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Amanda Toste
Clerk of the Superior Court
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

CELERINO FERNANDEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

RENOVA HOME IMPROVEMENTS, a
California corporation; and DOES 1
through 100,

Defendants.

Case No.: 21CV-02300
Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Celerino Fernandez ("Plaintiff"), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("Complaint") against; Renova Home Improvements, a California corporation; and DOES 1
4 through 100, inclusive (collectively "Defendants"), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business & Professions
9 Code § 17200 *et seq.*, Labor Code §§ 201-204, 221, 226 *et seq.*, 226.7, 510, 512, 516, 558,
10 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*; and Industrial Welfare Commission Wage
11 Order 16 ("Wage Order 16"), in addition to seeking declaratory relief and restitution. This
12 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
13 jurisdiction over Defendants' violations of the California Labor Code because the amount in
14 controversy exceeds this Court's jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
17 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
18 County of Merced. Defendants own, maintain offices, transact business, have agent(s) within the
19 County of Merced, and/or otherwise are found within the County of Merced, and Defendants are
20 within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-204, 221, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and

1 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* (“Unfair Competition
2 Law”); and Wage Order 16, which sets employment standards for the Construction Industry.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
5 continue to do) business by performing construction work in California and the greater United
6 States, and employed Plaintiff and other, similarly-situated non-exempt employees within Merced
7 County and the state of California and, therefore, were (and are) doing business in Merced County
8 and the State of California.

9 5. Plaintiff does not know the true names or capacities, whether individual, partner,
10 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
11 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
12 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
13 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
14 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
15 and proximately caused Plaintiff and the Classes to be subject to the unlawful employment
16 practices, wrongs, injuries and damages complained of herein.

17 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
18 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

19 7. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one of
22 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff was employed by Defendants as a non-exempt employee in the position
5 of "roofer" from approximately October of 2019 until his separation of employment on
6 approximately August 9, 2020. Plaintiff typically worked a Monday through Thursday from
7 around 7:00 a.m. until at least 6:00 p.m., and frequently later. Plaintiff generally performed
8 approximately 40-50 hours of work per week, however he was only credited for having worked
9 40 hours per week regardless of the actual amount of hours he worked due to Defendants
10 fraudulent timekeeping policies/practice which intentionally served to deny overtime
11 compensation to Plaintiff and the other aggrieved employees.

12 **Off-The-Clock/Overtime**

13 10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff was
14 not paid for all hours worked. Additionally, Plaintiff routinely worked in excess of forty hours per
15 workweek but did not receive overtime compensation equal to one and one-half times his regular
16 rate of pay for all overtime hours worked. Defendants did not track Plaintiff and the other
17 aggrieved employees' hours worked in any manner apparent to Plaintiff. He and the other
18 aggrieved employees were never made to sign off on their hours worked, nor were they provided
19 timesheets. Despite the fact that Plaintiff and other aggrieved employees regularly worked in
20 excess of eight hours in a given workday, at no point did Defendants provide them with overtime
21 compensation for those hours worked in excess of eight. Plaintiff and other aggrieved employees
22 regularly worked in excess of 12-13 hours per shift, however would only be paid straight time
23 wages for these hours worked. Plaintiff estimates that he and the other aggrieved employees
24 worked at least 10 hours per week of overtime that was only compensated at a straight time rate.
25 Furthermore, Plaintiff and other aggrieved employees frequently worked in excess of 12 hours in
26 a given shift, thus entitling them to double-time pay. However, Defendants at no point ever
27 provided Plaintiff and the other aggrieved employees with any double-time compensation, instead
28 electing to only pay them straight time pay for these hours worked. Consequently, due Defendants'

1 unlawful timekeeping and payment policies and practices that failed to properly compensate for
2 all hours worked, including overtime & double time hours worked, Plaintiff and the other
3 aggrieved employees have been deprived of all required minimum and overtime wages earned.

