

1 DAVID G. SPIVAK (SBN 179684)  
2 [david@spivaklaw.com](mailto:david@spivaklaw.com)

3 MAYA CHEAITANI (SBN 335777)  
4 [maya@spivaklaw.com](mailto:maya@spivaklaw.com)

5 THE SPIVAK LAW FIRM  
6 16530 Ventura Blvd., Suite 203  
7 Encino, CA 91436  
8 Telephone (213) 725-9094  
9 Facsimile (213) 634-2485

10 Attorneys for Plaintiff,  
11 JOSE L. GONZALEZ DUARTE, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ORANGE**  
14 **(UNLIMITED JURISDICTION)**

15 JOSE L. GONZALEZ DUARTE, on behalf of  
16 himself, all others similarly situated, and as an  
17 “aggrieved employee” on behalf of other  
18 “aggrieved employees” under the Labor Code  
19 Private Attorneys General Act of 2004,

20 *Plaintiff,*

21 vs.

22 CORBEL COMMUNICATIONS  
23 INDUSTRIES OF CALIFORNIA INC., a  
24 California corporation; CORBEL  
25 COMMUNICATIONS INDUSTRIES, LLC, a  
26 limited liability company of unknown origin;  
27 and DOES 1-50, inclusive,

28 *Defendants.*

Case No.: 30-2021-01225089-CU-OE-CXC

**FIRST AMENDED CLASS ACTION**

**COMPLAINT FOR:**

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
3. Wage Statement Penalties (Lab. Code § 226);
4. Waiting Time Penalties (Lab. Code §§ 201–203); and
5. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
6. Civil Penalties (Lab. Code §§ 2698, et seq.).

**JURY TRIAL DEMANDED**



SPIVAK LAW

Employee Rights Attorneys  
16530 Ventura Blvd., Ste. 203  
Encino, CA 91436  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

**ADDITIONAL ATTORNEY FOR PLAINTIFF**

Walter Haines (SBN 71075)  
whaines@uelglaw.com  
UNITED EMPLOYEES LAW GROUP, PC  
4276 Katella Ave, #301  
Los Alamitos, CA 90720  
Telephone: (562) 256-1047  
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys  
16530 Ventura Blvd., Ste. 203  
Encino, CA 91436  
(213) 725-9094 Tel  
(213) 634-2485 Fax  
SpivakLaw.com

1 Plaintiff, JOSE L. GONZALEZ DUARTE (hereafter “Plaintiff”), on behalf of himself and  
2 all others similarly situated, complains and alleges as follows:

### 3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant CORBEL  
5 COMMUNICATIONS INDUSTRIES OF CALIFORNIA INC., a California corporation,  
6 CORBEL COMMUNICATIONS INDUSTRIES, LLC, a limited liability company of unknown  
7 origin, and Does 1-50, inclusive (collectively “Defendants”) for alleged violations of the  
8 California Labor Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage  
Order”), and the 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’ alleged failures to (1) provide all meal  
12 and rest periods in compliance with California law, (2) pay all wages earned for all hours worked  
13 at the correct rates of pay, (3) provide accurate and complete itemized written wage statements,  
14 (4) timely pay all final wages upon termination of employment, and (5) fairly compete.  
15 Accordingly, Plaintiff now seeks to recover unpaid wages and related relief through this class  
16 action.

### 17 **JURISDICTION AND VENUE**

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

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

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

24 6. Venue is proper in Orange County pursuant to California Code of Civil  
25 Procedure § 395(a) and § 395.5 in that liability arose in Orange County because at least some  
26 of the transactions that are the subject matter of this Complaint occurred therein and/or because  
27 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

### 28 **PARTIES**

7. Plaintiff JOSE L. GONZALEZ DUARTE is a resident of California. On  
approximately June 23, 2020, Defendants began to employ Plaintiff in Brea, Orange County in



1 the position of laborer. Defendants continuously employed him in that capacity until on or about  
2 April 14, 2021, when his employment ended.

3 8. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8  
4 California Code of Regulations § 11050 and an "aggrieved employee" within the meaning of  
5 Labor Code § 2699(c).

