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8 Counsel for Plaintiff MARIO HERRERA

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 MARIO HERRERA, on behalf of all others
12 similarly aggrieved,

13 Plaintiff,

14 vs. STONE ETC., INC., a California
15 corporation, G.B. MARBLE, INC., a
16 California corporation, GIORA BAREKET,
17 an individual, and DOES 1 through 10,
18 inclusive,

19 Defendants.

CASE NO. **21STCV43188**

COMPLAINT FOR VIOLATION OF
PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff MARIO HERRERA is an individual residing in the State of California.

2. On information and belief, defendant STONE ETC., INC. is a California corporation duly licensed to conduct business in the State of California.

3. On information and belief, defendant G.B. MARBLE, INC. is a California corporation duly licensed to conduct business in the State of California.

4. On information and belief, defendant GIORA BAREKET is an individual residing in the State of California and is, and at all relevant times has been, the Chief Executive Officer of both defendants STONE ETC. INC. and G.B. MARBLE, INC., owns, operates, and/or manages STONE ETC. INC. and G.B. MARBLE, INC., and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, GIORA BAREKET devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558, 1197.1 and 2699(f). Pursuant to Labor code §§ 558, 1197.1, 2699(f), GIORA BAREKET is individually liable as a person who “caused” the violations to occur

5. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation pertains to each defendant.

6. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendant transacts business in this district, and some of the complained of conduct occurred in this judicial district.

7. Defendants jointly employed Plaintiff in California as a non-exempt employee during the relevant time period until his employment terminated in and around August 2021.

1 Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor Code
2 sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of California
3 regarding violations of the Labor Code as to all similarly aggrieved individuals employed by
4 Defendant as non-exempt employees, however titled, in the State of California, from the date one
5 year prior to submission of Plaintiff’s PAGA notice letters. This action is brought solely under
6 PAGA and seeks no relief beyond that available under PAGA.

7 8. During the period beginning one-year period preceding the filing of the required
8 PAGA notice with the Labor Workforce & Development Agency, and continuing through the
9 present, as alleged herein, Defendant violated Labor Code sections 201, 202, 204, 210, 221-
10 223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, and all applicable Wage Orders, as
11 to Plaintiff and all other similarly aggrieved employees employed by Defendant in California.
12 These violations subject Defendant to civil penalties as set forth in the foregoing statutes as
13 well as other provisions of the Labor Code, including without limitation Labor Code sections
14 203, 210, 225.5, 226.3, 256, 1174.5, 1194.2, 1197.1, and 2699, and section 20 of all
15 applicable IWC Wage Orders.

16 FIRST CAUSE OF ACTION

17 (Violation of Private Attorneys General Act – Labor Code §§ 2698, *et seq.*)

18 9. Plaintiff incorporates by reference the allegations contained in paragraphs 1
19 through 8.

20 10. California law mandates that employees in California be paid for all hours worked,
21 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
22 Defendant violated California minimum wage laws in part by using a rounding system that, as
23 applied, worked to detrimentally shave and round time off from Plaintiff and similarly aggrieved
24 employees’ work days. Specifically, Plaintiff alleges on information and belief that through the
25 operation of Defendant’s rounding system, Plaintiff and similarly aggrieved employees would
26 systematically be deprived of compensable time because the time recording system implemented
27 by Defendant resulted in understating actual compensable work time due to the rounding.
28 Defendant also failed to record and pay Plaintiff and aggrieved employees for all hours worked

1 through manipulation of the time clock. Accordingly, Plaintiff and similarly aggrieved employees
2 were not being paid for all hours worked causing minimum wage violations pursuant to Labor
3 Code sections 1194-1199, and all applicable Wage Orders. These violations subject Defendant to
4 civil penalties under the foregoing Labor Code sections and other applicable Labor Code sections,
5 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
6 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
7 penalty.

8 11. California law requires employers to pay overtime equal to one and one-half times
9 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each
10 hour worked beyond forty (40) hours per work week. Employers must pay overtime equal to
11 double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday
12 and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a
13 work week.

