. Labor Code section 6403 provides that no employer shall fail or neglect to do any of
19 the following:

20 (a) To provide and use safety devices and safeguards reasonably adequate to render the
21 employment and place of employment safe.

22 (b) To adopt and use methods and processes reasonably adequate to render the employment
23 and place of employment safe.

24 (c) To do every other thing reasonably necessary to protect the life, safety, and health of
25 employees

26 Labor Code section 6409.6(a)(1) provides that “COVID-19” means severe acute respiratory
27 syndrome coronavirus 2 (SARS-CoV-2).

28 155. In early 2020, COVID-19 spread rapidly throughout California, affecting the health
and safety of thousands of individuals, especially hourly paid employees in the workplace.
Recognizing the severity of the COVID-19 pandemic, in or around March of 2020, Governor Gavin
Newsom issued a stay at home order to protect the health and well-being of all Californians to slow
the spread of COVID-19. Moreover, in recognizing the severity of COVID-19, the Legislature

1 passed Labor Code section 6409.6 which provides procedures for employers to follow if there is
2 potential exposure to COVID-19.

3 156. Upon information and belief, at all relevant times, Defendants failed to provide
4 Plaintiffs, Class Members, and/or other aggrieved current and former non-exempt employees with a
5 reasonably safe place of employment by failing to provide and use safeguards reasonably adequate
6 to render the place of employment safe during their employment in the COVID-19 pandemic as
7 required by the Labor Code. For example, Defendants failed to ask Plaintiffs, Class Members, and/or
8 other aggrieved current and former non-exempt employees whether they had fever or COVID-19
9 symptoms or if they had been exposed to anyone who exhibited COVID-19 symptoms, during their
10 shifts. Such measures, if adopted, would have enhanced the safety and well-being of employees at
11 Defendants' locations. As such, Defendants did not take actions, reasonably necessary to protect the
12 life, safety, and health of Plaintiffs, Class Members, and/or other aggrieved current and former non-
13 exempt employees.

14
15 **FOURTEENTH CAUSE OF ACTION**

16 **UCL VIOLATIONS**

17 **[Cal. Business and Professions Code § 17200]**

18 **On behalf of Plaintiffs and the Class Against Defendants**

19 157. Plaintiffs reallege and incorporate by reference all previous paragraphs.

20 158. Defendants have engaged and continue to engage in unfair and/or unlawful business
21 practices in California in violation of California Business and Professions Code section 17200
22 through 17210, by committing the unlawful acts described herein. Defendants' utilization of these
23 unfair and unlawful business practices deprived and continue to deprive Plaintiffs and the other Class
24 Members of compensation to which they are legally entitled. These practices constitute unfair and
25 unlawful competition and provide an unfair advantage over Defendants' competitors who have been
26 and/or are currently employing workers and attempting to do so in honest compliance with applicable
27 wage and hour laws.

28 159. Because Plaintiffs are a victim of Defendants' unfair and unlawful conduct alleged
herein, Plaintiffs for themselves and on behalf of the Class Members, seek full restitution of monies,

1 as necessary and according to proof, to restore any and all monies withheld, acquired and/or
2 converted by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

3 160. The acts complained of herein occurred within the four years prior to the initiation of
4 this action and are continuing into the present and ongoing.

5 161. Plaintiffs were compelled to retain the services of counsel to file this Court action to
6 protect their interests and those of the Class Members, to obtain restitution and injunctive relief on
7 behalf of Defendants' current non-exempt employees and to enforce important rights affecting the
8 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,
9 which Plaintiffs are entitled to recover under Code of Civil Procedure section 1021.5.

10
11 **FIFTEENTH CAUSE OF ACTION**
12 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
13 **PENALTIES FOR LABOR CODE VIOLATIONS**
14 **[Cal. Labor Code §§ 2698-2699.5]**

15 **On behalf of Plaintiffs, the LWDA and the Aggrieved Employees Against Defendants**

16 162. Plaintiffs reallege and incorporate by reference all previous paragraphs.

17 163. Based on the above allegations incorporated by reference, Defendants violated Labor
18 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2,
19 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the Applicable
20 Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160), and others that
21 may be applicable.

22 164. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
23 sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202,
24 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
25 1199, 2802, 2804, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of
26 Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160), and others that may be applicable.

27 165. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such
28 violation, Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be shown
at the time of trial subject to the following formula:

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

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

2 166. These penalties must be allocated seventy-five percent to the Labor and Workforce
3 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These
4 penalties may be stacked separately for each of Defendants violations of the California Labor Code.
5 (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval
6 *Stoddart v. Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL
7 5522142, at *9, for the proposition that plaintiff could pursue separate claims for penalties under
8 Labor Code section 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a),
9 violations]; see also *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972
10 MMM JCGX) 2012 WL 2373372, at *17 fn. 70 [noting that federal courts applying California law
11 have found that “PAGA penalties can be stacked, i.e., multiple PAGA penalties can be assessed for
12 the same pay period for different Labor Code violations.”], internal quotation marks omitted).

13 167. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs and
14 all Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code
15 section 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants’ violations of
16 Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15
17 Cal.App.5th at pp. 780, 788.)

18 168. For violations of Labor Code section 226, subdivision (a), Plaintiffs seek the default
19 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
20 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
21 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
22 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
23 fails to provide the employee a wage deduction statement or fails to keep the required in subdivision
24 (a) of Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiffs and
25 the Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3
26 and seek default PAGA penalties for each of Defendants’ numerous violations of Labor Code section
27 226, subdivision (e).

28 169. Labor Code section 210 provides that “in addition to, an entirely independent and

1 apart from, any other penalty provided in this article, every person who fails to pay the wages of
2 each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1)
3 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
4 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
5 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
6 faulty compensation policies and practices, Plaintiffs and the Aggrieved Employees are also entitled
7 to recover penalties under Labor Code section 210 through PAGA.

8 170. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
9 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
10 intentionally committed for each underpaid employee for each pay period for which the employee is
11 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same
12 specific offense for each underpaid employee for each pay period for which the employee is
13 underpaid regardless of whether the initial violation is intentionally committed. Accordingly,
14 through PAGA and to the extent permitted by law, Plaintiffs and the Aggrieved Employees are
15 entitled to recover pursuant to Labor Code section 1197.1.

16 171. Plaintiffs were compelled to retain the services of counsel to file this action to protect
17 their interests and those of the Aggrieved Employees, and to assess and collect the wages and
18 penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs, which
19 Plaintiffs are also entitled to recover under Labor Code section 2699, subdivision (g)(1).

20 **DEMAND FOR JURY TRIAL**

21 172. Plaintiffs hereby demand trial by jury of Plaintiffs’ and the Class Members’ claims
22 against Defendants.

23 **RELIEF REQUESTED**

24 **WHEREFORE**, Plaintiffs pray for judgment for themselves and for all others on whose
25 behalf this suit is brought against Defendants, as follows:

- 26 1. For an order certifying the proposed class;
- 27 2. For an order appointing Plaintiffs as representatives of the class;
- 28 3. For an order appointing Plaintiffs’ counsel as counsel for the class;

1 4. For the failure to pay all minimum wages, compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and others
3 as may be applicable;

4 5. For the failure to pay all overtime wages, compensatory, consequential, general, and
5 special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198, and others
6 as may be applicable;

7 6. For the failure to provide rest periods and pay missed rest period premiums,
8 compensatory, consequential, general, and special damages according to proof pursuant to Labor
9 Code section 226.7;

10 7. For the failure to provide meal periods and pay missed meal period premiums,
11 compensatory, consequential, general, and special damages according to proof pursuant to Labor
12 Code sections 226.7 and 512;

13 8. For the failure to maintain accurate employment records, penalties pursuant to Labor
14 Code sections 226.3, 1174.5, and others that may be applicable;

15 9. For the failure to pay wages timely during employment, the unpaid balance of the
16 compensation owed to Plaintiffs and the other Class Members and any applicable penalties owed to
17 them pursuant to Labor Code section 210;

18 10. For the failure to pay all wages earned and unpaid at separation, statutory waiting time
19 penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit or were
20 fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;

21 11. For the failure to indemnify all necessary business expenditures, all unreimbursed
22 business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and
23 attorney fees, pursuant to Labor Code section 2802, subdivision (c);

24 12. For the failure to pay sick pay wages during employment, the unpaid balance of the
25 compensation owed to Plaintiffs and the other Class Members and any applicable penalties owed to
26 them pursuant to Labor Code section 246;

