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Electronically  
**FILED**  
by Superior Court of California, County of San Mateo  
ON 3/22/2022  
By /s/ Una Finau  
Deputy Clerk

Attorneys for Plaintiff FRANCISCO ANGUIANO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN MATEO**

FRANCISCO ANGUIANO,

Plaintiff,

vs.

MACHU PICCHU ROOFING INC.;  
ALFONSO TRIVENO; JENNY GUILLEN  
CASTRILLON; and DOES 1 to 25,  
inclusive,

Defendants.

CASE NO.: 22-CIV-01227

**COMPLAINT FOR DAMAGES FOR:**

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES/PREVAILING WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) VIOLATION OF LABOR CODE SECTION 558;**
- 8) FAILURE TO GIVE REST BREAKS;**
- 9) FAILURE TO GIVE MEAL BREAKS;**
- 10) FAILURE TO MAINTAIN ACCURATE RECORDS;**
- 11) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;**
- 12) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 13) FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 14) FAILURE TO PROVIDE PAY RECORDS;**
- 15) RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;**

1 ) **16) WRONGFUL TERMINATION IN**  
2 ) **VIOLATION OF PUBLIC POLICY;**  
3 ) **17) VIOLATION OF BUSINESS AND**  
4 ) **PROFESSIONS CODE SECTION**  
5 ) **17200**

6 ) **JURY TRIAL DEMANDED**

7 COMES NOW Plaintiff, FRANCISCO ANGUIANO (hereinafter "Plaintiff"), and  
8 alleges as follows:

9 **PARTIES, JURISDICTION, and VENUE**

10 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the  
11 County of San Mateo and in this judicial district because Defendants MACHU PICCHU  
12 ROOFING INC.; ALFONSO TRIVENO; JENNY GUILLEN CASTRILLON and DOES 1 to  
13 25, inclusive, do business in the County of SAN MATEO, and because Defendants'  
14 obligations and liabilities arise therein, and because the work that was performed by Plaintiff in  
15 the County of SAN MATEO is the subject of this action. Moreover, Plaintiff's damages sought  
16 herein exceed \$25,000.

17  
18 2. Plaintiff is a male resident of the State of California.

19 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant  
20 MACHU PICCHU ROOFING INC. is a California corporation, doing business in various  
21 counties, including SAN MATEO County, and which employed Plaintiff.

22 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant  
23 ALFONSO TRIVENO is a male resident of the State of California and is and was the owner  
24 and managing agent of MACHU PICCHU ROOFING INC. ALFONSO TRIVENO is being  
25 included in this lawsuit pursuant to California Labor Code Section 558.1 as he was personally  
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involved in the day-to-day operations of the business and personally controlled the hours, wages, and working conditions of Plaintiff and other similarly situated aggrieved employees.

5. Plaintiff is informed and believes that at all times herein mentioned, Defendant JENNY GUILLEN CASTRILLON is a female resident of the State of California and is and was the owner and managing agent of MACHU PICCHU ROOFING INC. JENNY GUILLEN CASTRILLON is being included in this lawsuit pursuant to California Labor Code Section 558.1 as she was personally involved in the day-to-day operations of the business and personally controlled the hours, wages, and working conditions of Plaintiff and other similarly situated aggrieved employees. MACHU PICCHU ROOFING INC., ALFONSO TRIVENO, and JENNY GUILLEN CASTRILLON are collectively referred to as “MACHU PICCHU” or “Defendant(s)”.

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

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## **GENERAL ALLEGATIONS**

8. Plaintiff started working for MACHU PICCHU on or around 2018. His employment ended on or around September 27, 2021. Plaintiff was hired as a roofing helper. He was paid in cash and was seemingly not a W-2 employee. He was provided with approximately \$160 per day regardless of the number of hours he worked. Plaintiff and others were paid weekly.

9. It is Plaintiff's position that MACHU PICCHU has committed numerous labor code violations against Plaintiff other similarly situated aggrieved employees.

10. MACHU PICCHU violated Labor Code section 226.8. Pursuant to Labor Code section 226.8(a)(1), it is unlawful for any person or employer to willfully misclassify an individual as an independent contractor. "Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor." Cal. Lab. Code Section 226.8(i)(4). If a person or employer has willfully misclassified an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code Section 226.8(b). If the person or employer has engaged in or is engaging in a pattern or practice of willfully misclassifying individuals as independent contractors, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code Section 226.8(c).

11. In a very important decision, Dynamex Operations v. Superior Court (2018) 4 Cal. 5th 903, the Supreme Court developed the "ABC TEST" to determine whether an independent contractor is an employee. Under the ABC TEST, a worker will be deemed to have been "suffered or permitted to work," and thus, an employee for wage order purposes, unless the putative employer proves:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

1 (B) that the worker performs work that is outside the usual course of the hiring entity's business;  
2 and

3 (C) that the worker is customarily engaged in an independently established trade, occupation, or  
4 business of the same nature as the work performed.