4 **Missed/Shortened Meal Periods/Off-The-Clock**

5 11. During Plaintiff's employment with Defendants, Plaintiff was not provided all
6 required meal periods due to Defendants' meal period policies/practices which fail to provide
7 uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work commencing.
8 Plaintiff and other aggrieved employees were the subject to a sporadic and inconsistent meal
9 period policy. Occasionally, they were released for their meal periods at 12:00 p.m. in a timely
10 manner, however more often than not, Plaintiff and the other aggrieved employees were not
11 released for their meal periods until 12:30 p.m. and sometimes later. On those occasions that they
12 were afforded a meal period, it was more often than not exercised well after their fifth hour
13 worked. Furthermore, there were countless occasions where Plaintiff and other aggrieved
14 employees at the insistence of their supervisors would have their meal periods cut short, and
15 sometimes be forced to skip them entirely, in order to meet the intense deadlines imposed on them
16 by Defendants. At no point during Plaintiff's employment did Defendants actually track the time
17 of Plaintiff and other aggrieved employees' meal periods or hours worked. As a result of this
18 policy/practice, Plaintiff and the other aggrieved employees would constantly work off-the-clock
19 during their meal periods, as on information and belief, 30 minutes were automatically deducted
20 from Plaintiff and other aggrieved employees' time for each shift worked, regardless of whether
21 a 30 minute meal period was actually provided and taken. Furthermore, Plaintiff and other
22 aggrieved employees faced intense pressure to meet tight deadlines set by Defendants which in
23 practice disincentivized their exercise of legally compliant meal periods and encouraged working
24 off-the-clock to appease their superiors. Defendants were aware, or reasonably should have been
25 aware, that this off-the-clock work was being performed but failed to compensate Plaintiff and
26 the other aggrieved employees for such off-the-clock work, most of which constituted overtime
27 hours worked.

28 12. In addition to Defendants' failure to provide Plaintiff and other aggrieved

employees with all legally required first meal periods, Defendants also failed to provide second meal periods to Plaintiff and other aggrieved employees when they worked shifts in excess of 10.0 hours. At no point during Plaintiff's tenure with Defendants was he ever afforded a second meal period despite frequently working in excess of 10.0 hours.

13. On those occasions when Plaintiff and other aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiff and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments required by Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

Missed Rest Periods

14. Plaintiff and the putative class were also not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices, which fail to authorize and permit all rest periods for every four hours worked, or major fraction thereof. Plaintiff and the other aggrieved employees were not ever afforded the use of a legally compliant rest period throughout his tenure with Defendants. Instead, due to the prevailing attitude as expressed by management that employees should be working at all times while on-the-clock (because of intense pressure to meet deadlines), Plaintiff and other aggrieved employees would be required to work through the entirety of their shifts without being afforded any rest periods. As stated above, Plaintiff was constantly required to attend to his work duties, without interruption of breaks, and therefore, Defendants failed to authorize and permit Plaintiff to take off-duty rest periods that were completely free of employer control, in violation of California law.

15. As a result of these policies/practices, Defendants failed to authorize and permit Plaintiff and other aggrieved employees to exercise the use of off-duty rest periods that were completely free of employer control, in violation of California law. On those occasions when Plaintiff and other aggrieved employees were not authorized and permitted to take all legally-

1 compliant rest periods to which they were entitled, Defendants failed to compensate them with
2 the required rest period premium for each workday in which they experienced a rest period
3 violation as mandated by Labor Code § 226.7. Furthermore, upon information and belief during
4 at least a portion of the class period, Defendants maintained no payroll code or other mechanism
5 for the payment of rest period premium payments under Labor Code § 226.7 in the event that a
6 legally compliant rest period was not provided to their non-exempt employees.

7 **Inaccurate Wage Statements**

8 16. As a result of Defendants' failure to properly track all hours worked and pay all
9 minimum wages, overtime wages, and meal & rest period premium wages, Defendants
10 maintained inaccurate payroll records, and issued inaccurate and facially deficient wage
11 statements.

12 **Failure to Timely Pay All Final Wages**

13 17. As a further result of Defendants' failure to pay all minimum wages, overtime
14 wages, and meal and rest period premium wages, Defendants failed to pay all wages owed to
15 Plaintiff upon his separation of employment from Defendants.

16 **CLASS ACTION ALLEGATIONS**

17 18. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
18 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 19 a. The Minimum Wage Class consists of all Defendants' current and former non-
20 exempt employees in California who were subject to Defendants' timekeeping
21 systems and/or practices, during the four years immediately preceding the filing
22 of the Complaint through the present.
- 23 b. The Overtime Class consists of all Defendants' current and former non-exempt
24 employees in California who worked more than eight (8) hours per day and/or
25 forty (40) hours per week and were subject to Defendants' timekeeping systems
26 and/or practices during the four years immediately preceding the filing of the
27 Complaint through the present.

- c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: worked at least one shift: (i) in excess of 5.0 hours; and/or (ii) in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present;
- d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of the Complaint through the present;
- e. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and Rest Period Class, who received a wage statement during the one year immediately preceding the filing of the Complaint through the present; and
- f. The Waiting Time Class consists of all Defendants' formerly employed members of the Minimum Wage Class, the Overtime Class, Meal Period Class, and Rest Period Class, who separated from employment during the three years immediately preceding the filing of the Complaint through the present.

