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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

RICARDO FLORES, individually and on
behalf of all similarly aggrieved employees,

Plaintiff,

v.

CRUZ CAT CONSTRUCTION &
ENGINEERING, INC., a California
corporation; FELIPE CRUZ, an individual;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. CVRI 2200073

**COMPLAINT FOR ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
*SEQ.***

**1. VIOLATION OF LABOR CODE §§
2698, *ET SEQ.* (“PAGA”)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff RICARDO FLORES (“Plaintiff”), on behalf of himself and all other aggrieved employees, and hereby brings this Representative Action Complaint against Defendants CRUZ CAT CONSTRUCTION & ENGINEERING, INC., a California corporation; FELIPE CRUZ, an individual; and DOES 1 through 100 (collectively, “Defendants”), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, on behalf of himself and all other aggrieved employees, which is defined as individuals who are currently employed, or formerly have been employed, as non-exempt employees of Defendants between October 13, 2020 and the present, hereby brings this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et seq.*

2. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California market so as to render the exercise of jurisdiction over them by the California courts consistent with the traditional notions of fair play and substantial justice.

3. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, because Defendants regularly conduct business in the Riverside County, maintain offices and facilities in the Riverside County, because Plaintiff lives in the Riverside County, and because the conduct alleged herein which gives rise to the claims asserted occurred within the Riverside County.

THE PARTIES

4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the one year immediately preceding the filing of this Complaint and within the statute of limitations period applicable to each cause of action pled herein, Plaintiff was employed by Defendants in the Riverside County, California.

5. Plaintiff is informed and believes, and based thereon alleges, that Defendants were at all times doing business throughout the State of California, have their offices in Riverside County, and

1 serve numerous clients throughout the State. Further, Defendants employed Plaintiff and other
2 aggrieved employees within the State of California and, therefore, were (and are) doing business in
3 Riverside County and the State of California.

4 6. Plaintiff does not know the true names or capacities, whether individual, partner, or
5 corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
6 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
7 this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
8 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
9 corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately
10 caused Plaintiff and other aggrieved employees to be subject to the unlawful employment practices,
11 wrongs, injuries and damages complained of herein.

12 7. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and the other aggrieved employees.

14 8. At all times herein mentioned, each of said Defendants participated in the doing of the
15 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
16 and each of them, were the agents, servants, and employees of each and every one of the other
17 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
18 within the course and scope of said agency and employment. Defendants, and each of them, approved
19 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
20 herein.

21 9. At all times mentioned herein, Defendants, and each of them, were members of and
22 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
23 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
24 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
25 employees.

26 **ALTER EGO, AGENCY AND JOINT EMPLOYER**

27 10. FELIPE CRUZ owned and/or controlled the businesses operated by CRUZ CAT
28 CONSTRUCTION & ENGINEERING, INC., and furthermore, FELIPE CRUZ exercised control

1 over the labor practices of each and every one of the employees (inclusive of Plaintiff and the
2 aggrieved employees) of each and every one of his said interests, and caused the violations at issue in
3 this Complaint.

4 11. Based on the foregoing allegations, even if FELIPE CRUZ is not found to be the
5 “employer(s)” of Plaintiff (by way of direct employment, alter ego, or otherwise) FELIPE CRUZ, in
6 fact, caused the violations at-issue in this Complaint, thereby creating individual liability under *Labor*
7 *Code* § 558.1.

8 12. As further referenced hereinbelow, the viability of obtaining liability of individuals by
9 this method was discussed by the California Supreme Court in *Reynolds v. Bement* (2005) 36 Cal.4th
10 1075, 1089 where the court noted that individual liability against non-employers could be obtained
11 through the use of § 558.

12 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
13 unity of interest and ownership between FELIPE CRUZ, CRUZ CAT CONSTRUCTION &
14 ENGINEERING, INC., and DOES 1-100 that the individuality and separateness of Defendants have
15 ceased to exist.

16 14. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
17 of purported corporate existence, FELIPE CRUZ, CRUZ CAT CONSTRUCTION &
18 ENGINEERING, INC., and DOES 1-100, are in reality, one and the same, including, but not limited
19 to, because:
20

21 a. CRUZ CAT CONSTRUCTION & ENGINEERING, INC., and DOES 1-100 are
22 completely dominated and controlled by FELIPE CRUZ, who personally committed the frauds and
23 violated the laws as set forth in this complaint, and who has hidden and currently hide behind CRUZ
24 CAT CONSTRUCTION & ENGINEERING, INC., and DOES 1-100 to perpetrate frauds, circumvent
25 statutes, or accomplish some other wrongful or inequitable purpose.

26 b. FELIPE CRUZ derives actual and significant monetary benefits by and through CRUZ
27 CAT CONSTRUCTION & ENGINEERING, INC., and DOES 1-100’s unlawful conduct, and by
28

1 using CRUZ CAT CONSTRUCTION & ENGINEERING, INC., and DOES 1-100 as the funding
2 source for their own personal expenditures.

3 c. Plaintiff is informed and believes that FELIPE CRUZ, CRUZ CAT CONSTRUCTION
4 & ENGINEERING, INC., and DOES 1-100, while really one and the same, were segregated to appear
5 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
6 accomplishing some other wrongful or inequitable purpose.