27 13. For the violations of California's Unfair Competition Law, restitution to Plaintiffs and
28 the other Class Members of all money and/or property unlawfully acquired by Defendants by means

1 of any acts or practices declared by this Court to be in violation of Business and Professions Code
2 sections 17200 through 17210;

3 14. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section
4 218.6 and Civil Code sections 3287 and 3289;

5 15. On all causes of action for which attorneys' fees may be available, for attorneys' fees
6 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section 1021.5,
7 and others as may be applicable;

8 16. For an order enjoining Defendants, and each of them, and their agents, servants, and
9 employees, and all persons acting under, in concert with, or for them, from acting in derogation of
10 any rights or duties adumbrated in this complaint;

11 17. For penalties and other relief allowable under Labor Code § 2699, *et seq.* and 226.3
12 for Plaintiffs and all Aggrieved Employees because of Defendants' violation of, without limitation,
13 Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 218.5, 221, 226, 226.3, 226.7, 233, 245.5-249, 256
14 432, 510, 512, 558, 1174, 1174.5, 1182.12, *et seq.*, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
15 1199, 2800, 2802, 2804, 6400, *et seq.*;

16 18. A civil penalty against Defendants in the amount of \$100 for the initial violation and
17 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
18 for Plaintiffs and all Aggrieved Employees for each and every pay period worked by Plaintiff and the
19 Aggrieved Employees between June 4, 2020, and the date of judgment and/or the date of any
20 corrective action by Defendants;

21 19. A civil penalty of \$250 per pay period per employee for each pay period in which an
22 inaccurate wage statement was given to Plaintiff, and each of the Aggrieved Employees from June
23 4, 2020 to the present; and

24 ///

25 ///

26 ///

27 ///

28 ///

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

2
3 Dated: October 5, 2022

Respectfully submitted,

4 **ACKERMANN & TILAJEF, P.C.**
5 **LAW OFFICE OF TATIANA HERNANDEZ P.C.**
6 **LAW OFFICES OF DURHAM & NG**
7 **MELMED LAW GROUP P.C.**
8 **JUSTICE LAW CORPORATION**

9 By:



Craig J. Ackermann, Esq.

Tatiana Hernandez, Esq.

Jonathan Durham, Esq.

Ned B. Ng, Esq.

Jonathan Melmed, Esq.

Douglas Han, Esq.

Shunt Tatayos-Gharajeh, Esq.

Chancellor D. Nobles, Esq.

*Attorneys for Plaintiffs, the Class Members, the LWDA, and
the other Aggrieved Employees*

EXHIBIT A

**to FIRST AMENDED CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT**



California compensación de Servicios de Construcción (Hourly Field Direct Labor)

Todos los empleados de mano de obra directa de campo por hora (Hourly Field Direct Labor) dentro de nuestra división de servicios de construcción se pagarán una tarifa por hora igual o mayor que el salario mínimo establecido. El salario por hora será determinado por el empleador y acordado por el trabajador en el momento de la contratación y antes de iniciar cualquier trabajo. Estos empleados también tendrán la oportunidad de ganar salarios adicionales, en función de su productividad, a través de un presupuesto de producción preestablecida. Presupuestos de producción serán pre-determinados antes de que los empleado (s) comiencen a trabajar en cada proyecto. Estas tarifas pueden variar dependiendo del tipo de trabajo, fase de construcción, complejidad de los productos, y el área geográfica. Presupuestos de producción se crean utilizando horas estimadas de terminación (Horas objetivo) y fluctuarán de fase a fase y de proyecto en proyecto dadas las variables antes mencionadas.

Ingresos regulares de empleado se basarán en sus horas totales trabajadas multiplicadas por su tarifa por hora. Los ingresos del presupuesto de producción se calcula utilizando lo siguiente:

Presupuesto de producción (horas específicas x \$ 25) - los ingresos por hora regulares = Compensación Bono de Producción (se paga además de las ganancias regulares).

* Si se gana bono de producción, se pagará a cada individuo en la cuadrilla por un % acordado, decidido y documentado antes de comenzar el trabajo.

** En el caso de que los ingresos por hora regulares superan las horas totales objetivo x \$ 25, no se pagará prima de producción, sin embargo, se pagarán todos los ingresos por hora regulares.

El cálculo anterior se utilizará si hay solo un empleado que trabaja en una tarea en particular o varios empleados (una cuadrilla) que trabajan en la tarea específica. El presupuesto de producción NO es acumulativa (no se multiplica) por el número de personas que trabajan en el trabajo. El presupuesto de producción es un número fijo y no se puede modificar el número de personas que trabajan en ese trabajo. En el caso de que los ingresos regulares superan el presupuesto de producción, a los empleados se le pagarán sus ingresos regulares, pero no recibirán ninguna compensación producción.

Los periodos de descanso y de recuperación deben ser registrados en la tarjeta de tiempo de cada individuo y se pagarán en base a su tarifa por hora.

Horas extras se calcularán utilizando los salarios brutos del empleado (incluyendo la compensación bono de producción) dividido por el total de horas trabajadas y multiplicado por 1.5 por horas en exceso de 8 o multiplicado por 2.0 por horas en exceso de 12 en cualquier día de trabajo.

Talones de pago de los empleados serán detallados por los siguientes pagos:

Los salarios por hora regular; Las ganancias del descanso y la recuperación; Tiempo enfermedad pagado, Las ganancias de incentivos de instalador (bono de incentivo de producción); Tiempo extra

* Si hay alguna pregunta acerca de lo que implica su trabajo o cómo se le pagará por su trabajo, por favor hable con su supervisor antes de comenzar el trabajo. *

EXHIBIT B

**to FIRST AMENDED CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT**



Employer Name: BMC WEST LLC
Employer #: 9194311000
Employer Phone:
Employer Address: 4800 Falls of Neuse Rd, Suite 400
 Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
 Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 4/30/2021
Pay Period: 4/17/2021 - 4/23/2021
Deposit Advice #: 391547508
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

	Current 4/17/2021 - 4/23/2021			YTD As of 4/23/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	91.81		\$2,314.63	812.97	\$19,060.67
Regular	40.00	23.0000	\$920.00	351.00	\$6,925.00
Overtime	11.00	34.5000	\$379.50	153.00	\$4,468.50
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$57.38		\$612.92
Rest - CA	2.50			24.00	
CA Ins Inc	38.31	25.0000	\$957.75	266.97	\$6,674.25
Memo Information			\$46.30		\$389.83
401K ER Match			\$46.30		\$381.25
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$92.59		\$762.44
401K %			\$92.59		\$762.44
Taxes			\$379.22		\$2,929.49
Fed W/H			\$94.14		\$713.09
SO SEC TAX EE			\$143.51		\$1,181.76
MEDICARE TAX EE			\$33.56		\$276.38
CA W/H			\$80.24		\$529.53
CA DT EE			\$27.77		\$228.73
	Routing #	Account #	Amount		Amount
Net Pay			\$1,842.82		\$15,368.74
Direct Deposit	121000358	XXXXXXXXX6266	\$1,842.82		

Accruals & Balances

Sick Balance:	10.52 Hours	Sick Accrued:	1.90 Hours
Emergency Sick California Balance:	80.00 Hours		



Employer Name: BMC WEST LLC
Employer Phone: 9194311000
Employer Address: 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 4/30/2021
Pay Period: 4/17/2021 - 4/23/2021
Deposit Advice #: 391547508
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

Supplemental Earnings Statement					
Earnings	Begin Date	End Date	Hours/Units	Rate	Amount
FLSA Overtime	4/17/2021	4/23/2021			\$57.38
CA Ins Inc	4/17/2021	4/23/2021	38.31	25.0000	\$957.75



Employer Name: BMC WEST LLC
Employer: 9194311000
Phone:
Employer Address: 4800 Falls of Neuse Rd, Suite 400
 Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
 Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 4/23/2021
Pay Period: 4/10/2021 - 4/16/2021
Deposit Advice #: 389777319
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

	Current 4/10/2021 - 4/16/2021			YTD As of 4/16/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	57.04		\$1,444.64	721.16	\$16,746.04
Regular	24.00	23.0000	\$552.00	311.00	\$6,005.00
Overtime	7.00	34.5000	\$241.50	142.00	\$4,089.00
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$37.64		\$555.54
Rest - CA	1.50			21.50	
CA Ins Inc	24.54	25.0000	\$613.50	228.66	\$5,716.50
Memo Information			\$28.90		\$343.53
401K ER Match			\$28.90		\$334.95
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$57.79		\$669.85
401K %			\$57.79		\$669.85
Taxes			\$148.90		\$2,550.27
Fed W/H					\$618.95
SO SEC TAX EE			\$89.56		\$1,038.25
MEDICARE TAX EE			\$20.95		\$242.82
CA W/H			\$21.05		\$449.29
CA DT EE			\$17.34		\$200.96
	Routing #	Account #	Amount		Amount
Net Pay			\$1,237.95		\$13,525.92
Direct Deposit	121000358	XXXXXXXXX6266	\$1,237.95		