5 Note that each of these requirements need to be met in order for the presumption that a worker  
6 is an employee to be rebutted, and for a court to recognize that a worker has been properly  
7 classified as an independent contractor. Here, it is unequivocally clear that MACHU PICCHU  
8 would not be able to get past the second part of the test since Plaintiff and others were  
9 unequivocally doing work related to MACHU PICCHU's core business of roofing. As such,  
10 MACHU PICCHU willfully misclassified Plaintiff and other aggrieved employees as  
11 independent contractors. Moreover, there was plenty of control by MACHU PICCHU as it  
12 related to Plaintiff's and other aggrieved employees' schedules and working conditions and  
13 especially in terms of payment.

14 12. MACHU PICCHU did not provide Plaintiff and other similarly situated aggrieved  
15 employees with the minimum wages to which they were entitled for all work performed and  
16 did not compensate him and others for all hours worked pursuant to California Labor Code  
17 sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked,  
18 including travel time to job sites, and consistently worked "off the clock". This is so because  
19 Plaintiff and others were not even paid an hourly rate. They were provided a "daily rate"  
20 irrespective of how many hours were actually worked. In addition, MACHU PICCHU did not  
21 have a formal timekeeping system to keep track of hours. As such, they would routinely time  
22 shave and round down hours to the detriment of the employees, which would translate into  
23 employees not getting paid for all hours worked in contravention of California's minimum  
24 wage laws.

25 13. Pursuant to California Industrial Welfare Commission Order No. 16-2001, Section 8(B),  
26 "[w]hen the employer requires the use of tools or equipment or they are necessary for the  
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1 performance of a job, such tools and equipment shall be provided and maintained by the  
2 employer, except that an employee whose wages are at least two (2) times the minimum wage  
3 may provide and maintain hand tools and equipment customarily required by the particular trade  
4 or craft in conformity with Labor Code Section 2802”. MACHU PICCHU unequivocally  
5 required its employees to provide their own hand tools for the performance of their job duties  
6 and to effectuate their job duties, which included roofing. In fact, the manager demanded that  
7 Plaintiff and others bring their own tools. As such, MACHU PICCHU violated the  
8 aforementioned IWC Wage Order in that MACHU PICCHU required its employees to provide  
9 and maintain hand tools and equipment customarily required by the trade but did NOT  
10 compensate these employees at least two (2) times the minimum wage.

11 14. Due to the above “off the clock” violations as mentioned above, MACHU PICCHU  
12 violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved  
13 employees overtime, even though they worked more than 8 hours per day, 12 hours per day,  
14 and/or 40 hours per week throughout their employment. Plaintiff’s and others’ actual work hours,  
15 which included the “off the clock” work as described above, entitled them to overtime, however,  
16 it was not company policy to keep accurate track of all hours worked and to pay employees ANY  
17 amount of overtime. Furthermore, since certain aggrieved employees were not paid their correct  
18 regular rate for all hours worked (at twice the minimum wage), they were also not paid the  
19 corresponding correct and accurate overtime rate of pay. In essence, since the company had a  
20 policy of providing a daily rate as opposed to any type of hourly rate, Plaintiff and others simply  
21 did not receive any overtime compensation whatsoever. It was simply not part of the  
22 compensation package.

23 15. MACHU PICCHU also violated Labor Code §§ 512 and 226.7 along with the applicable  
24 Industrial Welfare Commission Wage Order (Wage Order no. 16) because it failed to provide  
25 Plaintiff and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted  
26 meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not  
27 validly waive said meal periods. MACHU PICCHU did not completely relieve Plaintiff of all  
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1 duty during said meal periods. MACHU PICCHU did not pay to Plaintiff one additional hour  
2 of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory  
3 meal periods was not provided. It was not company policy and not part of the culture for  
4 employees such as Plaintiff and others to take timely, uninterrupted meal breaks. As such, the  
5 culture at MACHU PICCHU did not lend itself to the employees receiving timely statutory  
6 breaks wherein they were relieved of all work duties. Plaintiff and others would consistently  
7 receive their meal breaks after the 5<sup>th</sup> hour worked or they would be interrupted during their  
8 breaks and they would not be compensated with premium wage for their missed, interrupted,  
9 late, or short meal periods. Moreover, MACHU PICCHU had no policy in place regarding  
10 keeping of track of whether employees such as Plaintiff and others were receiving timely,  
11 uninterrupted meal periods.

12 16. MACHU PICCHU also violated Labor Code § 226.7 along with the applicable Industrial  
13 Welfare Commission Wage Order (Wage Order No. 16) because it failed to provide Plaintiff and  
14 other similarly situated aggrieved employees 10-minute rest periods for every four hours of  
15 work, or majority portion thereof, throughout their employment. MACHU PICCHU did not  
16 completely relieve Plaintiff of all duty during said rest periods. MACHU PICCHU did not pay  
17 to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each  
18 workday that one or more statutory rest periods was not provided. Like the situation with meal  
19 breaks, Plaintiff and others did not take timely, uninterrupted rest breaks wherein they were  
20 relieved of all duty. It was not company policy and not part of the culture for employees such as  
21 Plaintiff and others to take uninterrupted rest breaks since it was the normal practice and custom  
22 of MACHU PICCHU not to authorize, permit, and enforce statutory rest periods.

