

Douglas Han (SBN 232858)
dhan@justicelawcorp.com
Shunt Tatavos-Gharajeh (SBN 272164)
statavos@justicelawcorp.com
Jason Rothman (SBN 304961)
jrothman@justicelawcorp.com
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs Damian Crockett and Neakco Cox,
on behalf of themselves and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

DAMIAN CROCKETT, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiffs,

v.

CUSTOM BILT HOLDINGS, LLC d/b/a
CUSTOM BILT METALS, a Delaware
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 34-2020-00285868-CU-OE-GDS

CLASS ACTION

Honorable Jill H. Talley
Department 25

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code §§ 226(a);
6. Violation of Labor Code § 203;
7. Failure to Reimburse Expenses § 2802;
8. Violation of Labor Code § 221;
9. Violation of Business & Professions Code § 17200 *et seq.*; and
10. Penalties Pursuant to Labor Code § 2699, *et seq.*

Complaint Filed: September 25, 2020
Trial Date: None Set



1 Plaintiffs Damian Crockett and Neakco Cox, (collectively “Plaintiffs”), on behalf of
2 themselves and all others similarly situated (collectively, “Employees”; individually, “Employee”)
3 complains of Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this action on behalf of themselves and all similarly situated
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendant CUSTOM BILT
8 HOLDINGS, LLC d/b/a CUSTOM BILT METALS, a Delaware limited liability company, and
9 DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”).
10 Plaintiffs allege that Defendants, and each of them, violated various provisions of the California
11 Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and California Business
12 & Professions Code, and seeks redress for these violations.

13 2. Upon information and belief, the same violations Plaintiffs endured at Defendants’
14 Sacramento, California location was also experienced by all non-exempt hourly employees
15 working for Defendants throughout California. Plaintiffs were employed by Defendants and (1)
16 shared similar job duties and responsibilities, (2) were subjected to the same policies and practices,
17 and (3) endured similar violations at the hands of Defendants as the other Class Members who
18 served in similar and related positions throughout California.

19 **THE PARTIES**

20 **A. The Plaintiff**

21 3. Plaintiff Damian Crockett has been a California resident during the time period
22 relevant to this Complaint, during which he was employed by Defendants as a non-exempt hourly
23 employee based out of Defendants’ facilities and offices in Sacramento, California.

24 4. Plaintiff Neakco Cox has been a California resident during the time period relevant
25 to this Complaint, during which he was employed by Defendants as a non-exempt hourly
26 employee based out of Defendants’ facilities and offices in Sacramento, California.

27 ///

28 ///

1 **B. The Defendants**

2 5. Defendant CUSTOM BILT HOLDINGS, LLC d/b/a CUSTOM BILT METALS, a
3 Delaware limited liability company, (“CUSTOM”) lists its principal offices in Irving, Texas.

4 6. The true names and capacities, whether individual, corporate, associate, or
5 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
6 unknown to Plaintiffs, who therefore sues these Defendants by such fictitious names under Code
7 of Civil Procedure § 474. Plaintiffs are informed and believes and thereon alleges that Defendants
8 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
9 some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend
10 this First Amended Complaint to reflect the true names and capacities of the Defendants
11 designated herein as Does 1 through 50 when their identities become known.

12 7. Plaintiffs are informed and believe and thereon alleges that each Defendant acted in
13 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
14 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
15 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
16 all respects as the employers or joint employers of Employees. Defendants, and each of them,
17 exercised control over the wages, hours or working conditions of Employees, issued policies
18 governing their employment, or suffered or permitted Employees to work, or engaged, thereby
19 creating a common law employment relationship, with Employees. Therefore, Defendants, and
20 each of them, employed or jointly employed Employees.

21 8. Plaintiffs further allege that Defendants controlled or affected the working
22 conditions, wages, working hours, and conditions of employment of Plaintiffs and all other Class
23 Members, so as to make each of said Defendants employers of Plaintiffs and all other Class
24 Members, regardless of whether they were hired by Defendants directly or through a staffing
25 agency, and thus liable as an employer of each of Plaintiffs and all other Class Members under the
26 statutory provisions set forth herein. Defendants had the authority to hire and terminate Plaintiffs
27 and other Class Members; to set work rules and conditions governing Plaintiffs’ and other Class
28 Members’ employment; and to supervise their daily employment activities.

9. Defendants exercised sufficient authority over the term and conditions of Plaintiffs and other Class Members' employment for them to be joint employers of Plaintiffs and the other Class Members.

10. Whenever and wherever reference is made in this Complaint to any act by a defendant or defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each defendant acting individually, jointly, and severally.

11. Whenever and wherever reference is made to individuals who are not named as a Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in Sacramento County. Defendants maintain and operate company facilities in Sacramento County and employ Plaintiffs and Class Members throughout California.

FACTUAL BACKGROUND

1. The Employees who comprise the Class, including Plaintiffs, are non-exempt employees pursuant to the applicable Wage Order(s) of the IWC. Defendants hire hourly employees who work in non-exempt positions at the direction of Defendants in the State of California. Plaintiffs and Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiffs also contends that Defendants failed to pay Plaintiffs and Class Members all wages due and owing to their detriment.

/ / /

2. As discussed in detail below, Defendants' employment practices resulted in (i) Class Members performing off-the-clock pre-shift and post-shift work without compensation (ii) rounding down of hours worked to either a quarter of an hour or to Class Members' shift schedules (iii) the under-recording of all hours worked, resulting in failure to pay overtime wages, (iv) failure to furnish accurate wage statements, (v) failure to provide timely, uninterrupted meal periods and rest breaks; (vi) failure to reimburse all necessary business expenditures, (vii) failure to provide rest and recovery periods, as required by law, and (viii) failure to timely pay Class Members upon separation. Defendants' conduct thus violated various provisions of the California Labor Code and applicable Wage Orders.

3. The work performed by Plaintiffs and the other Class Members was as manual laborers and/or machine operators. As a result of this manual labor and/or machine operator work, as detailed further below, Plaintiffs and Class Members employed by Defendants performed these tasks but were not paid the minimum wages, overtime wages, and double time wages to which they were entitled because of Defendants' systematic policies and practices of rounding and failing to properly compensate Class Members for all hours worked.

4. Plaintiffs contend Defendants' policy and practice of rounding time entries to conform to shift schedules is not neutral and results, over time, to the detriment of Class Members by systematically under-compensating them. Thus, Plaintiffs and Class Members worked longer hours than recorded by Defendants, and this off the clock work resulted in overtime hours accruing earlier than when Defendants started paying them in a work shift. When coupled with Plaintiffs and Class Members working longer post-shift hours off the clock and without compensation, this resulted in substantial regular and overtime hours worked under the control and authority of Defendants during each work shift that remain unpaid.

5. Moreover, there were often long lines at Defendants time clock machines, forcing Class Members to arrive early, upwards of ten (10) minutes before their shift started, in order to be able to clock in on time for their daily shift without being late. This "waiting" time was unaccounted for and to Class Members detriment.