Accruals & Balances	
Sick Balance:	8.62 Hours
Emergency Sick California Balance:	80.00 Hours



Employer Name: BMC WEST LLC
Employer Phone: 9194311000
Employer Address: 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 4/23/2021
Pay Period: 4/10/2021 - 4/16/2021
Deposit Advice #: 389777319
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

Supplemental Earnings Statement					
Earnings	Begin Date	End Date	Hours/Units	Rate	Amount
FLSA Overtime	4/10/2021	4/16/2021			\$37.64
CA Ins Inc	4/10/2021	4/16/2021	24.54	25.0000	\$613.50



Employer Name: BMC WEST LLC

Employer Phone: 9194311000

Employer Address: 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671

Employee Address: 11159 Virginia Ave
Lynwood, CA 90262

Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 5/7/2021
Pay Period: 4/24/2021 - 4/30/2021

Deposit Advice #: 393050732

Pay Frequency: Weekly

Pay Rate: 23.0000

Federal Filing Status: Married

Federal 2c/Extra Withholding: No/\$0.00

State Filing Status: Married; Alt Code 01

State Exemptions: (CA)

4 (CA)

	Current 4/24/2021 - 4/30/2021			YTD As of 4/30/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	73.65		\$1,840.87	886.62	\$20,901.54
Regular	40.00	23.0000	\$920.00	391.00	\$7,845.00
Overtime	11.00	34.5000	\$379.50	164.00	\$4,848.00
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$37.62		\$650.54
Rest - CA	2.50			26.50	
CA Ins Inc	20.15	25.0000	\$503.75	287.12	\$7,178.00
Memo Information			\$36.82		\$426.65
401K ER Match			\$36.82		\$418.07
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$73.63		\$836.07
401K %			\$73.63		\$836.07
Taxes			\$228.90		\$3,158.39
Fed W/H			\$21.49		\$734.58
SO SEC TAX EE			\$114.14		\$1,295.90
MEDICARE TAX EE			\$26.69		\$303.07
CA W/H			\$44.49		\$574.02
CA DT EE			\$22.09		\$250.82
	Routing #	Account #	Amount		Amount
Net Pay			\$1,538.34		\$16,907.08
Direct Deposit	121000358	XXXXXXXXX6266	\$1,538.34		

Accruals & Balances

Sick Balance:	13.58 Hours	Sick Accrued:	3.06 Hours
Emergency Sick California Balance:	80.00 Hours		



Employer Name: BMC WEST LLC
Employer Phone: 9194311000
Employer Address: 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 5/7/2021
Pay Period: 4/24/2021 - 4/30/2021
Deposit Advice #: 393050732
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

Supplemental Earnings Statement

Earnings	Begin Date	End Date	Hours/Units	Rate	Amount
FLSA Overtime	4/24/2021	4/30/2021			\$37.62
CA Ins Inc	4/24/2021	4/30/2021	20.15	25.0000	\$503.75

**Chavez Franco, Gustavo** • 682671

8794- Scaffold Builder

8794 - California Stucco • 8794 - California Stucco

Active

BMC Construction Services

Manager



Billa, Robert J

8794- Operations Manager I

Earnings

Statements **BMC WEST LLC - #394603920 5/14/2021**

Print Statement

Summary

**Employer** BMC WEST LLC**Name:** 9194311000**Phone:****Employer Address:** 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609**Employee Name:** Gustavo Chavez Franco**Employee #:** 682671**Employee Address:** 11159 Virginia Ave

Lynwood, CA 90262

Department: 8794 - California Stucco**Site:** 8794 - California Stucco**Pay Date:** 5/14/2021**Pay Period:** 5/1/2021 - 5/7/2021**Deposit Advice #:** 394603920**Pay Frequency:** Weekly**Pay Rate:** 23.0000**Federal Filing Status:** Married**Federal 2c/Extra** No/\$0.00**Withholding:****State Filing Status:** Married; Alt Code 01

(CA)

State Exemptions: 4 (CA)

	Current			YTD	
	5/1/2021 - 5/7/2021			As of 5/7/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	95.78		\$2,469.44	982.40	\$23,370.98
Regular	40.00	23.0000	\$920.00	431.00	\$8,765.00
Overtime	15.00	34.5000	\$517.50	179.00	\$5,365.50
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$74.94		\$725.48
Rest - CA	2.50			29.00	
CA Ins Inc	38.28	25.0000	\$957.00	325.40	\$8,135.00
Memo Information			\$49.39		\$476.04
401K ER Match			\$49.39		\$467.46
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$98.78		\$934.85
401K %			\$98.78		\$934.85
Taxes			\$438.69		\$3,597.08
Fed W/H			\$126.83		\$861.41
SO SEC TAX EE			\$153.10		\$1,449.00
MEDICARE TAX EE			\$35.81		\$338.88
CA W/H			\$93.32		\$667.34
CA DT EE			\$29.63		\$280.45
	Routing #	Account #	Amount		Amount
Net Pay			\$1,931.97		\$18,839.05
Direct Deposit	121000358	XXXXXXXX6266	\$1,931.97		

Accruals & Balances			
Sick Balance:	16.03 Hours	Sick Accrued:	2.46 Hours
Emergency Sick California Balance:	80.00 Hours		



Chavez Franco, Gustavo • 682671
 8794- Scaffold Builder
 8794 - California Stucco • 8794 - California Stucco
 Active BMC Construction Services

Manager



Billa, Robert J
 8794- Operations Manager f

Earnings

Statements BMC WEST LLC - #396096333 5/21/2021

5/21/2021

Summary



Employer BMC WEST LLC
Name:
Employer 9194311000
Phone:
Employer 4800 Falls of Neuse Rd, Suite
Address: 400
 Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
 Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 5/21/2021
Pay Period: 5/8/2021 - 5/14/2021
Deposit Advice #: 396096333
Pay Frequency: Weekly
Pay Rate: 23,0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0,00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

	Current 5/8/2021 - 5/14/2021			YTD As of 5/14/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	89.06		\$2,203.30	1,071.46	\$25,574.28
Regular	40.00	23.0000	\$920.00	471.00	\$9,665.00
Overtime	8.00	34.5000	\$276.00	187.00	\$5,641.50
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$43.30		\$768.78
Rest - CA	2.50			31.50	
CA Ins Inc	38.56	25.0000	\$964.00	363.96	\$9,099.00
Memo Information			\$44.07		\$520.11
401K ER Match			\$44.07		\$511.53
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$88.13		\$1,022.98
401K %			\$88.13		\$1,022.98
Taxes			\$336.47		\$3,933.55
Fed W/H			\$70.63		\$932.04
SO SEC TAX EE			\$136.61		\$1,585.61
MEDICARE TAX EE			\$31.95		\$370.83
CA W/H			\$70.84		\$738.18
CA DT EE			\$26.44		\$306.89
	Routing #	Account #	Amount		Amount
Net Pay			\$1,778.70		\$20,617.75
Direct Deposit	121000358	XXXXXXXXX6266	\$1,778.70		

Accruals & Balances			
Sick Balance:	19.23 Hours	Sick Accrued:	3.19 Hours
Emergency Sick California	80.00 Hours		
Balance:			



Chavez Franco, Gustavo - 682671
 8794- Scaffold Builder
 8794 - California Stucco - 8794 - California Stucco
 Active BMC Construction Services

Manager Billa, Robert J
 8794- Operations Manager I

Earnings

Statements BMC WEST LLC - #397713334 5/28/2021

Summary



Employer BMC WEST LLC
Name:
Employer 9194311000
Phone:
Employer 4800 Falls of Neuse Rd, Suite
Address: 400
 Raleigh, NC 27609

Employee Name: Gustavo Chávez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
 Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 5/28/2021
Pay Period: 5/15/2021 -
 5/21/2021
 397713334
Deposit Advice #:
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra No/\$0.00
Withholding:
State Filing Status: Married; Alt Code 01
 (CA)
State Exemptions: 4 (CA)