19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

20. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;

- ii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- iii. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 1194 by requiring work, including overtime work, and not paying for said work in accordance with the laws of the state of California;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

21. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, meal and rest period, non-reimbursement, wage statement, and payment of final wages policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not paid for all hours worked, provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal and rest

1 periods, did not receive accurate and itemized wage statements, and was not paid all wages owed
2 at time of separation of employment from Defendants.

3 23. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
4 to represent fairly and adequately the interests of the members of the Classes. Moreover,
5 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
6 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
7 and-hour class actions in state and federal courts in the past and are committed to vigorously
8 prosecuting this action on behalf of the members of the Classes.

9 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
10 an important public interest in establishing minimum working conditions and standards in
11 California. These laws and labor standards protect the average working employee from
12 exploitation by employers who have the responsibility to follow the laws and who may seek to
13 take advantage of superior economic and bargaining power in setting onerous terms and
14 conditions of employment. The nature of this action and the format of laws available to Plaintiff
15 and members of the Classes make the class action format a particularly efficient and appropriate
16 procedure to redress the violations alleged herein. If each employee were required to file an
17 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
18 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
19 their vastly superior financial and legal resources. Moreover, requiring each member of the
20 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
21 employees who would be disinclined to file an action against their former and/or current employer
22 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
23 employment. Further, the prosecution of separate actions by the individual class members, even
24 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
25 with respect to the individual class members against Defendants herein; and which would
26 establish potentially incompatible standards of conduct for Defendants; and/or legal
27 determinations with respect to individual class members which would, as a practical matter, be
28 dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified in Paragraph 18 are maintainable as a Class under § 382 of the
5 Code of Civil Procedure.

6 **FIRST CAUSE OF ACTION**
7 **MINIMUM WAGE VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

9 25. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 26. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
11 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
12 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
13 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
14 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
15 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
16 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
17 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
18 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
19 and Wage Order 16.

20 27. California Labor Code § 1198 makes unlawful the employment of an employee
21 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
22 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
23 those employees the balance of the unpaid wages as well as liquidated damages in an amount
24 equal to the wages due and interest thereon.

25 28. As a direct and proximate result of Defendants' unlawful conduct as alleged
26 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
27 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
28 entitled to recover economic and statutory damages and penalties and other appropriate relief as

1 a result of Defendants' violations of the California Labor Code and Wage Order 16.

2 29. Defendants' practice and uniform administration of corporate policy regarding
3 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
4 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
5 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
6 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
7 Civil Procedure § 1021.5.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGES**

10 **(AGAINST AL DEFENDANTS)**

11 30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
13 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
14 overtime hours worked, and provide a private right of action for the failure to pay all overtime
15 compensation for overtime work performed.

16 32. At all times relevant herein, Defendants were required to properly compensate
17 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
18 Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an
19 employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess
20 of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 16,
21 § 3 also requires an employer to pay an employee double the employee's regular rate of pay for
22 work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh
23 consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours,
24 but did not compensate Plaintiff or members of the Off-The-Clock Class at one and one-half times
25 their regular rate of pay for such hours.

26 33. The foregoing policies and practices are unlawful and create entitlement to
27 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
28 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of

1 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 16, and
2 Code of Civil Procedure § 1021.5.

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5 **THIRD CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 failed in their affirmative obligation to provide all of their non-exempt employees in California,
11 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
12 in accordance with the mandates of the California Labor Code and Wage Order 16, § 11. Despite
13 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
14 of the Meal Period Class at their respective regular rates of compensation, in accordance with
15 California Labor Code §§ 226.7, and 512.

16 36. As a result, Defendants are responsible for paying premium compensation for meal
17 period violations including interest thereon, as well as statutory penalties, civil penalties, and
18 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Civil Code §§
19 3287(b) and 3289.

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 38. Wage Order 16, § 12 and California Labor Code §§ 226.7 and 516 establish the
25 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
26 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

27 39. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
28 of the Rest Period Class to take all required rest periods.

1 40. The foregoing violations create an entitlement to recovery by Plaintiff and
2 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
3 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
4 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

5 **FIFTH CAUSE OF ACTION**

6 **WAGE STATEMENT VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
11 and the Wage Statement Class with accurate, itemized wage statements that included, among
12 other requirements, accurate total gross wages earned, meal and rest period premiums, and total
13 net wages earned in violation of Labor Code §226 *et seq.*

14 43. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
15 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
16 failures led to, among other things, the non-payment of all of their earned wages, meal and rest
17 period premiums, and deprived them of the information necessary to identify discrepancies in
18 Defendants' reported data.

