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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JESUS FUENTES, individually, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

APEX CONTRACTING AND
RESTORATION, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2022-00001417-CU-OE-CTL

Honorable Ronald F. Frazier
Department C-65

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code § 226.2 (unpaid rest periods and unproductive time for piece-rate employees)
- (8) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (9) Violation of California Labor Code §§

2698 *et seq.* (Private Attorneys
General Act of 2004); and
(10) Violation of California Business &
Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JESUS FUENTES (“Plaintiff”), individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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

3. This Court has jurisdiction over all Defendants because, upon information and belief, each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in County of San Diego. Most of the acts and omissions alleged herein relating to Plaintiff took place in the State of California, County of San Diego. Defendants employed Plaintiff within the State of California, County of San Diego.

PARTIES

5. Plaintiff is an individual residing in the State of California, County of San Jose.

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1 6. Defendant APEX CONTRACTING AND RESTORATION, INC., at all times
2 herein mentioned, was and is, upon information and belief, a California corporation, and at all
3 times herein mentioned, was and is, an employer whose employees are engaged throughout the
4 State of California, including the County of San Diego.

5 7. At all relevant times, Defendants APEX CONTRACTING AND
6 RESTORATION, INC. was the “employer” of Plaintiff within the meaning of all applicable
7 California laws and statutes.

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

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

24 10. Defendants APEX CONTRACTING AND RESTORATION, INC. and DOES 1
25 through 100 will hereinafter collectively be referred to as “Defendants.”

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

CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees employed by Defendants within the State of California at any time between November 5, 2020 through May 20, 2022.

14. Plaintiff reserves the right to establish subclasses as appropriate.

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

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time. However, the class is estimated to be greater than two hundred (200) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

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

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

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

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

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

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

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

- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants properly calculated the regular rate for Plaintiff and the other class members to worked overtime and earned incentive pay;
- e. Whether Defendants properly calculated and paid sick leave to Plaintiff and other class members using the methods outlined in the Labor Code;
- f. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- g. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- h. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon discharge or resignation;
- i. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- j. Whether Defendants complied with wage reporting as required by the Labor Code, including, *inter alia*, section 226;
- k. Whether Defendants failed to compensate Plaintiff and the other class members for rest and recovery periods and other nonproductive times;
- l. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- m. Whether Defendants' conduct was willful or reckless;
- n. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code section 17200, *et seq.*;
- o. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

1 p. Whether Plaintiff and the other class members are entitled to
2 compensatory damages pursuant to the Labor Code.

3 **GENERAL ALLEGATIONS**

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

6 18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-
7 exempt employee from approximately 2019 to February 2021 in the State of California,
8 County of San Diego.

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

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

15 21. Defendants directly hired and paid wages and benefits to Plaintiff and the other
16 class members.

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

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

21 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
23 non-exempt employees within the State of California. This scheme involved, *inter alia*, failing
24 to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of
25 California law.

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1 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 certain wages for overtime compensation and that Plaintiff and the other class members were
4 not receiving wages for overtime compensation.

5 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to provide Plaintiff and the other class members the required rest and meal periods
7 during the relevant time period as required under the Industrial Welfare Commission Wage
8 Orders and, thus, they are entitled to any and all applicable penalties.

9 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and the other class members were entitled to receive
11 all timely and complete meal periods or payment of one additional hour of pay at Plaintiff's
12 and the other class members' regular rate of pay when a meal period was missed, late, or
13 interrupted, and that Plaintiff and the other class members did not receive all timely and proper
14 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
15 period was missed, late, or interrupted.

16 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and other class members were entitled to receive all
18 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff's
19 and the other class members' regular rate of pay when a rest period was missed, late, or
20 interrupted, and that Plaintiff and the other class members did not receive all rest periods or
21 payment of one additional hour of pay at their regular rate of pay when a rest period was
22 missed, late, or interrupted.

23 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and the other class members were entitled to receive
25 at least minimum wages for compensation and that Plaintiff and the other class members were
26 not receiving at least minimum wages for all hours worked.