1 6. Regarding off the clock pre-shift and post-shift hours worked, Defendants have a
2 systematic practice of pressuring Class Members to engage in pre-shift and post-shift off the clock
3 work, to their detriment. If Class Members were required and scheduled to work a shift between
4 the hours of 9:00 a.m. and 5:00 p.m., for example, he or she would be required to arrive at work
5 before their shift start time and to continue to work after their scheduled end time. More
6 specifically, Class Members were often required to come in early, before their shift started, in
7 order to assist other employees and management in putting together orders for the days'
8 projects/assignments/pieces. Plaintiffs and Class Members also donned and doffed their clothes
9 and personal protective equipment before clocking in as they would need to change into
10 appropriate attire before they could begin working (steel toe boots, safety equipment, etc...).

11 7. Furthermore, after Class Members pre-assigned shift time/schedule ended,
12 Defendants required Class Members to continue to work to complete required job duties. Plaintiffs
13 and Class Members were regularly asked by Defendants' management to continue working after
14 they clocked out. For example, Class Members were asked to help clean up the work site, continue
15 putting together pieces for the next days' projects, load vehicles, or to finish an order they were
16 currently working on. All of this post-shift work was unrecorded and off-the-clock due to
17 Defendants' policy and practice of only paying Class Members for their scheduled shift times
18 rather than for all hours actually worked.

19 13. Defendants' unlawful conduct was driven, upon information and belief, by the
20 decision to pay Class Members based on their scheduled shift times rather than the hours they
21 actually worked. This uniformly applied policy of requiring off-the-clock work in conjunction
22 with timekeeping records that reflected shift schedules rather than actual hours worked, operated
23 as an unlawful rounding policy because it was not neutral and resulted, over time, to the
24 substantial detriment of Class Members by systematically under-compensating them. This meant
25 that Plaintiffs were regularly performing pre-shift and post-shift work related functions for
26 Defendants, all off the clock and uncompensated for, to their detriment.

27 14. To the extent that Defendants paid overtime to Plaintiffs and Class Members, it
28 began doing so well after eight (8) hours into a work shift day and/or forty (40) hours a week, as

1 Defendants' corresponding time records and paystubs show. Therefore, from at least four (4) years
2 prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy
3 or practice of failing to pay Employees for all hours worked, and failing to pay minimum wages,
4 overtime wages, and double time wages for all time worked as required by California Law and in
5 violation of the Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and
6 4(A)-4(C) of the applicable IWC Wage Orders. Defendants' willful actions resulted in the
7 systematic underpayment of wages to Class Members, including underpayment of overtime and
8 double time pay to Class Members over a period of time.

9 15. To the extent Defendants paid double time to Plaintiffs and Class Members, it did
10 so at a rate less than double their standard hourly rate of pay. Therefore Plaintiffs and Class
11 Members were underpaid double time for hours worked.

12 16. As a result of Defendants' unlawful policies and practices, Plaintiffs and Class
13 Members incurred overtime hours worked for which they were not adequately and completely
14 compensated for, in addition to the hours they were required to work off-the-clock. To the extent
15 applicable, Defendants also failed to pay Plaintiffs and Class Members at an overtime rate of 1.5
16 times the regular rate for the first eight hours of the seventh consecutive work day in a week and
17 overtime payments at the rate of two (2) times the regular rate for hours worked over eight (8) on
18 the seventh consecutive work day, as required under the Labor Code and applicable IWC Wage
19 Orders.

20 17. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
21 meal periods, all the legally required paid, off-duty rest periods to the Plaintiffs and Class
22 Members, including as required by Labor Code §§ 226.7 and 512, and paragraphs 11 and 12 of the
23 applicable IWC Wage Orders, and all the legally required paid rest and recovery periods,
24 including as required by Labor Code §§ 226.7 and 512, and 8 California Code of Regulations §
25 3395.

26 8. Defendants' policy of rounding the time keeping entries also resulted in under-
27 reporting hours worked in a manner that would impact when Class Members were to receive off-
28 duty meal and rest periods, resulting in meal and rest periods that were either provided late, were

1 impermissibly shortened, or were interrupted by work demands. This often resulted in meal and
2 rest breaks being taken generally later than required by law.

3 9. Defendants did not have a policy or practice which provided or recorded all the
4 legally required unpaid, off-duty meal periods. Due to Defendants' rounding policy, Plaintiffs and
5 Class Members were required to perform work as ordered by Defendants for more than five (5)
6 hours during a shift, but were often required to do so without receiving a lawful and timely meal
7 break, and were sometimes required to take shortened meal breaks in order to keep up with the
8 demands and pressures from Defendants. This is because Defendants placed the current job needs
9 over Plaintiffs and Class Members' lawful meal breaks, forcing Class Members to take on duty
10 meal periods in order to keep up with the demands of the job. Defendants' managers also
11 instructed Plaintiffs and Class Members to continue working rather than take meal periods, or to
12 delay taking meal periods until later in the shift. To the extent Defendants provided Class
13 Members timely meal breaks, they were not properly recorded. For example, Plaintiffs and Class
14 Members had to maintain deadlines and inspections, requiring them to work through their lawful
15 meal breaks in order to keep up with the demands of production.

16 10. Therefore, from at least four (4) years prior to the filing of this lawsuit and
17 continuing to the present, meal period violations thus occurred in one or more of the following
18 manners:

- 19 a. Class Members were not provided full thirty-minute duty free meal periods for
20 work days in excess of five (5) hours and were not compensated one (1) hour's
21 wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7,
22 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 23 b. Class Members were not provided second full thirty-minute duty free meal
24 periods for work days in excess of ten (10) hours;
- 25 c. Class Members were required to work through at least part of their daily meal
26 period(s);

- d. Class Members were not provided with “premium pay,” i.e. one hour of wages at each Employee’s effective hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided.
- e. Meal periods were not recorded;
- f. Meal periods were provided after five hours of continuous work during a shift;
- g. Class Members were restricted in their ability to take a full duty free thirty-minute meal period; and
- h. Class Members were unable to leave the premises during their meal periods.

11. Plaintiffs and Class Members were regularly required by Defendants to work through or during their rest breaks and were not provided with one hour’s wages in lieu thereof. Moreover, on instances when rest breaks were provided, they were provided alongside meal breaks instead of separately.

12. Rest period violations therefore arose in one or more of the following manners:

- a. Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- b. Class Members, due to the busy work environment, were restricted in their ability to take timely off-duty rest breaks which in turn were often provided at the end of a shift instead of every four (4) hours worked, or major fraction thereof; and
- c. Class Members were not allowed to leave the work premises during rest breaks.

13. Plaintiffs and Class Members were regularly required by Defendants to work through or during their rest and recovery periods and were not provided with one hour’s wages in lieu thereof.

14. Rest and recovery period violations therefore arose in one or more of the following manners:

- a. Class Members, due to the busy work environment, were restricted in their ability to take rest and recovery periods which in turn were often provided at the end of a shift instead of as required by law; and
- b. Class Members were not allowed to leave the work premises during rest and recovery periods, and were therefore denied the opportunity to recover from exposure to excessive heat in the workplace.

15.

16. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). The wage statements are required to show the total hours worked by Class Members, amongst other items detailed below, which they do not. The absence of showing total hours worked, combined with Defendants' practice of paying all double time hours worked by Class Members at a rate under double their standard hourly rate lead to confusion about how many hours were actually worked and at which rates per pay period.

17. From at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have also had a consistent policy of failing to pay all wages owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

18. Defendants' management also did not reimburse Plaintiffs and Class Members for all necessarily incurred expenses in performance of their job duties. Plaintiffs incurred personal cellular phone expenses in the performance of their job duties that were uncompensated for. For example, Plaintiffs allege that they and Class Members had to use their cell phones for keeping into contact with Defendants' supervisors throughout the day and the status of their ongoing projects.

19. In light of the foregoing, Plaintiffs bring this action on behalf of themselves and on behalf of all similarly situated Employees, pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218.6, 226, 226.7, 510, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, 2699, and California Code of Regulations, Title 8, section 11000 *et seq.*, and 8 California Code of Regulations § 3395.

20. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,

1 Plaintiffs and their fellow Employees seek injunctive relief, restitution, and disgorgement of all
2 benefits Defendants have enjoyed from their violations of Labor Code and the other unfair,
3 unlawful, or fraudulent practices alleged in this Complaint.

4 **CLASS ALLEGATIONS**

5 21. Plaintiffs bring this class action on behalf of themselves and all others similarly
6 situated pursuant to Code of Civil Procedure § 382. Plaintiffs seeks to represent a Class (or “the
7 Class” or “Class Members”) defined as follows: “All current and former California-based (i.e.,
8 currently “residing” in California with the intent to remain in California indefinitely) hourly-paid
9 or non-exempt employees (whether hired directly or through a staffing agency) of Defendant
10 within the State of California at any time during the period from April 6, 2016 to November 10,
11 2021”).

12 22. Further, Plaintiffs seeks to represent the following Subclasses composed of and
13 defined as follows:

- 14 a. Subclass 1. Minimum Wages Subclass. All Class Members who were not
15 compensated for all hours worked for Defendants at the applicable minimum
16 wage.
- 17 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not
18 compensated for all hours worked for Defendants at the required rates of pay,
19 c. including for all hours worked in excess of eight in a day and/or forty in a
20 week.
- 21 d. Subclass 3. Meal Period Subclass. All Class Members who were subject to
22 Defendants’ policy and/or practice of failing to provide unpaid 30-minute
23 uninterrupted and duty-free meal periods or one hour of pay at the Employee’s
24 regular rate of pay in lieu thereof.
- 25 e. Subclass 4. Rest Break Subclass. All Class Members who were subject to
26 Defendants’ policy and/or practice of failing to authorize and permit Employees
27 to take uninterrupted, duty-free, 10-minute rest periods for every four (4) hours
28

1 worked, or major fraction thereof, and failing to pay one hour of pay at the
2 Employee's regular rate of pay in lieu thereof.

3 f. Subclass 5. Wage Statement Subclass. All Class Members who, within the
4 applicable limitations period, were not provided with accurate itemized wage
5 statements.

6 g. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class
7 Members who were subject to Defendants' policy and/or practice of
8 understating the hours worked by Employees..

9 h. Subclass 7. Termination Pay Subclass. All Class Members who, within the
10 applicable limitations period, either voluntarily or involuntarily separated from
11 their employment and were subject to Defendants' policy and/or practice of
12 failing to timely pay wages upon termination.

13 i. Subclass 8. Expense Reimbursement Subclass. All Class Members who
14 incurred necessary and reasonable expenses in connection with performing their
15 job duties for Defendants and who were subject to a policy and/or practice
16 under which such expenses were not reimbursed.

17 j. Subclass 9. UCL Subclass. All Class Members who are owed restitution as a
18 result of Defendants' business acts and practices, to the extent such acts and
19 practices are found to be unlawful, deceptive, and/or unfair.

20 23. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or
21 modify the class description with greater particularity or further division into subclasses or
22 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
23 against Defendants, the Class Period should be adjusted accordingly.

24 24. Defendants, as a matter of company policy, practice and procedure, and in violation
25 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
26 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
27 in a practice whereby Defendants failed to correctly calculate compensation for the time worked
28 by Plaintiffs and the other members of the Class, even though Defendants enjoyed the benefit of

1 this work, required employees to perform this work and permitted or suffered to permit this work.
2 Defendants have uniformly denied these Class Members wages to which they are and were
3 entitled, failed to provide meal periods or authorize and permit rest periods, and failed to provide
4 rest and recovery periods as required by law, in order to unfairly cheat the competition and
5 unlawfully profit.

6 25. This action has been brought and may properly be maintained as a class action
7 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
8 of interest in litigation and proposed Class is easily ascertainable.

9 **A. Numerosity**

10 26. The potential members of the Class as defined are so numerous that joinder of all
11 the members of the Class is impracticable. While the precise number of Class Members has not
12 been determined at this time, Plaintiffs are informed and believe that Defendants employ or,
13 during the time period relevant to this lawsuit, employed hundreds of Employees who satisfy the
14 Class definition within the State of California.

15 27. Accounting for employee turnover during the relevant time period increases this
16 number substantially. Plaintiffs allege that Defendants' employment records will provide
17 information as to the number and location of all Class Members.

18 **B. Commonality**

19 28. There are questions of law and fact common to the Class that predominate over any
20 questions affecting only individual Class Members. The common questions are numerous and
21 substantial and stem from Defendants' uniform policies and/or practices of violating the California
22 Labor Code addressed above. As such, these common questions predominate over individual
23 questions concerning each individual Class Member's showing as to his or her eligibility for
24 recovery or as to the amount of damages. These common questions of law and fact include:

- 25 a. Whether Defendants failed to pay Employees minimum wages;
- 26 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 27 c. Whether Defendants failed to pay Employees overtime based on proper
- 28 calculation of the regular rate of pay;

- d. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- h. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business related expenses;
- l. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- m. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- o. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*; and

1 p. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*

2 **C. Typicality**

3 29. The claims of the named Plaintiffs are typical of those of the other Class Members.
4 The Class Members all sustained injuries and damages arising out of and caused by Defendants'
5 common course of conduct in violation of statutes, as well as regulations that have the force and
6 effect of law, as alleged herein.

7 **D. Adequacy of Representation**

8 30. Plaintiffs will fairly and adequately represent and protect the interest of the Class
9 Members. Counsel who represents the Class Members are experienced and competent in litigating
10 employment class actions.

11 **E. Superiority of Class Action**

12 31. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
14 questions of law and fact common to all Employees predominate over any questions affecting only
15 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
16 Defendants' illegal policies or practices of failing to properly compensate Employees.