23 17. Furthermore, during the relevant time period and due to the labor code violations as  
24 discussed above, MACHU PICCHU failed to pay Plaintiff and other similarly situated aggrieved  
25 employees all wages due to them within any time period specified by California Labor Code  
26 section 204. MACHU PICCHU was also in violation of California Labor Code section 226(a),  
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1 by failing to include accurate, pertinent information on the wage statements, including but not  
2 limited to, all hours worked, overtime hours worked, all applicable hourly rates, the correct legal  
3 name and correct address of the employer, gross wages earned, all deductions, net wages earned,  
4 reimbursement for business expenses, the correct start and end of the applicable pay period, the  
5 employee ID numbers or social security numbers, among other items. As such, MACHU  
6 PICCHU did not provide Plaintiff and other similarly situated aggrieved employees with  
7 complete, accurate itemized wage statements. In fact, MACHU PICCHU did not provide  
8 Plaintiff with any pay stubs whatsoever which is consistent with the fact that the company also  
9 misclassified employees as independent contractors.

10 18. MACHU PICCHU violated Labor Code § 203 because it willfully failed to pay Plaintiff  
11 and other similarly situated aggrieved employees earned and due wages upon separation of  
12 employment, either immediately upon involuntary termination, or within 72 hours of resignation.  
13 These earned but unpaid wages include compensation for all hours worked, minimum wages,  
14 overtime wages, meal/rest period compensation described above, and business expense  
15 reimbursement. During the relevant time period, MACHU PICCHU also failed to keep accurate  
16 and complete payroll records showing the actual hours worked per day and the wages paid to  
17 Plaintiff and other aggrieved employees pursuant to California Labor Code sections 1174(d).

18 19. Moreover, MACHU PICCHU failed to provide sick pay pursuant to Labor Code sections  
19 232 and 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other  
20 aggrieved employees in violation of Labor Code Section 3700.5.

21 20. During the relevant time period, Plaintiff and other aggrieved employees incurred  
22 necessary, business-related expenses and costs that were not reimbursed by MACHU PICCHU.  
23 These costs include, but are not limited to, use of personal hand tools as mentioned above as  
24 Plaintiff also had to purchase and use his own tools to effectuate his job duties and was not  
25 reimbursed for those items. These items include Roofing Gun, Hammer, side tool bag,  
26 compressor, etc. In addition, Plaintiff and others were required to wear their own clothes as  
27 uniforms and were not reimbursed for this either. Accordingly, MACHU PICCHU was in  
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violation of California Labor Code sections 2800 and 2802.

21. Plaintiff would also have individual claims against MACHU PICCHU for retaliation pursuant to Labor Code Section 1102.5 and wrongful termination in violation of public policy. This is so because Plaintiff was terminated after refusing to drive a huge truck that requires a Class A driver's license. Since Plaintiff only had a Class C license, it would have been illegal for him to operate the big rig. Due to Plaintiff refusing to engage in illegal activity and after voicing his concerns about it to the owner Mr. Triveno, he was terminated from his employment on or around September 27, 2021 in violation of California law.

### **FIRST CAUSE OF ACTION**

#### **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

**(California Industrial Welfare Commission Order 16-2001, California Code of Regulations Title 8 Section 11160, and California Labor Code Section 1198)**

**(Plaintiff against all named Defendants and all DOE Defendants)**

22. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 21, inclusive, of this Complaint as thought fully set forth herein.

23. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 16-2001, California Code of Regulations, Title 8, Section 11160.

24. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked.

25. Under the aforementioned wage and order regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

26. As a proximate result of the aforementioned violations, Plaintiff has been damaged in

1 an amount according to proof at time of trial, but not in an amount in excess of the jurisdiction  
2 of this Court.

3 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and  
4 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is  
5 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus  
6 reasonable attorney's fees and costs of suit.

7 28. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
8 along with any allowable interest, penalties, attorney's fees, and costs which will equal an  
9 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.  
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11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES/PREVAILING WAGES**

13 **(California Labor Code Sections 1771, 1774, 1194, 1194.2, 1197)**

14 **(Plaintiff against All Named Defendants and all DOE defendants)**

15 29. Plaintiff re-alleges and incorporates by reference each and every allegation in  
16 paragraphs 1 through 28, inclusive, of this Complaint as though fully set forth herein.  
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18 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer  
19 to suffer or permit a California employee to work without paying wages at the minimum wage  
20 rate for all hours worked as required by the applicable Industrial Welfare Commission  
21 (hereinafter "IWC") Wage order no. 16-2001, codified at California Code of Regulations, Title  
22 8, Section 11160, subdivision 4. Defendants were subject to the minimum wage requirements  
23 of the State of California pursuant to Labor Code § 1194 and prevailing wage laws of the State  
24 of California. Pursuant to Labor Code § 1194 defendants had a duty to pay their employees,  
25 including Plaintiff, not less than the minimum required hourly rate of pay and legal overtime  
26 wage.

27 30. At all times mentioned herein, Defendants were subject to the prevailing wage laws of  
28 the State of California pursuant to Labor Code §§ 1771, regarding work undertaken on public

1 construction projects, including work undertaken on the projects listed above. Pursuant to  
2 Labor Code §§ 1771, Defendants had a duty to pay their employees on such projects, including  
3 Plaintiff, not less than the general prevailing rate of per diem wages for work of a similar  
4 character in the locality in which the public work is performed, and not less than the general  
5 prevailing rate of per diem wages for holiday and overtime work.

