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10 Attorneys for Plaintiff OSCAR ARANA, as an individual and on behalf of all similarly situated
11 employees,

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ALAMEDA**

14 OSCAR ARANA, as an individual and on
15 behalf of all similarly situated employees,

16 Plaintiff,

17 vs.

18 CASE INDUSTRIES, INC.; and DOES 1-50,
19 inclusive,

20 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

01/13/2022 at 04:01:26 PM

By: Anthony Zapotoczny, Deputy Clerk

Case No.: **22CV005351**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Cal. Labor Code §§ 204, 510, 1182.12, 1194, and 1194.2 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7 and 512, IWC Wage Order No. 9 (Meal Period Violations);
3. Violation of Cal. Labor Code § 226.7 and IWC Wage Order No. 9 (Rest Period Violations);
4. Violation of Cal. Labor Code § 226, subds. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements);
5. Violation of Cal. Labor Code § 2802 (Failure to Reimburse for Necessary Business Expenditures);
6. Violation of Cal. Labor Code §§ 201–203 (Failure to Pay Wages Due at Separation of Employment); and
7. Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices).

DEMAND FOR JURY TRIAL

1 Plaintiff, OSCAR ARANA (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, complains and alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a class action brough on behalf of Plaintiff and the class he seeks to
5 represent (“Plaintiff Class” or “Class Members”). Plaintiff Class consists of all non-exempt,
6 hourly-paid trash compactor employees, currently and/or formerly employed by Defendant Case
7 Industries, Inc. (“Defendant”) in the State of California during the Class Period. The term “Class
8 Period” is defined as four (4) years prior to the filing of the initial complaint in this action through
9 judgment. Plaintiff reserves the right to amend this complaint to reflect a different “Class Period”
10 as further discovery is conducted.

11 2. Plaintiff, individually, and on behalf of Plaintiff Class, seeks 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, Overtime,
15 and Double Time, (2) Violation of Labor Code §§ 226.7, and 512, and California Wage Order
16 No. 9–2001 for Meal Period Violations, (3) Violation of Labor Code § 226.7, and California
17 Wage Order No. 9–2001 for Rest Period Violations, (4) Violation of Labor Code § 226 for Failure
18 to Issue Accurate Itemized Wage Statements, (5) Violation of Cal. Labor Code § 2802 for Failure
19 to Reimburse for Necessary Business Expenditures, (6) Violation of Labor Code §§ 201, 202, and
20 203 for Failure to Pay Wages Due at Separation of Employment, and (7) Violation of Cal. Bus.
21 & Prof. Code §§ 17200 et seq. for Unfair Business Practices. These violations concern current
22 and past employees of Defendant.

23 3. At all relevant times herein, Defendants have 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 Alameda, pursuant to the
27 California Code of Civil Procedure, sections 395 and 395.5, because the acts that give rise to the
28 causes of action alleged herein occurred in this county.

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

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

15 **ADMINISTRATIVE PREREQUISITE**

16 7. Pursuant to Labor Code section 2699.3, subdivision (a), a plaintiff may bring a
17 cause of action under the Private Attorneys General Act (“PAGA”) only after giving notice to the
18 Labor and Workforce Development Agency (“LWDA”) and the employer of the alleged Labor
19 Code violations, and after receiving notice from the LWDA of its intention not to investigate, or
20 after sixty-five (65) days have passed without notice from the LWDA.

21 8. Prior to filing this complaint, Plaintiff Oscar Arana gave written notice on
22 November 10, 2021, by electronic filing to the LWDA and by certified mail to Defendant, of the
23 specific provisions alleged to have been violated by Defendants, including the facts and theories
24 to support the alleged violations as required by Labor Code section 2699.3. Plaintiff was given
25 an LWDA case number of LWDA-CM-851986-21. Attached herein as **Exhibit A** is a true and
26 correct copy of Plaintiff’s original notice provided to the LWDA on November 10, 2021.

27 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(c), “[n]otwithstanding
28 any other provision, a plaintiff may as a matter of right amend an existing complaint to add a

1 cause of action arising under this part at any time within 60 days of the time periods specified in
2 this part.” Accordingly, Plaintiff intends to amend this complaint upon the expiration of the sixty-
3 five (65) day period for the LWDA to provide notice of its intent to investigate Plaintiff’s claims.