17 32. As to the issues raised in this case, a class action is superior to all other methods for
18 the fair and efficient adjudication of this controversy, as joinder of all Class Members is
19 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
20 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
21 be relatively small, the expense and burden of individual actions makes it difficult for Class
22 Members to individually redress the wrongs they have suffered. Moreover, in the event
23 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
24 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
25 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
26 to vindicate their rights for violations they endured which they would otherwise be foreclosed
27 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.
28

1 33. Class action treatment will allow those persons similarly situated to litigate their
2 claims in the manner that is most efficient and economical for the parties and the judicial system.
3 Plaintiffs are unaware of any difficulties in managing this case that should preclude class
4 treatment. Plaintiffs contemplate the eventual issuance of notice to the proposed Class Members
5 that would set forth the subject and nature of the instant action. The Defendants' own business
6 records can be utilized for assistance in the preparation and issuance of the contemplated notices.
7 To the extent that any further notice is required additional media and/or mailings can be used.

8 34. Defendants, as a prospective and actual employer of the Employees, had a special
9 fiduciary duty to disclose to prospective Class Members the true facts surrounding Defendants'
10 pay practices, policies and working conditions imposed upon the similarly situated Employees as
11 well as the effect of any alleged arbitration agreements that may have been forced upon them. In
12 addition, Defendants knew they possessed special knowledge about pay practices and policies,
13 most notably intentionally refusing to pay for all hours actually worked which should have been
14 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements
15 and policies and practices on the Employees and Class as a whole.

16 35. Plaintiffs and the Class Members in the Class did not discover the fact that they
17 were entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was
18 there ever any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of
19 trial by jury, right to collectively organize and oppose unlawful pay practices under California and
20 federal law as well as obtain injunctive relief preventing such practices from continuing. As a
21 result, the applicable statutes of limitation were tolled until such time as Plaintiffs and Class
22 Members discovered their claims.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

25 **(Against All Defendants)**

26 36. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
27 full herein.
28

1 37. Defendants failed to pay Employees in the Class minimum wages for all hours
2 worked and provided them with inaccurate wage statements that prevented Plaintiffs and Class
3 Members from learning of these unlawful pay practices.

4 38. Employees worked hours and did not receive wages, including as alleged above in
5 connection with off-the-clock work and rounding. Defendants, and each of them, have required
6 Class Members to submit manually rounded time records that reflect shift schedules instead of
7 actual time worked, which resulted in off-the-clock work and underpayment of all wages owed to
8 employees over a period of time, while benefiting Defendants. Defendants' uniform pattern of
9 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
10 whole, as a result of implementing a uniform policy and practice that denied accurate
11 compensation to Plaintiffs and the other members of the Class as to minimum wage pay.

12 39. In California, employees must be paid at least the then applicable state minimum
13 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
14 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
15 timely pay its employees for all hours worked. Defendants failed to do so.

16 40. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
17 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
18 employees, and the payment of a less wage than the minimum so fixed is unlawful."

19 41. The applicable minimum wages fixed by the commission for work during the
20 relevant period is found in the Wage Orders. The minimum wage provisions of California Labor
21 Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states:
22 "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the
23 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
24 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
25 compensation, including interest thereon, reasonable attorney's fees and costs of suit."

26 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
27 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
28 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage

1 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
2 all hours worked. All hours must be paid at least at the statutory or agreed upon rate, and no part
3 of this rate may be used as a credit against a minimum wage obligation.

4 43. In committing these violations of the California Labor Code, Defendants
5 inaccurately recorded or incorrectly calculated the time worked, and consequently underpaid the
6 actual time worked by Plaintiffs and other members of the Class. Defendants acted in an illegal
7 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
8 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
9 regulations. As a result of these violations, Defendants also failed to timely pay all wages earned
10 in accordance with California Labor Code § 1194.

11 44. California Labor Code § 1194.2 also provides for the following remedies: “In any
12 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
13 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
14 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

15 45. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
16 1197.1, Plaintiffs and Class Members are entitled to recover a penalty of \$100.00 for the initial
17 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
18 pay each employee minimum wages.

19 46. Pursuant to California Labor Code § 1194.2, Plaintiffs and Class Members are
20 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
21 interest thereon.

22 47. Defendants have the ability to pay minimum wages for all time worked and have
23 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
24 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

25 48. Wherefore, Plaintiffs and Class Members are entitled to recover the unpaid
26 minimum wages, liquidated damages in an amount equal to the minimum wages unlawfully
27 unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California
28 Labor Code § 1194(a). Plaintiffs and the other members of the Class further request recovery of all

1 unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any
2 statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or
3 other applicable statutes. To the extent minimum wage compensation is determined to be owed to
4 Class Members who have terminated their employment, Defendants' conduct also violates Labor
5 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
6 penalties under California Labor Code § 203, which penalties are sought herein on behalf of these
7 Class Members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204
8 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate
9 wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good
10 faith. Further, Plaintiffs and other Class Members are entitled to seek and recover statutory costs.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE §§ 510, 1194**

13 **(Against All Defendants)**

14 49. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
15 full herein.

16 50. California Labor Code §§ 1194 and 1198 provides that employees in California
17 shall not be employed more than eight (8) hours in any work day, and/or more than forty (40)
18 hours in any workweek, or work a seventh (7th) day in a work week unless they receive additional
19 compensation beyond their regular wages in amounts specified by law.

20 51. California Labor Code § 1194 provides that "any employee receiving less than the
21 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
22 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
23 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
24 may be maintained directly against the employer in an employee's name without first filing a
25 claim with the Department of Labor Standards and Enforcement.

26 52. By their conduct, as set forth herein, Defendants violated California Labor Code §
27 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
28 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a

1 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
2 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
3 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
4 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of
5 rounding time records, not paying Employees wages for all hours worked, under-reporting actual
6 hours worked, and not paying proper overtime and double rates, as detailed above.

7 53. Defendants, and each of them, have intentionally and improperly required Plaintiffs
8 and Class Members to accept changed, rounded, adjusted and/or modified hours worked, or
9 otherwise caused them to work off the clock to avoid paying Plaintiffs and Class Members all
10 earned and owed straight time and overtime wages and other benefits, in violation of the
11 California Labor Code, the California Code of Regulations and the IWC Wage Orders and
12 guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also
13 violated these provisions by requiring Plaintiffs and other similarly situated non-exempt
14 Employees to work through meal periods when they were required to be clocked out. Therefore,
15 Employees were not properly compensated, nor were they paid overtime rates for hours worked in
16 excess of eight hours in a given day, and/or forty hours in a given week. Based on information and
17 belief, Defendants did not make available to Employees a reasonable protocol for correcting time
18 records when Employees worked overtime hours or to fix incorrect time entries that were under
19 recorded by Defendants, to the Employee's detriment. Defendants have also violated these
20 provisions by requiring Plaintiffs and other similarly situated Employees in the Class to work
21 through meal periods when they were required to be clocked out or to otherwise work off the
22 clock to complete their daily job duties.

23 54. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
24 regular wages owed and overtime compensation, as required by California law, violates the
25 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

26 55. Additionally, Labor Code § 558(a) provides "any employer or other person acting
27 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil

1 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
2 pay period for which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
4 underpaid employee for each pay period for which the employee was underpaid in addition to an
5 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
6 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
7 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
8 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
9 Wage Orders. Accordingly, Plaintiffs and Class Members seek the remedies set forth in Labor
10 Code § 558.