6 9. Defendant CORBEL COMMUNICATIONS INDUSTRIES OF CALIFORNIA  
7 INC. is a corporation organized and existing under the laws of California and a citizen of  
8 California based on Plaintiff's information and belief.

9 10. Defendants CORBEL COMMUNICATIONS INDUSTRIES, LLC, is a limited  
10 liability company of unknown origin.

11 11. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
12 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but  
13 is informed and believes and thereon alleges that said Defendants are legally responsible for the  
14 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.  
15 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants  
16 when ascertained.

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

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

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

## CLASS ALLEGATIONS

15. 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.

16. **Class Definition:** The Class is defined as follows: All individuals Defendants have employed or otherwise contracted with in California as hourly, non-exempt laborers, 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”).

17. **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.

18. **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.

19. **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 provide the Class Members with all meal and rest periods in compliance with California law;

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

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

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

E. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

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

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

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

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

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

### 26 **STATEMENT OF FACTS**

27 24. On approximately June 23, 2020, Defendants began to employ Plaintiff in Brea,  
28 Orange County in the position of laborer. Defendants continuously employed him in that capacity  
until on or about April 14, 2021, when his employment ended.

25 25. At all relevant times, Defendants issued wages to Plaintiff and all of the other Class  
26 Members on a weekly (52 pay periods/year) basis and paid them by the hour. At all relevant times,



1 Defendants classified Plaintiff and all of the other Class Members as non-exempt employees  
2 entitled to the protections of the Labor Code and the Wage Order.

3 26. Defendants failed to compensate Plaintiff and all of the other Class Members for  
4 all hours worked at the applicable minimum or regular rates of pay. Defendants did not provide  
5 Plaintiff and the Class Members with meal periods. However, Defendants deducted time worked  
6 from the time records they created for Plaintiff and the Class Members to create the appearance  
7 that Defendants had provided Plaintiff and the Class Members with meal periods of 30 minutes  
8 to one hour.

9 27. Defendants failed to compensate Plaintiff and all of the other Class Members at  
10 the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the  
11 first eight hours of the seventh day of the workweek. As a result of the deductions and failure to  
12 pay all wages earned described above, Defendants paid Plaintiff and the Class Members only  
13 regular wages on days in which they worked in excess of eight hours.

14 28. Defendants failed to compensate Plaintiff and all of the other Class Members at  
15 the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the  
16 seventh day of the workweek.

17 29. At all relevant times, Defendants failed to provide Plaintiff and all of the other  
18 Class Members with all timely 30-minute, off-duty meal periods. Defendants required Plaintiff  
19 and the Class Members to work in excess of eight hours per day with only a few ten-minute  
20 breaks. When Plaintiff asked his foreman about meal periods, the foreman told him “no breaks.”  
21 Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff  
22 and all of the other Class Members with meal periods as required by law.

23 30. At all relevant times, Defendants failed to authorize and permit Plaintiff and all of  
24 the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked  
25 or major portion thereof. Defendants also failed to pay premium wages for days on which they  
26 failed to authorize and permit Plaintiff and all of the other Class Members to take rest breaks as  
27 required by law.

28 31. Defendants unlawfully deducted wages belonging to Plaintiff and all of the other  
Class Members. As explained above, Defendants did not provide Plaintiff and the Class Members  
with meal periods. However, Defendants deducted time worked from the time records they  
created for Plaintiff and the Class Members to create the appearance that Defendants had provided



1 Plaintiff and the Class Members with unpaid meal periods of 30 minutes to one hour. At all  
2 relevant times, Defendants failed to issue to Plaintiff and all of the other Class Members complete  
3 and accurate wage statements that state all hours worked at the correct rates of pay, and all wages  
4 earned. Defendants knowingly and intentionally failed to state on the wage statements they issued  
5 to Plaintiff and all of the other Class Members the unpaid wages discussed above. The wage  
6 statements fail to state all hours worked at the correct rates of pay, all minimum wages earned, all  
7 regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period  
8 premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and  
the full and correct name of the employer and its address.

9 32. Defendants also failed to timely pay Plaintiff and all of the other Class Members  
10 all earned wages as described above during and at the conclusion of employment. Additionally,  
11 Defendants did not issue to Plaintiff and the Class Members their final paychecks, including  
12 vacation pay, until several days after the end of the employment relationship.