4 **THE PARTIES**

5 **Plaintiff**

6 10. Plaintiff was employed by Defendant from in or around March of 2020 until on or
7 about January 16, 2021 at Defendant’s Hayward, California location. At all relevant times herein,
8 Plaintiff was employed by Defendant in a non-exempt, hourly position as a trash compactor, and
9 was entitled to compensation for all hours worked, including overtime compensation, and
10 penalties from Defendant. Plaintiff was employed by Defendant within the four (4) years prior to
11 the commencement of this action.

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

14 **Defendant**

15 12. Plaintiff is informed and believes, and thereupon alleges, that Defendant Case
16 Industries, Inc. is a California corporation waste management service whose facilities are located
17 in Alameda County, California, and was the employer of Plaintiff. On information and belief, and
18 based thereon, Plaintiff alleges that Defendant is conducting business in good standing in
19 California, and at all times herein mentioned has regularly conducted business in the State of
20 California.

21 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of
22 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
23 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
24 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
25 capacities of the DOE Defendants when that information is ascertained.

26 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
28 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant

1 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
2 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
3 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
4 the conduct described in this complaint.

5 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
6 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
7 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
8 below was acting, at least in part, within the course and scope of that authority as such agent,
9 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
10 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
11 are legally attributable to the other Defendants.

12 **FACTUAL ALLEGATIONS**

13 16. Plaintiff and Plaintiff Class are, and at all times relevant herein, have been non-
14 exempt employees within the meaning of the California Labor Code, and California Wage Order
15 No. 9–2001 of the Industrial Welfare Commission. Defendant is, and at all times relevant herein,
16 has been an “employer” within the meaning of state law and California Wage Order No. 9–2001
17 of the Industrial Welfare Commission.

18 17. Defendant owns and operates a waste management service in Hayward, California.
19 Plaintiff and Class Members were employees of the business and Plaintiff worked primarily as a
20 trash compactor from in or around March of 2020 until on or about January 16, 2021.

21 18. During the Class Period, Defendant was required to pay Plaintiff and Class
22 Members overtime compensation for any and all hours in excess of eight (8) hours in a workday
23 or forty (40) hours in a workweek, and double time wages for any and all hours worked in excess
24 of twelve (12) hours in a workday.

25 19. Defendant required Plaintiff and Class Members to arrive to work at 5:30 a.m. and
26 perform preparatory work for ten (10) minutes before clocking in for their shift. Specifically,
27 before clocking in for the day, Plaintiff and Class Members were required to prepare their trucks
28 by ensuring that shovels, masks, brooms, and gloves were on the truck and also by connecting

1 their trucks to the compacting machines. Plaintiff and Class Members were not permitted to clock
2 in until 5:40 a.m. each morning after they had already been working for ten minutes. Thus,
3 Plaintiff and Class Members were not paid for ten (10) minutes of work every day.

4 20. Plaintiff and Class Members regularly worked ten (10) to twelve (12) hours in a
5 workday. Accordingly, the aforementioned unpaid hours are compensable at the applicable
6 minimum wage, overtime, and/or double time rates.

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

13 22. Due to the work requirements and demands of the Defendant, Plaintiff and Class
14 Members were unable to take timely meal periods and the rest periods to which they were entitled.
15 Defendant failed to implement meal and rest break policies and prioritized work responsibilities
16 over providing requisite meal and rest breaks to Plaintiff and Class Members.

17 23. Plaintiff and Class Members were instructed by Defendant as to when to take their
18 meal period and were not permitted to take their meal period until they received a text from their
19 supervisor permitting as much. Plaintiff and Class Members received their meal period no earlier
20 than 12:00 p.m. each day. However, Plaintiff and Class Members began their shift at 5:30 a.m.,
21 thus their meal periods were untimely as they were not provided before the fifth hour of work.
22 Further, when Plaintiff and Class Members worked more than ten (10) hours in a workday, they
23 did not receive a second meal period as required by law.

24 24. Plaintiff and Class Members were instructed by Defendant to bring their own lunch
25 because Defendant did not want Plaintiff and Class Members to take the time to drive anywhere
26 to buy food. Plaintiff and Class Members were required to park somewhere along their garbage
27 collection route, near the next stop, and eat their meal in the work truck and were not permitted
28 to leave the truck. Therefore, Plaintiff and Class Members were not relieved of all work duties

1 and permitted to leave their work area in order to take their meal breaks in violation of IWC Wage
2 Order 9–2001(C), yet thirty (30) minutes were deducted from each day’s pay for meal breaks.

