

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

11/08/2021 at 04:21:20 PM

By: Xian-xii Bowie, Deputy Clerk

Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com

Ryan T. Kuhn [CSB No. 324538]
ryan@sullivanlawgroupapc.com

SULLIVAN & YAECKEL LAW GROUP, APC

2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com

CAPSTONE LAW, APC

1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

Attorneys for Plaintiff FRANCISCO MARTINEZ, Individually, and on behalf of other members of
the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

FRANCISCO MARTINEZ, Individually,
and on behalf of other members of the
general public similarly situated

Plaintiff

v.

STATE ROOFING SYSTEMS, INC., a
California Corporation and DOES 1-10,
inclusive.

Defendants

CASE NO. **21CV002168**

(Proposed CLASS ACTION)

COMPLAINT FOR:

1. **VIOLATION OF LABOR CODE §§
226.7 and 512 (Class Claim)**
2. **VIOLATION OF LABOR CODE §§
510, 1194 and 1197 (Class Claim);**
3. **VIOLATION OF LABOR CODE §
226 (Class Claim)**
4. **VIOLATION OF LABOR CODE §§
2802 (Class Claim)**
5. **VIOLATION OF LABOR CODE §§
201-203 (Class Claim);**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200 et
seq. (Class Claim) and

Demand for Jury Trial.

COMES NOW Plaintiff FRANCISCO MARTINEZ (“Plaintiff”), Individually, and on behalf
of all other members of the general public similarly situated, and alleges for his Complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s).
2. Venue before this Court is proper in that Defendant STATE ROOFING SYSTEMS, INC., (hereinafter, “STATE”) is a California Corporation, and is performing business in the state of California, and County of Alameda. Additionally, certain acts constituting the below violations were committed in the County of Alameda.
3. At all relevant times herein, Plaintiff MARTINEZ was and is an individual working in the County of Alameda, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants are responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her

1 authority as such agent, servant, partner, and employee with the permission and consent of the
2 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said
3 Defendants. Wherever it is alleged herein that any act or omission was done or committed by
4 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does allege
5 that the same act or omission was also done and committed by each and every Defendant named
6 as a DOE, both separately and in concert or conspiracy with the named Defendant or
7 Defendants, (hereinafter, DOES 1 through 10 and STATE are collectively known as
8 "Defendants").

- 9 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
10 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
11 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
12 legal entities which were licensed to do and/or were doing business in the County of Alameda,
13 state of California at all times relevant to the subject matter of this action.

14 **FACTUAL BACKGROUND**

- 15 7. Plaintiff was employed by Defendants as a non-exempt employee, from approximately February
16 10, 2017 through December 18, 2021. Throughout his employment with Defendants, Plaintiff
17 performed his job in a capable and competent manner, and was commended for doing so.
- 18 8. Throughout the term of his employment, Plaintiff and all other nonexempt employees were and
19 currently are denied the benefits and protections of the Labor Code due to Defendants'
20 institutionalized pay practices, standard as to all of Defendants' California-based, nonexempt,
21 non-union employees.

22 **CLASS ACTION ALLEGATIONS**

- 23 9. As more specifically set forth below, Plaintiff brings this action on behalf of an ascertainable
24 class and a well-defined community of interest among the class members. Code Civ. Proc. §
25 382; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 426, 470. Throughout the operative
26 limitations period, Plaintiff and all other class members were denied the protections and benefits
27 of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s) due to
28 Defendants' standard practices. Throughout their employment, Plaintiff and all other class

1 members were and are denied full and accurate compensation, including overtime
2 compensation, in violation of, *inter alia*, Labor Code sections 510 and 1194. Plaintiff and the
3 other class members were and are denied Meal and Rest Periods and Meal and Rest Period
4 payments, in violation of, *inter alia*, IWC Wage Order 16 (or any other applicable Wage Order)
5 and Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage
6 statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse
7 Plaintiff and other class members for necessary business expenditures in violation of, *inter alia*,
8 Labor Code section 2802.