### 13 **FIRST CAUSE OF ACTION**

#### 14 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

15 **(Lab. Code §§ 226.7, 512, and 1198)**

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

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

18 34. At all relevant times during the applicable limitations period, Plaintiff and the  
19 Class Members have been employees of Defendants and entitled to the benefits and protections  
of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

20 35. In relevant part, California Labor Code § 1198 states:

21 The maximum hours of work and the standard conditions of labor  
22 fixed by the commission shall be the maximum hours of work and  
23 the standard conditions of labor for employees. The employment  
of any employee for longer hours than those fixed by the order or  
under conditions of labor prohibited by the order is unlawful.

24 36. In relevant part, California Labor Code § 512 states:

25 An employer shall not employ an employee for a work period of  
26 more than five hours per day without providing the employee with  
27 a meal period of not less than 30 minutes, except that if the total  
28 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



1 employer and employee.

2 An employer shall not employ an employee for a work period of  
3 more than 10 hours per day without providing the employee with  
4 a second meal period of not less than 30 minutes, except that if the  
5 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.

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

7  
8 **Rest Periods**

9 (A) “Every employer shall authorize and permit all employees  
10 to take rest periods, which insofar as practicable shall be in the  
11 middle of each work period. Nothing in this provision shall prevent  
12 an employer from staggering rest periods to avoid interruption in  
13 the flow of work and to maintain continuous operations, or from  
14 scheduling rest periods to coincide with breaks in the flow of work  
15 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.

16 (B) Rest periods need not be authorized in limited  
17 circumstances when the disruption of continuous operations would  
18 jeopardize the product or process of the work. However, the  
19 employer shall make up the missed rest period within the same  
20 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.

21 (C) ...

22 (D) If an employer fails to provide an employee a rest period in  
23 accordance with the applicable provisions of this order, the  
24 employer shall pay the employee one (1) hour of pay at the  
25 employee’s regular rate of compensation for each workday that the  
rest period is not provided.

26 38. In relevant part, § 10 of the Wage Order states:

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28 **Meal Periods**

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(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.”

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

1 of compensation for each work day that the meal or rest period is  
2 not provided.

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

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

10 42. Defendants intentionally failed to provide Plaintiff and the Class Members with  
11 all required 30-minute duty-free meal periods and 10-minute rest periods free from any work  
12 duties in accordance with the Wage Order.

13 43. At all relevant times, Defendants failed to provide Plaintiff and all of the other  
14 Class Members with all timely meal periods. Defendants denied Plaintiff and all of the other  
15 Class Members their 30-minute off-duty meal period within the first five hours of work.  
16 Defendants required Plaintiff and the Class Members to work in excess of eight hours per day  
17 with only a few ten-minute breaks. When Plaintiff asked his foreman about meal periods, the  
18 foreman told him “no breaks.” Furthermore, Defendants failed to pay premium wages for days  
19 on which they failed to provide Plaintiff and all of the other Class Members with timely meal  
20 periods.

21 44. At all relevant times, Defendants failed to authorize and permit Plaintiff and all  
22 of the other Class Members to take ten-minute, paid, duty-free rest breaks every four hours  
23 worked or major fraction thereof. Defendants did not seek an exemption from the rest period  
24 protections of the Wage Order from the California Division of Labor Standards Enforcement.  
25 Moreover, Defendants failed to pay Plaintiff and all of the other Class Members premium wages  
26 on workdays Defendants failed to provide Plaintiff and all of the other Class Members with 10-  
27 minute rest periods every four hours worked or major fraction thereof.

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

46. 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 and rest breaks not provided to them.

47. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them, and for workdays in which one or more rest breaks were not provided to them.

## SECOND CAUSE OF ACTION

## FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

**(Lab. Code §§ 221, 510, 1194, 1197, and 1198)**

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

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

49. 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 §§ 221, 510, 1194, 1197, and 1198 and the Wage Order.

50. § 2(J) of the Wage Order defines “hours worked” as “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.”

51. § 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

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

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours 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.

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1 (b) Double the employee's regular rate of pay for all hours worked in excess of  
2 12 hours in any workday and for all hours worked in excess of eight (8) hours on  
the seventh (7<sup>th</sup>) consecutive day of work in a workweek.

