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Sacramento
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By _____ Deputy
Case Number:
34-2021-00306482

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

CLEMENTE SANABIA, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

GP DEVELOPMENT, INC, a California
Corporation, GARY PERKINS, an individual
and DOES 1-10, inclusive,

Defendants.

Case No.: 34-2021-00306482-CU-OE-GDS

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

1. VIOLATIONS OF PREVAILING WAGE LAWS ON PUBLIC WORKS PROJECTS;
2. FAILURE TO PAY MINIMUM AND OVERTIME WAGES;
3. FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
4. FAILURE TO FURNISH ACCURATE, ITEMIZED WAGE STATEMENTS;
5. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS;
6. FAILURE TO TIMELY PAY WAGES OWED DURING EMPLOYMENT;
7. FAILURE TO PAY ALL WAGES OWED UPON TERMINATION;
8. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 et seq.; and

**9. PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (“PAGA”)**

DEMAND FOR JURY TRIAL

Plaintiff Clemente Sanabia (hereinafter “Plaintiff”), by and through his attorneys of record, brings this action on behalf of himself and all others similarly situated, against Defendants GP Development, Inc. and Gary Perkins (collectively, “Defendants”) on the following grounds:

INTRODUCTION

1. This class and representative action is brought on behalf of all current and former nonexempt employees of Defendants in the state of California.

2. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of violating the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order.

3. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased their profits by violating state wage and hour laws by, among other things:

- a. Failing to comply with prevailing wage laws on public works projects;
- b. Failing to pay the applicable minimum and overtime rate for all work performed;
- c. Failing to reimburse employees for costs incurred in purchasing necessary tools and equipment;
- d. Failing to provide employees with accurate, itemized wage statements reflecting, among other things, the applicable rate of pay in effect and the corresponding number of hours worked;
- e. Failing to maintain accurate employment records for all employees;
- f. Failing to timely pay all wages owed during the course of employment; and
- g. Failing to pay all wages owed upon termination of employment.

4. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of

1 himself and all others similarly situated to recover, among other things, unpaid wages and benefits,
2 interest, statutory damages, attorneys' fees and litigation costs.

3 5. All allegations in this complaint are based upon information and belief, except for
4 those allegations that specifically pertain to Plaintiff, which are based upon his own personal
5 knowledge. Each allegation in this complaint has evidentiary support or is likely to have evidentiary
6 support after a reasonable opportunity for further investigation and discovery.

7 **JURISDICTION AND VENUE**

8 6. Pursuant to California Code of Civil Procedure § 382 and Business and Professions
9 Code § 17203, Plaintiff brings this action on behalf of himself, and on behalf of all persons within
10 the Class, as defined below.

11 7. The Court has jurisdiction over this action pursuant to California Code of Civil
12 Procedure § 410.10. Defendants are licensed to do business, and are actually doing business, in the
13 state of California. The amount in controversy, exclusive of interest, costs, and attorneys' fees,
14 exceeds the minimum jurisdictional amount for this Court.

15 8. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 395
16 and 395.5 because many of the acts, conduct, and events alleged herein occurred in this county.
17 Defendants transact business in Sacramento County, and are otherwise within this Court's
18 jurisdiction for purposes of service of process.

19 **THE PARTIES**

20 9. Plaintiff Clemente Sanabia is, and at all times relevant to this complaint was, an adult
21 individual residing in Sacramento County, in the state of California. Plaintiff was employed by
22 Defendants to perform construction work in an hourly, nonexempt capacity.

23 10. Defendant GP Development, Inc. is a commercial construction company that is
24 headquartered in Roseville, California. According to its website, the company provides construction-
25 related services throughout Northern California. (See <https://gpdevelopmentcorp.com/>.)

26 11. Plaintiff is informed and believes, and thereon alleges, that Defendant GP
27 Development, Inc. is, and at all times relevant to this complaint was, a California corporation doing
28 business in the state of California and in the county of Sacramento.

1 12. Plaintiff is informed and believes, and thereon alleges, that Defendant Gary Perkins
2 is, and at all times relevant to this complaint was, an individual residing in and conducting business
3 in the state of California. Defendant Perkins is the chief executive officer and a managing agent of
4 Defendant GP Development, Inc. Among other things, Defendant Perkins is responsible for
5 implementing company-wide policies and practices and was responsible for directing the work of
6 Plaintiff and other nonexempt employees. As a result, Plaintiff contends that Defendant Perkins
7 directly causes the violations alleged herein.

8 13. Plaintiff is informed and believes, and thereon alleges, that Defendants, at all times
9 relevant to this complaint, were and are employers as defined in and subject to the Labor Code and
10 applicable IWC Wage Order, whose employees were and are engaged throughout this county and
11 the state of California.

12 14. The true names and capacities, whether individual, corporate, subsidiary, partnership,
13 associate, or otherwise of Doe Defendants 1 through 10, are unknown to Plaintiff, who therefore
14 sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff
15 will amend his complaint to allege the true names and capacities of Does 1 through 10 when they
16 are ascertained.

17 15. At all times relevant to this complaint, acts alleged to have been done by Defendants
18 are also alleged to have been done by the unascertained defendants mentioned above, and by each
19 of their agents and employees who acted within the scope of their agency and/or employment.

20 16. At all times relevant to this complaint, the acts and omissions of each of the
21 defendants concurrently contributed to the various acts and omissions of each and every one of the
22 other defendants in proximately causing the wrongful conduct, harm, and damages alleged herein.
23 Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of the
24 acts or omissions complained of herein.

25 **GENERAL FACTUAL ALLEGATIONS**

26 17. Plaintiff was employed by Defendants as an hourly, nonexempt general laborer from
27 September 1996 until December 11, 2020, when he was purportedly laid off due to a lack of available
28 construction work.

1 18. Plaintiff alleges that throughout the course of his employment, Defendants routinely
2 bid on, and were awarded, contracts to perform work on public works projects. Such contracts
3 include work on facilities owned or operated by the Department of Social Services, the Department
4 of Public Health and the Department of Consumer Affairs, among others. On information and belief,
5 Plaintiff alleges that at all times relevant, the value of the contracts Defendants were awarded
6 exceeded \$1,000.