3 25. Due to the workload and demands of Defendant, Plaintiff and Class Members were
4 prohibited from taking rest periods. Defendant informed Plaintiff and Class Members that rest
5 periods were not permitted because Defendant did not want Plaintiff and Class Members to get
6 behind on their work.

7 26. When Plaintiff and Class Members were prevented from taking compliant meal
8 and rest periods, Defendant failed to compensate with a premium pay for every missed meal
9 period and failed to compensate with a premium pay on all workdays on which one or more rest
10 periods were missed.

11 27. During the Class Period, Defendant was required to provide Plaintiff and Class
12 Members with complete and accurate wage statements.

13 28. As discussed above, Plaintiff and Class Members were not paid for all hours
14 worked. Specifically, they were not compensated for the ten (10) minutes they spent each day
15 setting up before their shift. Further, Plaintiff and Class Members were not paid premium pay for
16 all meal and rest periods not taken.

17 29. Accordingly, Plaintiff and Class Members were provided inaccurate wage
18 statements as they omitted the aforementioned hours of work and rates of pay. Therefore,
19 Defendant furnished Plaintiff and Class Members wage statements with an inaccurate number of
20 hours worked, inaccurate gross and net wages, and inaccurate corresponding number of hours
21 worked at each hourly rate. In fact, Defendant failed to provide Plaintiff and Class Members with
22 wage statements at all.

23 30. Moreover, when Plaintiff and Class Members requested wage statements from
24 Defendant, Defendant refused to provide them.

25 31. During the Class Period, Defendant was required to reimburse Plaintiff and Class
26 Members for any and all necessary business expenditures.

27 32. Defendant required Plaintiff and Class Members to utilize their personal cellular
28 devices every day to clock in and out for their shift and their meal period. Defendant also required

1 Plaintiff and Class Members to receive text messages on their personal cell phones instructing
2 them when to take their meal period.

3 33. Defendant failed or refused to reimburse Plaintiff and Class Members for the use
4 of their personal cellular devices of the Wi-Fi connection necessary to send and receive messages
5 to and from Defendant.

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

9 35. Defendant failed to compensate Plaintiff and Class Members for all wages owed
10 at the time their employment ended as Plaintiff and Class Members were not compensated for all
11 hours worked, nor at the proper overtime and/or double time rates for applicable hours and they
12 were owed as much at the time their employment ended. Plaintiff and Class Members were also
13 owed compensation in the form of premium pay for the times they did not receive compliant meal
14 and rest periods as well as reimbursements for necessary business expenditures.

15 36. Plaintiff and Class Members are owed regular wages, overtime wages, double time
16 wages, premium payments, reimbursements, and waiting time penalties.

17 **CLASS ALLEGATIONS**

18 37. Plaintiff brings this action on behalf of himself and all other similarly situated
19 persons, as a class action pursuant to California Code of Civil Procedure section 382.

20 38. Plaintiff's proposed class consists of and is defined as follows: all individuals who
21 worked for Defendant in a California location, including, but not limited to, trash compactors, at
22 a time during the period from four years prior to the filing of the initial complaint through the
23 date of judgment ("Class Period").

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

27 40. This action has been brought and may be maintained as a class action pursuant to
28 Code of Civil Procedure section 382 because there is a well-defined community of interest in the

1 litigation and because the proposed class is easily ascertained by Defendant's personnel and
2 payroll records.

3 **Numerosity**

4 41. The potential members of the class as defined are so numerous that joinder of all
5 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
6 Plaintiff is informed and believes that Defendant has employed more than twenty (20) employees
7 during the Class Period.

8 **Commonality**

9 42. There are common questions of law and fact arising out of Defendants' conduct,
10 as described herein, including, but not limited to:

- 11 a. Whether Defendants failed to pay all wages, including minimum, overtime, and
12 double time wages earned and due to Plaintiff and Class Members;
- 13 b. Whether Defendants failed, and continue to fail, to provide compliant meal periods
14 to Plaintiff and Class Members;
- 15 c. Whether Defendants failed, and continue to fail, to authorize and permit Plaintiff
16 and Class Members to take rest periods;
- 17 d. Whether Defendants failed, and continue to fail, to provide Plaintiff and Class
18 Members wage statements containing all information required by Labor Code
19 section 226(a);
- 20 e. Whether Defendants failed, and continue to fail, to reimburse Plaintiff and Class
21 Members for necessary business expenditures, specifically the use of their
22 personal cellular devices;
- 23 f. Whether Defendants failed to pay Plaintiff and Class Members all wages earned
24 during the course of their employment upon separation; and
- 25 g. Whether Defendants engaged in unfair or unlawful business practices.

