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7 Attorneys for Plaintiff,
MICHAEL CANTRELL and all others similarly situated
8 (Additional attorney for Plaintiff on the following page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
(UNLIMITED JURISDICTION)

12 MICHAEL CANTRELL, on behalf of
13 himself, all others similarly situated, and as an
14 “aggrieved employee” on behalf of other
15 “aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 CONCRETE PLACEMENT, INC., a
19 California corporation; COLLIN FLEMING;
20 and DOES 2–50, inclusive,

21 *Defendants.*

Case No.: 30-2021-01225534-CU-OE-CXC

CLASS ACTION

**~~PROPOSED~~ SECOND AMENDED
COMPLAINT FOR:**

1. Failure to Provide Rest Periods (Lab. Code §§ 226.7, 558.1 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 558.1 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 204, 510, 558, 1194, 1197, 1197.1 and 1198)
4. Failure to Reimburse for Expenses (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code §§ 226 and 558);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, 203 and 558.1;
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff, MICHAEL CANTRELL (hereafter “Plaintiff”), on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against Defendants
5 CONCRETE PLACEMENT, INC., a California corporation; COLLIN FLEMING; and DOES 2–
6 50, inclusive (collectively “Defendants”) for alleged violations of the California Labor Code,
7 Industrial Welfare Commission Order No. 16–2001 (hereafter “the Wage Order”), and the
8 Business and Professions Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest periods;
12 (2) Provide all meal periods; (3) Pay all wages, including minimum, regular, overtime and
13 doubletime wages, earned for all hours worked at the correct rates of pay; (4) Failure to pay all
14 wages earned for all hours worked at the correct rates of pay; (5) Failure to reimburse for
15 expenses; (6) Issue accurate and complete itemized written wage statements; (7) Timely pay all
16 wages upon termination of employment; and (8) Fairly compete. Accordingly, Plaintiff now seeks
17 to recover unpaid wages, statutory penalties, interest, and related relief through this class action.
18 Additionally, Plaintiff seeks civil penalties under the California Labor Code Private Attorneys
19 General Act, Labor Code §§ 2698, *et seq.* (“PAGA”). Accordingly, Plaintiff now seeks to recover
20 civil penalties and related relief through this class and representative action.

21 JURISDICTION AND VENUE

22 3. This court has subject matter jurisdiction because the aggregate claims of
23 Plaintiff, inclusive of all relief, place more than \$25,000 in controversy.

24 4. There is no basis for federal question subject matter jurisdiction in this case.
25 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal
26 law.

27 5. There is also no basis for federal diversity jurisdiction in this case.

28 6. Venue is proper in Orange County pursuant to California Code of Civil



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1 Procedure § 395(a) and § 395.5 in that liability arose in Orange County because at least some
2 of the transactions that are the subject matter of this Complaint occurred therein and/or because
3 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

4 PARTIES

5 7. Plaintiff MICHAEL CANTRELL is a resident of the State of South Carolina. At
6 all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of
7 Regulations Section 11160 and an “aggrieved employee” within the meaning of Labor Code
8 Section 2699(c).

9 8. Defendant CONCRETE PLACEMENT, INC., is a corporation organized and
10 existing under the laws of California and is also a citizen of California based on Plaintiff’s
11 information and belief.

12 9. Defendant COLLIN FLEMING is an individual and a citizen of the State of
13 California based on Plaintiff’s information and belief.

14 10. In relevant part, California Labor Code § 558.1 states:

15 (a) Any employer or other person acting on behalf of an employer, who
16 violates, or causes to be violated, any provision regulating minimum wages
17 or hours and days of work in any order of the Industrial Welfare
18 Commission, or violates, or causes to be violated, §§ 203, 226, 226.7,
19 1193.6, 1194, or 2802, may be held liable as the employer for such
20 violation.

21 (b) For purposes of this section, the term “other person acting on behalf
22 of an employer” is limited to a natural person who is an owner, director,
23 officer, or managing agent of the employer, and the term “managing
24 agent” has the same meaning as in subdivision (b) of § 3294 of the Civil
25 Code.

26 11. Based on Plaintiffs’ information and belief, Defendant COLLIN FLEMING is
27 natural person and an owner, director, officer, and/or managing agent of Defendant CONCRETE
28 PLACEMENT, INC., who directly or indirectly, or through an agent or any other person,
employed or exercised control over the wages, hours, or working conditions of Plaintiffs and the
Class. Therefore, he is liable to Plaintiff and the Class for his violations of, or causing Defendants
to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.



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12. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 2–50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

13. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees, servants, masters, and/or employers of the remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment and with the approval and ratification of each of the other Defendants.

14. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable laws as alleged herein.

15. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

CLASS ALLEGATIONS

16. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

17. **Class Definition:** The Class is defined as follows: All individuals currently and formerly employed in California as non-exempt, hourly employees including, but not limited to



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heavy equipment operators, field workers, machine operators, construction workers, and persons in similar positions., individuals performing work comparable to the aforementioned, and individuals in similar positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

18. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

19. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

20. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages, including minimum, regular, overtime and doubletime wages, earned for all hours worked at the correct rates of pay;

B. Whether Defendants failed to pay all wages earned for all hours worked at the correct rates of pay;

C. Whether Defendants failed to provide the Class Members with all meal and rest periods in compliance with California law;

D. Whether Defendants failed to reimburse the Class Members for necessary business expenses;

E. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate and complete written wage statements;

F. Whether Defendants willfully failed to provide the Class Members with timely final wages upon termination of employment;

G. Whether Defendants engaged in unfair competition within the meaning of



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1 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

2 H. Whether the Class Members are entitled to restitution of money or property
3 that Defendants may have acquired from them through alleged Labor Code violations.

4 21. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
5 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
6 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
7 Code, the Wage Order, and the Business and Professions Code.

8 22. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
9 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
10 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
11 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
12 Members.

13 23. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
14 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
15 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
16 Plaintiff and absent Class Members.

17 24. **Superiority:** A class action is vastly superior to other available means for fair and
18 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
19 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
20 and efficiently prosecute their common claims in a single forum without the unnecessary
21 duplication of effort and expense that numerous individual actions would entail. In addition, the
22 monetary amounts due to many individual Class Members are likely to be relatively small and
23 would thus make it difficult, if not impossible, for individual Class Members to both seek and
24 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
25 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
26 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

27 **STATEMENT OF FACTS**

28 25. On approximately May 15, 2014, Plaintiff began working for Defendants as a



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1 heavy equipment operator in the city of Santa Ana. Defendants continuously employed him in
2 that capacity until on or about March 15, 2021, when Plaintiff's employment ended.

3 26. At all relevant times, Defendants issued wages to Plaintiff and the other Class
4 Members on a weekly basis and paid them at an hourly rate of pay. At all relevant times,
5 Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the
6 protections of both the Labor Code and the Wage Order.

7 27. At all relevant times, Defendants failed to provide Plaintiff and the Class
8 Members with all timely meal periods. Defendants failed to provide timely 30-minute, off-duty
9 meal periods to Plaintiff and the Class Members by requiring them to work in excess of 12 hours
10 in a day and preventing them from taking and clocking out for either of the two meal periods
11 they were entitled to take. Furthermore, Defendants also required Plaintiff and the Class
12 Members to continuously monitor the concrete. This monitoring policy interrupted the few
13 occasions Plaintiff and the Class Members attempted to take their 30-minute meal periods.

14 28. Defendants failed to compensate Plaintiff and the Class Members for all hours
15 worked at the correct rates of pay, including overtime. Plaintiff and the Class Members often
16 worked seven (7) days in a workweek, and between eight (8) and sixteen (16) hours per workday.
17 At all relevant times, Plaintiff and the Class Members worked over eight (8) hours in one
18 workday and over forty (40) hours in one workweek. Defendants, however, failed to pay Plaintiff
19 and the Class Members overtime wages at least one and a half times their hourly rates of pay for
20 all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and all hours
21 on the seventh (7th) day worked in a workweek. Additionally, Defendants failed to pay Plaintiff
22 and the Class Members at least twice their hourly rates of pay when they worked over twelve
23 (12) hours in a workday or for hours in excess of eight (8) on the seventh (7th) workday of the
24 workweek.

25 29. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and
26 the Class Members in violation of California law. Defendants required Plaintiff and the Class
27 Members to continuously monitor concrete and failed to authorize and permit Plaintiff and the
28 Class Members to take ten-minute, paid, duty-free rest periods every four hours worked or major



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1 fraction thereof. Defendants often required Plaintiff and the Class Members to work in excess of
2 12 hours in a day, but failed to provide 3 duty-free, 10-minute rest periods. Defendants did not
3 seek an exemption from the rest period protections of the Wage Order from the California
4 Divisions of Labor Standards Enforcement.

5 30. Defendants failed to pay premium wages for days on which they failed to provide
6 Plaintiff and the other Class Members with timely meal periods. Defendants also failed to pay
7 premium wages for days on which they failed to provide Plaintiff and the other Class Members
8 with timely rest periods.

9 31. At all relevant times, Defendants required Plaintiff and the Class Members to
10 incur certain business expenses in the course of performing their duties. Defendants required
11 Plaintiff and the Class Members to supply mobile phones to perform their job duties, but
12 Defendants did not provide these items or reimburse Plaintiff and the Class Members for these
13 items. Defendant also required Plaintiff and the Class Members to use these personal mobile
14 phones to communicate with their managers and other individuals. Defendants failed to provide
15 these phones or reimburse Plaintiff and the Class Members for phone usage.

16 32. Defendants failed to maintain accurate employee records of Plaintiff and the Class
17 Members. Defendants failed to maintain accurate and complete records of Plaintiff's and the
18 Class Members' meal periods and rest periods, as well as the premium wages they earned for
19 missed meal and rest periods.

20 33. Defendant failed to timely pay Plaintiff and the Class Members all earned wages
21 during and at the conclusion of employment.

