

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
LIZETTE RODRIGUEZ (SBN 335182)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff Blanca Sanchez

KEVIN MAHONEY (SBN 235367)
LAURA THERIAULT (SBN 330474)
MAHONEY LAW GROUP, APC
249 East Ocean Blvd., Suite 814
Long Beach, California 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Plaintiff for Plaintiff Francisco Birrueta

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

BLANCA SANCHEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

CARPENTER CO. d/b/a E.R. CARPENTER
COMPANY, INC., a Virginia corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: RIC2004219
[Consolidated With Case No. CVRI2200511]

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);

- (8) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
(9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

FRANCISCO BIRRUETA, as an individual
and on behalf of all similarly situated
employees,

Plaintiff,

v.

CARPENTER CO. WHICH WILL DO
BUSINESS IN CALIFORNIA AS E.R.
CARPENTER COMPANY, and DOES 1
through 50, inclusive,

Defendants.

Case No.: CVRI2200511
[Consolidated With Case No. RIC2004219]

Complaint Filed: February 7, 2022

COMES NOW, Plaintiff BLANCA SANCHEZ and FRANCISCO BIRRUETA (“Plaintiffs,” “Plaintiff Sanchez,” and “Plaintiff Birrueta”), individually, and on behalf of other members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiffs, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Riverside. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State of California, County of Riverside.

PARTIES

5. Plaintiff Sanchez is an individual residing in the State of California, County of Riverside. Plaintiff Birrueta is an individual residing in the State of California, County of Riverside.

1 6. Defendant CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC., at all
2 times herein mentioned, was and is, upon information and belief, a Virginia corporation, and at
3 all times herein mentioned, was and is, an employer whose employees are engaged throughout
4 the State of California, including the County of Riverside.

5 7. At all relevant times, Defendants CARPENTER CO. d/b/a E.R. CARPENTER
6 COMPANY, INC., was the “employer” of Plaintiffs within the meaning of all applicable laws
7 and statutes.

8 8. At all times herein relevant, Defendants CARPENTER CO. d/b/a E.R.
9 CARPENTER COMPANY, INC., and DOES 1 through 100, and each of them, were the
10 agents, partners, joint venturers, joint employers, representatives, servants, employees,
11 successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant
12 hereto were acting within the course and scope of their authority as such agents, partners, joint
13 venturers, joint employers, representatives, servants, employees, successors, co-conspirators
14 and assigns, and all acts or omissions alleged herein were duly committed with the ratification,
15 knowledge, permission, encouragement, authorization, and consent of each defendant
16 designated herein.

17 9. The true names and capacities, whether corporate, associate, individual or
18 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
19 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that
20 information and belief allege, that each of the Defendants designated as a DOE is legally
21 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
22 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
23 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
24 capacities when the same have been ascertained.

25 10. Defendants CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and
26 DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

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11. Plaintiffs further allege that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this action on their own behalf and on behalf of all other members of the general public similarly situated and seek class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All non-exempt hourly-paid employees who worked for Defendants in California during the Class Period of October 20, 2016 through August 31, 2023.

14. Plaintiffs reserve the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time. However, the class is estimated to be greater than five hundred (500) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiffs' claims are typical of all other class members' claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

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1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom they have a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiffs have
4 no interest that is antagonistic to the other class members. Plaintiffs'
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiffs have
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.

11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.

14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the Labor Code, was willful;

26 b. Whether Defendants failed to pay their hourly-paid or non-exempt
27 employees within the State of California for all hours worked, missed
28 meal periods and rest breaks in violation of the law;

- 1 c. Whether Defendants required Plaintiffs and the other class members to
2 work over eight (8) hours per day and/or over forty (40) hours per week
3 and failed to pay the legally required overtime compensation to Plaintiffs
4 and the other class members;
- 5 d. Whether Defendants properly calculated the regular rate for Plaintiffs
6 and the other class members to worked overtime and earned incentive
7 pay and sick leave pay;
- 8 e. Whether Defendants deprived Plaintiffs and the other class members of
9 meal and/or rest periods or required Plaintiffs and the other class
10 members to work during meal and/or rest periods without compensation;
- 11 f. Whether Defendants failed to pay minimum wages to Plaintiffs and the
12 other class members for all hours worked;
- 13 g. Whether Defendants failed to pay all wages due to Plaintiffs and the
14 other class members within the required time upon their discharge or
15 resignation;
- 16 h. Whether Defendants failed to timely pay all wages due to Plaintiffs and
17 the other class members during their employment;
- 18 i. Whether Defendants complied with wage reporting as required by the
19 Labor Code, including, *inter alia*, section 226;
- 20 j. Whether Defendants failed to reimburse Plaintiffs and the other class
21 members for necessary business-related expenses and costs;
- 22 k. Whether Defendants' conduct was willful or reckless;
- 23 l. Whether Defendants engaged in unfair business practices in violation of
24 Business & Professions Code section 17200, *et seq.*;
- 25 m. The appropriate amount of damages, restitution, and/or monetary
26 penalties resulting from Defendants' violation of the law; and
- 27 n. Whether Plaintiff and the other class members are entitled to
28 compensatory damages pursuant to the Labor Code.

GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiffs as hourly-paid non-exempt employees during the relevant period in the State of California, County of Riverside.

19. Defendants had the authority to hire and terminate Plaintiffs and other class members; to set work rules and conditions governing Plaintiffs' and other class members' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs and the other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiffs and other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiffs and other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

24. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, *inter alia*, failing to pay them for all hours worked, sick leave, missed meal periods, and missed rest breaks in violation of the law.

25. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and other class members were entitled to receive certain wages for overtime compensation and that Plaintiffs and other class members were not receiving wages for overtime compensation.

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1 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 failed to provide Plaintiffs and other class members the required rest and meal periods during
3 the relevant time period as required under the Industrial Welfare Commission Wage Orders
4 and thus they are entitled to any and all applicable penalties.

5 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that Plaintiffs and other class members were entitled to receive all
7 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
8 the other class members' regular rate of pay when a meal period was missed, late or
9 interrupted, and that Plaintiffs and other class members did not receive all timely and proper
10 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
11 period was missed.

12 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs and other class members were entitled to receive all
14 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs
15 and the other class members' regular rate of pay when a rest period was missed, late or
16 interrupted, and that Plaintiffs and other class members did not receive all rest periods or
17 payment of one additional hour of pay at their regular rate of pay when a rest period was
18 missed.

19 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 knew or should have known that Plaintiffs and other class members were entitled to receive at
21 least minimum wages for compensation and that Plaintiffs and other class members were not
22 receiving at least minimum wages for all hours worked.

23 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiffs and other class members were entitled to receive the
25 wages owed to them upon discharge or resignation, including overtime and minimum wages
26 and meal and rest period premiums, and that Plaintiffs and other class members did not, in fact,
27 receive such wages owed to them at the time of their discharge or resignation.

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1 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and other class members were entitled to receive
3 complete and accurate wage statements in accordance with the law, but, in fact, Plaintiffs and
4 other class members did not receive complete and accurate wage statements from Defendants.
5 The deficiencies included, inter alia, the failure to include the total number of hours worked by
6 Plaintiffs and other class members.

7 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 knew or should have known that Plaintiffs and the other class members were entitled to
9 reimbursement for necessary business-related expenses.

10 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
11 knew or should have known that Defendants had to keep complete and accurate payroll records
12 for Plaintiffs and other class members in accordance with the law, but, in fact, did not keep
13 complete and accurate payroll records for Plaintiffs and other class members.

14 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
15 knew or should have known that they had a duty to compensate Plaintiffs and other class
16 members pursuant to the law, and that Defendants had the financial ability to pay such
17 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
18 represented to Plaintiffs and other class members that they were properly denied wages, all in
19 order to increase Defendants' profits.

20 35. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
22 worked. Plaintiffs and other class members were required to work more than eight (8) hours
23 per day and/or forty (40) hours per week without overtime compensation.

24 36. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants failed to properly calculate and pay sick leave to Plaintiffs and the other class
26 members.

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37. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to Plaintiffs and other class members.

38. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and other class members at least minimum wages for all hours worked.

39. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and other class members the wages owed to them upon discharge or resignation.

40. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class members.

41. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class members.

42. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to properly compensate Plaintiffs and other class members pursuant to the law in order to increase Defendants' profits.

43. Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and DOES 1 through 100)

44. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 43, and each and every part thereof with the same force and effect as though fully set forth herein.

1 45. Labor Code section 1198 and the applicable Industrial Welfare Commission
2 (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them
3 at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay,
4 depending on the number of hours worked by the person on a daily or weekly basis.

5 46. The applicable IWC Wage Order provides that Defendants are and were
6 required to pay Plaintiffs and other class members employed by Defendants, who work(ed)
7 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
8 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
9 (40) hours in a workweek.

10 47. The applicable IWC Wage Order further provides that Defendants are and were
11 required to pay Plaintiffs and other class members overtime compensation at a rate of two
12 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

13 48. Labor Code section 510 codifies the right to overtime compensation at one-and-
14 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
15 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work,
16 and overtime compensation at twice the regular hourly rate for hours worked in excess of
17 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

18 49. During the relevant time period set forth herein, Plaintiffs and other class
19 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
20 week.