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

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

9 53. Labor Code § 510 states:

10 Eight hours of labor constitutes a day's work. Any work in excess of eight hours  
11 in one workday and any work in excess of 40 hours in any one workweek and the  
12 first eight hours worked on the seventh day of work in any one workweek shall  
13 be compensated at the rate of no less than one and one-half times the regular rate  
14 of pay for an employee. Any work in excess of 12 hours in one day shall be  
15 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.

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

18 55. Labor Code § 1197 makes it unlawful for an employer to pay an employee less  
19 than the minimum wage required under the applicable Wage Order for all hours worked during a  
20 payroll period.

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

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

28 58. Labor Code § 221 prohibits an employer from taking deductions from an  
employee's wages without the employee's express written consent or other legal authority for

1 doing so.

2 59. At all relevant times during the applicable limitations period, Defendants did not  
3 provide Plaintiff and the Class Members with meal periods. However, Defendants deducted time  
4 worked from the time records they created for Plaintiff and the Class Members to create the  
5 appearance that Defendants had provided Plaintiff and the Class Members with meal periods of  
6 30 minutes to one hour. Defendants deducted wages from the wages earned by Plaintiff and all  
7 of the other Class Members for in violation of Labor Code § 221, including fees for cashing a  
8 payroll check. As a result of the deductions and failure to pay all wages earned described above,  
9 Defendants paid Plaintiff and the Class Members only regular wages on days in which they  
10 worked in excess of eight hours and not the overtime premium wages they were entitled to by  
11 law.

12 60. At all relevant times during the applicable limitations period, Defendants failed to  
13 compensate Plaintiff and all of the other Class Members for all hours worked, including, but not  
14 limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the  
15 correct rates of pay.

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

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

24 63. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members,  
25 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid  
26 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject  
27 to proof.

### 28 **THIRD CAUSE OF ACTION**

#### **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

**(Lab. Code § 226)**

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



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

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

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

8                   (1) Gross wages earned,

9                   (2) Total hours worked by the employee, except for any employee whose  
10 compensation is solely based on a salary and who is exempt from payment of overtime under  
11 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,

12                   (3) The number of piece rate units earned and any applicable piece rate if the  
13 employee is paid on a piece-rate basis,

14                   (4) All deductions, provided that all deductions made on written orders of the  
15 employee may be aggregated and shown as one item,

16                   (5) Net wages earned,

17                   (6) The inclusive dates of the period for which the employee is paid,

18                   (7) The name of the employee and his or her social security number, except  
19 that by January 1, 2008, only the last four digits of his or her social security number or an  
20 employee identification number other than a social security number may be shown on the itemized  
21 statement,

22                   (8) The name and address of the legal entity that is the employer, and

23                   (9) All applicable hourly rates in effect during the pay period and the  
24 corresponding number of hours worked at each hourly rate by the employee.

25           67. Pursuant to California Labor Code § 226(e), an employee suffering injury as a  
26 result of a knowing and intentional failure by an employer to comply with subdivision (a) is  
27 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period  
28 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a  
subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and  
is entitled to an award of costs and reasonable attorneys' fees.

          68. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer



1 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer  
2 injury if the employer fails to provide accurate and complete information as required by California  
3 Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage  
4 statement alone one or more of the following:

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

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

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

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

15 69. “Promptly and easily determine,” as stated in California Labor Code §  
16 226(e), means a reasonable person would be able to readily ascertain the information without  
17 reference to other documents or information.

18 70. At all relevant times during the applicable limitations period, Defendants violated  
19 Labor Code section 226 because they did not properly and accurately itemize each Aggrieved  
20 Employee’s gross wages earned, net wages earned, the total hours worked, the corresponding  
21 number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor  
22 Code section 226.

23 71. Defendants failed to state in the wage statements they issued to Plaintiff and all of  
24 the other Class Members all their hours worked and wages earned, including, but not limited to,  
25 regular and overtime wages for work they performed off-the-clock after clocking-out (as  
26 described above). Defendants knowingly and intentionally failed to state on the wage statements  
27 they issued to Plaintiff and all of the other Class Members the earned but unpaid wages described  
28 above. The wage statements do not state all hours worked at the correct rates of pay, all minimum  
wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned,  
all meal period premium wages earned, all rest break premium wages earned, all unlawfully  
deducted wages, and the correct name and address of the employer.