22 34. Defendants failed to issue to Plaintiff and the Class Members complete and
23 accurate wage statements that state all hours worked at the correct rates of pay, and all wages
24 earned. Defendants knowingly and intentionally failed to state on the wage statements they issued
25 to Plaintiff and the Class Members all meal period premium wages earned and all rest break
26 premium wages earned. Defendants also failed to timely pay Plaintiff and the Class Members all
27 earned wages described above at the conclusion of employment.

28 //



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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

3 **(Lab. Code §§ 226.7, 558.1 and 1198)**

4 **(By Plaintiff and the Class against all Defendants)**

5 35. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 36. At all relevant times during the applicable limitations period, Plaintiff and the
7 Class Members have been employees of Defendants and entitled to the benefits and protections
8 of California Labor Code §§ 226.7, 558.1, 1198, and the Wage Order.

9 37. In relevant part, California Labor Code § 1198 states:
10 The maximum hours of work and the standard conditions of labor fixed by the
11 commission shall be the maximum hours of work and the standard conditions of
12 labor for employees. The employment of any employee for longer hours than those
13 fixed by the order or under conditions of labor prohibited by the order is unlawful.

14 38. In relevant part, § 12 of the Wage Order states:

15 **Rest Periods**

16 (A) “Every employer shall authorize and permit all employees to take rest
17 periods, which insofar as practicable shall be in the middle of each work period.
18 The authorized rest period time shall be based on the total hours worked daily at
19 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
20 thereof. However, a rest period need not be authorized for employees whose total
21 daily work time is less than three and one-half (3 1/2) hours. Authorized rest period
22 time shall be counted as hours worked for which there shall be no deduction from
23 wages.”

24 (B) If an employer fails to provide an employee a rest period in accordance
25 with the applicable provisions of this Order, the employer shall pay the employee
26 one (1) hour of pay at the employee’s regular rate of compensation for each work
27 day that the rest period is not provided.”

28 39. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest
period mandated pursuant to an applicable statute, or applicable regulation,
standard, or order of the Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in
accordance with a state law, including, but not limited to, an applicable statute or
applicable regulation, standard, or order of the Industrial Welfare Commission, the
Occupational Safety and Health Standards Board, or the Division of Occupational
Safety and Health, the employer shall pay the employee one additional hour of pay
at the employee’s regular rate of compensation for each work day that the meal or
rest period is not provided.



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1 40. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
2 provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
3 fraction thereof.

4 41. In relevant part, Labor Code § 558.1 states

5 a.) Any employer or other person acting on behalf of an
6 employer, who violates, or causes to be violated, any provision
7 regulating minimum wages or hours and days of work in any order
8 of the Industrial Welfare Commission, or violates, or causes to be
9 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
10 held liable as the employer for such violation

11 b.) For purposes of this section, the term “other person acting
12 on behalf of an employer” is limited to a natural person who is an
13 owner, director, officer, or managing agent of the employer, and the
14 term “managing agent” has the same meaning as in subdivision (b)
15 of Section 3294 of the Civil Code.

16 42. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff
17 and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
18 Defendants and the other employers identified above. Defendant COLLIN FLEMING directly
19 or indirectly, or through an agent or other person, employed and exercised control over the wages,
20 hours, and/or working conditions of the Class Members, and caused the violations to the Labor
21 Code and the Wage Order described above. On behalf of himself and all of the other Class
22 Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
23 liquidated damages, attorneys’ fees, costs, and related relief against Defendant COLLIN
24 FLEMING that is the same as the award of against the other Defendants on the same grounds for
25 which Plaintiff seeks against the Defendants.

26 43. Defendants intentionally failed to provide Plaintiff and the Class Members with
27 all required 10-minute rest periods free from any work duties in accordance with the Wage Order.

28 44. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof
as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days
on which they failed to provide Plaintiff and the Class Members with timely rest periods.



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the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

52. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

53. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.

54. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

55. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods.

56. In relevant part, Labor Code § 558.1 states

(c) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision



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1 regulating minimum wages or hours and days of work in any order
2 of the Industrial Welfare Commission, or violates, or causes to be
3 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
4 held liable as the employer for such violation

5 (d) For purposes of this section, the term “other person acting
6 on behalf of an employer” is limited to a natural person who is an
7 owner, director, officer, or managing agent of the employer, and the
8 term “managing agent” has the same meaning as in subdivision (b)
9 of Section 3294 of the Civil Code.

10 57. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff
11 and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
12 Defendants and the other employers identified above. Defendant COLLIN FLEMING directly
13 or indirectly, or through an agent or other person, employed and exercised control over the wages,
14 hours, and/or working conditions of the Class Members, and caused the violations to the Labor
15 Code and the Wage Order described above. On behalf of himself and all of the other Class
16 Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
17 liquidated damages, attorneys’ fees, costs, and related relief against Defendant COLLIN
18 FLEMING that is the same as the award of against the other Defendants on the same grounds for
19 which Plaintiff seeks against the Defendants.

20 58. At all relevant times, Defendants failed to provide Plaintiff and the Class
21 Members with all timely 30-minute duty-free meal periods within the first five hours of work.
22 Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
23 Plaintiff and the Class Members with timely meal periods.