7 19. Under California law, Defendants were required to pay employees who performed
8 work under a public works contract the applicable prevailing wage for the work performed, and to
9 maintain accurate payroll records, showing the name, address, social security number, work
10 classification, straight time and overtime hours worked, and the actual per diem wages paid to each
11 employee employed by them in connection with the public work.

12 20. Plaintiff contends that Defendants knew they were required to pay the prevailing
13 wage on such projects, and not only failed to do so, but often instructed Plaintiff and other
14 nonexempt employees to record the time they spent working on public works projects under other
15 projects. Indeed, Plaintiff's payroll records show that he was paid the same hourly rate regardless of
16 whether he performed work under a public works contract, and at all times relevant, that rate was
17 below the applicable prevailing wage for the work performed. Plaintiff only learned that he should
18 have been paid the prevailing wage when subcontractors working on the same public works project
19 advised him of such.

20 21. As a result of Defendants' unlawful policies and practices, Plaintiff and other
21 nonexempt employees were deprived of regular and overtime wages they were entitled to as a matter
22 of law.

23 22. Plaintiff further contends that Defendants failed to provide him and other employees
24 with the power tools that were necessary to perform various construction-related tasks, including
25 drills and saws. Although Defendants implemented a written tool policy in September 2017, the
26 policy is facially unlawful because it purports to make employees liable for *any* loss or damage of a
27 company-owned tool. In this regard, the policy serves only to encourage employees to purchase and
28 use their own tools. Plaintiff alleges that Defendants knew that employees were using their own

1 hand and power tools, but failed to reimburse them for a reasonable percentage of the cost of such
2 tools.

3 23. Plaintiff alleges that as a result of Defendants' failure to pay their employees the
4 applicable prevailing wage for work performed under public works projects, the timekeeping and
5 payroll records Defendants are required to maintain, as well as the wage statements that were
6 provided to nonexempt employees, do not comply with California law because they do not
7 accurately reflect the gross and net wages earned, or all applicable hourly rates in effect during the
8 pay period and the corresponding number of hours worked at each hourly rate. On information and
9 belief, Plaintiff further alleges that Defendants violate the recordkeeping requirements set forth in
10 Labor Code § 1776 because their payroll records either do not contain a written declaration made
11 under penalty of perjury stating that they have complied with California's prevailing wage laws or
12 they misrepresent Defendants' compliance with such.

13 24. When Defendants terminated Plaintiff's employment on December 11, 2020, he was
14 paid for the hours he worked during the pay period. However, as of the date of this complaint, he
15 has not been paid the prevailing wages and overtime wages that he is entitled to. On information and
16 belief, Plaintiff alleges that Defendants have also failed to pay other former nonexempt employees
17 all wages owed to them at the time their employment with the company was terminated.

18 **PAGA ALLEGATIONS**

19 25. Plaintiff is an aggrieved employee as defined in Labor Code § 2699(c). He brings this
20 action, in part, on behalf of himself, other current and former employees affected by the wage and
21 hour violations alleged in this complaint, and the state of California.

22 26. Defendants, at all relevant times to this complaint, were employers or persons acting
23 on behalf of an employer, who violated Plaintiff's and other aggrieved employees' rights by
24 violating the Labor Code, and as such, are subject to civil penalties provided for under the Private
25 Attorneys General Act of 2004, Labor Code § 2698 et seq. ("PAGA").

26 27. Defendants committed the following violations of the Labor Code against Plaintiff,
27 and on that information and belief, against other current and former employees while they were
28 employed by Defendants:

- a. Defendants violated Labor Code §§ 1771, 1774 and 1776 by failing to pay their employees the applicable prevailing wage for work performed on public works projects.
- b. Defendants violated Labor Code §§ 510, 558, 1194, 1197, 1811 and 1815 by failing to pay employees the applicable minimum wage for regular hours and at one and one-half times their regular rate of pay for all hours worked in excess of eight hours in a workday and 40 hours in a workweek.
- c. Defendants violated Labor Code § 2802 by failing to reimburse employees for expenditures necessarily incurred in the discharge of their duties, including power tools and equipment.
- d. Defendants violated Labor Code § 226(a) by failing to provide Plaintiff and other nonexempt employees with itemized wage statements that accurately reflected, among other things, the total hours worked, all applicable hourly rates during the pay period and the corresponding number of hours worked, and the gross wages earned by each employee.
- e. Defendants violated Labor Code §§ 226.3, 1174 and 1812 by failing to maintain accurate employment records for their nonexempt employees, including but not limited to the actual hours worked each calendar day and each calendar week in connection with public works projects.
- f. Defendants violated Labor Code § 204 by routinely failing to pay employees their earned wages on days designated in advance by the company as the regular paydays.
- g. Defendants violated Labor Code §§ 201-203 by failing to timely pay all wages owed to employees who resigned or who were terminated from their employment.

28. On July 16, 2021, Plaintiff notified the Labor and Workforce Development Agency (“LWDA”) of his intent to assert the rights granted to him under PAGA. The notice, which was submitted electronically through the LWDA’s website, also set forth the specific violations alleged

1 and the facts and theories supporting those violations. A copy was simultaneously sent by certified
2 mail to Defendants through their agent for service of process. A true and correct copy of the notice
3 is attached as **Exhibit 1** and is hereby incorporated by reference.

4 29. The LWDA had until September 19, 2021 to provide notice of whether it intended to
5 investigate the violations Plaintiff alleges. As of the date of this complaint, the LWDA has not
6 provided such notice. Accordingly, Plaintiff files this action in his representative capacity as
7 permitted under Labor Code § 2699.3(a)(2)(A).

8 **CLASS ACTION ALLEGATIONS**

9 30. Plaintiff brings this action behalf of himself and on behalf of all others similarly
10 situated, and therefore seeks class certification under Code of Civil Procedure § 382.

11 31. Plaintiff's proposed Class is defined as follows:

12 All current and former nonexempt employees who were employed by
13 Defendants in the state of California during the four years immediately
preceding the filing of this action through the present.

