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SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF RIVERSIDE

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.: **CVRI 2200511**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Cal. Labor Code §§ 204, 510, 1182.12, 1194, 1194.2 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7, 512, Wage Order No. 1 (Meal Period Violations);
3. Violation of Cal. Labor Code § 226.7, Wage Order No. 1 (Rest Period Violations);
4. Violation of Cal. Labor Code § 226, subdivision. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements);
5. Violation of Cal. Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment); and
6. Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); and
7. Violation of Private Attorneys General Act (PAGA) (Lab. Code § 2698 et. seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff Francisco Birrueta (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, complain and allege as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class they seek to
5 represent (“Plaintiff Class” or “Class Members.”). Plaintiff Class consists of all non-exempt,
6 hourly-paid employees, currently and/or formerly employed by Defendant Carpenter Co. doing
7 business in California as E.R. Carpenter Company (“Defendant”), in the State of California during
8 the Class Period. The term “Class Period” is defined as four (4) years prior to the filing of the
9 original complaint in this action through judgment. Plaintiff reserve the right to amend this
10 complaint to reflect a different “Class Period” as further discovery is conducted.

11 2. Plaintiff, individually, and on behalf of Plaintiff Class, seek relief against
12 Defendant, for Defendant’s practices of violating the applicable Industrial Welfare Commission
13 Wage Order, Code of Regulations, and California Labor Codes, including: (1) Violation of Labor
14 Code §§ 204, 510, 1182.12, 1194, and 1194.2 for Recovery of Unpaid Minimum Wage and
15 Overtime, (2) Violation of Labor Code §§ 226.7, and 512, and California Wage Order No. 1–
16 2001 for Meal Period Violations, (3) Violation of Labor Code § 226.7, and California Wage Order
17 No. 1–2001 for Rest Period Violations, (4) Violation of Labor Code § 226 for Failure to Issue
18 Accurate Itemized Wage Statements, (5) Violation of Labor Code §§ 201, 202, and 203 for Failure
19 to Pay Wages Due at Separation of Employment, (6) Violation of Cal. Bus. & Prof. Code §§
20 17200 et seq. for Unfair Business Practices, (7) Violation of Private Attorneys General Act
21 (PAGA) Labor Code § 2698 et. seq. These violations concern current and past employees of
22 Defendant.

23 3. At all relevant times herein, Defendant has consistently maintained and enforced
24 against Plaintiff Class the unlawful practices and policies set forth herein.

25 **JURISDICTION AND VENUE**

26 4. Venue is proper in this judicial district and the County of Riverside, pursuant to
27 the California Code of Civil Procedure sections 395 and 395.5, because the acts that give rise to
28 the causes of action alleged herein occurred in this county.

5. This Court has personal jurisdiction over Defendant because Defendant resides in, is incorporated in, has its main place of business in, and/or conducts business in the State of California, and a substantial portion of the acts, omissions, events, and transactions constituting the causes of action alleged herein occurred within the State of California, and more specifically, in the County of Riverside. (Code Civ. Proc. § 410.10.)

6. The California Superior Court has jurisdiction over this matter because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court; and upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State of California. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, California Rules of Court, and the Business & Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction over this matter.

THE PARTIES

Plaintiff

7. Plaintiff was employed by Defendant as a machine operator from on or about March 20, 2002, until on or about March 3, 2021, at Defendant's Riverside, California location. At all relevant times herein, Plaintiff was employed by Defendant in non-exempt, hourly position and was entitled to compensation for all hours worked, including overtime compensation, and penalties from Defendant. Plaintiff was employed by Defendant for at least four (4) years prior to the commencement of this action.

8. Each Plaintiff Class consists of identifiable, current, and/or former similarly situated persons who were employed by Defendant in California during the Class Period.

Defendant(s)

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Carpenter Company is a Virginia corporation doing business in California as E.R. Carpenter Company that owns and operates a foam cushion manufacturing facility and maintains its factory

1 in Riverside, California, and was the employer of Plaintiff and the Plaintiff Class. On information
2 and belief, and based thereon, Plaintiff alleges that Defendant is conducting business in good
3 standing in California, and at all times herein mentioned has regularly conducted business in the
4 State of California.