7 d. Plaintiff is informed and believes that FELIPE CRUZ, CRUZ CAT CONSTRUCTION
8 & ENGINEERING, INC., and DOES 1-100, do not comply with all requisite corporate formalities to
9 maintain a legal and separate corporate existence.

10 e. Plaintiff is informed and believes, and based thereon alleges, that the business affairs
11 of FELIPE CRUZ, CRUZ CAT CONSTRUCTION & ENGINEERING, INC., and DOES 1-100, are,
12 and at all times relevant were, so mixed and intermingled that the same cannot reasonably be
13 segregated, and the same are in inextricable confusion. CRUZ CAT CONSTRUCTION &
14 ENGINEERING, INC., and DOES 1-100 are and at all times relevant times hereto were used by
15 FELIPE CRUZ as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are,
16 and were, the alter egos of FELIPE CRUZ. The recognition of the separate existence of FELIPE
17 CRUZ, CRUZ CAT CONSTRUCTION & ENGINEERING, INC., and DOES 1-100 from one another
18 would not promote justice, in that it would permit Defendants to insulate themselves from liability to
19 Plaintiff for violations of the Government Code, Labor Code, and other statutory violations. The
20 corporate existence of CRUZ CAT CONSTRUCTION & ENGINEERING, INC., and DOES 1-100
21 should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid
22 fraud and injustice to Plaintiff herein.

24 15. Accordingly, FELIPE CRUZ, CRUZ CAT CONSTRUCTION & ENGINEERING,
25 INC., and DOES 1-100 constitute the alter egos of one another, and the fiction of their separate
26 corporate existence must be disregarded.

27 16. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
28 thereon alleges that FELIPE CRUZ, CRUZ CAT CONSTRUCTION & ENGINEERING, INC., and

DOES 1-100 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of FELIPE CRUZ, CRUZ CAT CONSTRUCTION & ENGINEERING, INC., and DOES 1-100. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendants' business was and is conducted.

REPRESENTATIVE ACTION FACTUAL ALLEGATIONS

17. Plaintiff worked for Defendants' construction company from in or around November 2018 until on or around June 29, 2021.

18. Prior to December 2020, Plaintiff was compensated at \$25 per hour; subsequent to December 2020, Plaintiff was compensated at \$30 per hour.

19. Plaintiff and other similarly aggrieved employees were tasked with land excavation, to prepare new housing developments for the installation of electricity and pipe lines.

20. Plaintiff and other similarly aggrieved employees were scheduled to work from approximately 7:00 a.m. to 3:30 p.m., Monday through Friday. However, they were required to perform work both *before* and *after* the start of their shifts, and were not compensated for this additional time.

21. Specifically, Plaintiff and other similarly aggrieved employees were required to arrive at the jobsite 30 minutes to one hour early. Further, Plaintiff and similarly aggrieved employees were required to pick up materials off-the-clock at least once per week which took approximately one hour.

22. Plaintiff and other similarly aggrieved employees were also required to stop at Defendants' main yard for various reasons either before or after their shift. This occurred approximately once per week and took about one hour, for which they were also not compensated.

23. On Fridays, Plaintiff and other similarly aggrieved employees would be required to drop off their handwritten timecards to Defendants main office and leave them with Manager Andrea Cruz. Defendants specifically told Plaintiff and other similarly aggrieved employees that the accrual of overtime was prohibited because of the financial strain on Defendants.

24. Therefore, Plaintiff and other similarly aggrieved are owed wages for the time it took

1 to drive to and from jobsites and the main yard, driving to get materials, and hours worked before their
2 set scheduled shifts.

3 25. Plaintiff and other similarly aggrieved employees were not paid for all of their overtime
4 hours. Beginning in December 2020, owner Felipe Cruz instituted a policy against the accrual of
5 overtime. However, Defendants continued to require Plaintiff and similarly aggrieved employees to
6 work the same hours as described above. Regardless of how many hours Plaintiff and similarly
7 aggrieved employees worked, they were either rarely or never paid any overtime after December 2020.

8 26. As a result of Defendants' failure to pay Plaintiff and other similarly aggrieved
9 employees for their owed hourly and overtime wages, Defendants maintained inaccurate payroll
10 records, issued inaccurate wage statements to Plaintiff and other similarly aggrieved employees, and
11 failed to pay all final wages owed to Plaintiff and other similarly aggrieved employees upon their
12 separation of employment from Defendants.

13 27. Defendants have engaged in, and continue to engage in, unfair business practices in
14 California by practicing, employing and utilizing the employment practices and policies outlined
15 above.

16 28. Defendants' utilization of such unfair business practices constitutes unfair competition
17 and provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair
18 business practices deprived Plaintiffs of the general minimum working standards and entitlements due
19 to them under California law and the Industrial Welfare Commission Wage Order as described herein.