26 **Typicality**

27 43. The claims of the Plaintiff are typical of the claims of the Class, all of whom have
28 incurred and/or will incur damages, as a result of Defendant's common course of conduct and

1 common policies and practices. The claims of Plaintiff are typical because Defendant subjected
2 all of its non-exempt employees to the identical violations of the California Industrial Welfare
3 Commission Wage Orders, California Code of Regulations, California Labor Code, and
4 California Business & Professions Code.

5 **Adequacy of Representation**

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

10 **Superiority**

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

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY ALL WAGES**

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

24 **(Plaintiff Against All Defendants)**

25 46. Plaintiff realleges and incorporates by reference all preceding paragraphs as
26 though fully set forth herein.

27 47. Pursuant to Labor Code § 1182.12, notwithstanding any other provision of the
28 Labor Code, hourly minimum wage rates are set for all industries according to statute. Labor Code

1 section 1194 requires that employers pay employees no less than minimum wage for each hour
2 worked.

3 48. Labor Code section 510, subdivision (a), mandates that any work in excess of eight
4 (8) hours in a workday and any work in excess of forty (40) hours in a workweek be compensated
5 at a rate of no less than one and one-half times the regular rate of pay. Also, that any work in
6 excess of twelve (12) hours in a workday be compensated at a rate twice the regular rate of pay.

7 49. Defendant scheduled Plaintiff and Class Members to regularly work ten (10) to
8 twelve (12) hours in a workday and over forty (40) hours each week. However, Defendant
9 required Plaintiff and Class Members to arrive to work ten (10) minutes early to set up and prepare
10 for their shift without pay. Defendant also deducted thirty (30) minutes of pay each workday for
11 meal periods even when Plaintiff and Class Members were not relieved of all duties for meal
12 periods.

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

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

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

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1 **SECOND CAUSE OF ACTION**

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

4 **(Labor Code §§ 226.7 and 512)**

5 **(Plaintiffs Against All Defendants)**

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

8 54. Labor Code sections 226.7 and 512, and Industrial Welfare Commission (IWC)
9 Wage Order No. 9–2001, section 11, provide that no employer shall employ any person for a
10 work period of more than five (5) hours without providing an uninterrupted meal period of at least
11 thirty (30) minutes. Further, when an employer fails to provide an employee a required meal
12 period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of
13 pay for each workday that a required meal period is not provided. Section (C) of IWC Wage Order
14 9–2001 requires the employer to relieve employees of all duties for meal periods. If an employer
15 fails to relieve employees of all work duties for meal periods, the meal period is considered “on
16 duty” and in order to be legally compliant an employer must establish the criteria for an on-duty
17 meal period.

18 55. Plaintiff alleges that Defendant failed or refused to provide legally compliant meal
19 periods. Defendants failed to schedule Plaintiff and Class Members in such a manner as to ensure
20 provision of proper meal periods and instructed them to take their first meal period after their
21 sixth (6th) hour of work had already commenced. Further, on the days that Plaintiff and Class
22 Members worked in excess of ten (10) hours, they were not provided a second meal period as
23 required by law. Further, Defendant failed to relieve Plaintiff and Class Members of all work
24 duties to take their meal periods, requiring them instead to remain in their truck and bring their
25 lunch to work.

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

1 and Class Members in violation of Labor Code sections 226.7 and 512 and IWC Wage Order No.
2 9–2001.

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 missed or untimely meal period, 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 fully
19 set forth herein.

20 60. Labor Code section 226.7 and IWC Wage Order No. 9–2001, 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. Defendant failed to schedule Plaintiff and Class Members in such a manner as to ensure
27 provision of proper rest periods and make available rest periods and failed to relieve employees
28 from all work duties thereby preventing employees from taking the requisite rest periods.

1 Defendant had a policy and/or practice of not permitting Plaintiff and Class Members to take any
2 rest periods because Defendant did not want Plaintiff and Class Members to fall behind with their
3 work. Thus, Defendant denied Plaintiff and Class Members their lawfully required rest periods
4 resulting in Plaintiff and Class Members being forced to work during rest periods and forego them
5 altogether.