	Current			YTD	
	5/15/2021 - 5/21/2021			As of 5/21/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	45.74		\$1,160.76	1,117.20	\$26,735.04
Regular	24.00	23.0000	\$552.00	495.00	\$10,237.00
Overtime	8.00	34.5000	\$276.00	195.00	\$5,917.50
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$26.76		\$795.54
Rest - CA	1.50			33.00	
CA Ins Inc	12.24	25.0000	\$306.00	376.20	\$9,405.00
Memo Information			\$23.22		\$543.33
401K ER Match			\$23.22		\$534.75
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$46.43		\$1,069.41
401K %			\$46.43		\$1,069.41
Taxes			\$111.78		\$4,045.33
Fed W/H					\$932.04
SO SEC TAX EE			\$71.96		\$1,657.57
MEDICARE TAX EE			\$16.83		\$387.66
CA W/H			\$9.06		\$747.24
CA DT EE			\$13.93		\$320.82
Net Pay	Routing #	Account #	Amount		Amount
Direct Deposit	121000358	XXXXXXXX6266	\$1,002.55		\$21,620.30

Accruals & Balances			
Sick Balance:	22.19 Hours	Sick Accrued:	2.97 Hours
Emergency Sick California	80.00 Hours		
Balance:			

EXHIBIT C

September 20, 2022

Filed Via LWDA's PAGA Claim Notice Online Form

Copies Sent Via Certified Mail to:

Human Resources
BMC West, LLC
4800 Falls of Neuse Road, Suite 400
Raleigh, NC 27609

Re: *Gustavo Chavez Franco v. BMC West, LLC*
California Labor Code §2699.3; Supplemental Notice of Intent to File Suit
LWDA Case No. LWDA-CM-834103-21

Gentlepersons:

This letter supplements Plaintiff's earlier PAGA letter, dated June 4, 2021, which initiated LWDA Case No. LWDA-CM-834103-21. Plaintiff now is supplementing the earlier PAGA letter (which is incorporated by reference), wherein Plaintiff is making the same allegations contained herein as previously alleged, however, Plaintiff is now adding five more Plaintiffs to the action and alleging several additional claims by way of this Supplemental Clarification letter. The additional Plaintiffs include Geovany Cisneros Palma, Rodolfo Cisneros Dominguez, Gerardo Cisneros, Gabriel Ramos, and Chris Rosillo. The additional claims are Defendant's failure to pay minimum wages in violation of California Labor Code Sections 1194, 1194.2, 1197, 1197.1, 1198 and 1199; failure to provide rest periods and pay missed rest period premiums in violation of Labor Code Sections 226 and 226.7; failure to provide meal periods and pay missed meal period premiums in violation of Labor Code Sections 226.7 and 512; failure to pay sick pay wages in violation of Labor Code Section 246; unlawful collection of back wages in violation of Labor Code Section 221; unlawful payment of wages by a payroll debit card in violation of Labor Code Sections 212 and 213; and failure to provide a safe place of employment during the COVID-19 pandemic in violation of Labor Code Sections 6401, 6402, and 6403.

Our firm, Ackermann & Tilajef, P.C. along with our co-counsel, the Law Office of Tatiana Hernandez, P.C., the Law Offices of Durham & NG, Melmed Law Group P.C., and Justice Law Corporation represents Gustavo Chavez Franco, Geovany Cisneros Palma, Rodolfo Cisneros Dominguez, Gerardo Cisneros, Gabriel Ramos, and Chris Rosillo ("Plaintiffs") in connection with their individual, class, and PAGA representative claims against BMC West, LLC ("Defendant") based on:

1. Defendant's failure to pay minimum wages in violation of Labor Code Sections 1194, 1194.2, 1197, 1197.1, 1198 and 1199;
2. Defendant's underpayment of overtime wages in violation of Labor Code Section 510, 1194, 1199 and Section 3 of the applicable IWC Wage Order;
3. Defendant's failure to provide rest periods and pay missed rest period premiums in

-
- violation of Labor Code Section 226.7 and the applicable IWC Wage Order;
4. Defendant's failure to provide meal periods and pay missed meal period premiums in violation of Labor Code Sections 226.7, 512 and the applicable IWC Wage Order;
 5. Defendant's failure to provide accurate and itemized wage statements in violation of Labor Code Section 226(a) and 226.3;
 6. Defendant's failure to keep accurate payroll records in violation of the applicable IWC Wage Order and Labor Code Section 226, 226.3, 1174 and 1198;
 7. Defendant's failure to reimburse employees for necessary business expenses for use of personal cell phones in the course and scope of employment and use of personal protective equipment in violation of Labor Code Section 2800, 2802 and 2804;
 8. Defendant's failure to pay final wages in violation of Labor Code Sections 201-204 and 256;
 9. Defendant's failure to pay timely wages in violation of Labor Code Sections 204 and 210;
 10. Defendant's failure to pay sick pay in violation of Labor Code Section 246;
 11. Defendant's unlawful collection of back wages in violation of Labor Code Section 221;
 12. Defendant's unlawful payment of wages by a payroll debit card in violation of Labor Code Sections 212 and 213;
 13. Defendant's failure to provide a safe place of employment during the COVID-19 pandemic in violation of Labor Code Sections 6401, 6402, and 6403;
 14. Defendant's deceptive/fraudulent business practices based on the foregoing in violation of Cal. Bus. & Prof. Code Sections 17200, *et seq.*; and
 15. Penalties under California's Private Attorneys General Act, Labor Code Sections 2698-2699.6, and/or any and all other applicable penalties under the Labor Code, based on the foregoing.

Plaintiffs intend to pursue claims for PAGA penalties during the period of time from June 4, 2020 and ongoing (the "PAGA Period"). Plaintiffs also intend to pursue class claims during the period of time from July 23, 2017¹ and ongoing (the "Class Period").

In connection with the PAGA claim, Plaintiffs represent the State of California's LWDA and the following group of Aggrieved Employees: *Plaintiffs and all other California residents who are or were employed by Defendant BMC West, LLC and who worked at least one pay period in California during the PAGA Period* (the "Aggrieved Employees"). All such Aggrieved Employees were subject to Defendant's unlawful policies, as described in further detail below.

Defendant's Failure to Pay All Minimum Wages Owed

Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage." Likewise, the Applicable Wage Orders also obligate employers to pay each employee minimum wages for all hours worked. (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.) Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit.

¹ A prior settlement released class claims prior to January 17, 2018.

These minimum wage standards apply to each hour that employees work. Therefore, an employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

Here, Defendant failed to fully conform their pay practices to the requirements of the law during the relevant statutory periods. The Plaintiffs and the Aggrieved Employees were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendant and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Orders.

Additionally, the Plaintiffs and the Aggrieved Employees were not paid all wages for all hours worked due to Defendant's uniform payroll policies and practices that unfairly rounded employees' wages to the detriment of the Plaintiffs and the Aggrieved Employees. This rounding policy routinely failed to capture the entirety of the hours the Plaintiffs and the Aggrieved Employees worked and was structured in a way that in favored underpayment. (See *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result, the Plaintiffs and the Aggrieved Employees suffered periodic shortages in the hours for which they were compensated. This uncompensated time violated California's requirement that employees be compensated for all hours worked. As a result of this practice, the Plaintiffs and the Aggrieved Employees were not compensated their minimum wages for all hours worked.

Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

When employees are not paid for all hours worked under Labor Code section 1194, they are entitled to recover minimum wages for the time which they received no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

Labor Code section 1197.1 authorizes employees who are paid less than the minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other damages, as follows:

- (1) "For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid."
- (2) "For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed." (Lab. Code, § 1197.1, subd. (a).)

As set forth above, Defendant failed to fully compensate the Plaintiffs and the Aggrieved Employees for all minimum wages.

Defendant's Failure to Pay Overtime Wages at the Proper Rate

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the “regular rate of Pay” for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code §§ 1194, Plaintiffs and the other Aggrieved Employees could not agree to work for a lesser wage than the amount proscribed by Labor Code § 1194.

Here, Defendant violated their duty to accurately and completely compensate the Plaintiffs and the Aggrieved Employees for all overtime worked. The Plaintiffs and the Aggrieved Employees periodically worked hours that entitled them to overtime compensation under the law but were not fully compensated for those hours.

Moreover, during the relevant statutory periods, Defendant had a policy and practice of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when Defendant paid overtime wages to the Plaintiffs and the Aggrieved Employees, Defendant failed to include all compensation when calculating the regular rate of pay used in overtime calculations and when paying overtime.