20 29. At all times relevant hereto, Plaintiffs were not exempt pursuant to Labor Code §515,
21 including because:

22 1. Plaintiffs' duties and responsibilities did not involve the management of the
23 enterprise in which they were employed or of a customarily recognized department or subdivision
24 thereof;

25 2. Plaintiffs were not licensed or certified by the State of California nor were they
26 primarily engaged in the practice of one of the following recognized professions: law, medicine,
27 dentistry, optometry, architecture, engineering, teaching, or accounting, nor were they primarily
28

1 engaged in an occupation commonly recognized as a learned or artistic profession as such terms are
2 defined by Wage Order 16;

3 3. Plaintiffs' duties and responsibilities did not involve either the performance of
4 office or non-manual work directly related to management policies or general business operations of
5 their employer or their employer's customers, or the performance of functions in the administration
6 of a school system, or educational establishment or institution, or of a department or subdivision
7 thereof, in work directly related to the academic instruction or training carried on therein;

8 4. Plaintiffs did not have the authority to hire or fire other employees, nor were
9 Plaintiffs' suggestions and recommendations as to the advancement and promotion or any other
10 change of status of other employees given any weight;

11 5. Plaintiffs did not customarily and regularly exercise discretion and independent
12 judgment in performing their work duties;

13 6. Plaintiffs did not perform under only general supervision work along
14 specialized or technical lines requiring special training, experience, or knowledge;

15 7. Plaintiffs did not perform under only general supervision special assignments
16 and tasks; and

17 8. Plaintiffs did not spend more than one-half of their work time engaged in
18 exempt work.

19 30. As a direct result of the violations herein alleged, Plaintiffs have suffered, and continue
20 to suffer, substantial losses related to the use and enjoyment of wages, lost interest on such wages, and
21 expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under
22 state law, all to their respective damage in amounts according to proof at the time of trial.

23 31. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved
24 employees, as defined by Labor Code § 2699(c), including all individuals who are currently employed,
25 or formerly have been employed, as non-exempt employees of Defendants between October 13, 2020
26 and the present.
27
28

1 32. On October 13, 2021, Plaintiff sent a notice of filing the Private Attorney General Act
2 (“PAGA”) claim to Labor Workforce and Development Agency (“LWDA”) pursuant to California
3 Labor Code §§ 2698, *et seq.*, and paid \$75 to LWDA as a fee for filing the PAGA notice.

4 **FIRST CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 33. Plaintiff incorporates by reference and re-alleges as if fully stated herein all previous
8 paragraphs.

9 34. Defendants have committed several Labor Code violations against Plaintiff and
10 aggrieved employees.

11 35. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code
12 sections enumerated in Labor Code section 2699.5.

13 36. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*,
14 and acting on behalf of himself and other aggrieved employees, brings this representative action
15 against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the
16 State of California according to proof pursuant to Labor Code § 2699(a) including, but not limited to:
17 \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each
18 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure
19 to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial
20 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee
21 per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each subsequent violation
22 per employee per pay period for those violations of the Labor Code for which no civil penalty is
23 specifically provided, based on the following Labor Code violations:

- 24
- 25 a. Defendants’ failure to pay for all hours worked in violation of Industrial Welfare
26 Commission Order No. 16 and Labor Code §§ 200, 226, 226.7, 500, 510, 1197, 1194, and
 1198;
- 27 b. Defendants’ failure to pay the minimum wage in violation of Industrial Welfare
28 Commission Order No. 16 and Cal. Labor code §§200, 226, 500, 510, 1194, 1197, and
 1198;

- c. Defendants violated Labor code §§ 200, 226, 500, 510, 1194, and 1198 by not paying Plaintiff and similarly aggrieved employees overtime and work performed for the benefit of Defendants.
- d. Defendants violated Labor Code §§ 226 and 1174(d) by failing to provide Plaintiff and other similarly aggrieved employees with accurate and compliant itemized wage statements;
- e. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due, including, but not limited to, overtime wages due to Plaintiff and other similarly aggrieved employees upon their separation of employment;

37. On October 13, 2021, Plaintiff sent a notice of his intent to file a PAGA claim for civil penalties to the LWDA pursuant to the California Labor Code § 2698, *et seq.*, with respect to the violations of the California Labor Code identified in Paragraph 36 (a)-(e). Now that sixty-five days have passed from the date Plaintiff notified Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

38. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699(a) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each subsequent

1 violation per employee per pay period for those violations of the Labor Code for which no civil penalty
2 is specifically provided;

3 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699,
4 and Code of Civil Procedure § 1021.5; and

5 3. For such other and further relief that the Court may deem just and proper.

7 DATED: January 6, 2022

LOYR, APC

9
10 By: 

Young W. Ryu, Esq.

Alexander D. Wallin, Esq.

Sarah H. Cohen, Esq.

Attorneys for Plaintiff RICARDO FLORES

14
15 **JURY DEMAND**

16 Plaintiff, on behalf of himself and others aggrieved employees, demands a trial by jury for
17 himself and other aggrieved employees on all claims so triable.

18 DATED: January 6, 2022

LOYR, APC

20
21 By: 

Young W. Ryu, Esq.

Alexander D. Wallin, Esq.

Sarah H. Cohen, Esq.

Attorneys for Plaintiff RICARDO FLORES