9 10. Plaintiff brings this action on the grounds that he and other similarly situated current and former
10 employees of Defendants were and are improperly denied the mandated wages and
11 reimbursements resulting from the above-referenced violations. *Sav-On Drug Stores, Inc. v.*
12 *Superior Court* (2004) 34 Cal.4th 319. The class is believed to contain approximately One
13 Hundred and Twenty (120) members.

14 11. The approximately One Hundred and Twenty (120) member class is ascertainable via their
15 experience as Defendants' current or former California-based employees, designated as
16 "nonexempt" by Defendants.

17 12. Class members share a community of interest and an injury-in-fact as Defendants have violated
18 California compensation laws, depriving class members of money earned.

19 13. There are questions of fact and law common to the class that predominate over any questions
20 affecting only individual members. The questions of law and fact common to the class arising
21 from Defendants' actions include, without limitation, the following:

- 22 a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and
23 double time wages due and owing to them;
- 24 b. Whether Defendants failed to provide its employees with statutorily-compliant Meal
25 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
26 226.7, in that Defendants written policies are not compliant with California law,
27 Defendants do not allow its employees duty-free breaks, and Defendants improperly
28 "round" employees recorded Meal Periods;

- 1 c. Whether Defendants failed to properly provide Meal and Rest Period premiums in
2 accordance with law;
- 3 d. Whether Defendants failed to properly calculate and pay its employees overtime
4 compensation or Meal and Rest Period premiums in accordance with law by failing to
5 properly calculate, into the Regular Rate of Pay, the value of employee benefits, all
6 compensation;
- 7 e. Whether Defendants failed to properly reimburse its employees for necessary business
8 expenditures for, *inter alia*, cell phone costs and mileage, in violation of Labor Code
9 section 2802;
- 10 f. Whether Defendants failed to provide all compensation upon termination of
11 employment in violation of Labor Code sections 201-203, due, in part, to the fact that
12 Defendants failed to provide proper compensation for all hours worked, as discussed
13 above; and
- 14 g. Whether Defendants conduct constituted a violation of Business & Professions Code
15 section 17200 *et seq.*
- 16 14. The class on whose behalf this action is brought is so numerous that joinder of all parties
17 individually would be impracticable. Plaintiff brings the class action on behalf of approximately
18 One Hundred and Twenty (120) nonexempt, California-based current and former employees of
19 Defendants who share a common or general interest, and it would be impracticable for those
20 employees to bring the action individually. Any variations in job activities between the
21 individual class members are legally insignificant to the issues presented by this action since
22 the central facts remain, to wit, Plaintiff and all other class members were improperly denied
23 the benefits and protections of the Labor Code and IWC Wage Order(s), by and through
24 Defendants' standard and institutionalized practices.
- 25 15. There are questions of law and fact common to the class. Plaintiff, and all class members, were
26 injured by Defendants' violations of the enumerated Labor Code sections and IWC Wage
27 Order(s). As these violations resulted from Defendants' standard and institutionalized practices,
28 questions of law and fact are common to the class.

- 1 16. Plaintiff's claims in this action are typical of the class whom Plaintiff generally represents. The
2 claims result from Defendants' standard and institutionalized practices, experienced by Plaintiff
3 and all other class members.
- 4 17. Plaintiff can fairly and adequately protect the interests of all the members of the class he
5 represents in this action. Any difference in job titles is immaterial, as Defendants used (and
6 uses) standard systems to compensate class members. Plaintiff's experience and knowledge of
7 Defendants' "wage and hour" practices, in addition to Plaintiff's familiarity with Defendants
8 pay policies pertaining to the class members he represents, entitles him to adequately and fairly
9 represent the class.
- 10 18. Common questions predominate over questions affecting individual class members. Plaintiff
11 and all other class members were improperly denied the benefits and protections of the Labor
12 Code and IWC Wage Order(s) by and through Defendants' standard and institutionalized
13 practices. Common questions of law or fact therefore "present a significant aspect of the case"
14 and are capable of resolution "in a single adjudication." *Hanlon v. Chrysler Corp.* (9th Cir.
15 1998) 150 F.3d 1011, 1022.
- 16 19. At all times mentioned herein, Defendants are and were "employers" as that term is used within
17 the relevant sections of the California Labor Code.