24 59. Plaintiff is informed and believes and thereon alleges that, at all relevant times
25 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
26 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
27 breaks required by California law.

28 60. As a result of Defendants’ unlawful conduct, Plaintiff and the Class Members
have suffered damages in an amount, subject to proof, to the extent they were not paid additional
wages owed for all meal periods not provided to them.

61. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and



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1 the Class Members are entitled to premium wages for workdays in which one or more off-duty
2 meal periods were not provided to them.

3
4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

6 **(Lab. Code §§ 204, 510, 558, 1194, 1197, 1197.1 and 1198)**

7 **(By Plaintiff and the Class against Defendants)**

8 62. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

9 63. At all relevant times, Plaintiff and the other Class Members have been non-exempt
10 employees of Defendants and entitled to the benefits and protections of California Labor Code
11 §§ 204, 510, 558, 1194, 1197, 1197.1 and 1198 and the Wage Order.

12 64. § 2 of the Wage Order defines “hours worked” as “the time during which an
13 employee is subject to the control of an employer, and includes all the time the employee is
14 suffered or permitted to work, whether or not required to do so.”

15 65. § 3 of the Wage Order states:

16 (A) Daily Overtime - General Provisions

17 (1) The following overtime provisions are applicable to employees 18 years of
18 age or over and to employees 16 or 17 years of age who are not required by law
19 to attend school and are not otherwise prohibited by law from engaging in the
20 subject work. Such employees shall not be employed more than eight (8) hours in
21 any workday or more than 40 hours in any workweek unless the employee
22 receives one and one-half (1 ½) times such employee’s regular rate of pay for all
23 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
24 a day’s work. Employment beyond eight (8) hours in any workday or more than
25 six (6) days in any workweek is permissible provided the employee is
26 compensated for such overtime at not less than:

27 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours
28 worked in excess of eight (8) hours up to and including 12 hours in any workday,
and for the first eight (8) hours worked on the seventh (7th) consecutive day of
work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of
12 hours in any workday and for all hours worked in excess of eight (8) hours on
the seventh (7th) consecutive day of work in a workweek.



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(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

66. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

67. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

68. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.



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1 69. Labor Code § 1194 invalidates any agreement between an employer and an
2 employee to work for less than the minimum wage required under the applicable Wage Order.

3 70. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
4 than the minimum wage required under the applicable Wage Order for all hours worked during a
5 payroll period.

6 71. Labor Code § 1198 makes it unlawful for an employer to employ an employee
7 under conditions that violate the Wage Order.

8 72. In conjunction, these provisions of the Labor Code require employers to pay non-
9 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
10 worked, including unrecorded hours when the employer knew or reasonably should have known
11 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
12 Cal.4th 575, 585.)

13 73. At all relevant times during the applicable limitations period, Defendants failed to
14 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
15 overtime wages for all overtime hours they worked at the correct rates of pay, including overtime
16 wages for the hours worked on the seventh (7th) consecutive day, and twice their hourly rates of
17 pay for all hours worked in excess of twelve (12) hours in a workday. Defendants also failed to
18 compensated Plaintiff and the Class Members for all off-the-clock hours they worked at the
19 correct rates of pay.

20 74. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
21 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
22 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
23 California law.

24 75. In relevant part, California Labor Code § 558.1 states:

25 (e) Any employer or other person acting on behalf of an employer, who
26 violates, or causes to be violated, any provision regulating minimum wages or
27 hours and days of work in any order of the Industrial Welfare Commission, or
28 violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may
be held liable as the employer for such violation.

(f) For purposes of this section, the term "other person acting on behalf of
an employer" is limited to a natural person who is an owner, director, officer, or



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managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

76. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Defendant COLLIN FLEMING directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Defendant COLLIN FLEMING that is the same as the award of against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

77. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class Members have suffered damages, in an amount subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

78. Pursuant to Labor Code § 1194, Plaintiff, on behalf of herself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts subject to proof.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR EXPENSES

(Lab. Code §§ 1198 and 2802)

(By Plaintiff and the Class against Defendants)

79. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

80. At all relevant times, Plaintiff and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 1198 and 2802 and the Wage Order.

81. In pertinent part, California Labor Code § 2802(a) states, “[a]n employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct



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consequence of the discharge of his or her duties.”

82. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

83. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to supply mobile phones to perform their job duties, but Defendants did not provide these items or reimburse Plaintiff and the Class Members for these items. Defendant also required Plaintiff and the Class Members to use these personal mobile phones to communicate with their managers and other individuals. Defendants failed to provide these phones or reimburse Plaintiff and the Class Members for phone usage

84. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

85. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

86. Accordingly, with respect to this cause of action, on behalf of himself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys’ fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226 and 558.1)

(By Plaintiff and the Class against all Defendants)

87. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

88. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226 and 558.1.