11 56. Defendants’ failure to pay compensation in a timely fashion also constituted a
12 violation of California Labor Code § 204, which requires that all wages shall be paid
13 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
14 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
15 and overtime compensation earned by Employees. Each such failure to make a timely payment of
16 compensation to Employees constitutes a separate violation of California Labor Code § 204.

17 57. Employees have been damaged by these violations of California Labor Code §§
18 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

19 58. Consequently, pursuant to California Labor Code, including Labor Code §§ 204,
20 510, and 1194 (and the relevant orders of the Industrial Welfare Commission), Defendants are
21 liable to Employees for the full amount of all their unpaid wages and overtime compensation, with
22 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
23 penalties against Defendants, and each of them, and any additional sums as provided by the Labor
24 Code and/or other statutes.

25 59. Further, Plaintiffs and Class Members are entitled to seek and recover reasonable
26 attorneys’ fees and costs pursuant to Labor Code §§ 210 and 1194.

27 **THIRD CAUSE OF ACTION**

28 **MEAL BREAK LIABILITY UNDER LABOR CODE §§ 226.7, 512**

(Against All Defendants)

60. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

61. Employees regularly worked shifts greater than five (5) hours and in some instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

62. Defendants failed to provide Employees with meal periods as required under the Labor Code. Employees received short meal periods, were regularly required to work during their meal periods, as discussed above, or were provided with them after working beyond the fifth hour of their shifts, if Defendant provided them at all. Furthermore, upon information and belief, on the occasions when Employees worked more than ten (10) hours in a given shift, they did so without receiving a second uninterrupted, timely and duty-free thirty (30) minute meal period, as required by law.

63. Defendants' policy of rounding and placing the current demands of the job over Plaintiffs and Class Members' lawful meal breaks, resulted in meal breaks that were taken late, shortened due to work demands, or not taken at all. As a result, Defendants' failure to provide Plaintiffs and Class Members with all their legally required off-duty, unpaid meal periods is and will be evidenced by Defendants' business records, or lack thereof.

64. Upon information and belief, on the occasions when Class Members worked more than ten (10) hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period as will be evidenced by Defendants' business records, or lack thereof.

65. Defendants thus failed to provide Plaintiffs and Class Members with meal periods as required by the Labor Code, including by not providing them with the opportunity to take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

66. Moreover, Defendants failed to compensate Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the applicable IWC Wage Orders, which provides that, if an employer fails to provide an employee a meal period in accordance with this section, 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. To the extent Defendants did make any such payments to Plaintiffs and Class Members, they failed to do so for the vast majority of the violations. Defendants failed to compensate Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7.

67. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

FOURTH CAUSE OF ACTION

REST BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

68. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

69. Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) work hours, or major fraction thereof.

70. Labor Code § 226.7 and 8 Cal. Code Regs. § 3395 provide that employers must provide a ten minute net preventative cool-down rest period every two hours when temperatures reach 95 degrees or above.

71. Employees consistently worked consecutive shifts of at least eight (8) hours and were generally required to work shifts of greater than eight (8) hours total. Pursuant to the Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less

1 than ten (10) minutes for each consecutive four (4) hour or longer shift. Defendants failed to
2 provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive
3 four (4) hours of work, or major fraction thereof, if rest breaks were provided at all. Furthermore,
4 upon information and belief, on the occasions when Employees worked more than ten (10) hours
5 in a given shift, they did so without receiving a third uninterrupted ten (10) minute rest break, as
6 required by law. Defendants also failed to provide Employees with a ten minute net preventative
7 cool-down rest period every two hours when temperatures reach 95 degrees or above.

8 72. Labor Code § 226.7, paragraph 12 of the applicable IWC Wage Orders and 8 Cal.
9 Code Regs. § 3395 provide that if an employer fails to provide an employee rest period or
10 recovery period in accordance with this section, the employer shall pay the employee one (1) hour
11 of pay at the employee's regular rate of compensation for each workday that the rest period is not
12 provided.

13 73. Defendants, and each of them, have therefore intentionally and improperly denied
14 rest periods and recovery periods to Plaintiffs and Class Members in violation of Labor Code §
15 226.7, paragraph 12 of the applicable IWC Wage Orders, and 8 Cal. Code Regs. § 3395.

16 74. Defendants failed to authorize and permit Plaintiffs and Class Members to take rest
17 periods and recovery periods, as required by the Labor Code, paragraph 12 of the applicable IWC
18 Wage Orders, and 8 Cal. Code Regs. § 3395. Moreover, Defendants did not compensate
19 Employees with an additional hour of pay at each Employee's effective hourly rate for each day
20 that Defendants failed to provide them with adequate rest breaks, as required under Labor Code §
21 226.7.

22 75. Therefore, pursuant to Labor Code § 226.7, paragraph 12 of the applicable IWC
23 Wage Orders, and 8 Cal. Code Regs. § 3395, Employees are entitled to damages in an amount
24 equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without
25 the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory
26 penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or
27 other statutes.

28 ///

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

76. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

77. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

78. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime due to Defendants systematic rounding policy and/or altering time keeping entries, and premium pay for deficient meal periods and rest breaks, and under recording and/or altering timekeeping entries to the detriment of Class Members, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove.

79. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiffs and Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer 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 pursuant to Labor

1 Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed
2 to provide Plaintiffs and Class Members with such timely and accurate wage and hour statements.

3 80. Plaintiffs and Class Members suffered injury as a result of Defendants’ knowing
4 and intentional failure to provide them with the wage and hour statements as required by law and
5 are presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
6 Defendants have failed to provide wage statements with accurate and complete information as
7 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiffs
8 and Class Members cannot promptly and easily determine from the wage statement alone one or
9 more of the following: (i) The amount of the gross wages or net wages paid to the employee
10 during the pay period or any of the other information required to be provided on the itemized wage
11 statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which
12 deductions the employer made from gross wages to determine the net wages paid to the employee
13 during the pay period, (iii) The name and address of the employer and, (iv) The name of the
14 employee and only the last four digits of his or her social security number or an employee
15 identification number other than a social security number. For purposes of Labor Code § 226(e)
16 “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be
17 able to readily ascertain the information without reference to other documents or information.

18 81. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
19 § 226(a), Employees suffered injuries, including among other things confusion over whether they
20 received all wages owed them, the difficulty and expense involved in reconstructing pay records,
21 and forcing them to make mathematical computations to analyze whether the wages paid in fact
22 compensated them correctly for all hours worked.

23 82. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
24 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
25 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
26 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
27 award of costs and reasonable attorneys’ fees.

28 83. Labor Code § 226.3 further provides that “[a]ny employer who violates subdivision

1 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
2 (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per
3 employee for each violation in a subsequent citation, for which the employer fails to provide the
4 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section
5 226.” To the extent that Labor Code § 226.3 applies, Plaintiffs also seek such penalties on behalf
6 of themselves and the other Class Members.

7 **SIXTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 203**

9 **(Against All Defendants)**

10 84. Plaintiffs re-alleges and incorporate all preceding paragraphs, as though set forth in
11 full herein.