21 50. Plaintiffs and other putative class members had to wait approximately one to
22 five (1-5) minutes to clock in or out at the beginning of their shift, for meal periods, and at the
23 end of their shift. Additionally, Plaintiffs and other putative class members were required to
24 perform additional work after clocking out post-shift amounting to approximately 20-30
25 minutes of unpaid overtime being performed 2-3 times a week, without being compensated for
26 this time.

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1 58. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and Labor Code section 512(a) further provide that an employer may not require, cause,
3 or permit an employee to work for a work period of more than ten (10) hours per day without
4 providing the employee with a second uninterrupted meal period of not less than thirty (30)
5 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
6 meal period may be waived by mutual consent of the employer and the employee only if the
7 first meal period was not waived.

8 59. As a pattern and practice, during the relevant time period set forth herein,
9 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
10 time no longer than six (6) hours, and who did not waive their legally-mandated meal periods
11 by mutual consent, were required to work for periods longer than five (5) hours without an
12 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

13 60. Plaintiffs and other members of the putative class walked for several minutes in
14 order to clock in and clock out for meal periods, despite Defendants maintaining a policy that
15 meal breaks commence as soon as the class members were called, and, in addition, members of
16 the putative class were not compensated for all hours worked, as they were required be back
17 immediately after the break was over in order to participate in daily meetings.

18 61. Defendants' policies, along with their use of a singular timeclock, had the
19 cumulative effect of denying Plaintiffs and other employees the full time for their meal
20 periods, as employees were necessarily required to clock in late after walking to the time clock
21 and waiting in line, and clock out early in order to make it back to their workstation in time for
22 the daily meeting.

23 62. As a pattern and practice, during the relevant time period set forth herein,
24 Plaintiffs and other class members (but not all) who were scheduled to work for a period of
25 time no longer than twelve (12) hours, and who did not waive their legally-mandated meal
26 periods by mutual consent, were required to work for periods longer than ten (10) hours
27 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
28 period.

63. As a pattern and practice, during the relevant time period set forth herein, Plaintiffs and other class members (but not all) who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

64. As a pattern and practice, during the relevant time period set forth herein, Plaintiffs and other class members (but not all) who were scheduled to work for a period of time in excess of twelve (12) hours were required to work for periods longer than ten (10) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

65. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiffs and other class members (but not all) to work during meal periods and failed to compensate Plaintiffs and the other class members (but not all) the full meal period premium for work performed during meal periods.

66. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and other class members (but not all) the full meal period premium due pursuant to Labor Code section 226.7.

67. Defendants' conduct violates applicable IWC Wage Order and Labor Code sections 226.7 and 512(a).

68. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

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THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

**(Against CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and DOES 1
through 100)**

69. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 68, and each and every part thereof with the same force and effect as though fully set forth herein.

70. During the relevant time period set forth herein, the applicable IWC Wage Order and Labor Code section 226.7 were applicable to Plaintiffs and other class members' employment by Defendants.

71. During the relevant time period set forth herein, Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC.

72. During the relevant time period set forth herein, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

73. As a pattern and practice, during the relevant time period set forth herein, Defendants required Plaintiffs and other class members (but not all) to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

74. Defendants maintained a policy of not scheduling rest periods, which created expectations in Plaintiffs and other class members that they could not take rest periods. Defendants failed to timely relieve Plaintiffs and other class members of all duties for their first and second rest periods, thus discouraging employees from taking them.

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1 75. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants willfully required Plaintiffs and other class members (but not all) to work during
3 rest periods and failed to pay Plaintiffs and the other class members the full rest period
4 premium for work performed during rest periods.

5 76. As a pattern and practice, during the relevant time period set forth herein,
6 Defendants failed to pay Plaintiffs and the other class members (but not all) the full rest period
7 premium due pursuant to Labor Code section 226.7

8 77. Defendants' conduct violates applicable IWC Wage Orders and Labor Code
9 section 226.7.

10 78. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b),
11 Plaintiffs and the other class members are entitled to recover from Defendants one additional
12 hour of pay at the employees' regular hourly rate of compensation for each workday that the
13 rest period was not provided.

14 **FOURTH CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 1194 and 1197)**

16 **(Against CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and DOES 1**
17 **through 100)**

18 79. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
19 through 78 and each and every part thereof with the same force and effect as though fully set
20 forth herein.

21 80. During the relevant time period set forth herein, Labor Code sections 1194 and
22 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser
23 wage than the minimum so fixed, is unlawful.

24 81. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants failed to pay minimum wages to Plaintiffs and other class members (but not all) as
26 required, pursuant to Labor Code sections 1194 and 1197.

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82. Plaintiffs and other putative class members would have to wait approximately one to five (1-5) minutes to clock in or out at the beginning of their shift, for meal periods, and at the end of their shift. Additionally, Plaintiffs and other putative class members were required to perform additional work after clocking out post-shift amounting to approximately 20-30 minutes of unpaid work being performed 2-3 times a week, without being compensated for this time.