18 **FIRST CAUSE OF ACTION**
19 **Meal and Rest Period Violations Pursuant to Labor Code §§ 226.7 and 512**
20 **Class Action**
(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)

21 20. Plaintiff hereby incorporates by reference paragraphs 1 through 19 as though fully set forth
22 herein.

23 21. Labor Code section 1198 states:

24 The maximum hours of work and the standard conditions of labor fixed by the
25 commission shall be the maximum hours of work and the standard conditions of labor
26 for employees. The employment of any employee for longer hours than those fixed by
the order or under conditions of labor prohibited by the order is unlawful.

27 Defendants violated this section by establishing working conditions below the standard of the
28 applicable Wage Order.

- 1 22. Under applicable California law, “An employer may not employ an employee for a work period
2 of more than five hours per day without providing the employee with a meal period of not less
3 than 30 minutes [...] An employer may not employ an employee for a work period of more than
4 10 hours per day without providing the employee with a second meal period of not less than 30
5 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regulations. § 11160 (10)(A). Unless the
6 employee is relieved of all duty for a full thirty (30) minute meal period, the meal period shall
7 be considered an “on duty” meal period and counted as time worked. 8 Cal. Code Regulations.
8 § 11160 (10); *See Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1160.
- 9 23. California law requires employers to provide employees with a 10-minute rest break for every
10 four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11160 (11).
- 11 24. An employer who fails to provide meal or rest periods as required by an applicable Wage Order
12 must pay the employee one additional hour of pay at the employee’s regular rate of pay for each
13 workday that the meal or rest period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs.
14 § 11160 (10), (11).
- 15 25. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period
16 policies.
- 17 26. For example, Defendants’ Rest Period policy and practice does not provide the right for
18 employees to “leave the premises,” and actually requires the employees to “remain on premises
19 for the duration of this rest period” where “coverage” issues require as such.
- 20 27. Defendants’ Meal and Rest Period policy also assumes that employees have “waived” the right
21 to a legally-compliant Meal or Rest Period, or a Meal or Rest Period penalty payment, unless
22 the employees complete a very specific process of formal notification to the Defendants.
- 23 28. Moreover, Defendants policies and practices preclude “duty-free” Meal and Rest Periods. These
24 institutional and established practices of Defendants are illegal, in that Plaintiff and all other
25 employees were denied proper and/or timely Meal and Rest Periods.
- 26 29. These violations are due, in part, to the fact that Defendants do not possess a legal Rest Period
27 policy or practice, as its Rest Period policy lacks required language, resulting in employees
28 failing to receive all Rest Periods legally due. Defendants do not provide Rest Periods, as

defined by California law. Further, Defendants have never provided a Rest Period penalty payment to any employee.

30. Defendants also do not possess a legal Meal Period policy, and make no attempt to ensure that its employees are either timely or wholly provided meal periods. The employees would often either miss a Meal Period entirely, be provided a short or late Meal Period, or be provided only one Meal Period, even when they were working in excess of 10 hours a day. Additionally, Defendants failed to accurately record its employees actual start and stop times of Meal Periods, in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11160 (6)(A)(3).

31. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest Periods, in that the employees are required to remain "On Call" at all times, including during the Meal and Rest Periods, in order to (among other reasons) respond to job site supervisors. These institutional and established practices of Defendants are illegal, in that Plaintiff and all other class members were denied proper and/or timely Meal and Rest Periods.

32. Defendants willfully failed and refused to pay Plaintiff and all other class members one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest period was not provided, as required by Labor Code section 226.7 and IWC Wage Order 16 (10), (11).

33. Any payments made by Defendants for missed or late Meal Periods were not paid at an employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage Orders. Instead, these payments were made at an employee's base rate and did not include the value of, *inter alia*, additional compensation and/or employee benefits and non-discretionary bonuses.