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1 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 the wages owed to them upon discharge or resignation, including overtime and minimum
4 wages and meal and rest period premiums, and that Plaintiff and the other class members did
5 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

6 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and the other class members were entitled to receive
8 complete and accurate wage statements in accordance with California law, but, in fact, Plaintiff
9 and the other class members did not receive complete and accurate wage statements from
10 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of
11 hours worked by Plaintiff and the other class members.

12 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members were entitled to
14 compensation for rest and recovery periods and other nonproductive times and that Plaintiff
15 and other class members did not receive compensation for rest and recovery periods and other
16 nonproductive times.

17 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to sick
19 leave pay calculated using the methods outlined in the Labor Code and that Defendants failed
20 to calculate sick leave pay using the methods outlined in the Labor Code.

21 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and the other class members were entitled to
23 reimbursement for necessary business-related expenses.

24 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Defendants had to keep complete and accurate payroll records
26 for Plaintiff and the other class members in accordance with California law, but, in fact, did not
27 keep complete and accurate payroll records for Plaintiff and the other class members.

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1 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that they had a duty to compensate Plaintiff and the other class
3 members pursuant to California law, and that Defendants had the financial ability to pay such
4 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
5 represented to Plaintiff and the other class members that they were properly denied wages, all
6 to increase Defendants' profits.

7 37. During the relevant time period set forth herein, Defendants failed to pay
8 overtime wages to Plaintiff and the other class members for all hours worked. Plaintiff and
9 other class members were required to work more than eight (8) hours per day and/or forty (40)
10 hours per week without overtime compensation.

11 38. During the relevant time period set forth herein, Defendants failed to provide the
12 requisite uninterrupted and timely meal and rest periods to Plaintiff and the other class
13 members.

14 39. During the relevant time period set forth herein, Defendants failed to pay
15 Plaintiff and the other class members at least minimum wages for all hours worked.

16 40. During the relevant time period set forth herein, Defendants failed to pay
17 Plaintiff and the other class members the wages owed to them upon discharge or resignation.

18 41. During the relevant time period set forth herein, Defendants failed to provide
19 complete or accurate wage statements to Plaintiff and the other class members.

20 42. During the relevant time period set forth herein, Defendants failed to
21 compensate Plaintiff and the other class members for rest and recovery periods and other
22 nonproductive times.

23 43. During the relevant time period set forth herein, Defendants failed to calculate
24 and pay sick leave using the methods outlined in the Labor Code.

25 44. During the relevant time period set forth herein, Defendants failed to keep
26 complete or accurate payroll records for Plaintiff and the other class members.

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45. During the relevant time period set forth herein, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

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

FIRST CAUSE OF ACTION

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

(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through
100)

47. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 46, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

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

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

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

53. During the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

54. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of Labor Code sections 510 and 1198, and is, therefore, unlawful.

55. Under Labor Code section 1194, Plaintiff and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through 100)

56. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 55, and each and every part thereof with the same force and effect as though fully set forth herein.

57. During the relevant time period set forth herein, the IWC Order and Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

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

1 59. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and Labor Code section 512(a) provide that an employer may not require, cause or
3 permit an employee to work for a work period of more than five (5) hours per day without
4 providing the employee with a meal period of not less than thirty (30) minutes, except that if
5 the total work period per day of the employee is no more than six (6) hours, the meal period
6 may be waived by mutual consent of both the employer and employee.

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

14 61. During the relevant time period set forth herein, Plaintiff and the other class
15 members who were scheduled to work for a period of time no longer than six (6) hours, and
16 who did not waive their legally mandated meal periods by mutual consent, were required to
17 work for periods longer than five (5) hours without an uninterrupted meal period of not less
18 than thirty (30) minutes and/or without a rest period.

19 62. During the relevant time period set forth herein, Plaintiff and the other class
20 members who were scheduled to work for a period of time no longer than twelve (12) hours,
21 and who did not waive their legally mandated meal periods by mutual consent, were required
22 to work for periods longer than ten (10) hours without an uninterrupted meal period of not less
23 than thirty (30) minutes and/or without a rest period.