5 10. Plaintiff is ignorant of the true names, capacities, relationships and extent of
6 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
7 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
8 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
9 capacities of the DOE Defendants when that information is ascertained.

10 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
12 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
13 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
14 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
15 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
16 the conduct described in this complaint.

17 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
18 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
19 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
20 below was acting, at least in part, within the course and scope of that authority as such agent,
21 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
22 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
23 are legally attributable to the other Defendants.

24 **ADMINISTRATIVE PREREQUISITES**

25 13. By this complaint, Plaintiff also brings this case as a representative action seeking
26 penalties for the State of California in a representative capacity, as provided for by the Private
27 Attorneys General Act ("PAGA"), Labor Code section 2698 et seq., to the extent permitted by
28 law, as an aggrieved employee who was employed by Defendant and subject to alleged violations

1 set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in his notice to
2 the Labor Workforce Development Agency (“LWDA”) and the employer: Labor Code sections
3 510 and 1194 for failure to pay minimum wage and applicable overtime rates, Labor Code
4 sections 226.7 and 512 for failure provide meal and rest periods or premium compensation in lieu
5 thereof, Labor Code sections 226 and 1174 for failure to provide complete and accurate wage
6 statements and failure to maintain accurate payroll records, and Labor Code sections 201, 202,
7 and 203 for failure to pay all wages earned at the time employment ended.

8 14. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action
9 under PAGA only after giving the LWDA and the employer notice of the Labor Code sections
10 alleged to have been violated, and after receiving notice from the LWDA of its intention not to
11 investigate, or after 65 days have passed without notice from the LWDA.

12 15. On October 12, 2021, prior to the filing of this complaint, Plaintiff gave written
13 notice of the specified provisions alleged to have been violated, including the facts and theories
14 to support the alleged violations, as required by Labor Code section 2699.3. This written notice
15 was given via certified mail to Defendant, and to the LWDA by electronically filing the notice
16 via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of
17 LWDA-CM-848222-21. A true and correct copy of Plaintiff’s notice to the LWDA and
18 Defendant, dated October 12, 2021, is attached hereto as **Exhibit A**.

19 **FACTUAL ALLEGATIONS**

20 16. Plaintiff and Plaintiff Class are, and at all times relevant herein, have been non-
21 exempt employees within the meaning of the California Labor Code, and California Wage Order
22 No. 1–2001 of the Industrial Welfare Commission. Defendant is, and at all times relevant herein,
23 has been an “employer” within the meaning of state law and California Wage Order No. 1–2001
24 of the Industrial Welfare Commission.

25 17. Defendant owns and operates a foam cushion manufacturing factory in Riverside,
26 California. Plaintiff and Class Members were employees of the business.

27 18. During the Class Period, Defendant was required to pay Plaintiff and Class
28 Members overtime compensation for any and all hours worked in excess of eight (8) in a workday

or forty (40) in a workweek, and double time compensation for any and all hours worked in excess of twelve (12) in a workday.

19. Defendant utilized a practice or policy of routinely rounding the hours worked by Plaintiff and Class Members which resulted in Plaintiff and Class Members being undercompensated to the benefit of Defendant.

20. Defendant also implemented a policy and practice of deducting increments of 0.1 of an hour, or six (6) minutes, any time Plaintiff and Class Members arrived late to work, regardless of how many minutes late they clocked in. Thus, when Plaintiff and Class Members arrived to work one (1) minute late, Defendant deducted six (6) minutes of pay from their total hours worked thereby depriving Plaintiff and Class Members of five (5) minutes of pay for one (1) minute of tardiness.

21. Additionally, for purposes of calculating overtime pay, Defendant failed to include Plaintiff and Class Members' shift differentials and instead only included their lowest rate of pay.