6 31. At all times mentioned herein, Defendants were subject to the prevailing wage laws of  
7 the State of California pursuant to Labor Code §§ 1774, regarding work undertaken on public  
8 construction projects. Pursuant to Labor Code §§ 1774, Defendants had a duty to pay their  
9 employees on such projects, including Plaintiff, not less than the specific prevailing rates of  
10 wages to all workmen employed in the execution of the contract of the projects as described  
11 above.

12 32. Plaintiff is informed and believes and based thereon contends that the per diem wages  
13 and prevailing wages required to be paid pursuant to Labor Code §§ 1194, 1771 and 1774 are  
14 set forth in annual and semi-annual bulletins published by the California Department of  
15 Industrial Relations.

16 33. Plaintiff's employment periods, hours worked, and trade classifications are based on  
17 individual employment as described above and as will be proved at trial.

18 34. Plaintiff is informed and believes and based thereon contends that Plaintiff was paid  
19 less than the minimum required general prevailing rate of per diem wages for work and less  
20 than the minimum required prevailing rate of per diem wages for holiday and overtime work  
21 for his work on the projects as described above, as required by Labor Code §§ 1194, 1771 and  
22 1774.

23 35. Plaintiff is informed and believes and based thereon contends that said Defendants, and  
24 each of them, violated Labor Code §§ 1194, 1194.2, 1771 and 1774, specifically by failing and  
25 refusing to comply with the statutory duty to pay Plaintiffs' prevailing wages as required by the  
26 contracts and by statute, or ensure that Plaintiff was paid prevailing wages as required by the  
27 contracts and by statute.  
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1 36. The failure to pay the prevailing wage, which is a minimum wage, subjects Defendants  
2 to an assessment of the unpaid wage difference pursuant to Labor Code § 1194.2. As a result of  
3 Defendants' violation of statutory duties, as more fully set forth above, Plaintiff earned but was  
4 not paid wages in an amount above the jurisdictional limits of this court.

5 37. Plaintiff seeks as earned wages the difference between the amount actually paid and the  
6 prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff's audits  
7 and investigations are continuing, however, the amounts claimed are above the jurisdictional  
8 minimum requirements of this court. Plaintiffs will seek leave of court to amend this  
9 Complaint according to proof at the time of trial.

10 38. Plaintiff is entitled to and therefore requests an award of pre-judgment interest on the  
11 unpaid wages set forth herein. Plaintiff also seeks and is entitled to an assessment of the unpaid  
12 minimum wage under Labor Code § 1194.2.

13 39. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of  
14 this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

15 40. Plaintiff was, at all relevant times, under the control of Defendants and suffered or  
16 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately  
17 compensate Plaintiff, including twice the minimum wage due to requiring that Plaintiff bring  
18 and use his own hand tools, were not in good faith nor were there reasonable grounds for  
19 Defendants to believe that their acts or omissions were not contrary to California law.

20 41. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
21 along with any allowable interest, penalties, attorney's fees, and costs in an amount to be  
22 proven at trial.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME**

25 **(California Industrial Welfare Commission Order 16-2001, California Code of**  
26 **Regulations Title 8 Section 11160)**

27 **(Plaintiff against All Named Defendants and all DOE defendants)**  
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1 42. Plaintiff re-alleges and incorporates by reference each and every allegation in  
2 paragraphs 1 through 41, inclusive, of this Complaint as though fully set forth herein.

3 43. Pursuant to Industrial Welfare Commission Order No. 16-2001, California  
4 Code of Regulations, Title 8, Section 11160, for the period of Plaintiff's employment,  
5 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one  
6 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day  
7 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in  
8 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh  
9 consecutive work day in a week.

10 44. Plaintiff was a non-exempt employee entitled to the protections of the California  
11 Industrial Welfare Commission Order No. 16-2001, California Code of Regulations,  
12 Title 8, Section 11160.

13 45. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a  
14 single workweek on numerous occasions.

15 46. Plaintiff worked more than twelve (12) hours in a single workday.

16 47. Plaintiff was entitled to the above overtime premiums.

17 48. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
18 Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.  
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20 49. Defendants did not pay Plaintiff premium wages of at least one and one-half times  
21 Plaintiff's correct regular rate of pay for hours worked past forty (40) in a week.

22 50. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct  
23 regular rate of pay for hours worked past twelve (12) in a day.

24 51. Plaintiff worked at least one pay period in which he was not properly paid the correct  
25 amount of overtime within the three (3) years prior to the initiation of this lawsuit.

26 52. Defendants know or should know the actual dates of overtime worked, the amount of  
27 overtime worked, and the amount of unpaid overtime due.  
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1 53. As a proximate result of Defendants' violations, Plaintiff has been damaged in an  
2 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this  
3 Court.

4 54. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of  
5 Regulations, Title 8, Section 11160, Plaintiff is entitled to recover damages for the  
6 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus  
7 reasonable attorney's fees and costs of suit.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

10 **(California Labor Code Section 226)**

11 **(Against All Named Defendants and all DOE Defendants)**

12 55. Plaintiff re-alleges and incorporates by reference each and every allegation in  
13 paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth herein.

14 56. Labor Code section 226(a) requires employers provide employees with itemized wage  
15 statements.

16 57. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked  
17 and the applicable hourly rates.

18 58. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable  
19 hourly rates in effect during the pay period and the corresponding number of hours worked at  
20 each hourly rate.