1 72. Defendants' failure to provide Plaintiff and the other Class Members with accurate  
2 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and  
3 the other Class Members with accurate wage statements but intentionally provided wage  
4 statements that Defendants knew were not accurate.

5 73. As a result of being provided with inaccurate wage statements by Defendants,  
6 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate  
7 wage statements were violated and they were misled about the amount of wages they had actually  
8 earned and were owed. In addition, the absence of accurate information on their wage statements  
9 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery  
10 and mathematical computations to determine the amounts of wages owed, has caused difficulty  
11 and expense in attempting to reconstruct time and pay records and/or has led to the submission of  
12 inaccurate information about wages to state and federal government agencies. Further, Plaintiff  
13 and the other Class Members were not able to ascertain from the wage statements whether  
14 Defendants complied with their obligations under California Labor Code § 226(a).

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

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

#### 25 **FOURTH CAUSE OF ACTION**

#### 26 **WAITING TIME PENALTIES**

27 **(Lab. Code §§ 201-203)**

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

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

77. At all relevant times during the applicable limitations period, Plaintiff and the  
Class have been non-exempt employees of Defendants and entitled to the benefits and



1 protections of California Labor Code §§ 201-203, and the Wage Order.

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

4 79. Labor Code § 202 provides that all earned and unpaid wages of an employee who  
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of  
6 quitting and that all earned and unpaid wages of an employee who quits without providing at  
7 least 72-hours notice before quitting are due and payable within 72 hours.

8 80. By failing to pay earned minimum and premium wages to Plaintiff and the Class,  
9 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code  
10 § 201 or § 202.

11 81. Plaintiff is informed and believes that Defendants' failures to timely pay all final  
12 wages to him and the Class Members have been willful in that Defendants have the ability to  
13 pay final wages in accordance with Labor Code §§ 201 and 202 but have intentionally adopted  
14 policies or practice that are incompatible with those requirements.

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

18 83. Defendants failed to pay Plaintiff and all of the other Class Members whose  
19 employment ended all of the earned but unpaid wages described above by the conclusion of their  
20 employment with Plaintiff, including minimum wages, regular wages, overtime wages,  
21 doubletime wages, unprovided meal period premium wages, unprovided rest break premium  
22 wages, and deducted wages. Additionally, Defendants failed to issue to Plaintiff and all of the  
23 other Class Members whose employment ended their final paychecks with portions of their final  
24 wages until the next regular pay day following the termination.

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

85. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of  
himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties

for each Class Member.

**FIFTH CAUSE OF ACTION**

**UNFAIR COMPETITION**

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

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

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

87. 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 the Business and Professions Code §§ 17200, et seq.

88. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, and pay them all earned wages for all regular and overtime hours worked.

89. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and premium wages that Plaintiff and the other Class Members incurred during the course of performing their duties.

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

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

**SIXTH CAUSE OF ACTION**

**CIVIL PENALTIES**

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



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

93. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning August 10, 2020, and ending on the date that final judgment is entered in this action.

94. 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.

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

96. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

97. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on



1 behalf of themselves and other current or former employees, to bring a civil action to recover  
2 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

3 98. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are  
4 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code  
5 §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the  
6 applicable limitations period in the following amounts:

7 A. For violations of California Labor Code § 204, one hundred dollars  
8 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars  
9 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation  
10 (penalty amounts established by California Labor Code § 210).

11 B. For violations of California Labor Code § 226(a), two hundred fifty  
12 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars  
13 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts  
14 established by California Labor Code § 226.3).

15 C. For violations of California Labor Code § 221, one hundred dollars  
16 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars  
17 (\$200.00) for each Aggrieved Employee for each subsequent violation, or any willful or  
18 intentional violation, plus 25% of the amount unlawfully withheld from each Aggrieved  
19 Employee (penalty amounts established by California Labor Code § 225.5).

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars  
21 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)  
22 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts  
23 established by California Labor Code § 558).