14 32. Members of the Class described above will be collectively referred to as "class
15 members." Plaintiff reserves the right to establish other or additional subclasses, or modify any
16 Class or Subclass definition, as appropriate based on investigation, discovery and specific theories
17 of liability.

18 33. This action has been brought and may properly be maintained as a class action
19 because there are common questions of law and fact as to the Class that predominate over questions
20 affecting only individual members, including, but not limited to:

- 21 a. Whether Defendants violated California law by failing to pay Plaintiff and
22 other class members the prevailing rate on public works projects;
- 23 b. Whether Defendants failed to pay Plaintiff and other class members the
24 applicable minimum and overtime rate for all hours worked;
- 25 c. Whether Defendants failed to reimburse employees for reasonable expenses
26 necessarily incurred in the discharge of their duties;
- 27 d. Whether Defendants failed to provide Plaintiff and other class members
28 accurate, itemized wage statements as required under California law;

- e. Whether Defendants maintained accurate employment records, including timekeeping and payroll records, as required under California law;
- f. Whether Defendants violated Labor Code § 204 by failing to timely pay employees their earned wages on days designated in advance by the company as the regular paydays;
- g. Whether Defendants failed to provide Plaintiff and other members of the Class all wages due upon termination or within 72 hours of resignation;
- h. Whether Defendants' conduct was willful or reckless;
- i. Whether Defendants engaged in unfair business practices in violation of Business and Professions Code § 17200 et seq.;
- j. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- k. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

34. There is a well-defined community of interest in this litigation and the Class is readily ascertainable:

- a. **Numerosity**: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 40 individuals. The identity of the class members is readily ascertainable by inspection of Defendants' employment and payroll records.
- b. **Typicality**: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

- 1 c. **Adequacy:** Plaintiff is qualified to represent the Class and is ready and
2 willing to take the time necessary to help prosecute this case. Plaintiff has no
3 conflicts that will prevent him from fairly and adequately representing and
4 protecting the interests of the Class. In addition, Plaintiff's attorneys, as
5 proposed class counsel, are competent and experienced in litigating
6 employment class actions and are versed in the rules governing class action
7 discovery, certification and settlement. Plaintiff has incurred and will
8 continue to incur attorneys' fees and costs for the prosecution of this action
9 for the substantial benefit of each class member.
- 10 d. **Superiority:** The nature of this action makes class action adjudication
11 superior to other methods because individual joinder of all class members is
12 impractical. A class action will achieve economies of time, effort and expense
13 as compared to a series of separate lawsuits, and will avoid inconsistent
14 outcomes because the same issues can be adjudicated in the same manner and
15 at the same time for each class member. If appropriate, this Court is
16 empowered to fashion methods to efficiently manage this case as a class
17 action.
- 18 e. **Public Policy Considerations:** California employers violate employment
19 and labor laws every day. Current employees are often afraid to assert their
20 rights out of fear of direct or indirect retaliation. Former employees are fearful
21 of bringing actions because they believe their former employers might
22 damage their future endeavors through negative references or other means.
23 Class actions provide the class members who are not named in the complaint
24 with a type of anonymity that allows for the vindication of their rights at the
25 same time as affording them privacy protections.

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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Violations of Prevailing Wage Laws on Public Works Projects**

4 **(By the Class Against All Defendants)**

5 35. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
6 though fully set forth herein.

7 36. Labor Code § 1771 provides, in part:

8 Except for public works projects of one thousand dollars (\$1,000) or
9 less, not less than the general prevailing rate of per diem wages for
10 work of a similar character in the locality in which the public work is
11 performed, and not less than the general prevailing rate of per diem
wages for holiday and overtime work fixed as provided in this chapter,
shall be paid to all workers employed on public works.

12 37. Similarly, Labor Code § 1774 states, “The contractor to whom the contract is
13 awarded, and any subcontractor under him [or her], shall pay not less than the specified prevailing
14 rates of wages to all workmen employed in the execution of the contract.” Labor Code § 1722.1
15 makes it clear that “contractor” includes any “contractor, subcontractor, licensee, officer, agent, or
16 representative thereof, acting in that capacity, when working on public works.”

17 38. Under Labor Code § 1720, the term “public works” is defined to include, among
18 other things, construction, alteration, demolition, installation, or repair work done under contract
19 and paid for, in whole or in part, out of public funds. This includes work performed during the pre-
20 construction and post-construction phases of construction, such as design work, site assessments,
21 and cleanup work at the jobsite.

22 39. In addition to strict reporting requirements, Labor Code § 1776 requires contractors
23 to maintain accurate payroll records, showing the name, address, social security number, work
24 classification, straight time and overtime hours worked each day and week, and the actual per diem
25 wages paid to each employee employed by him or her in connection with the public work.

26 40. Labor Code § 223 states, “Where any statute or contract requires an employer to
27 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
28 purporting to pay the wage designated by statute or by contract.”

41. At all times relevant to this complaint, Defendants were contracted to provide construction services on public works projects that exceeded \$1,000, including contract work for the Department of Social Services, Department of Public Health and Department of Consumer Affairs. However, in violation of Labor Code §§ 1771 and 1776, Defendants consistently failed to pay Plaintiff and other members of the Class the applicable prevailing rate for the work performed.

42. Plaintiff alleges Defendants knew that they were required to pay the prevailing rate on such projects but instructed employees to record the time they spent working on public works projects under other projects. As a result of their policies and practices, Defendants violate Labor Code § 1776 because they fail to maintain accurate employment records for each employee employed in connection with a public work and either fail to report, or misrepresent, that they have complied with the requirements of Labor Code § 1771 for any work performed by their employees on public works projects.

43. Plaintiff further alleges that Defendants' unlawful business practices allow the company to secure lucrative public works projects by underbidding. Indeed, law abiding contractors have not been able to compete fairly with Defendants, who have been able to submit lower bids due to their illegal cost-saving practices.

44. Plaintiff and the Class have suffered injuries as a result of Defendants' violations of Labor Code §§ 1771, 1774 and 1776 in an amount to be determined at trial. In addition, Plaintiff has incurred costs and attorneys' fees in bringing this action and is entitled to seek, and hereby does seek, to recover such costs under Labor Code § 218.5.