When calculating an employee's regular rate, California and federal courts, with limited exceptions, look to the federal Fair Labor Standards Act (“FLSA”). *Huntington Mem'l Hosp. v. Sup. Ct.*, 131 Cal. App. 4th 893, 902 (2005).²³ Under the FLSA, the regular rate of pay includes all forms of remuneration, including non-discretionary bonuses, shift differentials, and pay for completing certain tasks. *See* 29 U.S.C. § 207(e); *Huntington Mem'l*, 131 Cal. App. 4th at 90 (holding that shift differential must be included in the regular rate when calculating and paying overtime). “Under [29 C.F.R.] § 778.224(a), a payment may not be excluded from the regular rate or pay pursuant to § 207(e)(2) if it is generally understood as compensation for work, even though the payment is not tied to specific hours worked by an employee.” *Id.*

² *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1129 (C.D. Cal. 2011) (using FLSA standards to determine the regular rate of pay in a Cal. Labor Code § 510 overtime claim); *Advanced-Tech Sec. Servs., Inc. v. Sup. Ct.*, 163 Cal. App. 4th 700, 707 (2008). The DLSE routinely “takes the position that the failure of the [IWC] to define the term ‘regular rate’ indicates the Commission's intent that in determining what payments are to be included in or excluded from the calculation of the regular rate of pay, California will adhere to the standards adopted by the U.S.” (*Huntington Mem'l*, *supra*, 131 Cal. App. 4th at p. 902-903; *Advanced-Tech*, *supra*, 163 Cal.App.4th at p. 707; *see also*, Division of Labor Standards Enforcement, Enforcement and Interpretations Manual, § 49.1.2 [noting “in not defining the term ‘regular rate of pay’, the Industrial Welfare Commission has manifest its intent to adopt the definition of regular rate of pay set out in the Fair Labor Standards Act.”]) In addition, numerous DLSE opinion letters take the position California will adhere to the standards adopted by the U.S. Dept. of Labor when determining an employee’s regular rate. (*See also*, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Jan. 29, 2003) pp. 2, fn. 1, 3, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay in Cases Involving Piece Rate (Feb. 22, 1993) p. 2 & fn. 2; Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Explicit Wage Agreements (Jan 29, 1992) p. 1, Cal. Dept. Industrial Relations, DLSE, H. Thomas Cadell, Jr., opinion letter, Calculation of Regular Rate of Pay (Mar. 6, 1991) p. 1.)

³ *Cf. Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 568 (2018) (explaining that for the purposes of calculating the per hour value of an employer’s flat sum attendance bonuses that California, unlike the FLSA, uses the non-overtime hours worked during the pay period as the divisor instead of all hours worked during the pay period).

The Ninth Circuit recently summarized in *Flores v. City of San Gabriel*, 824 F.3d 890, 895 (9th Cir. 2016) that “the question of whether a particular payment falls within the ‘other similar payments’ clause does not turn on whether the payment is tied to an hourly wage, but instead turns on whether the payment is a form of compensation for performing work.” *Id.* Nor, as the Ninth Circuit explained, need compensation paid be measured by the number of hours worked. *Id.* (explaining “that the key point is whether payment is ‘compensation for work’” and that “even if payments to employees are not measured by the number of hours spent at work, that fact does not qualify for them for exclusion under Section 207(e)(2).” *Id.* (citing *Local 246 Utility Workers Union of America v. Southern California Edison, Co.*, 83 F.3d 295.

On a regular basis, Plaintiffs and the Aggrieved Employees worked more than 8 hours in a day and more than 40 hours in a week; however, Defendant failed to include the pay listed on wage statements as “CA Ins Inc” in the calculation for determining Plaintiffs and the Aggrieved Employees’ regular rate of pay for then calculating appropriate overtime rates. Attached hereto as **Exhibit A** is a sampling of Plaintiffs’ wage statements showing Plaintiffs’ base hourly rate of \$23.00 and overtime rate of \$34.50. Notably, Plaintiffs’ overtime rate represents only 1.5x Plaintiffs’ base hourly rate of \$23.00 and fails to include the \$957.75 in pay itemized as “CA Ins Inc” in the calculation of Plaintiffs’ “regular rate,” which would then be multiplied by 1.5 to get the proper overtime rate. Therefore, Defendant violated Labor Code § 510 and Section 3(A) of the applicable IWC Wage Order by failing to pay all overtime hours at the applicable overtime rate.

These actions were and are in clear violation of California’s overtime laws as set forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.) As a result of Defendant’s faulty policies and practices, the Plaintiffs and the Aggrieved Employees were not compensated for all hours worked or paid accurate overtime compensation.

Defendant’s Failure to Provide Rest Breaks and Pay Rest Break Premiums

Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendant was and is required to provide the Plaintiffs and the Aggrieved Employees with compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage Orders, an employer must authorize and permit all employees to take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.)

Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage Orders set when and for how long the rest period must take place and the Labor Code establishes that violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay their employees when employers fail to provide rest periods.

The California Supreme Court has held that, during required rest periods, “employers must

relieve their employees of all duties and relinquish any control over how employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing control over employees during rest periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

“An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033.

Here, Defendant periodically did not permit the Plaintiffs and the Aggrieved Employees to take compliant duty-free rest breaks, free from Defendant’s control as required by Labor Code section 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”].) At all relevant times, the Plaintiffs and the Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or major fraction thereof due to Defendant’s unlawful rest period policies/practices. The Plaintiffs and the Aggrieved Employees were often expected and required to continue working through rest periods to meet the expectations Defendant set and finish the workday. In some cases when the Plaintiffs and the Aggrieved Employees worked more than ten hours in a shift, Defendant failed to authorize and/or permit a third mandated rest period. As a result, the Plaintiffs and the Aggrieved Employees were periodically unable to take compliant rest periods.

In such cases where Defendant did not offer the Plaintiffs and the Aggrieved Employees the opportunity to receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”].)

In addition to failing to authorize and permit compliant rest periods, the Plaintiffs and the Aggrieved Employees were not compensated with one hour’s worth of pay at their regular rate of compensation when they were not provided with a compliant rest period in accordance with Labor Code section 226.7, subdivision (c). Thus, Defendant has violated Labor Code section 226.7 and the Applicable Wage Orders.

Defendant’s Failure to Provide Meal Periods and Pay Meal Period Premiums

Labor Code section 512 and the Applicable Wage Orders require employers to provide employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than

30 minutes”]; Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160 [“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”].) Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“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”].)

“An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved before requiring an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

Here, the Plaintiffs and the Aggrieved Employees were never asked to sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendant periodically did not provide compliant off-duty meal periods within the first five hours of work for the Plaintiffs and the Aggrieved Employees.

As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

During the applicable statutory periods here, the Plaintiffs and the Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to Defendant’s unlawful meal period policy and practices. As a result of Defendant’s uniform meal period policies and practices, the Plaintiffs and the Aggrieved Employees were often not permitted to take complaint first meal periods before the end of the fifth hour of work. The Plaintiffs and the Aggrieved Employees were also periodically not permitted to take second meal periods for shifts in excess of ten hours. Defendant thus violated Labor Code section 512 and the Applicable Wage Orders by failing to advise, authorize, or permit the Plaintiffs and the Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their shifts.

Labor Code section 226.7 provides that “[a]n employer shall not require an employee to work

during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate employers to pay employees one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160 [“If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”].)

Accordingly, for each day that the Plaintiffs and the Aggrieved Employees did not receive compliant meal periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section 226.7 and the Applicable Wage Orders. Defendant, however, failed to pay the Plaintiffs and the Aggrieved Employees applicable meal period premiums for many workdays that the employees did not receive a compliant meal period. Thus, Defendant has violated Labor Code section 226.7 and the Applicable Wage Orders.

Defendant’s Failure to Issue Accurate/Itemized Wage Statements

As to Plaintiffs and all Aggrieved Employees, Defendant failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (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...

Similarly, Labor Code § 226(e) provides:

- (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.
- (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer

fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

Defendant knowingly and intentionally failed to pay Plaintiffs and all Aggrieved Employees all minimum wages, overtime wages due at the proper rate, and all meal and rest period premiums. Moreover, Plaintiffs and all Aggrieved Employees also suffered legal “injury” for purposes of Labor Code Section 226(e) insofar as they were unable to readily and easily determine the information required to be set forth by Section 226(a). Specifically, Plaintiffs and the Aggrieved Employees were unable to determine the actual and accurate total gross wages earned, the net wages earned, and the applicable hourly rates, including overtime rates, in violation of Section 226(a)(9), (1), and (2), since Defendant failed to include pay all minimum wages owed, failed to include itemized as “Cal Ins Inc” in the calculation of Plaintiff’s and Aggrieved Employees’ overtime rates (see **Exhibit A**), and failed to pay meal and rest period premiums.