21 59. Pursuant to California Labor Code Section 226, every employer must furnish each  
22 employee an itemized statement of wages and deductions at the time of payment of wages.

23 60. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs  
24 that accurately reflected all information required by Labor Code Section 226, including but not  
25 limited to, gross wages earned, net wages earned, total hours worked by the employee, all  
26 deductions, overtime hours and pay, premium pay for rest break and meal break violations,  
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1 business expense reimbursement, the correct start and end of the pay period, the correct name  
2 and address of the legal employer, among others. Therefore, Defendants failed to maintain and  
3 provide accurate itemized wage statements to Plaintiff in accordance with California Labor  
4 Code Section 226(a).

5 61. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the  
6 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
7 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
8 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and  
9 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to  
10 the 1-year period immediately preceding the date this lawsuit was filed.

11 62. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
12 sustained damages, including loss of earnings, in an amount to be established at trial. As a  
13 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,  
14 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs  
15 and attorney's fees pursuant to statute.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

18 **(California Labor Code Section 204)**

19 **(Plaintiff against All Named Defendants all DOE defendants)**

20 63. Plaintiff re-alleges and incorporates by reference each and every allegation in  
21 paragraphs 1 through 62, inclusive, of this Complaint as thought fully set forth herein.

22 64. California Labor Code Section 204 establishes the fundamental right of all employees  
23 in the State of California to be paid wages in a timely fashion for their work.

24 65. At all times relevant during the liability period, Defendants failed to pay Plaintiff the  
25 full amount of all owed wages when due as required by California Labor Code Section 204.

26 66. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is  
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1 informed, believes, and thereon alleges, that all times relevant during the liability period,  
2 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all  
3 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating  
4 Plaintiff with premium pay for missed rest and meal breaks.

5 67. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an  
6 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise  
7 amount of unpaid wages is not presently known to Plaintiff but can be determined directly  
8 from Defendants' records or indirectly based on information from Defendants' records.

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

11 **(Plaintiff against all named Defendants and all DOE defendants)**

12 68. Plaintiff re-alleges and incorporates by reference each and every allegation in  
13 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

14 69. Pursuant to California Labor Code Section 201(a), an employer who discharges an  
15 employee must immediately pay for all compensation due and owing.

16 70. Pursuant to California Labor Code Section 202, when an employee resigns, the  
17 employer must pay all compensation due and owing within 72 hours of resignation, or on the  
18 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

19 71. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,  
20 without abatement or reduction, any wages of an employee whose employment ends, the wages  
21 of the employee shall continue as a penalty from the due date at the same rate until paid or until  
22 an action is commenced; however, the wages shall not continue for more than 30 days for  
23 failure to pay an employee owed wages.

24 72. After Plaintiff's employment with Defendants ended, Defendants willfully refused and  
25 continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

1 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
2 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
3 trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year immediately  
4 preceding the filing of this lawsuit.

5 74. Under this cause of action, Plaintiff also prays for attorney's fees and costs under  
6 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set  
7 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

8 75. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged  
9 along with any allowable interest, penalties, attorney's fees, and costs according to proof at  
10 trial.  
11

12 **SEVENTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE SECTION 558**

14 **(California Labor Code Section 558)**

15 **(Plaintiff against all named defendants and all DOE defendants)**

16 76. Plaintiff re-alleges and incorporates by reference each and every allegation in  
17 paragraphs 1 through 75, inclusive, of this Complaint as though fully set forth herein.

18 77. California Labor Code Section 558 states that any person acting on behalf of an  
19 employer who violates, or causes to be violated, a section of this chapter or any provision  
20 regulating hours and days of work in any order of the Industrial Welfare Commission shall be  
21 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid  
22 employee for each pay period for which the employee was underpaid in addition to an amount  
23 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one  
24 hundred dollars (\$100) for each underpaid employee for each pay period for which the  
25 employee was underpaid in addition to an amount sufficient to recover underpaid wages.  
26  
27  
28

1 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was  
2 filed.

3 78. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,  
4 Defendants are subject to civil penalties under the following laws:

- 5 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular,  
6 including prevailing wage and overtime wages for overtime hours worked. As  
7 such, Defendants violated Section 558 under which penalties are due. Plaintiff  
8 therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each  
9 subsequent violation for each pay period for which Plaintiff was underpaid in  
10 addition to an amount sufficient to recover underpaid wages.  
11  
12 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for  
13 relief associated with Plaintiff's prosecution of this cause of action under California  
14 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not  
15 paying Plaintiff for his overtime hours worked and for all hours worked.  
16  
17 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's  
18 fees for relief associated with Plaintiff's prosecution of this cause of action under  
19 California Labor Code Sections 200, et seq.

20 79. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under  
21 the statutes, regulations, and wage orders alleged in this cause of action along with any  
22 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

23  
24 80. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs on  
25 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

26 **EIGHTH CAUSE OF ACTION**  
27 **FAILURE TO GIVE REST BREAKS**  
28

**(Plaintiff against all named defendants and all DOE defendants)**

81. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 80, inclusive, of this Complaint as though fully set forth herein.

82. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Section 11160(11)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Section 11160(11)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations section 11160(18)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code Section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the IWC, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of

1 compensation for each work day that the rest period is not provided.