SECOND CAUSE OF ACTION

Failure to Pay Minimum and Overtime Wages

(By the Class Against All Defendants)

45. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as though fully set forth herein.

46. Under Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than

1 the minimum so fixed is unlawful.”

2 47. Pursuant to Labor Code §§ 510, 1811, 1815 and section 3(A) of IWC Wage Order
3 No. 16, any work in excess of eight hours in a workday and any work in excess of 40 hours in a
4 workweek must be compensated at the rate of no less than one and one-half times the employee’s
5 regular rate of pay.

6 48. Under California law, when an employee earns different hourly rates for different
7 types of work during the same workweek, the employee’s regular rate is calculated using the
8 weighted average of the two rates.

9 49. Labor Code § 1194(a) provides:

10 Notwithstanding any agreement to work for a lesser wage, any
11 employee receiving less than the legal minimum wage or the legal
12 overtime compensation applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest thereon,
reasonable attorney’s fees, and costs of suit.

14 50. In addition, Labor Code § 1194.2(a) states, in part:

15 In any action under Section 98, 1193.6, 1194, or 1197.1 to recover
16 wages because of the payment of a wage less than the minimum wage
17 fixed by an order of the commission or by statute, an employee shall
be entitled to recover liquidated damages in an amount equal to the
18 wages unlawfully unpaid and interest thereon.

19 51. Finally, pursuant to Labor Code 1197.1(a), “Any employer or other person acting
20 either individually or as an officer, agent, or employee of another person, who pays or causes to be
21 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
22 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
damages payable to the employee”

23 52. Plaintiff alleges that Defendants’ failure to pay their employees prevailing wages for
24 work performed on public works projects violates Labor Code § 1197 because employees are not
25 paid the applicable minimum wage for the work performed, i.e., the prevailing rate. In addition, any
26 overtime that employees work during a workweek in which they also performed work on a public
27 works project is compensated at less than one and one-half times the employee’s regular rate of pay
28 in violation of Labor Code §§ 510 and 558, as well as IWC Wage Order No. 16, § 3(A).

1 53. Defendants’ unlawful conduct, which is tantamount to wage theft, has deprived, and
2 continues to deprive, nonexempt employees of wages owed to them. As such, Plaintiff and the other
3 members of the Class are entitled to recover unpaid wages and liquidated damages, as well as
4 reasonable attorneys’ fees and costs of suit.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Reimburse Necessary Business Expenses**

7 **(By the Class Against All Defendants)**

8 54. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
9 though fully set forth herein.

10 55. Labor Code § 2802 provides that “an employer shall indemnify his or her employees
11 for all necessary expenditures or losses incurred by the employee in direct consequence of the
12 discharge of his or her duties, or of his or obedience to the directions of the employer.”

13 56. Section 2802 is subject to an anti-waiver provision. Specifically, Labor Code § 2804
14 states in relevant part, that “[a]ny contract or agreement, express or implied, made by any employee
15 to waive the benefits of this article or any part thereof, is null and void.”

16 57. Section 8(B) of IWC Wage Order No. 16 provides, “When the employer requires the
17 use of tools or equipment or they are necessary for the performance of a job, such tools and
18 equipment shall be provided and maintained by the employer, except that an employee whose wages
19 are at least two (2) times the minimum wage may provide and maintain hand tools and equipment
20 customarily required by the particular trade or craft in conformity with Labor Code Section 2802.”
21 The IWC has made it clear that “[t]his exception is quite narrow and is limited to hand (as opposed
22 to power) tools and personal equipment, such as tool belts or tool boxes, that are needed by the
23 employee to secure those hand tools.” *See* IWC Statement as to the Basis for Wage Order No. 16.

24 58. Under California law, employers have a duty of due diligence to determine whether
25 or not employees have incurred expenses in the discharge of their duties, and to reimburse them for
26 any necessary expenses. *See Stuart v. RadioShack* (N.D. Cal. 2009) 641 F.Supp.2d 901. The
27 California Supreme Court has made it clear that the purpose of Labor Code § 2802 is “to prevent
28 employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks*

1 *Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.

2 59. Despite the clear language of Labor Code § 2802, and despite knowing that Plaintiff
3 and other class members routinely incur expenses associated with purchasing and maintaining the
4 power tools that are necessary to carry out their job duties, as a matter of policy and practice,
5 Defendants do not reimburse class members for such expenses. As such, Defendants violate Labor
6 Code § 2802 by forcing Plaintiff and the other members of the Class to bear the company's operating
7 costs. *See Gattuso v. Harte-Hanks Shoppers, Inc., supra*, 42 Cal. 4th at 562.

8 60. Under Labor Code § 2802, subdivision (b)-(c), Plaintiff and the other members of the
9 Class are entitled to recover the full amount of the expenses incurred, interest thereon, reasonable
10 attorneys' fees, and costs of suit.

11 **FOURTH CAUSE OF ACTION**

12 **Failure to Furnish Accurate, Itemized Wage Statements**

13 **(By the Class Against All Defendants)**

14 61. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
15 though fully set forth herein.

16 62. Under Labor Code § 226(a), an employer must provide an accurate itemized
17 statement in writing showing, among other things, the gross wages earned, the total hours worked
18 by the employee, the inclusive dates of the period for which the employee is paid, the name and
19 address of the legal employer, and all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 63. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing
22 and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater of
23 all actual damages or statutory penalties in the amount of \$50 for the initial pay period in which a
24 violation occurs and \$100 for each violation in a subsequent pay period, up to a maximum amount
25 of \$4,000.

26 64. Injury occurs where the employer fails to provide accurate information and the
27 employee cannot promptly and easily determine the total number of hours worked or the applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each

1 hourly rate. Labor Code §§ 226(e)(2)(A)-(B).

2 65. Labor Code § 226(e)(2)(C) explains that the phrase “promptly and easily determine”
3 means that “a reasonable person would be able to readily ascertain the information without reference
4 to other documents or information.”