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1 89. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members
2 were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate and
3 complete itemized statement showing:

- 4 (1) Gross wages earned,
5 (2) Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
8 (3) The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis,
10 (4) All deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item,
12 (5) Net wages earned,
13 (6) The inclusive dates of the period for which the employee is paid,
14 (7) The name of the employee and his or her social security number, except
15 that by January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the itemized
17 statement,
18 (8) The name and address of the legal entity that is the employer, and
19 (9) 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 90. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
22 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
23 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
24 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
25 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
26 is entitled to an award of costs and reasonable attorneys' fees.

27 91. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
28 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer



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injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

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

92. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

93. In relevant part, Labor Code § 558.1 states

(g) 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

(h) For purposes of this section, 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.

94. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the



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1 Defendants and the other employers identified above. Defendant COLLIN FLEMING directly
2 or indirectly, or through an agent or other person, employed and exercised control over the wages,
3 hours, and/or working conditions of the Class Members, and caused the violations to the Labor
4 Code and the Wage Order described above. On behalf of himself and all of the other Class
5 Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
6 liquidated damages, attorneys' fees, costs, and related relief against Defendant COLLIN
7 FLEMING that is the same as the award of against the other Defendants on the same grounds for
8 which Plaintiff seeks against the Defendants.

9 95. As alleged herein, Defendants failed to provide Plaintiff and the other Class
10 Members with all meal and rest periods in compliance with California law. Defendants also failed
11 to provide Plaintiff and the other Class Members with premium wages on the workdays
12 Defendants failed to provide them with one or more meal and/or rest periods in compliance with
13 California law. Defendants also failed to reimburse Plaintiff and the other Class Members for all
14 necessary business expenses that they incurred on Defendants' behalf. As a result, Defendants
15 have failed to properly itemize Plaintiff and the other Class Members' gross and net wages earned
16 and other requirements of California Labor Code § 226. As a result, Defendants have violated
17 California Labor Code § 226.

18 96. Defendants' failure to provide Plaintiff and the other Class Members with accurate
19 and complete wage statements was knowing and intentional. Defendants had the ability to provide
20 Plaintiff and the other Class Members with accurate wage statements but intentionally provided
21 wage statements that Defendants knew were not accurate.

22 97. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
24 wage statements were violated and they were misled about the amount of wages they had actually
25 earned and were owed. In addition, the absence of accurate information on their wage statements
26 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
27 and mathematical computations to determine the amounts of wages owed, has caused difficulty
28 and expense in attempting to reconstruct time and pay records and/or has led to the submission of



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1 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
2 and the other Class Members were not able to ascertain from the wage statements whether
3 Defendants complied with their obligations under California Labor Code § 226(a).

4 98. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
5 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
6 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
7 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
8 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
9 also entitled to an award of costs and reasonable attorneys' fees.

10 99. Accordingly, with respect to this cause of action, on behalf of himself and the other
11 Class, Plaintiff prays for the herein stated relief and for an award of all reasonable costs and
12 attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

13 **SIXTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(Lab. Code §§ 201, 202, 203, and 558.1)**

16 **(By Plaintiff and the Class against all Defendants)**

17 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 101. At all relevant times during the applicable limitations period, Plaintiff and the
19 Class have been non-exempt employees of Defendants and entitled to the benefits and
20 protections of California Labor Code §§ 201, 202, 203, and 558.1 and the Wage Order.

21 102. Labor Code § 201 provides that all earned and unpaid wages of an employee who
22 is discharged are due and payable immediately at the time of discharge.

23 103. Labor Code § 202 provides that all earned and unpaid wages of an employee who
24 quits after providing at least 72-hours notice before quitting are due and payable at the time of
25 quitting and that all earned and unpaid wages of an employee who quits without providing at
26 least 72-hours notice before quitting are due and payable within 72 hours.

27 104. In relevant part, Labor Code § 558.1 states

28 (i) Any employer or other person acting on behalf of an employer,
who violates, or causes to be violated, any provision



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1 regulating minimum wages or hours and days of work in
2 any order of the Industrial Welfare Commission, or violates,
3 or causes to be violated, Sections 203, 226, 226.7, 1193.6,
4 1194, or 2802, may be held liable as the employer for such
5 violation

6 (j) For purposes of this section, the term “other person acting
7 on behalf of an employer” is limited to a natural person who
8 is an owner, director, officer, or managing agent of the
9 employer, and the term “managing agent” has the same
10 meaning as in subdivision (b) of Section 3294 of the Civil
11 Code.

12 105. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff
13 and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
14 Defendants and the other employers identified above. Defendant COLLIN FLEMING directly
15 or indirectly, or through an agent or other person, employed and exercised control over the wages,
16 hours, and/or working conditions of the Class Members, and caused the violations to the Labor
17 Code and the Wage Order described above. On behalf of himself and all of the other Class
18 Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
19 liquidated damages, attorneys’ fees, costs, and related relief against Defendant COLLIN
20 FLEMING that is the same as the award of against the other Defendants on the same grounds for
21 which Plaintiff seeks against the Defendants.

22 106. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
23 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
24 § 201 or § 202.

25 107. Plaintiff is informed and believes that Defendants’ failures to timely pay all final
26 wages to him and the Class Members have been willful in that Defendants have the ability to
27 pay final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted
28 policies or practice that are incompatible with those requirements.