12 85. Numerous Employees, including Plaintiffs, are no longer employed by Defendants;
13 they either quit Defendants’ employ or were fired there from.

14 86. Defendants failed to pay these Employees all wages due and certain at the time of
15 termination or within seventy-two (72) hours of resignation.

16 87. The wages withheld from these Employees by Defendants remained due and owing
17 for more than thirty (30) days from the date of separation from employment.

18 88. Defendants failed to pay Plaintiffs and Class Members without abatement, all wages
19 as defined by applicable California law. Among other things, these Employees were not paid all
20 regular and overtime wages, including by failing to pay for all hours worked or requiring off-the-
21 clock work or by unlawful under recording and/or altering of time entries to the detriment of
22 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
23 rest periods, as further detailed in this Complaint. Defendants’ failure to pay said wages within the
24 required time was willful within the meaning of Labor Code § 203.

25 89. Defendants’ failure to pay wages, as alleged above, was willful in that Defendants
26 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
27 under Labor Code § 203, which provides that an employee’s wages shall continue until paid for up
28 to thirty (30) days from the date they were due.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES, LABOR CODE § 2802**

3 **(Against All Defendants)**

4 90. Plaintiffs re-alleges and incorporate all preceding paragraphs, as though set forth in
5 full herein.

6 91. Plaintiffs and Class Members are informed and believe and based thereon allege
7 that throughout the period applicable, Defendants compelled Plaintiffs and Class Members to pay
8 out-of-pocket for necessary work related expenses they incurred in the form of personal cellular
9 phone usage, a requirement for employment with Defendants.

10 92. Plaintiffs and Class Members were not reimbursed for these lawful and necessary
11 work related expenses or losses incurred in direct discharge of their job duties during employment
12 with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the
13 applicable IWC Wage Orders, paragraph 9.

14 93. Therefore, Plaintiffs and Class Members are entitled to reimbursement for any and
15 all necessary work-related expenses, as provided for in Labor Code § 2802(b), incurred during the
16 direct discharge of their duties while employed by Defendants, as well as accrued interest on those
17 expenses that were not reimbursed from the date Plaintiffs and Class Members incurred those
18 expenses.

19 94. Further, Plaintiffs and Class Members are entitled to costs and attorney's fees
20 pursuant to Labor Code § 2802(c).

21 **EIGHTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 221**

23 **(Against All Defendants)**

24 95. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
25 full herein.

26 96. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
27 receive from an employee any part of wages theretofore paid by said employer to said employee."
28 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and

1 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
2 to do so.

3 97. Defendants unlawfully received and/or collected wages from Class Members in the
4 Class by implementing a policy of automatically deducting and wages for meal periods that were
5 not provided from Class Members, as well as by understating the hours worked by Class Members
6 as alleged above.

7 98. As a direct and proximate cause of the unauthorized deductions, Class Members
8 have been damaged, in an amount to be determined at trial

9 **NINETH CAUSE OF ACTION**

10 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

11 **(Against All Defendants)**

12 99. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
13 full herein.

14 100. Plaintiffs, on behalf of themselves, the Employees, and the general public, brings
15 this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
16 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees
17 and the general public. Plaintiffs seeks to enforce important rights affecting the public interest
18 within the meaning of Code of Civil Procedure § 1021.5.

19 101. Plaintiffs are a “person” within the meaning of Business & Professions Code
20 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
21 relief, restitution, and other appropriate equitable relief.

22 102. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
23 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
24 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
25 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiffs and
26 Class Members for all hours worked, due to systematic business practices as alleged herein that
27 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
28 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*

1 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
2 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

3 103. Wage-and-hour laws express fundamental public policies. Paying employees their
4 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
5 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
6 vigorously to enforce minimum labor standards, to ensure that employees are not required or
7 permitted to work under substandard and unlawful conditions, and to protect law-abiding
8 employers and their employees from competitors who lower costs to themselves by failing to
9 comply with minimum labor standards.

10 104. Defendants have violated statutes and public policies. Through the conduct alleged
11 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
12 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
13 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiffs,
14 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
15 guaranteed to all employees under the law.

16 105. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
17 violation of the Business & Professions Code § 17200 *et seq.*

18 106. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
19 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
20 reasonable care should have known that their conduct was unlawful; therefore their conduct
21 violates the Business & Professions Code § 17200 *et seq.*

22 107. By the conduct alleged herein, Defendants have engaged and continue to engage in
23 a business practice which violates California and federal law, including but not limited to, the
24 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
25 Code including Sections 201, 202, 203, 204, 218.6, 226, 226.7, 510, 512, 558, 1174, 1185, 1194,
26 1194.2, 1197, and 2802 for which this Court should issue declaratory and other equitable relief
27 pursuant to California Business & Professions Code § 17203 as may be necessary to prevent and
28

1 remedy the conduct held to constitute unfair competition, including restitution of wages
2 wrongfully withheld.

3 108. As a proximate result of the above-mentioned acts of Defendants, Employees have
4 been damaged, in a sum to be proven at trial.

5 109. Unless restrained by this Court, Defendants will continue to engage in such
6 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
7 should make such orders or judgments, including the appointment of a receiver, as may be
8 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
9 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
10 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
11 have unlawfully failed to pay.

12 **TENTH CAUSE OF ACTION**

13 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

14 **(Against All Defendants)**

15 110. Plaintiff Neakco Cox realleges and incorporates all preceding paragraphs, as
16 though set forth in full herein.

17 111. Plaintiff Neakco Cox and aggrieved employees who worked for Defendants on or
18 after September 25, 2019 are aggrieved employees as defined under Labor Code § 2699(c) in that
19 they suffered the violations alleged in this First Amended Complaint and were employed by the
20 alleged violators, Defendants.

21 112. Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for
22 Defendants' violation of all Labor Code provisions alleged to have been violated in this First
23 Amended Complaint, which occurred on or after September 25, 2019 and including the penalty
24 provisions, without limitation, based on the following California Labor Code sections: 201, 202,
25 203, 204, 210, 221, 226, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1194.3, 1197, 1199, 2802,
26 2698, and 2699, et seq., IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), 4(A)-4(C), 9, 11
27 and 12 of the applicable IWC Wage Orders, and 8 Cal. Code Regs. § 3395. The penalties shall be
28

1 allocated as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to
2 the affected employee.

3 113. Plaintiffs also seek any and all penalties and remedies set forth in Labor Code §
4 558, which states:

5 (a) Any employer or other person acting on behalf of an employer who violates, or
6 causes to be violated, a section of this chapter or any provision regulating hours and days
7 of work in any order of the Industrial Welfare Commission shall be subject to a civil
8 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
9 employee for each pay period for which the employee was underpaid in addition to an
10 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
11 hundred dollars (\$100) for each underpaid employee for each pay period for which the
12 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
13 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

14 (b) If upon inspection or investigation the Labor Commissioner determines that a
15 person had paid or caused to be paid a wage for overtime work in violation of any
16 provision of this chapter, or any provision regulating hours and days of work in any order
17 of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The
18 procedures for issuing, contesting, and enforcing judgments for citations or civil penalties
19 issued by the Labor Commissioner for a violation of this chapter shall be the same as those
20 set out in Section 1197.1.