5 66. The wage statements Defendants provide to their employees do not comply with
6 California law because they do not accurately reflect the total hours worked, the applicable hourly
7 rates and the corresponding number of hours worked, and the gross wages earned by each employee.
8 Moreover, Plaintiff and members of the putative class are unable to ascertain whether or not they
9 were paid for all work performed without referencing other documents or outside information.

10 67. The wage statements Defendants provide to their employees do not comply with
11 California law because they do not accurately reflect the total hours worked, the applicable hourly
12 rates and the corresponding number of hours worked, and the gross wages earned by each employee.
13 Moreover, Plaintiff and members of the putative class are unable to ascertain whether or not they
14 were paid for all work performed without referencing other documents or outside information.

15 68. Defendants’ unlawful policies and practices, as alleged herein, violate Labor Code §
16 226(a) and entitle Plaintiff and the Class to recover statutory damages in the amount of \$50 for the
17 initial violation and \$100 for each subsequent violation, up to a maximum of \$4,000, as well as
18 reasonable attorneys’ fees and costs.

19 **FIFTH CAUSE OF ACTION**

20 **Failure to Maintain Accurate Employment Records**

21 **(By the Class Against All Defendants)**

22 69. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
23 though fully set forth herein.

24 70. Pursuant to Labor Code § 226.3, California employers are required to maintain
25 accurate records of the information set forth in § 226(a), including all applicable hourly rates in
26 effect during the pay period and the corresponding number of hours an employee worked at each
27 hourly rate. Any employer who fails to keep the records required in subdivision (a) of Section 226
28 shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial

1 citation and one thousand dollars \$1,000 per employee for each violation in a subsequent citation.

2 71. Section 1174(d) of the Labor Code provides, in part, “Every person employing labor
3 in this state shall . . . keep, at a central location in the state or at the plants or establishments at which
4 employees are employed, payroll records showing the hours worked daily by and the wages paid to
5 . . . employees employed at the respective plants or establishments. These records shall be kept in
6 accordance with rules established for this purpose by commission, but in case shall be kept on file
7 for not less than three years.”

8 72. Labor Code § 1174.5 states, “Any person employing labor who willfully fails to
9 maintain the records required by subdivision . . . (d) of Section 1174 . . . shall be subject to a civil
10 penalty of five hundred dollars (\$500).”

11 73. Under Labor Code § 1812, “Every contractor and subcontractor shall keep an
12 accurate record showing the name of and actual hours worked each calendar day and each calendar
13 week by each worker employed by him or her in connection with the public work.”

14 74. As set forth herein, Defendants fail to maintain accurate records for their employees,
15 in part, because they do not pay the applicable prevailing wage for work performed on public works
16 projects. Plaintiff contends that in order to conceal their unlawful conduct, Defendants instructed
17 him and other nonexempt employees to record the time they spent working on a public works project
18 under other, non-public works projects on their timesheets.

19 75. Plaintiff and other nonexempt employees have suffered, and continue to suffer,
20 injuries and damages as a direct consequence of Defendants’ willful failure to maintain accurate
21 records in violation of California law. More specifically, as a result of Defendants’ conduct,
22 employees were denied their legal right and protected interest in having accurate and complete
23 payroll records available to them.

24 76. Defendants’ unlawful policies and practices, as alleged herein, violate Labor Code
25 §§ 226.3, 1174 and 1812. As such, Plaintiff is entitled to seek, and does seek, civil penalties on
26 behalf of himself and all other aggrieved employees. In addition, as provided for in Labor Code §
27 218.5 and Code of Civil Procedure § 1021.5, Plaintiff is entitled to recover his reasonable attorneys’
28 fees and costs.

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Timely Pay Wages Owed During Employment**

3 **(By the Class Against All Defendants)**

4 77. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
5 though fully set forth herein.

6 78. Labor Code § 204 states:

7 All wages . . . earned by any person in any employment are due and
8 payable twice during each calendar month, on days designated in
9 advance by the employer as the regular paydays. Labor performed
10 between the 1st and 15th days, inclusive, of any calendar month shall
11 be paid for between the 16th and the 26th day of the month during
12 which the labor was performed, and labor performed between the 16th
13 and the last day, inclusive, of any calendar month, shall be paid for
14 between the 1st and 10th day of the following month.

12 79. Under Labor Code § 210, an employer who fails to pay the wages of each employee
13 as provided in § 204 shall be subject to a penalty in the amount of \$100 for each failure to pay each
14 employee.

15 80. As set forth herein, Defendants failed to pay him and other nonexempt employees the
16 applicable prevailing rate for work performed on public works projects. Defendants' unlawful
17 practice violates Labor Code § 204 and entitles Plaintiff, in his representative capacity, to recover
18 civil penalties on behalf of himself and all other nonexempt employees.

19 **SEVENTH CAUSE OF ACTION**

20 **Failure to Pay All Wages Owed Upon Termination**

21 **(By the Class Against All Defendants)**

22 81. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
23 though fully set forth herein.

24 82. Labor Code § 201(a) states: "If an employer discharges an employee, the wages
25 earned and unpaid at the time of discharge are due and payable immediately."

26 83. Under Labor Code § 202(a):

27 If an employee not having a written contract for a definite period quits
28 his or her employment, his or her wages shall become due and payable
not later than 72 hours thereafter, unless the employee has given 72
hours previous notice of his or her intention to quit, in which case the

1 employee is entitled to his or her wages at the time of quitting.
2 Notwithstanding any other provision of law, an employee who quits
3 without providing a 72-hour notice shall be entitled to receive
4 payment by mail if he or she so requests and designates a mailing
5 address. The date of the mailing shall constitute the date of payment
6 for purposes of the requirement to provide payment within 72 hours
7 of the notice of quitting.

8 84. Labor Code § 203 further provides:

9 If an employer willfully fails to pay, without abatement or reduction,
10 in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
11 wages of an employee who is discharged or who quits, the wages of
12 the employee shall continue as a penalty from the due date thereof at
13 the same rate until paid or until an action therefor is commenced; but
14 the wages shall not continue for more than 30 days.