2 83. Plaintiff alleges that he was not authorized and permitted to take a ten (1) minute rest  
3 break after every four (4) hours of work or major fraction thereof, as required by California  
4 Law.

5 84. Under this cause of action, Plaintiff prays for wages due to him under the statutes,  
6 regulations, and wage orders alleged in this cause of action along with any allowable interest,  
7 penalties, attorney's fees and costs, and in an amount to be proven at trial. Specifically,  
8 Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the  
9 filing of this lawsuit.  
10

11 85. Plaintiff also prays for Labor Code Section 218.5 recovery of costs and attorney's fees  
12 as well as interest under Labor Code Section 218.6.

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO GIVE MEAL BREAKS**

15 **(Plaintiff against all named defendants and all DOE defendants)**

16 86. Plaintiff re-alleges and incorporates by reference each and every allegation in  
17 paragraphs 1 through 85, inclusive, of this Complaint as though fully set forth herein.  
18

19 87. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 20 a. California Labor Code section 512(a), which requires that employees be given a  
21 30-minute uninterrupted meal break after five (5) hours of work, and a second  
22 uninterrupted meal break after ten (10) hours of work;  
23 b. California Labor Code section 226.7, which states that (a) no employer shall  
24 require any employee to work during any meal period mandated by an  
25 applicable order of the Industrial Welfare Commission, and (b) if any employer  
26 fails to provide an employee a meal period in accordance with an applicable  
27  
28

order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

- c. California Industrial Welfare Commission Order 16 section 10(B), as codified under Title 8 of the California Code of Regulations Section 11160, which state that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 16 Section 6(A)(3), as codified under Title 8 of the California Code of Regulations Section 11160, which require an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 16 Section 18(A), as codified under California Code of Regulations Section 11160, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 16) as enforceable law.

88. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law.

California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 16, as codified under California Code of Regulations Sections 11160 et. seq., require that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11160 require that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

89. Under this cause of action, Plaintiff prays for wages due to him under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

90. Plaintiff also prays for Labor Code Section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code Section 218.6

91. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

#### **TENTH CAUSE OF ACTION**

#### **FAILURE TO MAINTAIN ACCURATE RECORDS**

**(California Labor Code Section 1174(d))**

**(Plaintiff against all named defendants and all DOE defendants)**

92. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 91, inclusive, of this Complaint as though fully set forth herein.

93. Labor Code section 1174(d) requires that employers, including Defendants, maintain

1 accurate records showing the hours worked daily by its employees and to whom wages were  
2 paid.

3 94. Additionally, the “Records” section of the applicable IWC Wage Order obligates the  
4 employer, including Defendants, to keep accurate information with respect to each one of their  
5 employees including, but not limited to, the total wages paid each payroll period, and time  
6 records showing when the employee begins and ends each work period, meal periods, split  
7 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and  
8 the applicable rates of pay.

9 95. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails  
10 to maintain accurate and complete records required by Labor Code section 1174(d) is subject  
11 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate  
12 records regarding Plaintiff’s, including the applicable rates of pay and total wages earned for  
13 the payroll period.

14 96. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and  
15 continue to suffer substantial losses related to Defendants’ failure to record and maintain  
16 records of meal periods and time records/rates of pay.

17 97. Plaintiff seeks all available remedies for Defendants’ violations including, but not  
18 limited to penalties, and costs to the extent permitted by law.

19  
20 **ELEVENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23 98. Plaintiff re-alleges and incorporates by reference each and every allegation in  
24 paragraphs 1 through 97, inclusive, of this Complaint as though fully set forth herein.

25 99. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her  
26 employee for all necessary expenditures or losses incurred by the employee in direct  
27 consequence of the discharge of his or her duties.”  
28

100. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of completing his job duties, which were not reimbursed by Defendants. These expenses include, but are not limited to, use of personal hand tools as mentioned above as Plaintiff also had to purchase and use his own tools to effectuate his job duties and was not reimbursed for those items. These items include Roofing Gun, Hammer, side tool bag, compressor, etc. In addition, Plaintiff and others were required to wear their own clothes as uniforms and were not reimbursed for this either.

101. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

## **TWELFTH CAUSE OF ACTION**

### **PRIVATE ATTORNEYS GENERAL ACT**

**Individual and Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2802, 3700.5)**

**(Plaintiff against all named defendants and all DOE defendants)**

102. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.

103. Pursuant to law, Plaintiff provided the required written notice to the LWDA and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to violate.

104. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

105. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

106. Pursuant to California Labor Code section 2699, any provisions of the Labor Code

1 that provides for a civil penalty to be assessed and collected by the LWDA or any of its  
2 departments, divisions, commissions, boards, agencies, or employees for violation of the code  
3 may, as an alternative, be recovered through a civil action brought by an aggrieved employee  
4 on behalf of himself or herself and other current or former employees pursuant to the  
5 procedures specified in California Labor Code section 2699.3.

6 107. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged  
7 violator and had one or more of the alleged violations committed against him, and therefore is  
8 properly suited to represent the interests of other current and former hourly, non-exempt  
9 employees who worked for Defendants in the State of California during the applicable PAGA  
10 period.