24 E. For violations of California Labor Code § 1174, five hundred dollars  
25 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty  
26 amounts established by Labor Code § 1174.5).

27 F. For violations of California Labor Code § 1197, one hundred dollars  
28 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two  
hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per  
pay period (regardless of whether the initial violations were intentionally committed) (penalty  
amounts established by California Labor Code § 1197.1).



- 1 K. Equitable relief;  
2 L. Pre-judgment interest;  
3 M. Statutory penalties;  
4 N. Costs of suit;  
5 O. Interest;  
6 P. Reasonable attorneys' fees; and  
7 Q. Such other relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial  
10 on all issues so triable.

11 Respectfully submitted,

12 THE SPIVAK LAW FIRM

13 Dated: October 27, 2021

14 By



15 DAVID SPIVAK,  
16 MAYA CHEAITANI, Attorneys for Plaintiff,  
17 JOSE L. GONZALEZ DUARTE, and all others  
18 similarly situated  
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# **EXHIBIT A**



SPIVAK LAW

**\*SENT BY ELECTRONIC SUBMISSION \***

August 6, 2021

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

Re: Jose L Gonzalez Duarte / Corbel Communications

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jose L Gonzalez Duarte (hereafter “Gonzalez Duarte” or “Complainant”) provides notice that Corbel Communications Industries of California Inc., a California corporation, Corbel Communications Industries, LLC, and related entities (collectively “the Corbel Communications Employers” or “the Employers”) violated his rights and those of all other individuals the Corbel Communications Employers have employed or otherwise contracted with in California as hourly, non-exempt laborers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198. On behalf of himself and all other Aggrieved Employees, Gonzalez Duarte hereby provides this notice to the Labor & Workforce Development Agency and the Corbel Communications Employers and their agents and representatives.

At all relevant times, the Corbel Communications Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Gonzalez Duarte 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 June 23, 2020, the Corbel Communications Employers began to employ Gonzalez Duarte in Brea, Orange County in the position of laborer. The Corbel Communications Employers continuously employed him in that capacity until on or about April 14, 2021 when his employment ended.

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

The Corbel Communications Employers failed to compensate Gonzalez Duarte and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Corbel Communications Employers did not provide Gonzalez Duarte and the Aggrieved Employees with meal periods. However, the Corbel Communications Employers deducted time worked from the time records they created for Gonzalez Duarte and the Aggrieved Employees to create the appearance that the Corbel Communications Employers had provided Gonzalez Duarte and the Aggrieved Employees with meal periods of 30 minutes to one hour.

The Corbel Communications Employers failed to compensate Gonzalez Duarte and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. As a result of the deductions and failure to pay all wages earned described above, the Corbel Communications Employers paid

Gonzalez Duarte and the Aggrieved Employees only regular wages on days in which they worked in excess of eight hours.

The Corbel Communications Employers failed to compensate Gonzalez Duarte and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

At all relevant times, the Corbel Communications Employers failed to provide Gonzalez Duarte and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Corbel Communications Employers required Gonzalez Duarte and the Aggrieved Employees to work in excess of eight hours per day with only a few ten-minute breaks. When Gonzalez Duarte asked his foreman about meal periods, the foreman told him “no breaks.” The Corbel Communications Employers also failed to pay premium wages for days on which it failed to provide Gonzalez Duarte and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Corbel Communications Employers failed to authorize and permit Gonzalez Duarte 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 Corbel Communications Employers also failed to pay premium wages for days on which it failed to authorize and permit Gonzalez Duarte and all of the other Aggrieved Employees to take rest breaks as required by law.

The Corbel Communications Employers unlawfully deducted wages belonging to Gonzalez Duarte and all of the other Aggrieved Employees. As explained above, the Corbel Communications Employers did not provide Gonzalez Duarte and the Aggrieved Employees with meal periods. However, the Corbel Communications Employers deducted time worked from the time records they created for Gonzalez Duarte and the Aggrieved Employees to create the appearance that the Corbel Communications Employers had provided Gonzalez Duarte and the Aggrieved Employees with unpaid meal periods of 30 minutes to one hour. At all relevant times, the Corbel Communications Employers failed

to issue to Gonzalez Duarte 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 Corbel Communications Employers knowingly and intentionally failed to state on the wage statements they issued to Gonzalez Duarte and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and the full and correct name of the employer and its address.