34. As a direct result of Defendants' willful failure and refusal to comply with the California Labor Code, Plaintiff and other employees have suffered injury, loss, and harm in a sum according to proof. On behalf of the class, Plaintiff hereby seeks compensatory damages, back pay (or penalty), prejudgment interest, and other remedies set forth below.

35. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this Complaint when the amounts are more fully known.

SECOND CAUSE OF ACTION
Minimum Wage and Overtime Violations Pursuant to Labor Code §§ 510, 1194 and 1197
Class Action
(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)

36. Plaintiff incorporates by reference paragraphs 1 through 35 as though fully set forth herein.
37. Throughout the applicable time period, Plaintiff and the other Class Members were denied the benefits and protections of the California Labor Code and IWC Wage Order(s) and were damaged thereby.
38. Defendants failed to pay its employees all compensation due, including overtime compensation, in violation of, among other statutes, Labor Code sections 510 and 1197. This failure was caused by several separate uniform practices of Defendants. This failure was caused by and through Defendants failure to maintain accurate Time Records (as required by California law), to the detriment of the employee. Specifically, although Defendants would receive "to-the-minute" start and end times (from its employees required actions), Defendants would thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. Additionally, the right to receive the proper minimum wage and overtime compensation was impacted by Defendants knowingly failing to consider other work performed by the employees. Finally, Defendants' failed to keep accurate time records which reflected when its employees were actually working or under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including the proper minimum wage and overtime compensation.
39. Additionally, Defendants failed to properly calculate Plaintiff's regular rate of pay for purposes of overtime compensation such that the value of employee's benefits were not included in the calculation of Plaintiff's regular rate of pay. Plaintiff is informed and believes and thereon alleges that at all relevant times herein, Defendants failed to take into account the value of all employee benefits when calculating their regular rates of pay, for purposes of overtime compensation, in violation of Labor Code section 510. Additionally, by altering its employees' time records, as referenced above, Defendants alter the actual hourly rate of pay for its

employees. Defendants do not factor in this actual hourly rate, when calculating the overtime rate of pay, in violation of Labor Code section 510.

40. Defendants failed to pay Plaintiff and all other class members all compensation due, including Overtime Compensation, due in violation of, among other statutes, Labor Code section 510. These violations occurred due to Defendants' illegal policies, referenced above, including the failure to accurately record employee time worked, whereby employees experienced monetary under-compensation. These violations also occurred as Defendants had several policies and practices which required employees to work in excess of 8 hours, without receiving all overtime (and/or double-time) compensation. The systematic failure to provide proper overtime compensation is a violation of California law.

41. As a direct result of Defendants' willful failure and refusal to comply with the California Labor Code, Plaintiff and other employees have suffered injury, loss, and harm all to their damages in a sum according to proof. On behalf of the class, Plaintiff hereby seeks compensatory damages, back pay (or penalty), prejudgement interest, and other remedies set forth below.

42. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this Complaint when the amounts are more fully known.

THIRD CAUSE OF ACTION
Wage Statement Violations Pursuant to Labor Code § 226
Class Action
(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)

43. Plaintiff hereby incorporates by reference paragraphs 1 through 42 as though fully set forth herein.

44. Throughout the applicable time period, Plaintiff and the other class members were denied the benefits and protections of the California Labor Code and IWC Wage Order(s) and were damaged thereby.

45. Defendants failed to provide Plaintiff and all other members of the Class action with accurate itemized wage statements in violation of, among other statutes, Labor Code section 226. These violations include, but are not limited to, Defendants failure to provide an accurate showing of

1 the gross wages earned, in violation of Labor Code section 226(a)(1), due to under-payments
2 caused by the "Regular" time and Overtime allegations listed above, Defendants failure to
3 accurately identify all applicable regular and overtime (including double-time) rates of pay in
4 violation of section 226(a)(9), and providing inaccurate representations of both "gross" and "net
5 wages." Defendants also failed to provide the "inclusive dates of the pay period," in violation
6 of 226(a)(6). Defendants also failed to provide an accurate showing of the "total hours worked,"
7 in violation of Labor Code section 226(a)(2).