6 62. Further, Defendant failed to provide premium compensation of one (1) hour of
7 regular pay to Plaintiff and Class Members for each day a rest period was missed as required by
8 law. As such, Defendant intentionally and improperly denied rest periods to Plaintiff and Class
9 Members in violation of Labor Code section 226.7 and IWC Wage Order No. 9–2001.

10 63. Throughout the class period, Plaintiff and Plaintiff Class worked more than three
11 and one-half (3 ½) hours per shift with no rest breaks. Pursuant to Labor Code section 226.7,
12 Plaintiff and Plaintiff Class are entitled to damages in the amount equal to one (1) hour of wages
13 at their regular rate of pay for each workday in which a rest period was missed, in an amount
14 according to proof at trial.

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

21 **FOURTH CAUSE OF ACTION**

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

23 **(Labor Code § 226)**

24 **(Plaintiff Against All Defendants)**

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

27 66. Labor Code section 226, subdivision (a), requires that “at the time of each payment
28 of wages,” employers furnish employees with “an accurate itemized statement” that includes,

inter alia, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

67. To the extent that Defendant did furnish wage statements to Plaintiff and Class Members, Defendant knowingly and intentionally failed to provide Plaintiff and Class Members wage statements in compliance with Labor Code section 226, because said statements contained inaccurate gross wages earned, an inaccurate number of total hours worked, inaccurate net wages earned, and an inaccurate number of hours worked at each hourly rate.

68. As discussed above, Plaintiff and Class Members were required to take their meal periods late and work through their rest periods, entitling them to premium compensation which was missing from their wage statements. Defendant further deducted thirty (30) minute meal periods each workday even though they were not permitted to leave their trucks and were not relieved of all work duties during meal periods. Defendant also failed to include on Plaintiff and Class Members' wage statements the time they were required to report to work before their shift.

69. Consequently, Plaintiff and Class Members' wage statements reflected an inaccurate number of total hours worked, an inaccurate number of hours worked at each hourly rate, and inaccurate gross and net wages earned.

70. Moreover, when Plaintiff and Class Members requested wage statements from Defendant, Defendant refused to provide them.

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

1 incomplete wage statements, and at times refused to furnish wage statements at all, Plaintiff and
2 Class Members are entitled to penalties, attorney fees, and costs pursuant to Labor Code sections
3 2699, subdivisions (f)(2) and (g)(1), and section 226, subdivision (e)(1), and prejudgment interest.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

6 **(Labor Code § 2802)**

7 **(Plaintiff Against All Defendants)**

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

10 73. Labor Code section 2802, subdivision (a) provides that “[a]n employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
12 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
13 directions of the employer.”

14 74. Plaintiff and Class Members were required to utilize their personal cellular devices
15 in order to send and receive text messages to and from Defendant for work purposes every day.

16 75. Because Plaintiff and Class Members were acting in obedience to directions from
17 Defendants when they used their own cell phone and Wi-Fi connection to send and retrieve
18 messages to and from Defendant, Defendant is required to reimburse Plaintiff and Class Members
19 for the costs thereof.

20 76. Plaintiff individually, and on behalf of Plaintiff Class, requests reimbursement for
21 necessary business expenditures, as well as attorney fees and costs, any assessment of civil
22 penalties, and prejudgment interest in a sum provided by law pursuant to Labor Code section
23 2802, subdivisions (b), (c), and (d).

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT**

3 **(Labor Code §§ 201–203)**

4 **(Plaintiff Against All Defendants)**

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

7 78. At the time that Plaintiff and any of the Class Members' employment ended, they
8 were entitled to timely compensation of regular, overtime, and double time wages for all hours
9 worked, premium compensation for all missed meal and rest periods, and reimbursement for
10 necessary business expenditures.

11 79. At the cessation of Plaintiff and certain Class Members' employment, Defendants
12 failed or refused to compensate Plaintiff and certain Class Members for all hours worked, any
13 missed meal or rest periods, and necessary business expenditures.

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

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

21 82. Plaintiff individually, and on behalf of the Plaintiff Class, requests compensation
22 for all wages owed, as well as the assessment of any civil penalties in a sum provided by law
23 pursuant to Labor Code sections 201, subdivision (a), and 203, subdivisions (a) and (b).