83. Defendants' failure to pay Plaintiffs and other class members the minimum wage as required violates Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

84. Pursuant to Labor Code section 1194.2, Plaintiffs and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201, 202, and 203)

(Against CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and DOES 1 through 100)

85. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 84, and each and every part thereof with the same force and effect as though fully set forth herein.

86. During the relevant time period set forth herein, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

1 87. During the relevant time period set forth herein, Defendants intentionally and
2 willfully failed to pay Plaintiffs and the other class members who are no longer employed by
3 Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving
4 Defendants' employ.

5 88. Defendants' failure to pay Plaintiffs and the other class members who are no
6 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours
7 of their leaving Defendants' employ, is in violation of Labor Code sections 201 and 202.

8 89. Labor Code section 203 provides that if an employer willfully fails to pay wages
9 owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
10 as a penalty from the due date thereof at the same rate until paid or until an action is
11 commenced; but the wages shall not continue for more than thirty (30) days.

12 90. Plaintiffs and the other class members are entitled to recover from Defendants
13 the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum
14 as provided by Labor Code section 203.

15 **SIXTH CAUSE OF ACTION**

16 **(Violation of California Labor Code § 226(a))**

17 **(Against CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and DOES 1**
18 **through 100)**

19 91. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
20 through 90, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 92. During the relevant time period set forth herein, Labor Code section 226(a)
23 provides that every employer shall furnish each of his or her employees an accurate itemized
24 statement in writing showing: (a) gross wages earned; (b) total hours worked by the employee;
25 (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid
26 on a piece-rate basis; (d) all deductions, provided that all deductions made on written orders of
27 the employee may be aggregated and shown as one item; (e) net wages earned; (f) the inclusive
28 dates of the period for which the employee is paid; (g) the name of the employee and his or her

1 social security number; (i) the name and address of the legal entity that is the employer; and (j)
2 all applicable hourly rates in effect during the pay period and the corresponding number of
3 hours worked at each hourly rate by the employee. The deductions made from payments of
4 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day,
5 and year, and a copy of the statement or a record of the deductions shall be kept on file by the
6 employer for at least three years at the place of employment or at a central location within the
7 State of California.

8 93. Defendants have intentionally and willfully failed to provide Plaintiffs and the
9 other class members with complete and accurate wage statements. The deficiencies include,
10 but are not limited to, the failure to accurately include the following for Plaintiff's and other
11 class members: (i) total number of hours worked; (ii) the full legal name of Plaintiffs'
12 employer; (iii) gross wages earned; (iv) net wages earned; (v) correct overtime wage rate; (vi)
13 the correct number of hours worked at each hourly rate; (vii) meal and rest premiums that were
14 due.

15 94. 94. In addition, after Plaintiffs and the other class members enrolled in direct
16 deposit, they were no longer provided wage statements. When Plaintiffs and the other class
17 members requested a copy of their paystubs, Defendants informed them that the only way to
18 access paystubs was on the computer in the employee breakroom; they could not be accessed
19 from any other computer. In order to view their paystubs on Defendants' computer,
20 Defendants provided a password that was valid for twenty (20) days. When the twenty (20)
21 days expired, Plaintiffs and the other class members were required to obtain a new password
22 from Defendants. Plaintiffs and the other class members were not permitted to print or in any
23 way obtain a copy of said paystubs.

24 95. As a result of Defendants' violation of Labor Code section 226(a), Plaintiffs and
25 the other class members have suffered injury and damage to their statutorily protected rights.

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1 96. Plaintiffs and the other class members have been injured by Defendants'
2 intentional and willful violation of Labor Code section 226(a) because they were denied both
3 their legal right to receive, and their protected interest in receiving, accurate and itemized wage
4 statements pursuant to section 226(a).

5 97. Plaintiffs and the other class members are entitled to recover from Defendants
6 the greater of their actual damages caused by Defendants' failure to comply with Labor Code
7 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

8 98. Plaintiffs and the other class members are also entitled to injunctive relief to
9 ensure compliance with this section, pursuant to Labor Code section 226(g).

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 2800 and 2802)**

12 **(Against CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and DOES 1**
13 **through 100)**

14 99. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 98, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 100. Pursuant to Labor Code sections 2800 and 2802, an employer must reimburse its
18 employee for all necessary expenditures incurred by the employee in direct consequence of the
19 discharge of his or her job duties or in direct consequence of his or her obedience to the
20 directions of the employer.

21 101. Plaintiffs and other class members were required to use tools and other supplies,
22 such as tape measurers, pens, gloves, masks, and notebooks to complete their jobs. However,
23 Defendants failed to provide any such tools or supplies to Plaintiffs or other class members, who
24 were required to purchase them on their own.