8 46. As a direct result of Defendant's willful failure and refusal to comply with the California Labor
9 Code, Plaintiff and other employees have suffered injury, loss, and harm all to their damages
10 in a sum according to proof. On behalf of the class, Plaintiff hereby seeks compensatory
11 damages, back pay (or penalty), prejudgement interest, and other remedies set forth below.

12 47. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
13 presently unaware of the precise amount of these expenses and fees and prays for leave of court
14 to amend this Complaint when the amounts are more fully known.

15 **FOURTH CAUSE OF ACTION**
16 **Failure to Reimburse Pursuant to Labor Code § 2802**
17 **Class Action**

18 **(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)**

19 48. Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth
20 herein.

21 49. Defendants failed to reimburse Plaintiff and all other Class Members for all necessary business
22 expenditures incurred in direct consequence of the discharge of their duties in violation of,
23 among other statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*,
24 Defendants' standard policies which require its employees to incur mileage costs without full
25 reimbursement. Plaintiff and all other Class Members were also forced to incur cell phone
26 costs, without reimbursement.

27 50. As a direct result of Defendants' willful failure and refusal to comply with the California Labor
28 Code, Plaintiff and other non-exempt employees have suffered injury, loss, and harm all to their
damages in a sum according to proof. On behalf of the class, Plaintiff hereby seeks

1 compensatory damages, back pay (or penalty), prejudgement interest, and other remedies set
2 forth below.

- 3 51. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
4 presently unaware of the precise amount of these expenses and fees and prays for leave of court
5 to amend this Complaint when the amounts are more fully known.

6 **FIFTH CAUSE OF ACTION**
7 **Failure to Pay Wages Upon Separation Pursuant to Labor Code § 203**
8 **Class Action**
9 **(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)**

- 10 52. Plaintiff hereby incorporates by reference paragraphs 1 through 51 as though fully set forth
11 herein.

- 12 53. Throughout the applicable time period, Plaintiff and the other Class Members were denied the
13 benefits and protections of the California Labor Code and IWC Wage Order(s) and were
14 damaged thereby. These violations resulted from, among other unlawful actions, Defendants
15 willful failure to provide accurate and complete compensation to class members under Labor
16 Code sections 226.7, 510, 512, 1197, and 2802.

- 17 54. As set forth above, Defendants failed (and continue to fail) to provide all wages due and owing
18 to Plaintiff and all other class members throughout the course of their employment. As a direct
19 result of this failure, Plaintiff and all other class members who were discharged or quit were
20 denied all wages due and owing when they received their final paychecks. These final
21 paychecks failed to take into account all outstanding wages due as a result of Defendants'
22 standard and institutionalized payroll practices.

- 23 55. Labor Code section 203 provides for waiting time penalties for failing to pay wages earned and
24 unpaid at the time of discharge, in violation of Labor Code section 201. Accordingly, Plaintiff
25 and all other putative class members seek these penalties as relief for Defendants' violations.

- 26 56. As a direct result of Defendants' willful failure and refusal to comply with the California Labor
27 Code, Plaintiff and other employees have suffered injury, loss, and harm all to their damages
28 in a sum according to proof. On behalf of the class, Plaintiff hereby seeks compensatory
damages, back pay (or penalty), prejudgement interest, and other remedies set forth below.

1 57. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
2 presently unaware of the precise amount of these expenses and fees and prays for leave of court
3 to amend this Complaint when the amounts are more fully known.

4 **SIXTH CAUSE OF ACTION**
5 **Violation of Business and Professions Code § 17200**
6 **Class Action**
7 **(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)**

8 58. Plaintiff hereby incorporates by reference paragraphs 1 through 57 as though fully set forth
9 herein.

10 59. Plaintiff is a direct victim of Defendants' illegal and/or unfair business acts and practices
11 referenced in this complaint, has lost money as a result of such practices, and brings this action
12 both in his individual capacity and on behalf of Defendants' current and former California-
13 based, nonexempt employees who share a common or general interest in the damages as a result
14 of the illegal and/or unfair practices.