The Corbel Communications Employers also failed to timely pay Gonzalez Duarte and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment. Additionally, the Corbel Communications Employers did not issue to Gonzalez Duarte and the Aggrieved Employees their final paychecks, including vacation pay, until several days after the end of the employment relationship.

The Corbel Communications Employers failed to provide Gonzalez Duarte and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing.

The Corbel Communications Employers failed to maintain accurate employee records of Gonzalez Duarte and all of the other Aggrieved Employees.

For the reasons stated herein, Gonzalez Duarte 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 Corbel Communications Employers failed to pay Gonzalez Duarte and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;

- (b) The Corbel Communications Employers failed to provide Gonzalez Duarte and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Corbel Communications Employers failed to authorize and permit Gonzalez Duarte and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Corbel Communications Employers failed to compensate Gonzalez Duarte and all of the other Aggrieved Employees at one hour's pay for each day in which the Corbel Communications Employers failed to provide them with one or more meal periods as required by law;
- (e) The Corbel Communications Employers failed to compensate Gonzalez Duarte and all of the other Aggrieved Employees at one hour's pay for each day in which the Corbel Communications Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Corbel Communications Employers unlawfully deducted wages belonging to Gonzalez Duarte and all of the other Aggrieved Employees;
- (g) The Corbel Communications Employers knowingly and intentionally failed to provide Gonzalez Duarte and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Corbel Communications Employers willfully failed to timely pay Gonzalez Duarte and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Corbel Communications Employers and when their employment ended;

- (i) The Corbel Communications Employers failed to provide Gonzalez Duarte 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
- (j) The Corbel Communications Employers failed to maintain accurate employment records pertaining to Gonzalez Duarte and all of the other Aggrieved Employees.

Accordingly, Gonzalez Duarte now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Corbel Communications 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). The Wage Order defines “drilling occupations” to mean,

all job classifications associated with the exploration or extraction of oil, gas, or water resources work, including but not limited to the installation, establishment, reworking, maintenance or repair of wells and pumps by boring, drilling, excavating, casting, cementing and cleaning for the extraction or conveyance of fluids such as water, steam, gases, or petroleum.

Wage Order, § 2(E). The Wage Order defines “logging occupations” to mean,

any work for which a timber operator’s license is required pursuant to California Public Resources Code Sections 4571-4586, including the cutting or removal or both of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work that is incidental thereto, including but not limited to construction and maintenance of roads, fuel breaks, fire breaks, stream crossings, landings, skid trails, beds for the falling of trees, and fire hazard abatement.

Wage Order, § 2(K). The Wage Order defines “mining occupations” to mean,

miners and other associated and related occupations (not covered by Labor Code Sections 750 et seq.) required to engage in excavation or operations above or below ground including work in mines, quarries, or open pits, used for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone, gravel, and rock, or other materials intended for manufacture or sale, whether paid on a time, piece rate, commission, or other basis.

Wage Order, § 2(L).

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

**Failure To Pay Wages For All Hours Worked At The Correct**  
**Rates of Pay**  
**(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

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 1194 states:

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

In relevant part, Labor Code section 510 states:

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.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ( $1\frac{1}{2}$ ) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7<sup>th</sup>) 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 (7<sup>th</sup>) consecutive day of work in a workweek.
- (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.

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

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Corbel Communications Employers did not provide Gonzalez Duarte and the Aggrieved Employees with meal periods. However, the Corbel Communications Employers deducted time worked from the time records they created for Gonzalez Duarte and the Aggrieved Employees to create the appearance that the Corbel Communications Employers had provided Gonzalez Duarte and the Aggrieved Employees with meal periods of 30 minutes to one hour.

As a result of the deductions and failure to pay all wages earned described above, the Corbel Communications Employers paid Gonzalez Duarte and the Aggrieved Employees only regular wages on days in which they worked in excess of eight hours and not the overtime premium wages they were entitled to by law.