25 102. Defendants have intentionally and willfully failed to reimburse Plaintiffs and
26 other class members (but not all) for all necessary business-related expenses and costs. Plaintiffs
27 and other class members are entitled to recover from Defendants their business-related expenses
28 and costs incurred during the course and scope of their employment, plus interest accrued from

1 the date on which the employee incurred the necessary expenditures at the same rate as
2 judgments in civil actions in the State of California.

3 **EIGHTH CAUSE OF ACTION**

4 **(Violation of California Labor Code § 2698, *et seq.*)**

5 **(Against CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and DOES 1**
6 **through 100)**

7 103. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
8 through 102, and each and every part thereof with the same force and effect as though fully set
9 forth herein.

10 104. The Private Attorneys General Act of 2004 (“PAGA”) expressly establishes that
11 any provision of the Labor Code which provides for a civil penalty to be assessed and collected
12 by the California Labor and Workforce Development Agency (“LWDA”), or any of its
13 departments, divisions, commissions, boards, agencies, or employees for a violation of the Labor
14 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
15 himself or herself, and other current or former employees.

16 105. On October 12, 2021, Plaintiff Birrueta provided written notice to the LWDA and
17 Defendants of the specific provisions of the Labor Code she contends were violated and the
18 theories supporting her contentions. Attached hereto as **Exhibit 1** and incorporated by reference
19 is a copy of the written notice to the LWDA. Plaintiff Birrueta believes that on or about
20 December 16, 2021, the sixty-five (65) day notice period expired, and the LWDA did not take
21 any action to investigate or prosecute this matter. Thus, Plaintiff Birrueta exhausted the statutory
22 time period to bring this action.

23 106. Plaintiff Birrueta and the other hourly-paid or non-exempt employees are
24 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all non-exempt
25 hourly-paid employees who worked any hours for Defendants in California during the PAGA
26 Period of December 4, 2020 through August 31, 2023, and one or more of the alleged violations
27 was committed against them.

28 ///

1 **Failure to Pay Minimum and Overtime Wages**

2 107. At all times relevant herein, Defendants were required to compensate their non-
3 exempt employees minimum wages for all hours worked and overtime wages for all hours
4 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
5 mandate of Labor Code sections 510, 1194, 1197, and 1198.

6 108. As a policy and practice, Defendants failed to compensate Plaintiff Birrueta and
7 the other aggrieved current and former employees for all hours worked, resulting in a failure to
8 pay all minimum wages and overtime wages, where applicable.

9 **Failure to Provide Meal Periods and Rest Breaks**

10 109. In accordance with the mandates of Labor Code sections 226.7 and 512,
11 Defendants were required to authorize and permit their non-exempt employees to take a 10-
12 minute rest break for every four (4) hours worked or major fraction thereof and were further
13 required to provide their non-exempt employees with a 30-minute meal period for every five
14 (5) hours worked.

15 110. As a policy and practice, Defendants failed to provide Plaintiff Birrueta and the
16 other aggrieved current and former employees with legally mandated meal periods and rest
17 breaks and failed to pay proper compensation for this failure.

18 **Failure to Timely Pay Wages During Employment**

19 111. At all times relevant herein, Defendants were required to pay their employees
20 within a specified time period pursuant to the mandate of Labor Code section 204.

21 112. As a policy and practice, Defendants failed to pay Plaintiff Birrueta and the
22 other aggrieved current and former employees all wages due and owing them within the
23 required time period.

24 **Failure to Timely Pay Wages Upon Termination**

25 113. At all times relevant herein, Defendants were required to pay their employees all
26 wages owed in a timely fashion at the end of employment pursuant to Labor Code sections 201
27 to 204.

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1 114. As a result of Defendants' Labor Code violations alleged above, Defendants
2 failed to pay Plaintiff Birrueta and the other aggrieved former employees their final wages
3 pursuant to Labor Code sections 201 to 204 and accordingly owe waiting time penalties
4 pursuant to Labor Code section 203.

5 **Failure to Provide Complete and Accurate Wage Statements**

6 115. At all times relevant herein, Defendants were required to keep accurate records
7 regarding their California employees pursuant to the mandate of Labor Code sections 226,
8 1174, and 1776.

9 116. As a result of Defendants' various Labor Code violations detailed herein and in
10 Exhibit 1, Defendants failed to keep accurate records regarding Plaintiff Birrueta and the other
11 aggrieved current and former employees and provide complete and accurate wage statements.
12 For example, Defendants failed in their affirmative obligation to keep accurate records
13 regarding Plaintiff Birrueta and the other aggrieved current and former employees' gross
14 wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly
15 rates and the number of hours worked at each hourly rate.