22. During the Class Period, Defendant was required to permit Plaintiff and Class Members to take one (1) uninterrupted thirty (30) minute meal period prior to the sixth (6th) hour of work. A second meal period of not less than thirty (30) minutes is required if an employee works more than ten (10) hours in a workday, and a third meal period is required if an employee works more than fifteen (15) hours in a workday. Defendant was also required to permit Plaintiff and Class Members to take one (1) ten (10) minute rest period for every four (4) hours or major fraction thereof worked.

23. At times, Plaintiff and Class Members worked up to twenty (20) hours in a workday. However, Defendant failed or refused to authorize and permit Plaintiff and Class Members to take a third meal period as required by law.

24. Due to the nature of their work combined with the requirements and demands of the Defendant, Plaintiff and Class Members were unable to take the meal and rest periods to which they were entitled. Defendant prioritized work responsibilities over providing requisite meal and rest breaks to Plaintiff and Class Members.

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1 25. Defendant scheduled Plaintiff and Class Members in such a manner that they were
2 precluded from taking a third duty-free uninterrupted meal period during shifts in excess of fifteen
3 (15) hours and at least one (1) ten (10) minute rest period for every four (4) hours or major fraction
4 thereof worked.

5 26. Further, Plaintiff and Class Members were often precluded from taking rest breaks
6 due to the workload and demands of Defendant. Defendant was often understaffed and as a result,
7 Plaintiff and Class Members were precluded from taking a required rest period approximately
8 two (2) times each week.

9 27. When Plaintiff and Class Members were prevented from taking the required meal
10 and rest periods, Defendant failed to compensate with a premium pay for every missed meal
11 period and failed to compensate with a premium pay on all workdays on which one or both rest
12 periods were missed.

13 28. During the class period, Defendant was required to provide Plaintiff and Class
14 Members with complete and accurate wage statements.

15 29. As discussed above, Plaintiff and Class Members were not paid for all hours
16 worked at the proper rate of pay. Specifically, they had extra hours deducted from their pay when
17 they were tardy and also had their hours rounded to their detriment and to the benefit of
18 Defendant. Further, Plaintiff and Class Members' overtime wage rate was calculated incorrectly
19 by utilizing their lowest pay rate instead of including their shift differentials.

20 30. Accordingly, Plaintiff and Class Members were provided inaccurate and
21 incomplete wage statements as they omitted the aforementioned hours of work and premium
22 compensation for non-compliant meal and rest periods.

23 31. Therefore, to the extent that Defendant furnished Plaintiff and Class Members with
24 wage statements, they reflected an inaccurate number of hours worked, inaccurate gross and net
25 wages, an inaccurate overtime wage rate, and inaccurate corresponding number of hours worked
26 at each hourly rate.

27 32. Further, after Plaintiff and Class Members enrolled in direct deposit, Defendant
28 ceased providing them with wage statements. When Plaintiff and Class Members did request their

1 wage statements, Defendant only allowed Plaintiff and Class Members to access their wage
2 statements from a single computer in the employee breakroom by using a password that expired
3 after twenty (20) days. Plaintiff and Class Members were not permitted to print copies of their
4 wage statements.

5 33. At the time of Plaintiff and Class Members' separation from employment,
6 Defendant was required to compensate Plaintiff and Class Members for all wages earned and
7 owed.

8 34. Defendant failed to compensate Plaintiff and Class Members for all wages owed
9 at the time their employment ended as Plaintiff and Class Members were not compensated for all
10 hours worked, nor at the correct wage rates for applicable hours and they were owed as much at
11 the time their employment ended. Plaintiff and Class Members were also owed compensation in
12 the form of premium pay for the times they did not receive compliant meal and rest periods.

13 35. Plaintiff and Class Members are owed regular wages, overtime wages, double time
14 wages, premium payments, and waiting time penalties.

15 **CLASS ALLEGATIONS**

16 36. Plaintiff bring this action on behalf of himself and all other similarly situated
17 persons, as a class action pursuant to California Code of Civil Procedure section 382.

18 37. Plaintiff's proposed class consists of and is defined as follows: all individuals who
19 worked for Defendant in non-exempt, hourly positions at a California location and at a time during
20 the period from four years prior to the filing of this complaint through the date of judgment ("Class
21 Period").