At all relevant times during the applicable limitations period, the Corbel Communications Employers failed to compensate Gonzalez Duarte and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Gonzalez Duarte now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, 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 § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

**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 Corbel Communications Employers failed to provide Gonzalez Duarte and all of the other Aggrieved Employees with all timely meal periods. The Corbel Communications Employers denied Gonzalez Duarte and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Corbel Communications Employers required Gonzalez Duarte and the Aggrieved Employees to work in excess of eight hours per day with only a few ten-minute breaks. When Gonzalez Duarte asked his foreman about meal periods, the foreman told him "no breaks." Furthermore, the Corbel Communications Employers failed to pay premium wages for days on which they failed to provide Gonzalez Duarte and all of the other Aggrieved Employees with timely meal periods. Accordingly, Gonzalez Duarte now seeks civil penalties for these Labor Code violations that the Corbel

Communications 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 Corbel Communications Employers failed to authorize and permit Gonzalez Duarte 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 Corbel Communications Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Corbel Communications Employers failed to pay Gonzalez Duarte and all of the other Aggrieved Employees

premium wages on workdays the Corbel Communications Employers failed to provide Gonzalez Duarte and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Gonzalez Duarte now seeks civil penalties for these Labor Code violations that the Corbel Communications 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)).

**Unlawful Deductions**  
**(Lab. Code § 221)**

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Similarly, section 7 of the Wage Order states,

No employer shall collect or deduct from any employee any part of the wages that are paid unless such deductions are allowed by law. (See Labor Code Sections 220-226.) No fee shall be charged by the employer or agent of the employer for cashing a payroll check.

The Corbel Communications Employers deducted wages from the wages earned by Gonzalez Duarte and all of the other Aggrieved Employees for in violation of Labor Code § 221, including fees for cashing a payroll check. Accordingly, Gonzalez Duarte seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each

initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

**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 Corbel Communications 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 Corbel Communications Employers failed to state in the wage statements they issued to Gonzalez Duarte 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 Corbel Communications Employers knowingly and intentionally failed to state on the wage statements they issued to Gonzalez Duarte and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and the correct name and address of the employer. Accordingly, Gonzalez Duarte seeks civil penalties for the Labor Code violations that the Corbel Communications 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).

**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 Corbel Communications Employers failed to compensate Gonzalez Duarte and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal

period premium wages, unprovided rest break premium wages, deducted wages, at the intervals stated above. As a result, the Corbel Communications Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Gonzalez Duarte now seeks civil penalties for the Labor Code violations that the Corbel Communications 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 Corbel Communications Employers failed to pay Gonzalez Duarte 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 Gonzalez Duarte, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages. Additionally, the Corbel Communications Employers failed to issue to Gonzalez Duarte and all of the other Aggrieved Employees whose employment ended their final paychecks with portions of their final wages until the next regular pay day following the termination. By failing to pay Gonzalez Duarte and all of the other Aggrieved Employees as set forth above at the end of employment, the Corbel Communications Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Gonzalez Duarte seeks civil penalties from the Corbel Communications 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 Corbel Communications Employers failed to provide any toilet facilities for use by Gonzalez Duarte and all of the other Aggrieved Employees within reasonable access. Additionally, the Corbel Communications Employers failed to provide potable water, soap, or other suitable cleaning agent and single use towels for handwashing for use by Gonzalez Duarte and all of the other Aggrieved Employees. Accordingly, on behalf of himself and aggrieved employees, Gonzalez Duarte demands that the Corbel Communications Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved employees. If within 33 days of this notice, the Corbel Communications 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, Gonzalez Duarte, on behalf of himself and

all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Corbel Communications 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 Corbel Communications Employers failed to compensate Gonzalez Duarte and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all hours worked at the correct rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages. As a result, the Corbel Communications Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Gonzalez Duarte and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Gonzalez Duarte seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

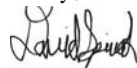
1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

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 Jose L Gonzalez Duarte 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](mailto:David@spivaklaw.com)

cc: Jose L Gonzalez Duarte  
Walter L. Haines, Esq.  
United Employees Law Group

Corbel Communications Industries of California Inc.  
c/o Agent for service of process  
Corporation Service Company Which Will Do Business In California As  
Csc - Lawyers Incorporating Service  
251 Little Falls Drive  
Wilmington, DE 19808

Corbel Communications Industries, LLC  
875 E 145th St  
Bronx, NY 10455