Plaintiffs and the Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a) without having to show injury or willfulness. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code Section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of Section 226(e)(1).”); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the “requirements for a Section 226(e) claim do not apply to a PAGA claim for a violation of Section 226(a).”).

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiffs and the other Aggrieved Employees with accurate itemized wage statements. Accordingly, Plaintiffs and the other Aggrieved Employees may recover Labor Code § 226.3 penalties under PAGA for Defendant’s violations of Labor Code § 226(a) in lieu of the normal penalties provided for in Section 226.

Defendant's Failure to Keep Accurate Payroll Records

By failing to implement a clock in and clock out policy, Defendant failed to keep accurate payroll records pertaining to Plaintiff's and the Aggrieved Employees' time worked. Defendant's method of record keeping for the time worked consisted of a supervisor keeping paper records which failed to accurately reflect the actual time worked by Plaintiffs and the Aggrieved Employees. Therefore, Defendant violated Labor Code Section 1198 which requires employers to maintain accurate payroll records. Defendant is also violating Section 6 of the applicable IWC Wage Order, which requires that an employer maintain "[t]ime records showing when the employee begins and ends each work period." Defendant never accurately recorded when Plaintiffs and the Aggrieved Employees began and ended their shifts in violation of the Labor Code and the applicable IWC Wage Order.

Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part, as follows:

"Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law." (Lab. Code, § 226.3, emphasis added.)

Likewise, Labor Code section 1174, subdivision (d), requires every employer, including Defendant, to:

"Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. 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 three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned." (Lab. Code, § 1174, subd. (d), emphasis added.)

As explained in detail above, Defendant failed to provide the Plaintiffs and the Aggrieved Employees with accurate itemized wage statements. Defendant did so, in part, because they failed to accurately track hours worked by the Plaintiffs and the Aggrieved Employees. Defendant has thus failed to keep accurate records of the "total hours worked by the employee[s]" in violation of Labor Code section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are "in addition to any other penalty provided by law." (Lab. Code, § 226.3.)

The failure to accurately track hours worked also resulted in a failure of Defendant to keep a record of all "payroll records showing the hours worked daily by" Defendant's employees, including

Plaintiffs and the other Aggrieved Employees, in violation of Labor Code section 1174, subdivision (d).

Defendant's Failure to Reimburse for Employees' Business Expenses Incurred on Behalf of Defendant

At all relevant times herein, Defendant was subject to Labor Code section 2802, which states that "an employer shall indemnify his or her employees 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." The purpose of this section is to "prevent employers from passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

At all relevant times herein, Defendant was subject to Labor Code section 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

Thus, the Plaintiffs and the Aggrieved Employees were and are entitled to reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own and would be required to pay for anyway. (*Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee."].)

Here, Defendant failed to fully reimburse the Plaintiffs and the Aggrieved Employees for necessary expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with their personal cell phone and personal vehicle they required to perform their work. Consequently, Defendant failed to comply with Labor Code section 2802.

Defendant does not maintain an expense reimbursement policy and/or practice stating that Defendant will affirmatively reimburse Plaintiffs and the Aggrieved Employees for their business expenses incurred on behalf of Defendant, including a reasonable portion of monthly cell phone expenses as required by Labor Code Sections 2802(a) and (c) and the holding of *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014). The employer's obligation to reimburse employees for monthly cell phone expenses arises when an employer "knew or should have known" that employees are or were using their cell phones to answer work related COVID-19 questions. See *Stuart v. RadioShack Corp.*, 2009 U.S. Dist. Lexis 41658 (N.D. Cal. 2009).

Specifically, California Labor Code Section 2802 requires an employer in California to "indemnify his or her employee for all necessary expenditures or losses incurred by that employee in direct consequence of the discharge of his or her duties." See Cal. Labor Code Section 2802(a); see also 2802(c) where "necessary" is defined to include all "reasonable" costs. "The elements of a claim

under Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses were reasonable and necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8, 2011) (citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the employer 'must either know or have reason to know that the employee has incurred [the] expense.'" *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an employer has knowledge that employees are incurring a reimbursable expense, the employer must "exercise due diligence to ensure each employee is reimbursed." *Marr*, at *1. The right of an employee to expense reimbursements from his or her employer is not waivable. *See* Cal. Labor Code Section 2804; *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008).

Furthermore, under California Labor Code Section 2802, employers must reimburse employees for all reasonable work-related expenses, including a reasonable portion of their work-related monthly cell phone expenses, regardless of whether or not employees incurred any additional out-of-pocket cost from work-related use. *See, Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code Section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *see also Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of claim processors working from home with Section 2802 claims for landline phone reimbursements where their employer required them to work from home and to have a home landline for work).

Here, Defendant's supervisors texted messages to Plaintiffs and the Aggrieved Employees on their personal cell phones with routes and addresses that Plaintiffs and the Aggrieved Employees needed to go for work. Additionally, Plaintiffs and the Aggrieved Employees received numerous phone calls and text messages on their personal cell phones throughout the day from Defendant's supervisors for updates on where to go for work. Lastly, Defendant failed to provide personal protective equipment during the COVID-19 pandemic to Plaintiffs and the Aggrieved Employees, including masks. Defendant did not affirmatively reimburse Plaintiffs and the Aggrieved Employees in any amount for any such cell phone expenses and mask expenses incurred throughout the PAGA Period.

In short, Defendant's policies and/or practices require and expect, and/or with Defendant's knowledge thereof permit, Plaintiffs and the Aggrieved Employees to pay for cell phone expenses and mask expenses incurred in direct consequence of discharging their duties on behalf of Defendant, without reimbursement by Defendant for such expenses. Defendant has maintained their policies and/or practices of denying reimbursement of Plaintiffs' and the Aggrieved Employees' necessarily incurred business expenses, or substantially similar policies, throughout California and throughout the PAGA Period.

Defendant is aware or should have been aware that Plaintiffs and the Aggrieved Employees regularly incur and have incurred cell phone business expenses and mask expenses in the discharge of their duties, since they regularly sent text messages and made phone calls to Plaintiffs' and the Aggrieved Employees' personal cell phones and failed to provide masks. Defendant nevertheless has,

throughout the PAGA Period, failed and refused to reimburse Plaintiffs and the Aggrieved Employees for such cell phone business expenses and mask expenses incurred by them in connection with their work.

Defendant's Failure to Pay Final Wages

Under Labor Code §§ 201-202, an employer must provide an employee wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides “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. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

In addition, Labor Code § 256 provides that the Labor Commissioner “shall impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203. The California Supreme Court and California Court of Appeal have both specifically recognized the ability of an aggrieved employee to recover civil penalties under Labor Code § 256 for a defendant’s willful violation of Labor Code § 201 and 202 under PAGA. In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 381 (2014), the California Supreme Court acknowledged that PAGA penalties for the untimely payment of wages included the 30 days of pay as waiting time pursuant to Labor Code § 256. *See also Esparza v. KS Industries, L.P.* 13 Cal.App.5th 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer’s failure to timely pay wages upon separation was willful is a “civil penalty” “recovered or imposed by the Labor Commissioner.”).

As described in detail herein, Defendant failed to pay Plaintiffs and other Aggrieved Employees whose employment with Defendant has now ended all minimum wages, all overtime wages owed at the proper rate, all meal and rest period premiums owed, sick leave and other wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendant’s faulty policies described above, Plaintiffs and all Aggrieved Employees left their employment with Defendant without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203.

Defendant's Failure to Pay Timely Wages

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

Due to Defendant’s failure to pay Plaintiffs and all Aggrieved Employees on a timely and bi-monthly basis for all minimum wages, all applicable overtime wages at the proper rate, and all meal and rest period premiums owed, Defendant failed to timely pay Plaintiffs and all Aggrieved Employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation,

or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

As a result of the faulty compensation policies and practices described in detail above and Defendant’s failure to pay Plaintiffs and all Aggrieved Employees for all minimum wages, all overtime wages at the proper rate, and all meal and rest period premiums within seven (7) days of the close of the payroll period, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1209 (2008)* (affirming an award of Labor Code Section 210 penalties under PAGA due to the employer’s failure to timely pay wages at the proper rate in accordance with a local wage ordinance).