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR/UNLAWFUL BUSINESS PRACTICES**

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

4 **(Plaintiff Against All Defendants)**

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

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

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

17 86. Beginning at an exact date unknown to Plaintiff, but at least since the date four
18 years prior to the filing of this complaint, Defendant has committed acts of unfair competition as
19 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
20 business practices and acts described in this complaint, including, but not limited to, violations of
21 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, and the
22 provisions of IWC Wage Order 9–2001.

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

26 88. As a result of these unlawful, unfair, and fraudulent business practices, Plaintiff,
27 on information and belief, alleges that Defendant is able to unfairly compete with, and gained an
28 unfair advantage over, other comparable companies in the State of California in violation of

1 Business and Professions Codes 17200 et seq.

2 89. Plaintiff is informed and believes, and thereon alleges, that Defendant performed
3 the unlawful, unfair, and fraudulent business practices with the intent of gaining an unfair
4 competitive advantage and thereby injuring Plaintiff, Class Members, competing waste
5 management services in the State of California, and the general public.

6 90. Plaintiff's success in this action will enforce important rights affecting the public
7 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
8 of himself.

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

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

21 93. Business and Professions Code section 17202 provides: "Notwithstanding section
22 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
23 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled
24 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
25 Professions Code section 17202.

26 94. Plaintiff requests injunctive relief pursuant to Business and Professions Code
27 section 17203 to enjoin Defendant from continuing the unfair and unlawful business practices
28 alleged herein.

1 95. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
2 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
3 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
4 pay attorney fees from the recovery in this action. Attorney fees are appropriate pursuant to Code
5 of Civil Procedure section 1021.5 and others.

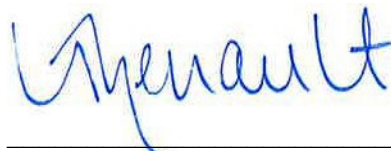
6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 8 1. That the Court determine that this action may be maintained as a class action under
9 Code of Civil Procedure section 382;
10 2. The Court appoint Plaintiff as Class Representative;
11 3. The Court appoint Mahoney Law Group, APC as class counsel;
12 4. For compensatory and statutory damages;
13 5. For restitution of all monies due to Plaintiff and Plaintiff Class from the unlawful and
14 unfair business practices of Defendant;
15 6. For injunctive relief;
16 7. For statutory and civil penalties according to proof;
17 8. For reasonable attorney fees and costs pursuant to Labor Code section 226,
18 subdivision (e), section 218.5, 2802(c), and section 1194; Code of Civil Procedure
19 section 1021.5, and other applicable laws and statutes; and
20 9. That the Court award such other and further relief as this Court may deem
21 appropriate.

22
23 Dated: January 13, 2022

24 **MAHONEY LAW GROUP, APC**

25 

26 Katherine J. Odenbreit, Esq.
27 Laura Theriault, Esq.
28 Attorneys for Plaintiff OSCAR ARANA,
 individually and on behalf of all similarly situated
 employees.

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Dated: January 13, 2022

Shenault

Laura Theriault, Esq.

Attorneys for Plaintiff OSCAR ARANA,
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

November 8, 2021

Via Certified Electronic Mail

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

VIA CERTIFIED MAIL #7019 0700 0001 7488 8992

Return Receipt Requested

Case Industries, Inc.
1349 Thiel Road
Hayward, CA 94544

Re: Oscar Arana v. Case Industries, Inc.

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

To: Labor and Workforce Development Agency; Case Industries, Inc.

From: Oscar Arana, 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 Oscar Arana ("Mr. Arana"), 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

Case Industries Inc. ("Case" or "Employer") is a California corporation. Mr. Arana began working for Case in or around March of 2020 until on or about January 16, 2021.

Mr. Arana alleges that Case violated various sections of the Labor Code, including sections 201, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802 by:

- a) failing to pay Mr. Arana and aggrieved employees all wages owed, including overtime and double time wages,
- b) failing to provide Mr. Arana and aggrieved employees with compliant meal periods or premium compensation in lieu thereof,
- c) failing to provide Mr. Arana and aggrieved employees with rest periods or premium compensation in lieu thereof,
- d) failing to provide Mr. Arana and aggrieved employees with accurate itemized wage statements and failing to maintain accurate payroll records,
- e) failing to reimburse Mr. Arana and aggrieved employees for necessary business expenditures, and
- f) failing to pay all wages earned and owed upon termination or separation of employment.