108. Labor Code § 203 provides that the wages of an employee continue on a daily
basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
unpaid wages to the employee in accordance with Labor Code § 201, or § 202.

109. Defendants failed to pay Plaintiff and the Class Members whose employment



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1 ended all of the earned, but unpaid wages described above by the conclusion of their employment.
2 In addition, Defendants failed to issue to Plaintiff and the Class Members whose employment
3 ended their final paychecks until the next regular pay day following the termination.

4 110. Plaintiff is informed and believes that Defendants' failures to weekly and timely
5 pay Plaintiff and the Class all of their earned and unpaid wages have been willful in that, at all
6 relevant times, Defendants have deliberately maintained policies and practices that violate the
7 requirements of the Labor Code and the Wage Order, even though at all relevant times, they have
8 had the ability to comply with those legal requirements.

9 111. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
10 himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
11 for each Class Member.

12 **SEVENTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

14 **(Bus. & Prof. Code §§ 17200, et seq.)**

15 **(By Plaintiff and the Class against all Defendants)**

16 112. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

17 113. At all relevant times during the applicable limitations period, Plaintiff and the
18 other Class Members have been employees of Defendants and entitled to the benefits and
19 protections of the Business and Professions Code §§ 17200, et seq.

20 114. The unlawful conduct of Defendants alleged herein amounts to and constitutes
21 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
22 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
23 unfairly gained a competitive advantage over other comparable companies doing business in
24 California that comply with their legal obligations to, among other things, pay their employees
25 premium wages for workdays in which they did not provide employees with one or more meal
26 and rest periods, and pay them all earned wages for all regular and overtime hours worked.
27 Defendants' unfair competitive advantage also includes the financial gains that resulted from
28 deducting at least 30 minutes from the work time Plaintiff and the Class Members had worked



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1 per day.

2 115. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
3 other Class Members have suffered injuries in fact and lost money or property. Defendants
4 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
5 premium wages that Plaintiff and the other Class Members incurred during the course of
6 performing their duties. Defendants also failed to reimburse Plaintiff and the other Class Members
7 for necessary business expenses, such as, but not limited to personal cell phone usage and mobile
8 phones.

9 116. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
10 other Class Members are entitled to restitution of all monies rightfully belonging to them that
11 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
12 and unfair business practices.

13 117. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
14 connection with their unfair competition claims pursuant to California Code of Civil Procedure
15 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

16
17 **EIGHTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab Code §§2698, et seq.)**

20 **(By Plaintiff and the Class against all Defendants)**

21 118. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 119. The "Aggrieved Employees" are all members of the Class defined above who
23 Defendants employed during the period beginning January 10, 2020, and ending on the date that
24 final judgment is entered in this action.

25 120. Labor Code § 204 states

26 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
27 or 204.2, earned by any person in any employment are due and payable twice
28 during each calendar month, on days designated in advance by the employer as the
regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
calendar month shall be paid for between the 16th and the 26th day of the month
during which the labor was performed, and labor performed between the 16th and
the last day, inclusive, of any calendar month, shall be paid for between the 1st
and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages



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1 earned for labor in excess of the normal work period shall be paid no later than the
2 payday for the next regular payroll period.

3 (2) An employer is in compliance with the requirements of subdivision (a) of
4 Section 226 relating to total hours worked by the employee, if hours worked in
5 excess of the normal work period during the current pay period are itemized as
6 corrections on the paystub for the next regular pay period. Any corrections set out
7 in a subsequently issued paystub shall state the inclusive dates of the pay period
8 for which the employer is correcting its initial report of hours worked.

9 (c) However, when employees are covered by a collective bargaining
10 agreement that provides different pay arrangements, those arrangements shall
11 apply to the covered employees.

12 (d) The requirements of this section shall be deemed satisfied by the payment
13 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
14 more than seven calendar days following the close of the payroll period.

15 121. Defendants paid wages to employees on regular intervals. Defendants, however,
16 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
17 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
18 intervals for all wages earned and all hours worked.

19 122. During the applicable time period, Defendants violated California Labor Code §§
20 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802.

21 123. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
22 behalf of themselves and other current or former employees, to bring a civil action to recover civil
23 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

24 124. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
25 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
26 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 2802 during the
27 applicable limitations period in the following amounts:

28 A. For violations of California Labor Code § 204, one hundred dollars
 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
 (penalty amounts established by California Labor Code § 210).

 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)



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1 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
2 California Labor Code § 226.3).

3 C. For violations of California Labor Codes §§ 510 and 512, fifty dollars
4 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
5 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
6 established by California Labor Code § 558).

7 D. For violations of California Labor Codes §§ 201, 202, 203, 226.7, 1194,
8 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
9 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
10 period for each subsequent violation (penalty amounts established by California Labor Code §
11 2699(f)(2)).

12 E. For violations of California Labor Code § 1197, one hundred dollars
13 (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred
14 fifty dollars (\$250.00) for each underpaid aggrieved employee for each subsequent violation per
15 pay period (regardless of whether the initial violations were intentionally committed), in addition
16 to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
17 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor
18 Code § 1197.1).