15 85. Plaintiff and a number of other class members are no longer employed by Defendants.
16 However, Plaintiff is informed and believes, and thereon alleges, that to date, Defendants have not
17 paid the wages owed to these individuals, as required under California law. As a consequence of
18 Defendants' willful and deliberate refusal to tender such wages, the affected members of the Class
19 are entitled to 30 days' wages as a waiting time penalty pursuant to Labor Code § 203.

20 86. In addition, pursuant to Labor Code § 218.5, Plaintiff and the Class are entitled to
21 seek, and do seek, an award of their reasonable attorneys' fees and costs incurred in prosecuting this
22 matter.

23 **EIGHTH CAUSE OF ACTION**

24 **Violation of Business and Professions Code § 17200 et seq.**

25 **(By the Class Against All Defendants)**

26 87. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
27 though fully set forth herein.

28 88. As codified in Business and Professions § 17200 et seq., California's Unfair
Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or
practice."

89. The UCL permits a cause of action to be brought if a practice violates some other
law. In effect, the "unlawful" prong of the UCL makes a violation of the underlying law a per se
violation of Business and Professions Code § 17200. *Cel-Tech Commc'ns, Inc. v. Los Angeles*

1 *Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180. Virtually any law or regulation—federal or state,
2 statutory or common law—can serve as predicate for a § 17200 violation. *See Farmers Ins. Exch. v.*
3 *Superior Court* (1992) 2 Cal.4th 377, 383.

4 90. Under the UCL, a practice may be “unfair” even if not specifically proscribed by
5 some other law. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143 (internal
6 citations omitted). According to the California Supreme Court, the “unfair” standard is intentionally
7 broad to allow courts maximum discretion in prohibiting new schemes to defraud. *Cel-Tech*
8 *Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, *supra*, 20 Cal.4th 163, 180-81.

9 91. A business act or practice is deemed “fraudulent” under § 17200 where “members of
10 the public are likely to be deceived.” *Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 49.
11 That is, a showing of actual deception, reasonable reliance, or damages is not required. *Id.* The
12 “fraudulent” prong of the UCL can be used to attack the deceptive manner in which otherwise lawful
13 contract terms are presented to an individual. *See Boschma v. Home Loan Ctr., Inc.* (2011) 198
14 Cal.App.4th 230, 253. Even a true statement may be unlawful under § 17200 if it is “couched in
15 such a manner that it is likely to mislead or deceive . . . , such as by failure to disclose other relevant
16 information.” *Id.*

17 92. As set forth in the preceding paragraphs, Defendants’ business practices undoubtedly
18 violate California’s UCL.

19 93. As a direct and proximate result of Defendants’ unlawful, unfair, and fraudulent
20 business practices, Plaintiff and the other members of the Class have suffered injury-in-fact and have
21 lost wages and reimbursements rightfully owed to them.

22 94. Through their unlawful, unfair, and fraudulent conduct, Defendants have reaped, and
23 continue to reap, benefits and profits at the expense of putative class members. Pursuant to Business
24 and Professions Code § 17203, Defendants should be enjoined from this activity and made to
25 disgorge all ill-gotten gains and restore to Plaintiff and the other members of the Class, the wages
26 and reimbursements wrongfully withheld from them.

27 95. Moreover, the conduct alleged herein is continuing, and there is no indication that
28 Defendants will refrain from such activity in the future. Plaintiff believes and alleges that if

1 Defendants are not enjoined from the unlawful, unfair, and fraudulent conduct described herein, it
2 will continue to violate California's wage and hour laws and public policy. Accordingly, Plaintiff
3 requests that the Court issue a preliminary and permanent injunction.

4 **NINTH CAUSE OF ACTION**

5 **Civil Penalties Pursuant to the Private Attorneys General Act of 2004**

6 **(By Plaintiff in His Representative Capacity Against All Defendants)**

7 96. Plaintiff re-alleges and incorporates by reference the proceeding paragraphs, as
8 though fully set forth herein.

9 97. Labor Code § 2698 et seq., also known as the Private Attorney General Act of 2004
10 ("PAGA"), expressly provides that any provision of the Labor Code allowing for a civil penalty to
11 be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards
12 agencies or employees, for a violation of the Labor Code, may be recovered through a civil action
13 brought by an aggrieved employee on behalf of himself or herself, and other current or former
14 employees. These penalties are in addition to any other relief available under the Labor Code, and
15 pursuant to § 2699(i), must be allocated 75 percent to the LWDA and 25 percent to the aggrieved
16 employees.

17 98. Plaintiff is an aggrieved employee within the meaning of Labor Code § 2699(c), in
18 that he was employed by Defendants during the applicable statutory period and suffered one or more
19 of the Labor Code violations set forth in this complaint.

20 99. As set forth above, Defendants have committed, and continue to commit, numerous
21 violations for which the Labor Code entitles Plaintiff, as a private attorney general, to recover, on
22 behalf of himself, all other aggrieved employees, and the state of California, attorneys' fees and
23 costs, as well as civil penalties against Defendants, for violations of Industrial Welfare Commission
24 Wage Order No. 16-2001 and Labor Code §§ 201, 202, 203, 204, 210, 223, 226, 226.3, 510, 558,
25 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1771, 1774, 1776 and 2802.

26 100. Labor Code § 2699(f) provides in pertinent part:

27 For all provisions of this code except those for which a civil penalty
28 is specifically provided, there is established a civil penalty for a
violation of these provisions as follows:

...

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

101. Under Labor Code § 558.1(a), “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Subsection (b) further provides that “the term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term ‘managing agent’ has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.”

102. Plaintiff has complied with the notice requirements outlined in Labor Code § 2699.3. On July 16, 2021, he provided written notice to the LWDA and Defendants that he intended to assert the rights granted to him under PAGA. The notice set forth the specific violations alleged and the facts and theories supporting those violations. (*See Exhibit 1.*)

103. The LWDA had until September 19, 2021 to notify Plaintiff whether it intended to investigate the violations alleges. As of the date of this complaint, the LWDA has not provided such notice. Accordingly, Plaintiff asserts this claim in his representative capacity, as permitted under Labor Code § 2699.3(a)(2)(A).