11 108. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks  
12 penalties under California Labor Code sections 2698 and 2699 because of Defendants’  
13 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

14 109. Plaintiff therefore has exhausted all administrative remedies required of him under  
15 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this  
16 cause of action and pursue penalties in a representative action for Defendants’ violations of the  
17 Labor Code.

18 110. California Labor Code section 2699 et seq. imposes penalties upon culpable  
19 Defendants for violating the Labor Code.

20 111. California Labor Code section 558 establishes a civil penalty as follows: Any  
21 employer or other person action on behalf of an employer who violates, or causes to be  
22 violated, a section of this chapter or any provision regulating hours and days of work in any  
23 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section  
24 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty  
25 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
26 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid  
27 employee for each pay period for which the employee was underpaid...  
28

112. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved employees in this specific cause of action under the Private Attorneys General Act.

113. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2802, 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order (Wage Order No. 16 and others) violated based on the facts alleged in this Complaint.

114. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, civil penalties, and wages on behalf of Plaintiff and other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

### **THIRTEENTH CAUSE OF ACTION**

#### **FAILURE TO PROVIDE PERSONNEL RECORDS**

**(Plaintiff against all named defendants and all DOE defendants)**

115. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.

116. Labor Code section 1198.5 dictates "every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee."

1 117. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer  
2 shall make the contents of those personnel records available for inspection to the current or  
3 former employee, or his or her representative, at reasonable intervals and at reasonable  
4 times...” On information and belief, Defendants intentionally failed to provide Plaintiff with  
5 personnel records when requested by Plaintiff via letter on October 14, 2021, as required by  
6 law. Plaintiff requested his personnel records in accordance with California Labor Code  
7 section 1198.5(k) on October 14, 2021, via U.S. certified mail, return receipt requested. .  
8

9 118. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his  
10 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has  
11 suffered and continues to suffer substantial losses related to Defendants’ failure to provide  
12 personnel records.

13 119. Plaintiff seeks all available remedies for Defendants’ violations including, but not  
14 limited penalties, and costs to the extent permitted by law and according to proof at trial.  
15 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants  
16 in the amount of \$750.00, along with costs and attorney’s fees.

17 **FOURTEENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE PAY RECORDS**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20  
21 120. Plaintiff re-alleges and incorporates by reference each and every allegation in  
22 paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

23 121. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current  
24 and former employees the right to inspect or copy records pertaining to their employment,  
25 upon reasonable request to the employer...”

26 122. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who  
27 receives a written or oral request to inspect or copy records pursuant to subdivision (b)  
28

1 pertaining to a current or former employee shall comply with the request as soon as  
2 practicable, but no later than 21 calendar days from the date of the request.” On information  
3 and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested  
4 by Plaintiff via certified letter, return receipt requested, on October 14, 2021, and as required  
5 by law. Plaintiff requested his pay records in accordance with California Labor Code section  
6 226 on October 14, 2021, via certified mail. Defendant failed to provide Plaintiff with an  
7 opportunity to inspect or copy his pay records within 21 days.  
8

9 123. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and  
10 continues to suffer substantial losses related to Defendants’ failure to provide pay records.  
11 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants  
12 in the amount of \$750.00, along with costs and attorney’s fees.

13 124. Plaintiff seeks all available remedies for Defendants’ violations including, but not  
14 limited penalties, and costs to the extent permitted by law and according to proof at trial.  
15

### 16 **FIFTEENTH CAUSE OF ACTION**

#### 17 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

18 **(Plaintiff against corporate Defendant MACHU PICCHU ROOFING INC. only and**  
19 **DOE Defendants, and each of them)**

20 125. Plaintiff re-alleges and incorporates by reference each and every allegation in  
21 paragraphs 1 through 124, inclusive, of this Complaint as though fully set forth herein.

22 126. At all times material to this Complaint, California Labor Code § 1102.5 was in effect  
23 and binding on corporate Defendant MACHU PICCHU ROOFING INC.. This section requires  
24 corporate Defendant to refrain from retaliating against an employee for refusing to participate  
25 in an activity that he/she reasonably believes would result in a violation of state or federal  
26 statute, or a violation or noncompliance with a state or federal rule or regulation. California  
27 Labor Code section 1102.5 also requires Defendants to refrain from retaliating against an  
28

1 employee for disclosing information to a person with authority over the employee if the  
2 employee has reasonable cause to believe that the information discloses a violation of state or  
3 federal statute, or a violation of or noncompliance with a local, state, or federal rule or  
4 regulation, regardless of whether disclosing the information is part of the employee's job  
5 duties.  
6

7 127. As discussed fully above, Plaintiff complained to Defendants about the company's  
8 illegal conduct and the labor code violations being committed against Plaintiff, including  
9 Plaintiff attempting to take a statutory and lawful break while on the job.

10 128. Corporate Defendant MACHU PICCHU ROOFING INC. retaliated against Plaintiff  
11 for his whistleblowing and protected activity in refusing to engage in unlawful and harmful  
12 conduct, as alleged above, all in violation of Labor Code § 1102.5.