22 38. Plaintiff reserve the right under California Rules of Court, rule 3.765, to amend or
23 modify the class description(s) with greater specificity or further division into subclasses or
24 limitation to particular issues.

25 39. This action has been brought and may be maintained as a class action pursuant to
26 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
27 litigation and because the proposed class is easily ascertained by Defendant's personnel and
28 payroll records.

1 **Numerosity**

2 40. The potential members of the class as defined are so numerous that joinder of all
3 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
4 Plaintiff are informed and believes that Defendant has employed more than two hundred (200)
5 employees during the Class Period.

6 **Commonality**

7 41. There are common questions of law and fact arising out of Defendant's conduct,
8 as described herein, including, but not limited to:

- 9 a. Whether Defendant failed to pay all wages, including minimum, overtime, and
10 double time wages earned and due to Plaintiff and Class Members;
11 b. Whether Defendant failed, and continues to fail, to provide meal periods to
12 Plaintiff and Class Members;
13 c. Whether Defendant failed, and continues to fail, to authorize and permit Plaintiff
14 and Class Members to take rest periods;
15 d. Whether Defendant failed, and continues to fail, to provide Plaintiff and Class
16 Members wage statements containing all information required by Labor Code
17 section 226(a);
18 e. Whether Defendant failed to pay Plaintiff and Class Members all wages earned
19 during the course of their employment upon separation; and
20 f. Whether Defendant engaged in unfair or unlawful business practices.

21 **Typicality**

22 42. The claims of the Plaintiff are typical of the claims of the Class, all of whom have
23 incurred and/or will incur damages, as a result of Defendant's common course of conduct and
24 common policies and practices. The claims of Plaintiff are typical because Defendant subjected
25 all of its non-exempt employees to the identical violations of the California Industrial Welfare
26 Commission Wage Orders, California Code of Regulations, California Labor Code, and
27 California Business & Professions Code.

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43. The Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class. Plaintiff's interests are not in conflict with those of the Plaintiff Class. Plaintiff's attorneys are competent, well-versed, and experienced in litigating employment class actions and other complex litigation matters.

Superiority

44. Under the facts and circumstances set forth above, a class action is superior to any other method available for both the fair and efficient adjudication of the rights of each Class Member. Joinder of individual and relatively small claims of Class Members is not practical, and if each employee were required to file an individual lawsuit, the corporate defendant would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees fearful of retaliation and permanent damage to their careers at present and/or subsequent employment. Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class Members against Defendant herein further support class certification.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(Labor Code §§ 204, 510, 1182.12, 1194, and 1194.2)

(Plaintiff Against All Defendants)

45. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

46. Pursuant to Labor Code § 1182.12, notwithstanding any other provision of the Labor Code, hourly minimum wage rates are set for all industries according to statute. Labor Code section 1194 requires that employers pay employees no less than minimum wage for each hour worked.

47. Labor Code section 510, subdivision (a), mandates that any work in excess of eight (8) hours in a workday and any work in excess of forty (40) hours in a workweek be compensated

1 at a rate of no less than one and one-half times the regular rate of pay. Any work in excess of
2 twelve (12) hours in a workday is mandated to be paid at no less than twice the regular rate of
3 pay.

4 48. Defendant had a practice or policy of rounding the hours worked by Plaintiff and
5 Class Members. Specifically, Defendant enacted a policy whereby employees who clocked in late
6 were docked at least six minutes of time regardless of whether they clocked in one minute late or
7 six minutes late. Thus, when Plaintiff and Class Members clocked in one (1) minute late, six (6)
8 minutes of pay were deducted from their total hours worked. To the extent that the uncompensated
9 five (5) minutes caused Plaintiff and Class Members to work more than eight (8) hours in a day
10 or forty (40) hours in a workweek, Defendant did not compensate Plaintiff and Class Members at
11 the applicable overtime rate. To the extent that the uncompensated five (5) minutes cause Plaintiff
12 and Class Members to work in excess of twelve (12) hours in a workday, they are owed said
13 compensation at the applicable double time rate.