PRAYER FOR RELIEF

On behalf of himself and the putative class, Plaintiff prays for judgment against Defendants and in favor of the Class as follows:

1. For the Court to determine that this action may be maintained as a class action with the named plaintiff as class representative;
2. For the attorneys appearing on the above caption to be named as class counsel;
3. For restitution of all monies, wages, expenses, and benefits due to Plaintiff and the other members of the Class;
4. For disgorged profits from Defendants’ unlawful, unfair and fraudulent business

practices;

5. For statutory penalties, as provided under Labor Code §§ 226(e) and 1197.1;
6. For waiting time penalties pursuant to Labor Code § 203;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For civil penalties, as provided under Labor Code §§ 2699(f) and 2699.5, for violations of IWC Wage Order No. 16 and Labor Code §§ 201, 202, 203, 204, 210, 223, 226, 226.3, 510, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1771, 1774, 1776 and 2802.
9. For reasonable attorneys' fees and litigation costs pursuant to Labor Code §§ 218.5, 1194, 2802(c) and Code of Civil Procedure § 1021.5;
10. For all interest accrued to date pursuant to Labor Code §§ 218.6 and 2802(b);
11. For appropriate equitable relief;
12. For appropriate declaratory relief; and
13. For such other and further relief as the Court may deem proper.

Dated: September 24, 2021

CLARK LAW GROUP



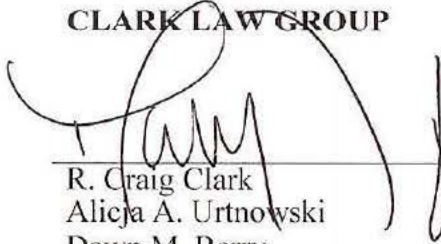
R. Craig Clark
Alicja A. Urtnowski
Dawn M. Berry
Attorneys for Plaintiff Clemente Sanabia

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues triable to a jury.

Dated: September 24, 2021

CLARK LAW GROUP



R. Craig Clark
Alicja A. Urtnowski
Dawn M. Berry
Attorneys for Plaintiff Clemente Sanabia

Exhibit 1



Clark Law Group

• 3258 Fourth Avenue • San Diego, California 92103 •

• Phone: (619) 239-1321 • Facsimile: (888) 273-4554 •

• www.clarklawyers.com •

Via Electronic Submission

July 16, 2021

Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Sanabia v. GP Development, Inc., et al.
Notice of Labor Code Violations Pursuant to Labor Code § 2699.3

Dear Administrator,

The purpose of this letter is to inform you that Clemente Sanabia, on behalf of himself and all other aggrieved employees, intends to assert the legal rights granted to him under the California Labor Code's Private Attorneys General Act of 2004, as set forth in Labor Code § 2698 et seq. (hereinafter, "the Act"). This letter serves to satisfy the notice requirements of the Act and will also be sent to Mr. Sanabia's former employer, GP Development, Inc., through its agent for service of process, as well as the company's chief executive officer, Gary Perkins (collectively, "Defendants").

Mr. Sanabia was employed by Defendants as an hourly, nonexempt general laborer from September 1996 until December 11, 2020, when he was purportedly laid off due to a lack of available construction work. As set forth below, Mr. Sanabia contends that over the course of his employment with Defendants, they engaged in a systematic pattern of violating the California Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order, thus depriving Mr. Sanabia and other nonexempt employees of wages owed and protections afforded to them under California law. As such, pursuant to Labor Code § 2699, Mr. Sanabia is entitled to seek, and does seek to recover, civil penalties on behalf of himself, all other aggrieved employees and the State of California.

A. Failure to Pay Prevailing Wage on Public Works Projects

Labor Code § 1771 provides, in part:

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in

which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

Similarly, Labor Code § 1774 states, "The contractor to whom the contract is awarded, and any subcontractor under him [or her], shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract." According to the Department of Industrial Relations, California's prevailing wage laws ensure that the ability to get a public works contract is not based on paying lower wage rates than a competitor. As such, all bidders are required to use the same wage rates when bidding on a public works project.

Contractors and subcontractors are required to keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee employed by him or her in connection with the public work. See Lab. Code § 1776. In addition, "[e]ach payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project." *Id.*

Throughout his employment, Mr. Sanabia and other nonexempt employees performed work on numerous public works projects, but were not paid the applicable prevailing rate. Such projects included contract work for the Department of Social Services, Department of Public Health and Department of Consumer Affairs. Mr. Sanabia contends that Defendants knew they were required to pay the prevailing rate on such projects, and not only failed to do so, but instructed employees to record the time they spent working on public works projects under other projects. Mr. Sanabia only learned that he should have been paid the prevailing rate when subcontractors working on the same projects advised him of such.

B. Failure to Pay Minimum and Overtime Wages

Under Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code §§ 510, 1811, 1815 and the applicable IWC Wage Order all require that any work in excess of eight hours in a workday and any work in excess of 40 hours in a workweek be compensated at the rate of no less than one and one-half times the employee's regular rate of pay.

Mr. Sanabia contends that Defendants' failure to pay its employees prevailing wages for work performed on public works projects violates Labor Code § 1197 because employees are not paid the applicable minimum wage for the work performed, i.e., the prevailing rate. Consequently, any overtime an employee works during a

workweek in which they also performed work on a public works project is compensated at less than one and one-half times the employee's regular rate of pay in violation of Labor Code §§ 510 and 558, as well as IWC Wage Order No. 16, § 3(A). As further explained below, Defendants' policies and practices also violate Labor Code §§ 226.3, 1174 and 1812, which require employers to maintain accurate employment records for each employee.

C. Failure to Timely Pay Wages

Labor Code § 204 requires that all wages earned between the 1st and the 15th day of any calendar month, other than those wages due upon termination of employment, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Wages earned between the 16th and the last day of any calendar month, other than those wages due upon termination of employment, are due and payable between the 1st and the 10th day of the following month. Labor Code § 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular pay period.