16 **Failure to Provide and Properly Pay Paid Sick Days**

17 117. At all times relevant herein, Defendants were required to provide their
18 employees with paid sick days at their regular rate of pay pursuant to Labor Code section 246
19 *at seq.*

20 118. As a policy and practice, Defendants failed to provide Plaintiff Birrueta and
21 other aggrieved current and former employees with paid sick days at the proper rate of pay
22 pursuant to Labor Code section 246 *et seq.*

23 **Failure to Reimburse Business Expenses**

24 119. At all times relevant herein, Defendants were required to reimburse its employees
25 for any and all necessary expenditures or losses incurred by the employees in direct
26 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
27 sections 2800 and 2802.

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120. As a policy and practice, Defendants failed to reimburse Plaintiff Birrueta and the other aggrieved current and former employees for all business expenses incurred and owing them within the required time period.

Penalties

121. Pursuant to Labor Code section 2699, Plaintiff Birrueta, individually, and on behalf of the other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but not limited to:

- a. Penalties under Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)

(Against CARPENTER CO. d/b/a E.R. CARPENTER COMPANY, INC. and DOES 1 through 100)

122. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 121, and each and every part thereof with the same force and effect as though fully set forth herein.

123. Defendants' conduct, as alleged herein, has been, and continues to be unfair, unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants' competitors. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

124. Defendants' activities as alleged herein are violations of the law, and constitute unlawful business acts and practices in violation of Business & Professions Code section 17200, *et seq.*

125. A violation of Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' pattern and practice of requiring Plaintiffs and other class members work overtime hours without paying them proper compensation violate Labor Code sections 510 and 1198. Additionally, Defendants' pattern and practice of requiring Plaintiffs and other class members, to work through their meal and rest periods without paying them proper compensation violate Labor Code sections 226.7 and 512(a). Defendants also violated Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

126. As a result of the herein described violations of the law, Defendants unlawfully gained an unfair advantage over other businesses.

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1 127. Plaintiffs and other class members (but not all) have been personally injured by
2 Defendants' unlawful business acts and practices as alleged herein, including but not
3 necessarily limited to the loss of money and/or property.

4 128. Pursuant to Business & Professions Code sections 17200, *et seq.*, Plaintiffs and
5 other class members are entitled to restitution of the wages withheld and retained by
6 Defendants during a period that commences four years prior to the filing of this Complaint; an
7 award of attorneys' fees pursuant to Code of Civil procedure section 1021.5 and other
8 applicable laws; and an award of costs.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs, individually, and on behalf of other members of the general public similarly
11 situated, request a trial by jury.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, individually and on behalf of all other members of the
14 general public similarly situated, pray for relief and judgment against Defendants, jointly and
15 severally, as follows:

16 **Class Certification**

- 17 1. That this action be certified as a class action;
- 18 2. That Plaintiffs be appointed as representatives of the Class;
- 19 3. That counsel for Plaintiffs be appointed as Class Counsel; and
- 20 4. That Defendants provide to Class Counsel immediately the names and most
21 current contact information (address, e-mail, and telephone numbers) of all class members.

22 **As to the First Cause of Action**

- 23 5. That the Court declare, adjudge, and decree that Defendants violated Labor
24 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
25 overtime wages due to Plaintiffs and other class members (but not all);

- 26 6. For general unpaid wages at overtime wage rates and such general and special
27 damages as may be appropriate;

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1 7. For pre-judgment interest on any unpaid overtime compensation commencing
2 from the date such amounts were due;

3 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
4 Labor Code section 1194; and

5 9. For such other and further relief as the court may deem just and proper.

6 **As to the Second Cause of Action**

7 10. That the Court declare, adjudge, and decree that Defendants violated Labor
8 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide
9 all meal periods (including second meal periods) to Plaintiffs and other class members (but not
10 all);

11 11. That the Court make an award to Plaintiffs and the other class members of one
12 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
13 period was not provided;

14 12. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 13. For premium wages pursuant to Labor Code section 226.7(b);

17 14. For pre-judgment interest on any unpaid wages from the date such amounts
18 were due;

19 15. For reasonable attorneys' fees and costs of suit incurred herein; and

20 16. For such other and further relief as the court may deem just and proper.

21 **As to the Third Cause of Action**

22 17. That the Court declare, adjudge, and decree that Defendants violated Labor
23 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
24 periods to Plaintiffs and other class members (but not all);

25 18. That the Court make an award to Plaintiffs and the other class members of one
26 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
27 period was not provided;

28 ///

1 19. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 20. For premium wages pursuant to Labor Code section 226.7(b);

4 21. For pre-judgment interest on any unpaid wages from the date such amounts
5 were due; and

6 22. For such other and further relief as the court may deem just and proper.