14 49. Defendant also failed to compensate Plaintiff and Class Members at the legally
15 mandated overtime wage rates for all hours worked in excess of eight (8) in a workday or forty
16 (40) in a workweek. Specifically, Defendant failed to include Plaintiff and Class Members' shift
17 differentials for purposes of calculating their overtime rate and instead computed the overtime
18 rate using their lowest rate of pay.

19 50. Pursuant to Labor Code sections 1194, subdivision (a), and 1194.2, an employee
20 receiving less than the legal minimum wage or overtime wage is entitled to recover in a civil
21 action the amount of unpaid wages, attorney fees, costs of suit, and liquidated damages in an
22 amount equal to the unlawfully unpaid wages and interest thereon.

23 51. Pursuant to Labor Code sections 510, 1182.12, and 1194, the Plaintiff Class seeks
24 the payment of all minimum, overtime, and double time wages which they earned and accrued
25 four (4) years prior to filing this complaint, according to proof.

26 52. Additionally, Plaintiff and Plaintiff Class are entitled to liquidated damages
27 pursuant to Labor Code section 1194.2, attorney fees and costs pursuant to California Labor Code
28 sections 218.5 and 1194, and prejudgment interest.

**FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM COMPENSATION IN LIEU
THEREOF**

(Plaintiff Against All Defendants)

54. Labor Code sections 226.7 and 512, and Industrial Welfare Commission (IWC) Wage Order No. 1–2001, section 11, provide that no employer shall employ any person for a work period of more than five (5) hours without providing an uninterrupted meal period of at least thirty (30) minutes, and that no employer shall employ any person for a work period of more than ten (10) hours without providing a second uninterrupted meal period of at least thirty (30) minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday that a required meal period is not provided. Section (C) of IWC Wage Order 9–2001 requires the employer to relieve employees of all duties for meal periods. If an employer fails to relieve employees of all work duties for meal periods, the meal period is considered “on duty” and in order to be legally compliant an employer must establish the criteria for an on-duty meal period.

56. Further, Defendant failed to provide premium compensation of one (1) hour of regular pay to Plaintiff and Class Members for their missed meal periods as required by law. As such, Defendant intentionally and improperly denied compliant meal periods to Plaintiff and

1 Class Members in violation of Labor Code sections 226.7 and 512 and IWC Wage Order No. 1–
2 2001.

3 57. At all times relevant hereto, Plaintiff and Class Members worked more than five
4 (5) hours in a workday. Pursuant to Labor Code section 226.7, Plaintiff and Plaintiff Class are
5 entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for
6 each workday a meal period was missed, in an amount according to proof at trial.

7 58. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the
8 Plaintiff Class, requests recovery of meal period compensation which they are owed beginning
9 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties
10 against the Defendant in a sum as provided by law. Pursuant to Labor Code section 218.5, Code
11 of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court
12 award reasonable attorney fees and costs incurred by them in this action.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS OR PREMIUM COMPENSATION IN LIEU**
15 **THEREOF**

16 **(Labor Code § 226.7)**

17 **(Plaintiff Against All Defendants)**

18 59. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
19 fully set forth herein.

20 60. Labor Code section 226.7 and IWC Wage Order No. 1–2001, section 12, require
21 that employers allow all employees a ten (10) minute rest period for every four (4) hours worked,
22 or major fraction thereof. Further, when an employer fails to provide an employee with required
23 rest periods, the employer must pay the employee one (1) hour of pay at the employee’s regular
24 rate of pay for each workday that at a required rest period is not provided.

25 61. Plaintiff alleges that Defendant failed or refused to provide legally compliant rest
26 periods by failing to schedule Plaintiff and Class Members in such a manner as to ensure provision
27 of proper rest periods and failed to relieve Plaintiff and Class Members from all work duties to
28 allow for timely and uninterrupted rest periods. Due to the workload and demands imposed by

1 Defendant, Plaintiff and Class Members were precluded from taking their rest breaks
2 approximately twice a week. Defendant was understaffed and, as such, required Plaintiff and
3 Class Members cut their rest breaks short or skip them altogether.