19 F. For violations of California Labor Code § 1198, one hundred dollars
20 (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred
21 dollars (\$200.00) for each aggrieved employee for each subsequent violation, per pay period
22 (penalties set by Labor Code § 2699(f)(2)).

23 125. Plaintiff has complied with the procedures for bringing suit specified in California
24 Labor Code § 2699.3. By letter dated August 18, 2021, Plaintiff filed written notice online with
25 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
26 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
27 violated, including the facts and theories to support the alleged violations. A true and correct copy
28 of the notice to the LWDA dated August 18, 2021, is attached as **Exhibit A**. Plaintiff accompanied



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1 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
2 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the
3 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
4 these allegations.

5 126. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
6 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
10 relief and judgment against Defendants as follows:

- 11 A. An order that the action be certified as a class action;
- 12 B. An order that Plaintiff be appointed class representative;
- 13 C. An order that counsel for Plaintiff be appointed class counsel;
- 14 D. Unpaid Wages;
- 15 E. Actual Damages;
- 16 F. Statutory Damages;
- 17 G. Civil Penalties;
- 18 H. Restitution;
- 19 I. Declaratory and injunctive relief;
- 20 J. Equitable relief;
- 21 K. Pre-judgment interest;
- 22 L. Statutory penalties;
- 23 M. Costs of suit;
- 24 N. Interest;
- 25 O. Reasonable attorneys' fees; and
- 26 P. Such other relief as the Court deems just and proper.

27 **DEMAND FOR JURY TRIAL**

28 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial



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1 on all issues so triable.

2
3 Respectfully submitted,

4 THE SPIVAK LAW FIRM

5 Dated: 11 / 02 / 2022

6 By 

7 DAVID G. SPIVAK,
8 CHRISTINA J. PREJEAN, Attorneys for
9 Plaintiff, MICHAEL CANTRELL, and all
10 others similarly situated
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 18, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Michael M. Cantrell / Concrete Placement, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Michael M. Cantrell (hereafter “Cantrell” or “Complainant”) provides notice that Concrete Placement, Inc., a California corporation, and related entities (collectively “the Concrete Placement Employers” or “the Employers”) violated his rights and those of all other individuals the Concrete Placement Employers have employed or otherwise contracted with in California as heavy equipment operators, operators, field workers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1174, 1198, 2802. On behalf of himself and all other Aggrieved Employees, Cantrell hereby provides this notice to the Labor & Workforce Development Agency and the Concrete Placement Employers and their agents and representatives.

At all relevant times, the Concrete Placement Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Cantrell and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately May 15, 2014, the Concrete Placement Employers began to employ Cantrell in Santa Ana, County of Orange in the position of hourly, non-exempt, heavy equipment operator. The Concrete Placement Employers continuously employed him in that capacity until on or about March 15, 2021 when his employment ended.

At all relevant times, the Concrete Placement Employers issued wages to Cantrell and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Concrete Placement Employers classified Cantrell and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

At all relevant times, the Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Concrete Placement Employers failed to provide timely, 30-minute, off-duty meal periods to Cantrell and the Aggrieved Employees by often requiring them to work in excess of 12 hours in a day and preventing them from taking and clocking out for the meal periods either of the two meal periods they were entitled to. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to monitor the concrete at all times. The Concrete Placement Employers also failed to pay premium wages for days on which it failed to provide Cantrell and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Concrete Placement Employers failed to authorize and permit Cantrell and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Concrete Placement Employers failed to authorize and/or permit Cantrell and the Aggrieved Employees to take a duty-free, ten-minute rest period every four hours worked or major portion thereof by often requiring them to work in excess of 12 hours in a day. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to monitor the concrete at all times. The Concrete

Placement Employers also failed to pay premium wages for days on which it failed to authorize and permit Cantrell and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Concrete Placement Employers required Cantrell and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Concrete Placement Employers required Cantrell and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Concrete Placement Employers did not provide these items and did not reimburse Cantrell and the other Aggrieved Employees for these items. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to communicate with their managers and others by using their personal mobile phones. The Concrete Placement Employers did not provide phones for this purpose or reimburse Cantrell and the Aggrieved Employees for using their personal mobile phones.

At all relevant times, the Concrete Placement Employers failed to issue to Cantrell and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Concrete Placement Employers knowingly and intentionally failed to state on the wage statements they issued to Cantrell and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all meal period premium wages earned, and all rest break premium wages earned.

The Concrete Placement Employers also failed to timely pay Cantrell and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing at the worksites they sent Cantrell and the Aggrieved Employees to work at.

The Concrete Placement Employers failed to maintain accurate employee records of Cantrell and all of the other Aggrieved Employees. The Concrete Placement Employers failed to maintain accurate and complete records of the meal periods and rest periods of Cantrell and the Aggrieved Employees and the premium wages they earned for missing their meal and rest periods.