Defendant’s Failure to Pay Sick Pay Wages

At all times relevant herein, Defendant was required to provide their employees with paid sick leave of not less than one hour per every thirty (30) hours worked, pursuant to the mandate of Labor Code § 246.

In accordance with the mandates of Labor Code § 246(l), Defendant was required to pay non-exempt employees’ paid sick leave at a rate calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior ninety (90) days of employment.

As a policy and a practice, Defendant failed to pay Plaintiffs and other aggrieved current and former non-exempt employees’ paid sick leave at their regular rate of pay or at a rate calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior ninety (90) days of employment.

Defendant’s Unlawful Collection of Back Wages

At all relevant times herein, Defendants were subject to Labor Code § 221, which provides that it "shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

Upon information and belief, at all relevant times, Defendants made certain collections or recoveries from Plaintiffs, Class Members, and/or other aggrieved current and former non-exempt employees of wages already paid during the relevant time periods that constitute a violation of Labor Code § 221.

Defendant’s Unlawful Payment of Wages By a Payroll Debit Card

At all relevant times herein, Defendants were subject to Labor Code section 212(a)(1), which prohibits the payment of wages by:

Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days,

the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

Labor Code section 213(d) limits the scope of section 212, stating:

[n]othing contained in Section 212 shall ... [p]rohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized pursuant to this subdivision, provided that the employer complies with the provisions of this article relating to the payment of wages upon termination or quitting of employment.

Upon information and belief, at all relevant times, Defendants failed to pay Plaintiffs, Class Members, and/or other aggrieved current and former non-exempt employees all wages pursuant to Labor Code sections 212 and 213 because it issued payroll debit cards which were only allowed to be used to withdraw funds at specific locations without incurring a fee and limited employees to a maximum \$600 withdrawal per day.

Failure to Provide a Safe Workplace During the COVID-19 Pandemic

Labor Code section 6401 provides that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6402 provides that no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Labor Code section 6403 provides that no employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6409.6(a)(1) provides that “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

In early 2020, COVID-19 spread rapidly throughout California, affecting the health and safety of thousands of individuals, especially hourly paid employees in the workplace. Recognizing the severity of the COVID-19 pandemic, in or around March of 2020, Governor Gavin Newsom issued a

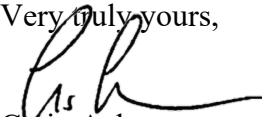
stay at home order to protect the health and well-being of all Californians to slow the spread of COVID-19. Moreover, in recognizing the severity of COVID-19, the Legislature passed Labor Code section 6409.6 which provides procedures for employers to follow if there is potential exposure to COVID-19.

Upon information and belief, at all relevant times, Defendants failed to provide Plaintiffs, Class Members, and/or other aggrieved current and former non-exempt employees with a reasonably safe place of employment by failing to provide and use safeguards reasonably adequate to render the place of employment safe during their employment in the COVID-19 pandemic as required by the Labor Code. For example, Defendants failed to ask Plaintiffs, Class Members, and/or other aggrieved current and former non-exempt employees whether they had fever or COVID-19 symptoms or if they had been exposed to anyone who exhibited COVID-19 symptoms, during their shifts. Such measures, if adopted, would have enhanced the safety and well-being of employees at Defendants' locations. As such, Defendants did not take actions, reasonably necessary to protect the life, safety, and health of Plaintiffs, Class Members, and/or other aggrieved current and former non-exempt employees.

Therefore, pursuant to Labor Code § 2699.3, the foregoing is to update you and the Labor and Workforce Development Agency about the additional facts and information and/or points of clarification set forth above.

If you have any questions, please do not hesitate to call.

Very truly yours,



Craig Ackermann

Enclosure (Exhibit A)

cc: Tatiana Hernandez (by email)
Jonathan Durham (by email)
Ned B. Ng (by email)
Jonathan Melmed (by email)
Douglas Han (by email)
Shunt Tatayos-Gharajeh (by email)
Chancellor D. Nobles (by email)

EXHIBIT A



Employer Name: BMC WEST LLC
Employer ID: 9194311000
Phone:
Employer Address: 4800 Falls of Neuse Rd, Suite 400
 Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
 Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 4/30/2021
Pay Period: 4/17/2021 - 4/23/2021
Deposit Advice #: 391547508
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

	Current 4/17/2021 - 4/23/2021			YTD As of 4/23/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	91.81		\$2,314.63	812.97	\$19,060.67
Regular	40.00	23.0000	\$920.00	351.00	\$6,925.00
Overtime	11.00	34.5000	\$379.50	153.00	\$4,468.50
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$57.38		\$612.92
Rest - CA	2.50			24.00	
CA Ins Inc	38.31	25.0000	\$957.75	266.97	\$6,674.25
Memo Information			\$46.30		\$389.83
401K ER Match			\$46.30		\$381.25
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$92.59		\$762.44
401K %			\$92.59		\$762.44
Taxes			\$379.22		\$2,929.49
Fed W/H			\$94.14		\$713.09
SO SEC TAX EE			\$143.51		\$1,181.76
MEDICARE TAX EE			\$33.56		\$276.38
CA W/H			\$80.24		\$529.53
CA DT EE			\$27.77		\$228.73
	Routing #	Account #	Amount		Amount
Net Pay			\$1,842.82		\$15,368.74
Direct Deposit	121000358	XXXXXXXXX6266	\$1,842.82		

Accruals & Balances

Sick Balance:	10.52 Hours	Sick Accrued:	1.90 Hours
Emergency Sick California Balance:	80.00 Hours		



Employer Name: BMC WEST LLC
Employer Phone: 9194311000
Employer Address: 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 4/30/2021
Pay Period: 4/17/2021 - 4/23/2021
Deposit Advice #: 391547508
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

Supplemental Earnings Statement					
Earnings	Begin Date	End Date	Hours/Units	Rate	Amount
FLSA Overtime	4/17/2021	4/23/2021			\$57.38
CA Ins Inc	4/17/2021	4/23/2021	38.31	25.0000	\$957.75



Employer Name: BMC WEST LLC
Employer: 9194311000
Phone:
Employer Address: 4800 Falls of Neuse Rd, Suite 400
 Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
 Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 4/23/2021
Pay Period: 4/10/2021 - 4/16/2021
Deposit Advice #: 389777319
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

	Current 4/10/2021 - 4/16/2021			YTD As of 4/16/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	57.04		\$1,444.64	721.16	\$16,746.04
Regular	24.00	23.0000	\$552.00	311.00	\$6,005.00
Overtime	7.00	34.5000	\$241.50	142.00	\$4,089.00
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$37.64		\$555.54
Rest - CA	1.50			21.50	
CA Ins Inc	24.54	25.0000	\$613.50	228.66	\$5,716.50
Memo Information			\$28.90		\$343.53
401K ER Match			\$28.90		\$334.95
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$57.79		\$669.85
401K %			\$57.79		\$669.85
Taxes			\$148.90		\$2,550.27
Fed W/H					\$618.95
SO SEC TAX EE			\$89.56		\$1,038.25
MEDICARE TAX EE			\$20.95		\$242.82
CA W/H			\$21.05		\$449.29
CA DT EE			\$17.34		\$200.96
	Routing #	Account #	Amount		Amount
Net Pay			\$1,237.95		\$13,525.92
Direct Deposit	121000358	XXXXXXXXX6266	\$1,237.95		

Accruals & Balances	
Sick Balance:	8.62 Hours
Emergency Sick California Balance:	80.00 Hours



Employer Name: BMC WEST LLC
Employer Phone: 9194311000
Employer Address: 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 4/23/2021
Pay Period: 4/10/2021 - 4/16/2021
Deposit Advice #: 389777319
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

Supplemental Earnings Statement					
Earnings	Begin Date	End Date	Hours/Units	Rate	Amount
FLSA Overtime	4/10/2021	4/16/2021			\$37.64
CA Ins Inc	4/10/2021	4/16/2021	24.54	25.0000	\$613.50



Employer Name: BMC WEST LLC

Employer Phone: 9194311000

Employer Address: 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 5/7/2021
Pay Period: 4/24/2021 - 4/30/2021
Deposit Advice #: 393050732
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