21 (c) The civil penalties provided for in this section are in addition to any other civil or
22 criminal penalty provided by law.

23 114. The civil penalties provided for in this section are in addition to any other civil or
24 criminal penalty provided by law.

25 115. Plaintiff Cox has exhausted his administrative remedy by sending a certified letter
26 to the LWDA and Defendants postmarked on September 20, 2021 (Exhibit A). The LWDA has
27 not provided notice of its intent to investigate the alleged violations within 65 calendar days of the
28 postmark date of the letter.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;

3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wages times thirty (30) days, as may be proven;
9. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
10. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
11. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
12. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
13. For all general, special, and incidental damages as may be proven;
14. For an award of pre-judgment and post-judgment interest;
15. For an award providing for the payment of the costs of this suit;
16. For an award of attorneys' fees; and

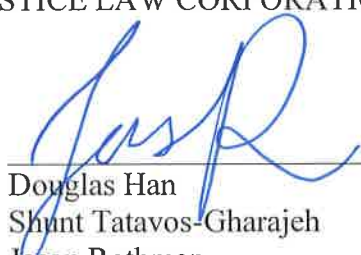
///

1 17. For such other and further relief as this Court may deem proper and just.

2
3 DATED: February 9, 2022

JUSTICE LAW CORPORATION

4
5 By


Douglas Han

Shunt Tatavos-Gharajeh

Jason Rothman

Attorneys for Plaintiffs Damian Crockett and
Neakco Cox, and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: February 9, 2022

JUSTICE LAW CORPORATION

By: 

Douglas Han

Shunt Tatavos-Gharajeh

Jason Rothman

Attorneys for Plaintiffs Damian Crockett and
Neakco Cox, and all others similarly situated

EXHIBIT A

September 21, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

**Re: Labor Code § 2698, *et seq.* Penalties – Amended PAGA Notice Letter
Crockett v Custom Bilt Holdings, LLC d/b/a Custom Bilt Holdings, et al.
*Sacramento Superior Court Case No. 34-2020-00285868-CU-OE-GDS***

Dear Representative:

This office represents Plaintiff Neakco Cox (“Plaintiff”) and other aggrieved employees (Plaintiff and aggrieved employees are collectively hereinafter referred to as “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 218.6, 221, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 2802, 2698 and 2699, *et seq.*; and provisions of the Industrial Welfare Commission (IWC) Wage Order(s).

The purpose of this amended letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants Custom Bilt Holdings, LLC d/b/a Custom Bilt Metals, a Delaware limited liability company (“Custom Bilt”), and DOES 1 through 50 inclusive (defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee. He was employed as laborer. Aggrieved Employees include all of Defendants’ non-exempt hourly employees (whether hired directly or through a staffing agency or labor contractor) in the state of California from one year prior to the date of the filing of the above-entitled Complaint and continuing through the present.

Aggrieved Employees consistently worked at Defendants’ behest, under their control, and subject to their policies and practices without being paid all wages due.

///

///

///

Defendants' employment practices resulted in (i) Aggrieved Employees performing off-the-clock pre-shift and post-shift work without compensation (ii) rounding down of hours worked to either a quarter of an hour or to Aggrieved Employees shift schedules (iii) the under-recording of all hours worked, resulting in failure to pay overtime wages, (iv) failure to furnish accurate wage statements, (v) failure to provide timely, uninterrupted meal periods and rest breaks; (vi) failure to reimburse all necessary business expenditures, and (vii) failure to timely pay Aggrieved Employees upon separation. Defendants' conduct thus violated various provisions of the California Labor Code and applicable Wage Orders.

The work performed by Plaintiff and Aggrieved Employees was as manual laborers and/or machine operators. As a result of this work, as detailed further below, Aggrieved Employees employed by Defendants performed these tasks but were not paid the minimum wages, overtime wages, and double time wages to which they were entitled because of Defendants' systematic policies and practices of rounding and failing to properly compensate Aggrieved Employees for all hours worked.

Moreover, there were often long lines at Defendant's time clock machines, forcing Aggrieved Employees to arrive early, upwards of ten (10) minutes, in order to be able to clock in on time for their daily shift without being late. This time was unaccounted for and to Aggrieved Employees detriment.

Plaintiff contends Defendants' policy and practice of rounding time entries to conform to shift schedules and/or to quarter of an hour increments is not neutral and results, over time, to the detriment of Aggrieved Employees by systematically under-compensating them. Thus, Aggrieved Employees worked longer hours than recorded by Defendants, and this off the clock work resulted in overtime hours accruing earlier than when Defendants started paying them in a work shift. When coupled with Aggrieved Employees working longer post-shift hours off the clock and without compensation, this resulted in substantial regular and overtime hours worked under the control and authority of Defendants during each work shift that remain unpaid.

Regarding off the clock pre-shift and post-shift hours worked, Defendants has a systematic practice of pressuring Aggrieved Employees to engage in pre-shift and post-shift off the clock work, to their detriment. If Aggrieved Employees were required and scheduled to work a shift between the hours of 9:00 a.m. and 5:00 p.m., for example, he or she would be required to arrive at work before their shift start times and to continue to work after their scheduled end time. More specifically, Aggrieved Employees were often required to come in early, before their shift started, in order to assist other employees and management in putting together orders for the days' projects/assignments/pieces. Aggrieved Employees also donned and doffed their clothes before clocking in as they would need to change into appropriate attire before they could begin working (steel toe boots, safety equipment, etc...).

///

///

Moreover, after Aggrieved Employees' pre-assigned shift time ended, Defendants required Aggrieved Employees to continue to work to complete required job duties, Aggrieved Employees were regularly asked by management to continue working after they clocked out. For example, they were asked to help clean up the work site, continue putting together pieces for the next days' projects, or to finish an order they were currently working on, for example. All of this post-shift work was unrecorded and off-the-clock due to Defendants' policy and practice of only paying Aggrieved Employees for their scheduled shift times rather than for all hours actually worked.

Defendants' unlawful conduct was driven, upon information and belief, by the decision to pay Aggrieved Employees based on their scheduled shift times rather than the hours they actually worked. This uniformly applied policy of requiring off-the-clock work in conjunction with timekeeping records that reflected time worked to the nearest quarter of an hour rather than actual hours worked, operated as an unlawful rounding policy because it was not neutral and resulted, over time, to the substantial detriment of Aggrieved Employees by systematically under-compensating them. This meant that Aggrieved Employees were regularly performing pre-shift and post-shift work related functions for Defendants, all off the clock and uncompensated for, to their detriment.

To the extent that Defendants paid overtime to Aggrieved Employees, it began doing so well after eight (8) hours into a work shift. Therefore, Aggrieved Employees were not properly paid for all wages earned and for all wages when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. When Defendants paid double time to Aggrieved Employees, it did so at a rate less than double their standard hourly rate of pay, Therefore Aggrieved Employees were underpaid overtime and double time for hours worked.