For the reasons stated herein, Cantrell alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (b) The Concrete Placement Employers failed to authorize and permit Cantrell and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Concrete Placement Employers failed to compensate Cantrell and all of the other Aggrieved Employees at one hour's pay for each day in which the Concrete Placement Employers failed to provide them with one or more meal periods as required by law;
- (d) The Concrete Placement Employers failed to compensate Cantrell and all of the other Aggrieved Employees at one hour's pay for each day in which the Concrete Placement Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (e) The Concrete Placement Employers failed to indemnify Cantrell and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (f) The Concrete Placement Employers knowingly and intentionally failed to provide Cantrell and all of the other Aggrieved Employees with accurate wage statements;
- (g) The Concrete Placement Employers willfully failed to timely pay Cantrell and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Concrete Placement Employers and when their employment ended;
- (h) The Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing; and
- (i) The Concrete Placement Employers failed to maintain accurate employment records pertaining to Cantrell and all of the other Aggrieved Employees.

Accordingly, Cantrell now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Concrete Placement Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through

4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis.”

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) “Division” means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(C).

At all relevant times during the applicable limitations period, the Concrete Placement Employers “Employers, Cantrell, and all of the Aggrieved Employees were covered by the Wage Order because Cantrell and all of the Aggrieved Employees worked for the Concrete Placement Employers in construction occupations. Accordingly, Cantrell and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less

than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. (See Labor Code Section 512.)

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (See Labor Code Section 512.)
- (C) ...
- (D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an

applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with all timely meal periods. The Concrete Placement Employers denied Cantrell and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Concrete Placement Employers failed to provide timely, 30-minute, off-duty meal periods to Cantrell and the Aggrieved Employees by often requiring them to work in excess of 12 hours in a day and preventing them from taking and clocking out for the meal periods either of the two meal periods they were entitled to. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to monitor the concrete at all times. Furthermore, the Concrete Placement Employers failed to pay premium wages for days on which they failed to provide Cantrell and all of the other Aggrieved Employees with timely meal periods. Accordingly, Cantrell now seeks civil penalties for these Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));

2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 11 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with

breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

- (B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.
- (C) ...
- (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but

not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

- (d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Concrete Placement Employers failed to authorize and permit Cantrell and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Concrete Placement Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Concrete Placement Employers failed to authorize and/or permit Cantrell and the Aggrieved Employees to take a duty-free, ten-minute rest period every four hours worked or major portion thereof by often requiring them to work in excess of 12 hours in a day. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to monitor the concrete at all times. Moreover, the Concrete Placement Employers failed to pay Cantrell and all of the other Aggrieved Employees premium wages on workdays the Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Cantrell now seeks civil penalties for these Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to 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 provided herein may be required to provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Concrete Placement Employers required Cantrell and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Concrete Placement Employers required Cantrell and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Concrete Placement Employers did not provide these items and did not reimburse Cantrell and the other Aggrieved Employees for these items. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to communicate with their managers and others by using their personal mobile phones. The Concrete Placement Employers did not provide phones for this purpose or reimburse Cantrell and the Aggrieved Employees for using their personal mobile phones. Accordingly, Cantrell seeks civil penalties for these Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number;
and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.
(See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Concrete Placement Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Concrete Placement Employers failed to state in the wage statements they issued to Cantrell and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Concrete Placement Employers knowingly and intentionally failed to state on the wage statements they issued to Cantrell and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all meal period premium wages earned, all rest break premium wages earned. Accordingly, Cantrell seeks civil penalties for the Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Concrete Placement Employers failed to compensate Cantrell and all of the other Aggrieved Employees for wages earned, including unprovided meal period premium wages, and unprovided rest break premium wages, at the intervals stated above. As a result, the Concrete Placement Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Cantrell now seeks civil penalties for the Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous

notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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.

The Concrete Placement Employers failed to pay Cantrell and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Cantrell, including unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Cantrell and all of the other Aggrieved Employees as set forth above at the end of employment, the Concrete Placement Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Cantrell seeks civil penalties from the Concrete Placement Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Toilet Facilities, Potable Water, Cleansing Agents
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 10(C) of the Wage Order states, “in all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleaning agent and single use towels for handwashing.”

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Concrete Placement Employers failed to provide any toilet facilities for use by Cantrell and all of the other Aggrieved Employees within reasonable access. Additionally, the Concrete Placement Employers failed to provide potable water, soap, or other suitable cleaning agent and single use towels for handwashing for use by Cantrell and all of the other Aggrieved Employees. Accordingly, on behalf of himself and aggrieved employees, Cantrell demands that the Concrete Placement Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved

employees. If within 33 days of this notice, the Concrete Placement Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Cantrell, on behalf of himself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Concrete Placement Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be

kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Concrete Placement Employers failed to compensate Cantrell and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, and all rest break premium wages earned. As a result, the Concrete Placement Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Cantrell and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Cantrell seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

- 1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for

each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Michael M. Cantrell will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Michael M. Cantrell
Walter L. Haines, Esq.

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State of California,
County of Los Angeles

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

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EXECUTED on Tuesday, November 29, 2022, at Los Angeles, California.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Emily H. Ly
EMILY HOUNG LY