13 129. As a direct and proximate result of the aforementioned acts and omissions of  
14 corporate Defendant MACHU PICCHU ROOFING INC., Plaintiff suffered general and  
15 compensatory damages, including but not limited to, loss of income (past and future), loss of  
16 employment benefits (past and future), general and compensatory damages (past and future),  
17 mental pain and anguish and emotional distress (past and future), and will continue to suffer in  
18 the future, in an amount to be proved at trial.  
19

20 130. Plaintiff requests all available relief under Labor Code § 1102.5 including damages  
21 and the imposition of civil penalties of \$10,000 for each violation as well as attorneys fees.  
22

### 23 **SIXTEENTH CAUSE OF ACTION**

#### 24 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

25 **(Plaintiff against corporate Defendant MACHU PICCHU ROOFING INC.  
26 only and DOE Defendants, and each of them)**

27 131. Plaintiff re-alleges and incorporates by reference each and every allegation in  
28 paragraphs 1 through 130, inclusive, of this Complaint as though fully set forth herein.

1 132. At all times during his employment with Defendant MACHU PICCHU, Plaintiff  
2 performed his duties with the utmost diligence and competence.

3 133. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and  
4 actions to treat him differently and ultimately terminate his employment as alleged herein, was  
5 motivated by Plaintiff's whistleblowing and complaints about illegal activity at the workplace  
6 as described above. Defendant MACHU PICCHU ROOFING INC. intentionally created the  
7 aforementioned retaliation, thereby not giving Plaintiff an opportunity to work in an  
8 environment free of retaliation.

9 134. The employment of Plaintiff wrongfully terminated on or around September 27, 2021  
10 in violation of the fundamental public policy of the State of California with respect to  
11 retaliating against an employee on account of his whistleblowing and refusing to engage in  
12 illegal and harmful conduct. Moreover, Plaintiff was forced to hire an attorney to assist him to  
13 end these illegal activities. Said conduct violated statutory and constitutional expressions of  
14 public policy including, the California Labor Code and the California Constitution, Article 1  
15 section 8.

16 135. As set forth above, said actions by Defendants were wrongful and in violation of the  
17 fundamental principles of the public policy of the State of California as reflected in its laws,  
18 objectives and policies. Said statutes and constitutional expressions of public policy include,  
19 but are not limited to, California Labor Code and the California Constitution, Article 1 section  
20 8. These laws inure to the benefit of the public at large, and not just the private interests of the  
21 employers and employees whom they govern or protect.

22 136. As a direct and proximate result of the aforementioned acts and omissions of  
23 corporate Defendants, Plaintiff suffered general and compensatory damages, including but not  
24 limited to, loss of income (past and future), loss of employment benefits (past and future),  
25 general and compensatory damages (past and future), mental pain and anguish and emotional  
26 distress (past and future), and will continue to suffer in the future, in an amount to be proved at  
27 trial.  
28

1 137. The foregoing conduct engaged in by corporate Defendants and each of their directors,  
2 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,  
3 ratified, and carried on with a conscious and willful disregard of their workers' right to work in  
4 an environment free of retaliation due to whistleblowing, so as to justify the imposition of  
5 punitive damages to punish and set an example of said Defendants.

6 **SEVENTEENTH CAUSE OF ACTION**

7 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

8 **(Plaintiff against all Named Defendants and all DOE defendants)**

9  
10 138. Plaintiff re-alleges and incorporates by reference each and every allegation in  
11 paragraphs 1 through 137, inclusive, of this Complaint as though fully set forth herein.

12 139. By virtue of this foregoing statutes, regulations, and laws, the acts of Defendants  
13 constitutes unfair and unlawful business practices under California Business and Professions  
14 Code Section 17200, et seq.

15 140. Defendant's violations of California labor laws constitutes a business practice because  
16 it was done repeatedly over a significant period of time in a systematic manner that was  
17 detrimental to Plaintiff and other similarly situated aggrieved employees.

18  
19 141. For the four (4) years preceding the filing of this action, Plaintiff has suffered damages  
20 and requests damages and/or restitution of all monies and profits to be disgorged from  
21 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of  
22 this Court.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as  
25 follows:

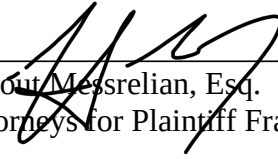
- 26 1. For compensatory damages according to proof, including for payment of regular hours,  
27 wages for all hours worked, prevailing wage, and overtime wages;  
28

2. For special and consequential damages to the extent allowed by law;
3. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount according to proof;
4. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
5. For damages and penalties against Defendants under Labor Code section 226 for Plaintiff in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code section 203 against Defendants in an amount subject to proof at trial;
7. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA notice;
8. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
9. For the imposition of civil penalties and/or statutory penalties;
10. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., 1102.5 and 1102.6, and other provisions of the Labor Code;
11. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
12. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
13. Costs and expenses of suit incurred herein;
14. For all interest as allowed by law;

1 15. For such other and further relief as the Court deems just and proper.

2 DATED: March 2, 2022

***MESSRELIAN LAW INC.***

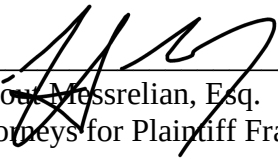
3  
4 By   
5 Harold Messrelian, Esq.  
6 Attorneys for Plaintiff Francisco Anguiano

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

9  
10  
11 DATED: March 2, 2022

***MESSRELIAN LAW INC.***

12 By   
13 Harold Messrelian, Esq.  
14 Attorneys for Plaintiff Francisco Anguiano