19 44. Defendants' failures created an entitlement to Plaintiff and members of the Wage
20 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
21 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
22 pursuant to Labor Code § 226 *et seq.*

23 **SIXTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

26 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 46. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
28 an employer to pay all wages immediately at the time of termination of employment in the event

the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

47. Defendants failed to timely pay Plaintiff all of his final wages at the time of termination, which include, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

48. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

50. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, provide all required meal periods and failing to authorize and permit all required rest periods, and failing to pay meal and rest period premium wage payments, unlawfully deducting earned wages, failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and members of the Waiting Time Class all final wages upon separation of employment.

51. Defendants' utilization of these unfair and/or unlawful business practices deprived

1 Plaintiff and continues to deprive members of the Classes of compensation to which they are
2 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
3 over Defendants' competitors who have been and/or are currently employing workers and
4 attempting to do so in honest compliance with applicable wage and hour laws.

5 52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
6 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
7 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
8 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

9 53. The acts complained of herein occurred within the last four years immediately
10 preceding the filing of the Complaint in this action.

11 54. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
13 of Defendants' current non-exempt employees, and to enforce important rights affecting the
14 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
15 which he is entitled to recover under Code of Civil Procedure § 1021.5.

16 **EIGHTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **(AGAINST ALL DEFENDANTS)**

19 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 56. Defendants have committed several Labor Code violations against Plaintiff,
21 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
22 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
23 employees, brings this representative action against Defendants to recover the civil penalties due
24 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
25 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
26 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
27 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
28 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each

1 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
2 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
3 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
4 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
5 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
6 subsequent violation per employee per pay period for those violations of the Labor Code for which
7 no civil penalty is specifically provided, based on the following Labor Code:

- 8 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
9 Wage Class, and other aggrieved employees in violation of Labor Code §§
10 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 11 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
12 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
13 1194, and 1198;
- 14 c. Failing to provide all legally required meal periods, and failure to pay meal
15 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
16 employees at the regular rate of compensation in violation of Labor Code §§
17 226.7, 512, 558, and 1198;
- 18 d. Failing to authorize and permit all legally required rest periods, and failure to
19 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
20 aggrieved employees at the regular rate of compensation in violation of Labor
21 Code §§ 226.7, 516, 558, and 1198;
- 22 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
23 employees with complete, accurate, itemized wage statements in violation of
24 Labor Code § 226;
- 25 f. Failing to timely pay all final wages and compensation earned by Plaintiff, the
26 Waiting Time Class, and other aggrieved employees at the time of separation
27 in violation of Labor Code §§ 201, 202, and 203;
- 28 g. Failing to pay Plaintiff and other non-exempt employees all earned wages at
least twice during each calendar month in violation of Labor Code § 204; and

h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

57. On July 14, 2021, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 56 (a)-(h). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and

1 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

2 8. Upon the Fifth Cause of Action, for actual damages, statutory and civil penalties
3 pursuant to Labor Code § 226, *et seq.*;

4 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
5 201-203.;

6 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
7 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
8 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
9 *seq.*;

10 11. Upon the Eighth Cause of Action, (1) \$100.00 for each initial violation for each
11 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
12 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
13 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
14 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
15 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
16 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
17 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
18 each initial violation and \$200 for each subsequent violation per employee per pay period for the
19 violations of the Labor Code Sections cited in Labor Code § 2699.5.

20 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
21 Code § 218.6 and Civil Code §§ 3287 and 3289;

22 13. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
23 Procedure § 1021.5 and all other applicable statutes; and

24 14. For such other and further relief the Court may deem just and proper.

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1 Dated: September 20, 2021

Respectfully submitted,
STANBURY BROWN LAW

2
3 By:



4 Daniel J. Brown
5 Ethan C. Surls
Attorneys for Plaintiff

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

8
9 Dated: September 20, 2021

Respectfully submitted,
STANBURY BROWN LAW

10
11 By:



12 Daniel J. Brown
13 Ethan C. Surls
Attorneys for Plaintiff

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 1/2 Abbot Kinney Blvd. Venice, CA 90212

On September 20, 2021, I served the document listed below on the parties in this action as follows:

- FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

X (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.

☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.

☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

☐ (BY EMAIL) In accordance with California Code of Civil Procedure Section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 20, 2021, at Redondo Beach, California.



Ethan C. Surls

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SERVICE LIST

Renova Home Improvements
c/o Salvador Cuevas III
4991 McKinley Ave., Ste. 118
Fresno, CA 93727

Agent for Service of Process for Defendant Renova Home Improvements