14 12. Defendant has violated California's overtime laws by, among other things, failing
15 to correctly calculate, or record at all, the total number of hours worked by Plaintiff and similarly
16 aggrieved employees by virtue of its time-shaving rounding system and manipulation of the time
17 clock. Defendant also violated California's overtime laws by, among other things, not paying
18 proper overtime rates for all overtime worked as Defendant failed to incorporate all forms of non-
19 discretionary pay, including but not limited to non-discretionary bonus pay, into the regular rate
20 of pay for purposes of calculating the owed overtime rate. Based on employees' regular work
21 schedules, Plaintiff and the similarly aggrieved employees worked a significant amount of
22 overtime each week for which they were not properly compensated. As a result, Defendant failed
23 to pay Plaintiff and the aggrieved employees for all overtime hours worked at the appropriate
24 premium rate. Plaintiff and similarly aggrieved employees often worked more than 8 hours in a
25 day and/or 40 hours in a week for which they were not properly compensated. This conduct
26 results in violations of Labor Code sections 510, 1198-1199, and IWC Wage Order 16-2001 (and
27 all applicable Wage Orders), § 12(A). These violations subject Defendant to civil penalties under
28 Labor Code section 2699, and Wage Order 16-2001 (and all applicable Wage Orders), § 20. Each

1 violation of each Labor Code section and Wage Order provision results in a separate civil penalty,
2 for each aggrieved employee, for each pay period during which the referenced statutes and Wage
3 Order provisions were violated.

4 13. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
5 Plaintiff and similarly aggrieved employees with one 30-minute meal period free from all duties
6 for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all
7 shifts longer than 10 hours. Meal periods can be waived, but only under the following
8 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
9 than six (6) hours, the required meal period may be waived by mutual consent of the employer
10 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
11 more than twelve (12) hours, the required second meal period may be waived by mutual consent
12 of the employer and employee, but only if the first meal period was not waived. Employers
13 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one
14 meal period for shifts over five hours (see above), and (2) to record having done so. If the
15 employer fails to properly record a valid meal period, it is presumed no meal period was
16 provided.

17 14. Plaintiff and similarly aggrieved employees regularly worked periods of more than
18 five and ten hours in a workday without being provided mandatory thirty-minute, duty-free meal
19 periods. Upon information and belief, Defendant failed to maintain a company meal period policy
20 compliant with California law. Moreover, as noted above, Plaintiff and other aggrieved
21 employees frequently worked in excess of 10 hours per shift and, thus, they were entitled to
22 uninterrupted thirty minute meal periods before the end of the fifth hour and a second thirty
23 minute meal period before the end of the tenth hour of work. Defendant often required Plaintiff
24 and aggrieved employees to work more than 10 hours in a shift but only provided them with one
25 meal period, and even the one meal period would often be late, short or interrupted. Plaintiff and
26 similarly aggrieved employees were consistently unable to take timely, thirty-minute
27 uninterrupted meal periods and were not even scheduled to start lunch periods until after the sixth
28 hour of work. Per Defendant's illegal meal period policy/practice, Plaintiff and similarly

1 aggrieved employees were not always relieved of their duties for purposes of taking meal periods.
2 Defendant also failed to pay Plaintiff and similarly aggrieved employees an additional hour of
3 wages at their regular rates of compensation for each workday a meal period was not provided, or
4 was late, short or interrupted.

5 15. Defendant failed to provide Plaintiff and similarly aggrieved employees all
6 required and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed
7 policies and procedures that ensured Plaintiff and other aggrieved employees would not receive
8 all legally required rest periods, as Defendant did not authorize and permit all required rest
9 periods in strict accordance to, and in compliance with, the timing requirements of all applicable
10 Wage Orders. Plaintiff and other aggrieved employees were not provided proper rest breaks
11 because purported rest breaks were short, interrupted, untimely, and/or on duty. Defendant further
12 employed policies and procedures ensuring Plaintiff and similarly aggrieved employees did not
13 receive premium wages to compensate them for workdays they did not receive all legally required
14 and fully compliant rest periods.

15 16. California law provides that, at the time of each payment of wages, the employer
16 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
17 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
18 employee is being paid, the employee's name and last four digits of their social security number,
19 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
20 effect during the pay period and all hours worked at each rate.

21 17. Defendant knowingly and intentionally failed to provide Plaintiff and other
22 aggrieved employees with proper, itemized wage statements as the wage statements provided by
23 Defendant do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages
24 earned, and all applicable hourly rates in effect during each pay period and all hours worked at
25 each applicable hourly rate, for all the reasons herein mentioned. Because Defendant rounds
26 employee time off, the wage statements do not provide the precise amount of hours worked by
27 each employee during the pay period and therefore violate Labor Code section 226 on their face.
28 Accordingly, Defendant has violated Labor Code section 226 as to Plaintiff and all similarly

1 aggrieved employees. These violations subject Defendant to civil penalties under the Labor Code,
2 including without limitation Labor Code sections 226.3 and 2699. Each violation of each Labor
3 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
4 penalty.