15 60. The approximately 120 member class is ascertainable via their experience as Defendants'
16 current or former California-based, nonexempt employees. Class members share a community
17 of interest and an injury-in-fact as Defendants have violated California compensation laws,
18 thereby depriving class members of money earned. Based on the facts set forth above, it would
19 be impracticable to proceed in individual actions.

20 61. Plaintiff suffered an injury-in-fact pursuant to Business & Professions Code section 17204, and
21 lost money as a result of Defendants' illegal and/or unfair practices.

22 62. Plaintiff brings this action on behalf of an ascertainable class who share a community of
23 interest pursuant to Business & Professions Code section 17203 and Code of Civil Procedure
24 section 382 and who share a common or general interest in the damages as a result of the illegal
25 and/or unfair practices, in that those individuals on whose behalf the action is brought have also
26 lost money as a result of Defendants' practices, as set forth above, and that it would be
27 impracticable to proceed as an individual plaintiff action.

28 63. As set forth above, during the course of Plaintiff's employment, Defendants failed and refused
to properly pay Plaintiff and all other class members. Defendants also failed to comply with

1 fundamentally protective California laws including, but not limited to, Labor Code sections
2 201-203, 226, 226.7, 510, 512, 1194, and 2802, as well as IWC Wage Order 16, or any other
3 applicable Wage Order.

4 64. Business & Professions Code section 17200 *et seq.* prohibits any unlawful, unfair, or fraudulent
5 business act or practice.

6 65. Plaintiff's allegations herein are based upon Defendants' institutional business acts and
7 practices.

8 66. Defendants' acts and practices, as described herein above, are unlawful and unfair, in that they
9 violate the Labor Code and IWC Wage Order(s).

10 67. As a direct result of Defendants' unlawful and unfair business acts and practices, Plaintiff and
11 all other class members have been denied wages earned, and have therefore been damaged in
12 an amount to be proven. Accordingly, Plaintiff prays for restitution and injunctive damages in
13 an amount to be proven.

14 68. Plaintiff is informed and believes, and on that basis alleges, that Defendants' unlawful and
15 unfair business practices, alleged above, are continuing in nature and are widespread.

16 69. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction against
17 Defendants to enjoin them from continuing to engage in the illegal conduct alleged herein.

18 70. On behalf of the ascertainable class, Plaintiff respectfully requests restitution damages.

19 71. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees. Plaintiff is
20 presently unaware of the precise amount of these expenses and fees, and prays for leave of court
21 to amend this complaint when the amounts are more fully known.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff on his own behalf and on behalf of all members of the proposed Class,
24 prays for judgment as follows:

- 25 1. For an order certifying the proposed class(es);
26 2. For compensatory damages according to proof, as set forth under Labor Code sections 510,
27 1194, and 2802, among other statutes;
28 3. For penalties and restitution of wages according to proof, as set forth under Labor Code sections

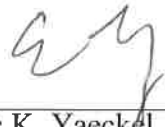
- 221, 226, 226.7, 450 and 1197.1, among other statutes;
4. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 16 (or any applicable Wage Order);
 5. For lost back pay in an amount to be proven;
 6. On behalf of the ascertainable Class, for a permanent injunction against Defendants restraining, preventing, and enjoining Defendants from engaging in the illegal practices alleged, and to ensure compliance with, among other employee protections, Labor Code sections 226, 226.7, 510, 512, 1197, and 2802;
 7. On behalf of the ascertainable Class, for restitution damages on behalf of the section 17200 claimants who share a common or general interest;
 8. Where available, for liquidated damages pursuant to Labor Code section 1194.2;
 9. For an award of interest, including prejudgment interest, pursuant to Labor Code section 218.6;
 10. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code sections 218.5, 226, 1194, 2802 and Code of Civil Procedure section 1021.5; and
 11. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

Dated: November 8, 2021

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel
Ryan T. Kuhn

Attorneys for Plaintiff FRANCISCO MARTINEZ, Individually,
and on behalf of other members of the general public similarly
situated