4 62. Further, Defendant failed to provide premium compensation of one (1) hour of
5 regular pay to Plaintiff and Class Members for each day a rest period was missed as required by
6 law. As such, Defendant intentionally and improperly denied rest periods to Plaintiff and Class
7 Members in violation of Labor Code section 226.7 and IWC Wage Order No. 1-2001.

8 63. Throughout the class period, Plaintiff and Plaintiff Class worked more than four
9 (4) hours per shift and were not authorized and permitted to take all requisite rest breaks. Pursuant
10 to Labor Code section 226.7, Plaintiff and Plaintiff Class are entitled to damages in the amount
11 equal to one (1) hour of wages at their regular rate of pay for each workday in which a rest period
12 was missed, in an amount according to proof at trial.

13 64. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the
14 Plaintiff Class, requests recovery of rest period compensation which they are owed beginning
15 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties
16 against the Defendant in a sum as provided by law. Pursuant to Labor Code section 218.5, Code
17 of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court
18 award reasonable attorney fees and costs incurred by them in this action.

19 **FOURTH CAUSE OF ACTION**

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

21 **(Labor Code § 226)**

22 **(Plaintiff Against All Defendants)**

23 65. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
24 fully set forth herein.

25 66. Labor Code section 226, subdivision (a), requires that “at the time of each payment
26 of wages,” employers furnish employees with “an accurate itemized statement” that includes,
27 inter alia, gross wages earned, total hours worked, net wages earned, and all applicable hourly
28 rates in effect during the pay period and the corresponding number of hours worked at each hourly

1 rate.

2 67. Defendant knowingly and intentionally failed to provide Plaintiff and Class
3 Members wage statements in compliance with Labor Code section 226, because the legal name
4 of the employer was partially omitted. Additionally, said statements contained inaccurate gross
5 wages earned, an inaccurate number of total hours worked, inaccurate net wages earned, an
6 inaccurate overtime wage rate, and inaccurate number of hours worked at each hourly rate.

7 68. As discussed above, Plaintiff and Class Members were required to work during
8 meal and rest periods, entitling them to premium compensation which was missing from their
9 wage statements. Plaintiff and Class Members also had time deducted from their pay as a penalty
10 for tardiness. Finally, Plaintiff and Class Members' overtime wage rate was calculated
11 incorrectly.

12 69. After Plaintiff and Class Members enrolled in direct deposit, Plaintiff and Class
13 Members were no longer provided wage statements. When Plaintiff and Class Members requested
14 a copy of their paystubs, Defendant informed them that the only way to access paystubs was on
15 the computer in the employee breakroom; they could not be accessed from any other computer.
16 In order to view their paystubs on Defendant's computer, Defendant provided a password that
17 was valid for twenty (20) days. When the twenty (20) days expired, Plaintiff and Class Members
18 were required to obtain a new password from Defendant. Plaintiff and Class Members were not
19 permitted to print or in any way obtain a copy of said paystubs.

20 70. Pursuant to Labor Code section 226, subsection (e)(2)(A), "[a]n employee is
21 deemed to suffer injury ... if the employer fails to provide a wage statement." Labor Code section
22 226, subdivision (e)(2)(B) provides, "[a]n employee is deemed to suffer injury ... if the employer
23 fails to provide accurate and complete information as required." Labor Code section 226,
24 subdivision (e)(1), provides that employees suffering injury as a result of the employers failure to
25 comply with section 226, subsection (a), are "entitled to recover the greater of all actual damages
26 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
27 (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate
28 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable

1 attorney's fees." Because Defendant furnished inaccurate and incomplete wage statements,
2 Plaintiff and Class Members are entitled to penalties, attorney fees, and costs pursuant to Labor
3 Code section 226, subdivision (e)(1), and prejudgment interest.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES EARNED AND OWED AT TERMINATION OR**
6 **SEPARATION OF EMPLOYMENT**

7 **(Labor Code §§ 201–203)**

8 **(Plaintiff Against All Defendants)**

9 71. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
10 fully set forth herein.