7 **As to the Fourth Cause of Action**

8 23. That the Court declare, adjudge, and decree that Defendants violated Labor
9 Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and other
10 class members (but not all);

11 24. For general unpaid wages and such general and special damages as may be
12 appropriate;

13 25. For pre-judgment interest on any unpaid compensation from the date such
14 amounts were due;

15 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
16 Labor Code section 1194(a);

17 27. For liquidated damages pursuant to Labor Code section 1194.2; and

18 28. For such other and further relief as the court may deem just and proper.

19 **As to the Fifth Cause of Action**

20 29. That the Court declare, adjudge, and decree that Defendants violated Labor
21 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time
22 of termination of the employment of Plaintiffs and the other class members no longer
23 employed by Defendants;

24 30. For all actual, consequential, and incidental losses and damages, according to
25 proof;

26 31. For statutory wage penalties pursuant to Labor Code section 203 for the other
27 class members who have left Defendants' employ;

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32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

34. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

35. For actual, consequential, and incidental losses and damages, according to proof;

36. For statutory penalties pursuant to Labor Code section 226(e);

37. For injunctive relief to ensure compliance with this section, pursuant to Labor Code section 226(g); and

38. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class members (but not all) for all necessary business-related expenses as required by Labor Code sections 2800 and 2802;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For the imposition of civil penalties and/or statutory penalties;

42. For punitive damages and/or exemplary damages according to proof at trial;

43. For reasonable attorneys' fees and costs of suit incurred herein; and

44. For such other and further relief as the court may deem just and proper.

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As to the Eighth Cause of Action

45. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to Defendants' violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802;

46. Upon this Cause of Action, for costs and attorneys' fees pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute; and

47. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

48. That the Court declare, adjudge, and decree that Defendants violated Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiffs and other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and the other class members.

49. For restitution of unpaid wages to Plaintiffs and other class members and all pre-judgment interest from the day such amounts were due and payable;

50. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of Business and Professions Code sections 17200, *et seq.*;

51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code of Civil Procedure section 1021.5;

52. For injunctive relief to ensure compliance with this section, pursuant to Business and Professions Code sections 17200, *et seq.*; and

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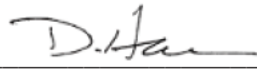
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53. For such other and further relief as the court may deem just and proper.

Dated: July 3, 2024

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Lizette Rodriguez
Attorneys for Plaintiff Blanca Sanchez

Dated: July 3, 2024

MAHONEY LAW GROUP, APC

By: 

Kevin Mahoney
Attorneys for Plaintiff Francisco Birrueta

EXHIBIT 1

Laura Theriault, Esq.
562.590.5550 phone
562.590.8400 facsimile
ltheriault@mahoney-law.net

October 11, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL #7019 2970 0000 2983 4700

Return Receipt Requested

Carpenter Co.
5016 Monument Ave.
Richmond, VA 23230

VIA CERTIFIED MAIL #7019 2970 0000 2983 4717

Return Receipt Requested

Frank Vasicek – Agent for Service of Process
7809 Lincoln Ave.
Riverside, CA 92504

Re: Francisco Birrueta v. Carpenter Co.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2698 ET SEQ.**

To: Labor and Workforce Development Agency; Carpenter Co.

From: Francisco Birrueta, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Francisco Birrueta ("Mr. Birrueta"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other Aggrieved Employees.

Theories of Labor Code Violations and Remedies

Carpenter Co. ("Carpenter" or "Employer") is a Virginia corporation conducting business in California. Mr. Birrueta began working for Carpenter on or about March 20, 2002 and was terminated on or about March 1, 2021.

Mr. Birrueta alleges that Carpenter violated various sections of the Labor Code, including sections 201, 203, 204, 226, 226.7, 510, 512, 1174, 1194, and 1198 by:

- a) failing to pay Mr. Birrueta and Aggrieved Employees all wages earned and owed;
- b) failing to provide Mr. Birrueta and Aggrieved Employees with compliant meal and rest periods or premium compensation in lieu thereof;
- c) failing to provide Mr. Birrueta and Aggrieved Employees with accurate itemized wage statements and failing to maintain accurate payroll records; and
- d) failing to pay all wages earned and owed upon termination or separation of employment.

Mr. Birrueta and the similarly Aggrieved Employees are identifiable current, and/or former hourly non-exempt employees who worked for Carpenter in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employer failed to pay Mr. Birrueta and Aggrieved Employees for all hours worked, including regular and overtime wages

Pursuant to Labor Code section 1194, subdivision (a), "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 510, subdivision (a), provides that [a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee."