Mr. Arana and the similarly aggrieved employees are identifiable current, and/or former hourly non-exempt employees who worked for Case 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. Arana and aggrieved employees for all hours worked

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 failed to compensate Mr. Arana and aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Employer required Mr. Arana and aggrieved employees to arrive to work at 5:30 a.m. and perform preparatory work for ten minutes before clocking in for their shift. Specifically, before clocking in for the day, Mr. Arana and aggrieved employees were required to prepare their trucks by ensuring that shovels, masks, brooms, and gloves were on the truck and also by connecting their trucks to the compacting machines. Mr. Arana and aggrieved employees were not permitted to clock in until 5:40 a.m. each morning after they had already been working for ten minutes.

Accordingly, since Mr. Arana and aggrieved employees were not paid at all for the time they spent working prior to the start of their shift, Employer failed to compensate them at the applicable overtime or double time wage rate. Mr. Arana and aggrieved employees worked between ten and twelve hour shifts each day. Thus, the additional unpaid ten minutes of work is compensable at the overtime rate for days in which Mr. Arana and aggrieved employees worked ten hours. On

days in which Mr. Arana and aggrieved employees worked twelve-hour shifts, the unpaid time is compensable at the applicable double time rate.

Employer's failure to pay Mr. Arana and aggrieved employees for all hours worked, including applicable overtime and double time rates, as detailed above, is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employer failed to provide Mr. Arana and aggrieved employees with compliant 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. 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. Arana and aggrieved employees were instructed by Employer as to when to take their meal period and were not permitted to take their meal period until they received a text from the supervisor permitting as much. Mr. Arana and aggrieved employees almost always received their meal period at 12:00 p.m. or 12:30 p.m. and never received their meal period before 12 noon. However, Mr. Arana and aggrieved employees started their shift at 5:30 a.m., thus their meal periods were untimely as they were not provided before the fifth hour of work. Further, when Mr. Arana and aggrieved employees worked more than ten hours in a workday, they did not receive a second meal period as required by law.

Mr. Arana and aggrieved employees were instructed by Employer to bring their own lunch because Employer did not want them to take the time to drive anywhere to buy food. Mr. Arana and aggrieved employees were required to park somewhere along their route, near the next stop, and eat their meal in the work truck and were not permitted to leave the truck.

When Mr. Arana and aggrieved employees were not provided with compliant meal periods, there were not compensated with one hour of pay at their regular rate of pay as required by law.

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. Arana 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. Arana and aggrieved employees were prohibited from taking rest periods. Employer informed Mr. Arana and aggrieved employees that rest periods were not permitted because Employer did not want Mr. Arana and aggrieved

employees to get behind on their work. Mr. Arana and aggrieved employees were not compensated with one hour of pay at their regular rate of pay for each day that a rest period was not provided as required by law.

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. Arana and aggrieved employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, and corresponding number of hours worked at each hourly rate. Labor Code section 1174 further requires employers to keep accurate payroll records that include "the hours worked daily" by employees.

By failed to pay Mr. Arana and aggrieved employees for all hours worked, to the extent that Employer provided wage statements, they were incomplete and inaccurate. Specifically, Employer's wage statements reflected an inaccurate total number of hours worked which resulted in inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Moreover, when Mr. Arana and aggrieved employees requested wage statements, Employer refused to provide them.

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

E. Employer failed to reimburse Mr. Arana and aggrieved employees for necessary business expenditures

Pursuant to Labor Code section 2802, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Employer required Mr. Arana and aggrieved employees to utilize their personal cellular devices every day to clock in and out for their shift and their meal period. Mr. Arana and aggrieved employees were required to send a text message as the method for clocking in and out each day. Mr. Arana and aggrieved employees were never reimbursed for using their personal cellular device for work purposes.

Employer's failure to reimburse Mr. Arana and aggrieved employees for all necessary business expenditures, specifically the use of their personal cellular devices, is a violation of Labor Code section 2802 and is therefore actionable under PAGA.

F. Employer failed to pay Mr. Arana and aggrieved employees all wages earned and owed 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. Arana 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 and reimbursement for work expenses 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. Arana and Aggrieved Employees are entitled to thirty days of waiting time penalties.

G. 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. Arana becomes aware of additional compensation owed or losses incurred by Mr. Arana or by any other aggrieved employee of the Employer, Mr. Arana 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