5 18. California law requires employers to keep “accurate and complete” payroll records
6 showing, among other things, the hours worked daily by all non-exempt employees. The
7 applicable IWC Wage Order similarly requires employers to keep time records showing, inter
8 alia, when the employees begins and end each work period and reflecting the times during which
9 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and
10 continues to fail, to keep the required time records by, including but not limited to, adopting and
11 maintaining an unlawful time rounding system that as applied worked to detrimentally shave and
12 round time off from Plaintiff and similarly aggrieved employees’ workdays. Plaintiff alleges on
13 information and belief that through the operation of Defendant’s rounding system, Plaintiff and
14 similarly aggrieved employees would systematically be deprived of compensable time because
15 the time recording system implemented by Defendant would almost always, if not always,
16 understate actual compensable work time due to the rounding. This time shaving and
17 manipulation of the time clock resulted in record-keeping violations. Defendant also failed to
18 record the start and end times of meal periods in violation of the Labor Code and Wage Orders.

19 19. Defendant’s failure to keep “accurate and complete” payroll records for Plaintiff
20 and other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
21 Order 16-2001 (and all applicable Wage Orders), section 7. These violations subject Defendant
22 to civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699.
23 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
24 employee, results in a separate civil penalty.

25 20. Labor Code sections 1198 and 1199 make it unlawful to employ any individual
26 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
27 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
28 1197, and 1198, or other order or ruling of the IWC. Defendant’s violations with respect to

1 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor
2 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,
3 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
4 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
5 penalty.

6 21. California Labor Code section 204 requires an employer to pay employees all
7 wages due and payable at least twice each calendar month. For reasons discussed herein,
8 Defendant failed to comply with Labor Code section 204 by failing to timely pay twice during
9 each calendar month all wages due and payable to Plaintiff and other similarly aggrieved
10 employees. Defendant's violations of Labor Code section 204 subject Defendant to civil
11 penalties, including but not limited to the penalties set forth in California Labor Code sections
12 210 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for
13 each pay period during which the statutory provisions were violated.

14 22. Labor Code section 201 requires employers to pay all wages earned and unpaid at
15 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
16 provisions with respect to employees who resign. For all aggrieved employees no longer
17 employed by Defendant, Defendant still has not paid such aggrieved employees all wages earned
18 and unpaid at the time of discharge, in that Defendant has not paid for, all minimum and overtime
19 wages. These violations subject Defendant to civil penalties under the Labor Code, including
20 without limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate
21 civil penalty, for each aggrieved employee for each pay period during which the statutory
22 provisions were violated.

23 23. Plaintiff complied with the procedures for bringing suit specified in Labor Code
24 Sections 2699.3 and 2699.5. By two letters dated and postmarked September 15, 2021, one
25 to defendant Stone Etc. Inc. and the other to defendant G.B. Marble, Inc., Plaintiff gave
26 written notice to the California Labor and Workforce Development Agency ("LWDA") via
27 electronic mail at PAGAfilings@dir.ca.gov, and via certified mail to all Defendants, of the
28 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts

1 and theories to support the alleged violations.

2 24. Under Labor Code Section 2699.3, the LWDA must give written notice by
3 certified mail to the parties it intends to investigate the alleged violations within 63 days of the
4 date of the complainant's written notice. As of the filing of this Second Amended Complaint, the
5 LWDA has not provided the parties any notice of its intention to investigate Plaintiff s claims
6 on behalf of herself and other aggrieved employees, nor have Defendants responded to
7 Plaintiff's PAGA notices in an attempt to cure. According, Plaintiff has exhausted all
8 administrative remedies required by law.

9 25. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
10 reasonable attorney's fees and costs in connection with his claims for civil penalties.

11 PRAYER

12 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
13 as follows:

- 14 1. For civil penalties according to proof;
15 2. For reasonable attorney's fees and costs of suit; and
16 3. For such other and further relief as the Court deems just and proper.

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18 Dated: November 23, 2021

LAW OFFICES OF J. KIRK DONNELLY, APC

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21 J. Kirk Donnelly
22 Attorneys for Plaintiff Mario Herrera
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: November 23, 2021

LAW OFFICES OF J. KIRK DONNELLY, APC



J. Kirk Donnelly
Attorneys for Plaintiff Mario Herrera