Employer had a practice or policy of rounding the hours worked by Mr. Birrueta and Aggrieved Employees to the benefit of Employer and to the detriment of Mr. Birrueta and Aggrieved Employees. Specifically, Employer enacted a policy whereby employees who clocked in late were "docked at least .1 of an hour or 6 minutes regardless of whether they clock in 1 minute late or 6 minutes late." Thus, when Mr. Birrueta or Aggrieved Employees clocked in one minute late, six minutes of pay was deducted from their total hours worked. Thus, Employer unlawfully withheld five minutes of pay as a penalty for one minute of tardiness. To the extent that the uncompensated five minutes caused Mr. Birrueta and Aggrieved Employees to work more than eight hours in a workday or forty hours in a workweek, they are owed said compensation at the applicable overtime rate. To the extent that the uncompensated five minutes cause Mr. Birrueta or Aggrieved Employees to work in excess of twelve hours in a workday, they are owed said compensation at the applicable double time rate.

Further, Employer failed to compensate Mr. Birrueta and Aggrieved Employees at the legally mandated overtime wage rates for all hours worked in excess of eight in a workday or forty in a workweek. Specifically, Employer failed to include Mr. Birrueta's and Aggrieved Employee's shift differentials for purposes of calculating their overtime rate and instead computed the overtime rate using their lowest rate of pay.

Employer's failure to pay Mr. Birrueta and Aggrieved Employees at the appropriate overtime rate as detailed above is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employer failed to provide Mr. Birrueta and Aggrieved Employees with meal periods or premium compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no employer shall employ a person for a work period of more than five hours without providing an uninterrupted meal period of at least thirty minutes. Nor shall an employer employ a person for a work period of more than ten hours without providing a second uninterrupted meal period of at least thirty minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Mr. Birrueta and Aggrieved Employees at times worked sixteen (16), eighteen (18), and twenty (20) hour shifts, but were only provided with two (2) meal periods. Employer was required to provide three (3) uninterrupted meal periods of at least thirty minutes for all shifts in excess of fifteen (15) hours. When Mr. Birrueta and Aggrieved Employees were not provided with requisite meal periods, they were not compensated with one hour of pay at their regular rate of pay.

Employer's conduct in failing to provide compliant meal periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Mr. Birrueta and Aggrieved Employees with rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that employers permit all employees to take a ten-minute rest period for every four hours, or major fraction thereof worked. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Due to the workload and demands of Employer, Mr. Birrueta and Aggrieved Employees were precluded from taking a required rest period approximately twice each week. When Mr. Birrueta and Aggrieved Employees did not receive the requisite rest periods, they were not compensated with one hour of pay at their regular rate of pay as required.

Employer's conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as a violation of Labor Code section 226.7.

D. Employer failed to provide Mr. Birrueta and Aggrieved Employees with accurate itemized wage statements

Pursuant to Labor Code section 226, subdivision (a), “[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

By failing to pay Mr. Birrueta and Aggrieved Employees for all hours worked, including regular and overtime wages, and premium compensation for missed meal and rest periods, and by failing to accurately calculate the overtime wage rate, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate total number of hours worked, inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

After enrolling in direct deposit, Mr. Birrueta and Aggrieved Employees were no longer provided wage statements. Further, upon a request by Mr. Birrueta and Aggrieved Employees for a copy of their paystubs, Employer informed them that the only way to access their paystubs was on the computer in the employee breakroom; they could not be accessed from any other computer. In order to view their paystubs on the company computer, Employer provided Mr. Birrueta and Aggrieved Employees with a password that was valid for twenty (20) days. If, after the expiration of twenty (20) days, Mr. Birrueta and Aggrieved Employees wished to view further paystubs, they were required to obtain a new password from Employer. Although Employer allowed Mr. Birrueta and Aggrieved Employees to view their paystubs on the company computer, they were not permitted to print or in any way obtain a copy of said paystubs.

Employer’s conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

E. Employer failed to pay Mr. Birrueta and Aggrieved Employees all wages earned upon termination or separation of employment

Pursuant to Labor Code section 201, subdivision (a), “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202, subdivision (a) provides, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

At the time that Mr. Birrueta and Aggrieved Employees resigned or were terminated, Employer failed to compensate them for all wages earned and owed as well as for meal and rest premiums as described herein.

Labor Code section 203, subdivision (a), states that "[i]f an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Accordingly, Mr. Birrueta and Aggrieved Employees are entitled to thirty days of waiting time penalties.

F. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Birrueta becomes aware of additional compensation owed or losses incurred by Mr. Birrueta or by any other Aggrieved Employee of the Employer, Mr. Birrueta expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Laura Theriault, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: ltheriault@mahoney-law.net

Sincerely,



Laura Theriault, Esq.
MAHONEY LAW GROUP, APC

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On July 10, 2024, I served the foregoing document described as

THIRD AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Sanchez, et al. v. Carpenter Co. d/b/a E.R. Carpenter Company, Inc., et al.**
LWDA/Court Case No.: **LWDA-CM-848222-21**
 RIC2004219 [Consolidated with Case No. CVRI2200511]
 Riverside County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on July 10, 2024, at Pasadena, California.



Mariah Anderson