11 72. Labor Code section 201 provides that when an employer discharges an employee,
12 all earned and unpaid wages are due immediately. Labor Code section 202 requires an employer
13 pay an employee who quits all earned and unpaid wages within seventy-two (72) hours thereafter.

14 73. At the time that Plaintiff's and any of the Class Members' employment ended, they
15 were entitled to timely compensation of regular, overtime, and double time wages for all hours
16 worked and premium compensation for all missed meal and rest periods.

17 74. At the cessation of Plaintiff's and certain Class Members' employment, Defendant
18 failed or refused to compensate Plaintiff and formerly employed Class Members for all hours
19 worked as well as premium compensation for any missed meal or rest periods.

20 75. Pursuant to Labor Code section 203, subdivision (a), "[i]f an employer willfully
21 fails to pay ... any wages of any employee who is discharged or who quits, the wages of the
22 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
23 an action therefor is commenced; but the wages shall not continue for more than 30 days."

24 76. Plaintiff and members of the Plaintiff Class whose employment was terminated
25 within four (4) years prior to the filing of this complaint are entitled to thirty (30) days of pay at
26 their regular hourly rate as waiting time penalties.

27 77. Plaintiff individually, and on behalf of the formerly employed Plaintiff Class,
28 requests compensation for all wages owed, as well as the assessment of any civil penalties in a

sum provided by law pursuant to Labor Code sections 201, subdivision (a), and 203, subdivisions (a) and (b).

SIXTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(Business and Professions Code §§ 17200 et seq.)

(Plaintiff Against All Defendants)

78. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

79. Business and Professions Code section 17200 prohibits unfair competition by way of unlawful, unfair, or fraudulent business acts or practices. Business and Professions Code section 17204 allows “a person who has suffered injury in fact and has lost money or property as a result of the unfair competition” to prosecute a civil action for violation of the Business and Professions Code.

80. Pursuant to Labor Code section 90.5, subdivision (a), it is the policy of California to “vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions ... and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.”

81. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this complaint, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business practices and acts described in this complaint, including, but not limited to, violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1182.12, 1194, and 1194.2, and the provisions of IWC Wage Order 1–2001.

82. The violations of these laws and regulations, as well as of fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code sections 17200 et seq.

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1 83. As a result of these unlawful, unfair, and fraudulent business practices, Plaintiff,
2 on information and belief, alleges that Defendant is able to unfairly compete with, and gained an
3 unfair advantage over, other comparable companies in the State of California in violation of
4 Business and Professions Codes 17200 et seq.

5 84. Plaintiff is informed and believes, and thereon alleges, that Defendant performed
6 the unlawful, unfair, and fraudulent business practices with the intent of gaining an unfair
7 competitive advantage and thereby injuring Plaintiff, Class Members, competing companies in
8 the State of California, and the general public.

9 85. Plaintiff's success in this action will enforce important rights affecting the public
10 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
11 of himself.

12 86. Business and Professions Code section 17203 provides that "[t]he court may make
13 such orders or judgments ... as may be necessary to prevent the use or employment by any person
14 of any practice which constitutes unfair competition." Injunctive relief is necessary and
15 appropriate to prevent Defendant from repeating their unlawful, unfair, and fraudulent business
16 acts and practices alleged above.

17 87. Business and Professions Code section 17203 provides that the Court may "restore
18 to any person in interest any money or property... which may have been acquired by means of
19 such unfair competition." Plaintiff and Plaintiff Class are entitled to restitution pursuant to
20 Business and Professions Code section 17203 for wages and payments unlawfully withheld from
21 employees, including the fair value of the meal and rest periods and other losses alleged herein,
22 during the four-year period prior to the filing of this complaint. All remedies are cumulative
23 pursuant to Business and Professions Code section 17205.

24 88. Business and Professions Code section 17202 provides: "Notwithstanding section
25 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
26 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled
27 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
28 Professions Code section 17202.

1 95. Plaintiff and Class Members are “aggrieved employees” as defined by Labor Code
2 section 2698 et seq. in that they are all current or former employees of Defendant, and one or
3 more of the alleged violations was committed against them.