As explained above, Defendants routinely failed to pay Mr. Sanabia and other aggrieved employees all wages owed to them within the time period specified by Labor Code § 204, including earned and unpaid minimum, overtime, and prevailing wages. As such, Mr. Sanabia is entitled to collect civil penalties under Labor Code § 210 on behalf of himself and other aggrieved employees.

D. Failure to Reimburse Necessary Business Expenses

Section 2802 of the Labor Code provides 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." Under California law, employers have a duty of due diligence to determine whether or not employees have incurred expenses in the discharge of their duties, and to reimburse them for any necessary expenses. See *Stuart v. RadioShack* (N.D. Cal. 2009) 641 F.Supp.2d 901. The California Supreme Court has made it clear that the purpose of Labor Code § 2802 is "to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.

In addition, section 8(B) of IWC Wage Order No. 16 provides, "When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802." In its *Statement as to the Basis of Wage Order No. 16*, the IWC explains, "This exception is quite narrow and is limited to hand (as opposed to power) tools and personal equipment, such as

tool belts or tool boxes, that are needed by the employee to secure those hand tools."

Mr. Sanabia alleges that while he was paid twice the state minimum wage, and could therefore be required to provide his own *hand* tools, Defendants failed to provide him and other employees with the *power* tools that were necessary to perform various construction-related tasks, including drills and saws. Although Defendants will undoubtedly point to the written tool policy they implemented in September 2017 and argue that employees were able to check power tools in and out as needed, Defendants' tool policy simply encourages employees to use their own tools. This is because employees are not only required to have their project manager approve the use of any company tools, but they must then go to the company's main office to collect and return the tools, and are warned that "any damage and/or loss will be [their] financial responsibility." As such, for Mr. Sanabia and other employees, the only real option was to provide their own power tools.

Despite having full knowledge that their employees purchase and use their own tools and equipment on a daily basis, as a matter of policy and practice, Defendants do not reimburse employees for any portion of the expenses they incur. See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140 (employees who are required to use their personal cell phones for work-related calls are entitled to be reimbursed for a reasonable percentage of their cell phone bills). In this respect, Defendants violate California law because they knowingly and willingly pass their operating costs to their employees. See *Gattuso, supra*, 42 Cal.4th at 562.

E. Failure to Provide Accurate, Itemized Wage Statements

Under Labor Code § 226(a), an employer must provide its employees with accurate, itemized wage statements showing, among other things, the gross and net wages earned, the total hours worked by the employee, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The purpose of Labor Code § 226(a) is to allow employees to easily ascertain whether or not they were accurately paid for all hours worked. See Lab. Code § 226(e).

By failing to pay employees prevailing wages for work performed on public works projects, Defendants violated, and continue to violate, Labor Code § 226(a) because the wage statements they issue to employees do not accurately reflect, among other things, all applicable hourly rates in effect during the pay period.

F. Failure to Maintain Accurate Employment Records

Labor Code § 226.3 requires employers to maintain accurate records of the information set forth in § 226(a), including all applicable hourly rates in effect during the pay period and the corresponding number of hours an employee worked at each hourly rate. Similarly, Labor Code § 1174 requires employers to maintain

accurate payroll records showing the daily hours each employee works and the wages paid to the employee. Finally, Labor Code § 1812 provides, “Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work.”

As set forth above, the employment records Defendants maintain are anything but accurate. Not only do Defendants fail to accurately record and pay their employees the prevailing rate for work performed on public works projects, but they also require employees to record the time they work on such projects under other, non-public works projects. This violates Labor Code §§ 226.3, 1174 and 1812.

G. Failure to Pay All Wages Owed Upon Termination

Under Labor Code § 201, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides that where an employee quits, his or her wages are due within 72 hours, unless the employee has given at least 72 hours’ notice, in which case wages are due at the time of quitting. Finally, pursuant to Labor Code § 203, “If an employer willfully fails to pay, without abatement or reduction . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

Defendants terminated Mr. Sanabia’s employment on December 11, 2020. While he was paid for the hours he worked during the pay period, he was not paid the prevailing wages and overtime wages he was entitled to. On information and belief, Mr. Sanabia alleges that Defendants also failed to pay other nonexempt employees all wages owed to them when their employment was terminated. As such, Defendants violated, and continue to violate, Labor Code §§ 201-203, and Mr. Sanabia is entitled to seek civil penalties on behalf of himself and all other aggrieved employees.

H. Attorneys’ Fees and Costs

In addition to civil penalties, the Act provides that “any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.” See Lab. Code § 2699(g)(1). Therefore, in the event that Mr. Sanabia is successful in a civil action against Defendant GP Development, Inc., he will seek an award of attorneys’ fees and costs incurred in prosecuting this matter. See *also* Lab. Code §§ 218.5, 1194, 1193.6; Code Civ. Proc. § 1021.5.

I. Conclusion

Defendants deprived, and continue to deprive, Mr. Sanabia and other nonexempt employees of their statutorily protected rights under the California Labor Code.

Accordingly, Mr. Sanabia seeks to stop Defendants from engaging in such unlawful conduct and to provide a remedy for any and all Labor Code violations, including but not limited to violations of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 246(i), 510, 512, 558, 558.1, 1174, 1197, 1197.1, 1771, 1774, 1776, 1811, 1812, 1815 and 2802.

In order to comply with the Act, Mr. Sanabia has placed Defendant GP Development, Inc. on notice by mailing a copy of this letter via certified mail to the company's agent for service of process. In addition, Defendant Gary Perkins, the company's chief executive officer, and a managing agent under Labor Code § 558.1, will be provided a copy of this letter via certified mail.

We invite Defendants and their attorneys to contact our office to discuss this matter, including whether the parties can reach an early resolution of Mr. Sanabia's claims.

Sincerely,

CLARK LAW GROUP



R. Craig Clark
Alicja A. Urtnowski
Dawn M. Berry

cc: GP Development, Inc.
Attn: Gary Perkins, Agent for Service of Process
10604 Industrial Ave, Suite 150
Roseville, CA 95678

Gary Perkins
GP Development, Inc.
10604 Industrial Ave, Suite 150
Roseville, CA 95678