	Current 4/24/2021 - 4/30/2021			YTD As of 4/30/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	73.65		\$1,840.87	886.62	\$20,901.54
Regular	40.00	23.0000	\$920.00	391.00	\$7,845.00
Overtime	11.00	34.5000	\$379.50	164.00	\$4,848.00
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$37.62		\$650.54
Rest - CA	2.50			26.50	
CA Ins Inc	20.15	25.0000	\$503.75	287.12	\$7,178.00
Memo Information			\$36.82		\$426.65
401K ER Match			\$36.82		\$418.07
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$73.63		\$836.07
401K %			\$73.63		\$836.07
Taxes			\$228.90		\$3,158.39
Fed W/H			\$21.49		\$734.58
SO SEC TAX EE			\$114.14		\$1,295.90
MEDICARE TAX EE			\$26.69		\$303.07
CA W/H			\$44.49		\$574.02
CA DT EE			\$22.09		\$250.82
	Routing #	Account #	Amount		Amount
Net Pay			\$1,538.34		\$16,907.08
Direct Deposit	121000358	XXXXXXXXX6266	\$1,538.34		

Accruals & Balances			
Sick Balance:	13.58 Hours	Sick Accrued:	3.06 Hours
Emergency Sick California Balance:	80.00 Hours		



Employer Name: BMC WEST LLC
Employer Phone: 9194311000
Employer Address: 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 5/7/2021
Pay Period: 4/24/2021 - 4/30/2021
Deposit Advice #: 393050732
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0.00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

Supplemental Earnings Statement

Earnings	Begin Date	End Date	Hours/Units	Rate	Amount
FLSA Overtime	4/24/2021	4/30/2021			\$37.62
CA Ins Inc	4/24/2021	4/30/2021	20.15	25.0000	\$503.75

**Chavez Franco, Gustavo** - 682671

8794- Scaffold Builder

8794 - California Stucco - 8794 - California Stucco

Active

BMC Construction Services

Manager



Billa, Robert J

8794- Operations Manager I

Earnings

Statements BMC WEST LLC - #394603920 5/14/2021

Print Statement

Summary

**Employer** BMC WEST LLC**Name:** 9194311000**Phone:****Employer Address:** 4800 Falls of Neuse Rd, Suite 400
Raleigh, NC 27609**Employee Name:** Gustavo Chavez Franco**Employee #:** 682671**Employee Address:** 11159 Virginia Ave

Lynwood, CA 90262

Department: 8794 - California Stucco**Site:** 8794 - California Stucco**Pay Date:** 5/14/2021**Pay Period:** 5/1/2021 - 5/7/2021**Deposit Advice #:** 394603920**Pay Frequency:** Weekly**Pay Rate:** 23.0000**Federal Filing Status:** Married**Federal 2c/Extra** No/\$0.00**Withholding:****State Filing Status:** Married; Alt Code 01

(CA)

State Exemptions: 4 (CA)

	Current			YTD	
	5/1/2021 - 5/7/2021			As of 5/7/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	95.78		\$2,469.44	982.40	\$23,370.98
Regular	40.00	23.0000	\$920.00	431.00	\$8,765.00
Overtime	15.00	34.5000	\$517.50	179.00	\$5,365.50
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$74.94		\$725.48
Rest - CA	2.50			29.00	
CA Ins Inc	38.28	25.0000	\$957.00	325.40	\$8,135.00
Memo Information			\$49.39		\$476.04
401K ER Match			\$49.39		\$467.46
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$98.78		\$934.85
401K %			\$98.78		\$934.85
Taxes			\$438.69		\$3,597.08
Fed W/H			\$126.83		\$861.41
SO SEC TAX EE			\$153.10		\$1,449.00
MEDICARE TAX EE			\$35.81		\$338.88
CA W/H			\$93.32		\$667.34
CA DT EE			\$29.63		\$280.45
	Routing #	Account #	Amount		Amount
Net Pay			\$1,931.97		\$18,839.05
Direct Deposit	121000358	XXXXXXXX6266	\$1,931.97		

Accruals & Balances			
Sick Balance:	16.03 Hours	Sick Accrued:	2.46 Hours
Emergency Sick California Balance:	80.00 Hours		



Chavez Franco, Gustavo • 682671
 8794- Scaffold Builder
 8794 - California Stucco • 8794 - California Stucco
 Active BMC Construction Services

Manager



Billa, Robert J
 8794- Operations Manager f

Earnings

Statements BMC WEST LLC - #396096333 5/21/2021

5/21/2021 Summary



Employer BMC WEST LLC
Name:
Employer 9194311000
Phone:
Employer 4800 Falls of Neuse Rd, Suite
Address: 400
 Raleigh, NC 27609

Employee Name: Gustavo Chavez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
 Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 5/21/2021
Pay Period: 5/8/2021 - 5/14/2021
Deposit Advice #: 396096333
Pay Frequency: Weekly
Pay Rate: 23,0000
Federal Filing Status: Married
Federal 2c/Extra Withholding: No/\$0,00
State Filing Status: Married; Alt Code 01 (CA)
State Exemptions: 4 (CA)

	Current 5/8/2021 - 5/14/2021			YTD As of 5/14/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	89.06		\$2,203.30	1,071.46	\$25,574.28
Regular	40.00	23.0000	\$920.00	471.00	\$9,665.00
Overtime	8.00	34.5000	\$276.00	187.00	\$5,641.50
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$43.30		\$768.78
Rest - CA	2.50			31.50	
CA Ins Inc	38.56	25.0000	\$964.00	363.96	\$9,099.00
Memo Information			\$44.07		\$520.11
401K ER Match			\$44.07		\$511.53
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$88.13		\$1,022.98
401K %			\$88.13		\$1,022.98
Taxes			\$336.47		\$3,933.55
Fed W/H			\$70.63		\$932.04
SO SEC TAX EE			\$136.61		\$1,585.61
MEDICARE TAX EE			\$31.95		\$370.83
CA W/H			\$70.84		\$738.18
CA DT EE			\$26.44		\$306.89
	Routing #	Account #	Amount		Amount
Net Pay			\$1,778.70		\$20,617.75
Direct Deposit	121000358	XXXXXXXXX6266	\$1,778.70		

Accruals & Balances			
Sick Balance:	19.23 Hours	Sick Accrued:	3.19 Hours
Emergency Sick California	80.00 Hours		
Balance:			



Chavez Franco, Gustavo - 682671
 8794- Scaffold Builder
 8794 - California Stucco • 8794 - California Stucco
 Active BMC Construction Services

Manager Billa, Robert J
 8794- Operations Manager I

Earnings

Statements BMC WEST LLC - #397713334 5/28/2021

Summary



Employer BMC WEST LLC
Name:
Employer 9194311000
Phone:
Employer 4800 Falls of Neuse Rd, Suite
Address: 400
 Raleigh, NC 27609

Employee Name: Gustavo Chávez Franco
Employee #: 682671
Employee Address: 11159 Virginia Ave
 Lynwood, CA 90262
Department: 8794 - California Stucco
Site: 8794 - California Stucco

Pay Date: 5/28/2021
Pay Period: 5/15/2021 -
 5/21/2021
 397713334
Deposit Advice #:
Pay Frequency: Weekly
Pay Rate: 23.0000
Federal Filing Status: Married
Federal 2c/Extra No/\$0.00
Withholding:
State Filing Status: Married; Alt Code 01
 (CA)
State Exemptions: 4 (CA)

	Current			YTD	
	5/15/2021 - 5/21/2021			As of 5/21/2021	
	Hours/Units	Rate	Amount	Hours/Units	Amount
Earnings	45.74		\$1,160.76	1,117.20	\$26,735.04
Regular	24.00	23.0000	\$552.00	495.00	\$10,237.00
Overtime	8.00	34.5000	\$276.00	195.00	\$5,917.50
Sick				16.00	\$304.00
Double Time				2.00	\$76.00
FLSA Overtime			\$26.76		\$795.54
Rest - CA	1.50			33.00	
CA Ins Inc	12.24	25.0000	\$306.00	376.20	\$9,405.00
Memo Information			\$23.22		\$543.33
401K ER Match			\$23.22		\$534.75
BLIFR					\$7.41
ADDR					\$1.17
Pre-Tax Deductions			\$46.43		\$1,069.41
401K %			\$46.43		\$1,069.41
Taxes			\$111.78		\$4,045.33
Fed W/H					\$932.04
SO SEC TAX EE			\$71.96		\$1,657.57
MEDICARE TAX EE			\$16.83		\$387.66
CA W/H			\$9.06		\$747.24
CA DT EE			\$13.93		\$320.82
Net Pay	Routing #	Account #	Amount		Amount
Direct Deposit	121000358	XXXXXXXX6266	\$1,002.55		\$21,620.30
			\$1,002.55		

Accruals & Balances			
Sick Balance:	22.19 Hours	Sick Accrued:	2.97 Hours
Emergency Sick California	80.00 Hours		
Balance:			