This was an intentional and calculated practice of Defendants to avoid paying Aggrieved Employees all duly owed wages. Thus, Aggrieved Employees worked longer hours than recorded by Defendants. This off-the-clock work also resulted in overtime hours accruing earlier than when Defendants started paying them in a work shift. Defendants therefore unlawfully deducted wages earned by and owed to the Aggrieved Employees, in violation of Labor Code § 221. Defendants' common policy and/or practice of understating the hours worked by Aggrieved Employees has given rise to further ongoing violations of Labor Code § 221.

Defendants' policy of rounding the time keeping entries also resulted in under-reporting hours worked in a manner that would impact when Employees were to receive off-duty meal and rest periods, resulting in meal and rest periods that were either provided late, were impermissibly shortened, or were interrupted by work demands. This often resulted in meal and rest breaks being taken generally later than required by law.

///

///

///

Due to the work demands and pressures from managers and supervisors, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees “premium pay,” i.e. one hour of wages at each Employee’s effective hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided. This is because Defendants placed the current job needs over Aggrieved Employees’ lawful meal breaks, forcing Aggrieved Employees to take on duty meal periods in order to keep up with the demands of the job. To the extent Defendants provided Aggrieved Employees timely meal breaks, they were not properly recorded and Defendant’s systematic rounding policy was used, in part, to disguise ongoing meal break violations. For example, Aggrieved Employees had to end their meal breaks early in order to wait in line to clock back into work, often were told to just eat their food and go back to work, regardless of how long it had been, and had to maintain deadlines that took priority over lawfully required breaks.

Aggrieved Employees were also regularly required by Defendants to work through or during their rest breaks and were not provided with one hour’s wages in lieu thereof as required by Labor Code and IWC Wage Orders. On instances in which Aggrieved Employees were provided rest breaks, they were not compensated for their non-productive time. Aggrieved Employees were also restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not authorized and permitted to take duty-free rest periods. Aggrieved Employees were also unable to leave Defendants premises during rest breaks. Moreover, on instances when rest breaks were provided, they were provided alongside meal breaks instead of separately

On occasions when the Aggrieved Employees worked over ten (10) hour shifts, they were, upon information and belief, not authorized and permitted to take a third timely and uninterrupted, duty-free rest break.

As a result of the above-described violations, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants for all hours they worked and/or non-productive time, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. The Aggrieved Employees were therefore entitled to receive overtime and double time wages from Defendants, which they were consistently denied in violation of the Labor Code and applicable paragraphs of the IWC Wage Orders.

In addition to the systematic underpayment of wages and unlawful meal and rest breaks, Defendants automatically deducted thirty (30) minutes from Aggrieved Employees’ pay, even though thirty (30) minute meal breaks were not provided. Therefore, Defendants unlawfully deducted wages earned by and owed to the Aggrieved Employees, in violation of Labor Code § 221.

///

///

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a), and Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203.

Defendants' management also did not reimburse Aggrieved Employees for all necessarily incurred expenses in performance of their job duties. Plaintiff incurred personal cellular phone expenses in the performance of his job duties that were uncompensated for. Defendants also failed to reimburse Aggrieved Employees for necessarily incurred expenses such as safety equipment which was required for the job

Moreover, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he 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." Due to Defendants policy of under recording hours worked, Aggrieved Employees were required to work pre-shift and post-shift hours off the clock without being paid minimum wages, regular wages, and applicable overtime at their required rates.

Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

///

///

///

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime and double time. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants, and each of them, have intentionally and improperly changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks. Defendants also automatically deducted 30 minutes per work shift for a meal periods without regard to whether it was actually and lawfully provided.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policy discouraged and effectively prevented Aggrieved Employees to from leaving Defendants' premises during breaks, and required them to remain on call during breaks to respond to radio calls or other job requirements. Defendants also required Aggrieved Employees to request permission to take a break, and could only leave when approved and relieved by a breaker, which again evidences unlawful control during breaks.

///

///

///

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, "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." As discussed above, Defendants unlawfully received and/or collected wages from the Aggrieved Employees by implementing a policy understating the hours worked and by requiring off the clock work, as alleged above. Aggrieved Employees had their wages unlawfully deducted when Defendants' managers recorded fewer hours worked in the timekeeping records than were in fact worked. By not compensating Employees for all hours worked and failure to pay for hours spent under Defendants' control, Defendants unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221.

In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish accurate, itemized wage statements in writing to its employees. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

///

///

Therefore, Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, as discussed above. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

///

///

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

Given the above described off the clock work and deductions from hours worked perpetrated by Defendants' management, Plaintiff would often notice on his wage statements that he was being paid for substantially fewer hours than he actually worked, and that he was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

///

///

Reimbursement of Necessary Expenditures Under Labor Code § 2802

Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

In the present case, as discussed above, Aggrieved Employees incurred necessary expenditures in the performance of their job duties for Defendants, in the form of personal cellular phone usage and safety equipment purchases. Thus, Aggrieved Employees were not reimbursed for those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions, including as follows:

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Conclusion

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

We have been constrained to initially move forward with amending the existing case against Defendant (Sacramento Superior Court Case No. 34-2020-00285868-CU-OE-GDS) the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter provides the requisite notice under the Act to the LWDA and Custom Bilt Holdings, LLC, d/b/a Custom Bilt Metals, by setting forth the specific provisions of the Labor Code and related provisions. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in an amended Complaint.

Regards,

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a stylized flourish at the end.

Douglas Han, Esq.

Crockett v Custom Bilt PAGA Notice Letter
September 21, 2021
Page 14 of 14

CC: (By Certified U.S. Mail Only)

CT Corporation
c/o Custom Bilt Holdings, LLC
dba Custom Bilt Metals
330 N. Brand Blvd., Ste. 700
Glendale, California 91203
Agent for Service of Process for Custom Bilt Holdings, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103.

On February 9, 22, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Leticia Rivera
leticia.rivera@ogletree.com
Christopher W. Decker
Christopher.Decker@ogletreedeakins.com
leticia.rivera@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071

Attorney(s) for Defendant Custom Bilt Holdings, LLC et al.

[X] BY ELECTRONIC SERVICE

E-mailing the document(s) to the persons at the e-mail address(es) listed based on notice previously provided that, during the Coronavirus (Covid-19) pandemic, this office will be primarily working remotely, unable to send physical mail as usual, and is therefore using only electronic mail. We will assume our email service was successful on the date of transmission unless we receive an electronic message or other indication that the transmission was not received on that date.

[X] STATE

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

Executed on February 9, 2022, at Pasadena, California.


Jillian Kislow

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is ccastro@justicelawcorp.com

On December 11, 2025, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT

for the following case: **Neakco Cox v. Custom Bilt Holdings, LLC
d/b/a Custom Bilt Metals**
LWDA/Court Case No.: **LWDA Case No.: CM-845280-21**
Court Case No.: 34-2020-00285868-CU-OE-GDS
Sacramento County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on December 11, 2025, at Pasadena, California.



Christina Castro