4 96. On October 12, 2021, prior to filing this complaint, Plaintiff gave written notice to
5 the LWDA and Defendant of the specified provisions alleged to have been violated, including the
6 facts and theories to support the alleged violations, as required by Labor Code section 2699.3,
7 subdivision (a)(1) (See “Exhibit A”), which are hereby incorporated by reference.

8 97. The LWDA has not provided Plaintiff with any notice that it intends to investigate
9 the alleged violations, Plaintiff does not anticipate an investigation into his claims by the LWDA,
10 and more than sixty-five (65) calendar days have elapsed since Plaintiff’s notice.

11 98. Plaintiff, individually and on behalf of all aggrieved Class Members, asserts all of
12 the claims in this complaint against Defendant under the capacity of PAGA, and seeks all statutory
13 penalties available under the Labor Code.

14 99. Pursuant to Labor Code section 2698 et seq., Plaintiff, individually and on behalf
15 of all aggrieved Class Members, requests and is entitled to recover from Defendant: unpaid wages,
16 overtime compensation, double time compensation, rest and meal period compensation and
17 penalties, waiting period wages and penalties according to proof, penalties for failure to keep
18 accurate payroll records, interest, attorneys’ fees, and costs pursuant to Labor Code sections 201,
19 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, and 1194, as well as all statutory
20 penalties, and attorneys’ fees against Defendants. The aforementioned penalties include, but are
21 not limited to, the following:

- 22 a. Penalties under Labor Code section 2698 in the amount of one hundred dollars
23 (\$100.00) for each aggrieved employee per pay period for each initial violation,
24 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for
25 each subsequent violation;
- 26 b. Penalties under Code of Regulations, Title 8, Section 11070 in the amount of fifty
27 dollars (\$50.00) for each aggrieved employee per pay period for the initial
28 violation, and two-hundred dollars (\$200.00) for each aggrieved employee per pay

period for each subsequent violation;

- c. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes.

100. In addition thereto, pursuant to Labor Code section 2699, subdivision (i), Plaintiff seeks and is entitled to: seventy five percent (75%) of all penalties obtained under Labor Code section 2698 to be allocated to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and twenty five percent (25%) to the aggrieved employees.

101. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgment as follows:

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure section 382;
2. The Court appoint Plaintiff as Class Representative;
3. The Court appoints Mahoney Law Group, APC as class counsel;
4. For compensatory and statutory damages;
5. For restitution of all monies due to Plaintiff and Plaintiff Class from the unlawful and unfair business practices of Defendant;
6. For injunctive relief;
7. For statutory and civil penalties according to proof;

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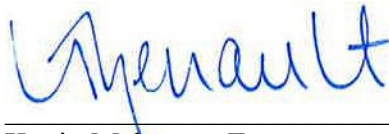
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- 1 8. For reasonable attorney fees and costs pursuant to Labor Code sections 226,
2 subdivision (e), 218.5, 1194, and section 2699(g)(1); Code of Civil Procedure section
3 1021.5, and other applicable laws and statutes; and
4 9. That the Court award such other and further relief as this Court may deem
5 appropriate.
6

7 Dated: February 7, 2022

MAHONEY LAW GROUP, APC

8
9 

10 Kevin Mahoney, Esq.

11 Laura Theriault, Esq.

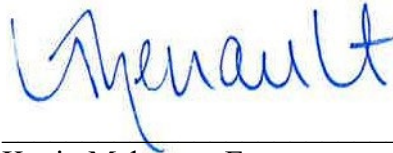
12 Attorneys for Plaintiff FRANCISCO BIRRUETA,
13 individually and on behalf of all similarly situated
14 employees.
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all Class Members, hereby demands a jury trial on all causes of action and claims with respect to which they have a right to a jury trial.

Dated: February 7, 2022

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.

Laura Theriault, Esq.

Attorneys for Plaintiff FRANCISCO BIRRUETA,
individually and on behalf of all similarly situated
employees.

EXHIBIT A



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