24 63. During the relevant time period set forth herein, Plaintiff and the other class
25 members who were scheduled to work for a period of time in excess of six (6) hours were
26 required to work for periods longer than five (5) hours without an uninterrupted meal period of
27 not less than thirty (30) minutes and/or without a rest period.

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

65. During the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

66. During the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to Labor Code section 226.7.

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

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

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through 100)

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

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

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

4 72. During the relevant time period set forth herein, the applicable IWC Wage
5 Order provides that “[e]very employer shall authorize and permit all employees to take rest
6 periods, which insofar as practicable shall be in the middle of each work period” and that the
7 “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
8 net rest time per four (4) hours or major fraction thereof” unless the total daily work time is
9 less than three and one-half (3 ½) hours.

10 73. During the relevant time period set forth herein, Defendants required Plaintiff
11 and the other class members to work four (4) or more hours without authorizing or permitting a
12 ten (10) minute rest period per each four (4) hour period worked.

13 74. During the relevant time period, Defendants willfully required Plaintiff and the
14 other class members to work during rest periods and failed to pay Plaintiff and the other class
15 members the full rest period premium for work performed during rest periods.

16 75. During the relevant time period set forth herein, Defendants failed to pay
17 Plaintiff and the other class members the full rest period premium due pursuant to Labor Code
18 section 226.7.

19 76. Defendants’ conduct violates applicable IWC Wage Orders and Labor Code
20 section 226.7.

21 77. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b),
22 Plaintiff and the other class members are entitled to recover from Defendants one additional
23 hour of pay at the employees’ regular hourly rate of compensation for each workday that the
24 rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through**
4 **100)**

5 78. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 77 and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 79. During the relevant time period set forth herein, Labor Code sections 1194 and
9 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser
10 wage than the minimum so fixed, is unlawful.

11 80. During the relevant time period set forth herein, Defendants failed to pay
12 minimum wages to Plaintiff and the other class members as required, pursuant to Labor Code
13 sections 1194 and 1197.

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

19 82. Pursuant to Labor Code section 1194.2, Plaintiff and the other class members
20 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
21 and interest thereon.

22 **FIFTH CAUSE OF ACTION**

23 **(Violation of California Labor Code §§ 201 and 202)**

24 **(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through**
25 **100)**

26 83. Plaintiff incorporates by reference the allegations contained in paragraphs 1
27 through 82, and each and every part thereof with the same force and effect as though fully set
28 forth herein.

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

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

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

87. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then 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 is commenced; but the wages shall not continue for more than thirty (30) days.

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

SIXTH CAUSE OF ACTION

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

(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through 100)

89. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 88, and each and every part thereof with the same force and effect as though fully set forth herein.

1 90. During the relevant time period set forth herein, Labor Code section 226(a)
2 provides that every employer shall furnish each of his or her employees an accurate itemized
3 statement in writing showing (a) gross wages earned, (b) total hours worked by the employee,
4 (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid
5 on a piece-rate basis, (d) all deductions, provided that all deductions made on written orders of
6 the employee may be aggregated and shown as one item, (e) net wages earned, (f) the inclusive
7 dates of the period for which the employee is paid, (g) the name of the employee and his or her
8 social security number, (h) the name and address of the legal entity that is the employer, and (i)
9 all applicable hourly rates in effect during the pay period and the corresponding number of
10 hours worked at each hourly rate by the employee. The deductions made from payments of
11 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day,
12 and year, and a copy of the statement or a record of the deductions shall be kept on file by the
13 employer for at least three years at the place of employment or at a central location within the
14 State of California.

15 91. Defendants have intentionally and willfully failed to provide Plaintiff and the
16 other class members with complete and accurate wage statements. The deficiencies include but
17 are not limited to: the failure to include the total number of hours worked by Plaintiff and other
18 class members.

19 92. As a result of Defendants' violation of Labor Code section 226(a), Plaintiff and
20 the other class members have suffered injury and damage to their statutorily protected rights.

21 93. More specifically, Plaintiff and the other class members have been injured by
22 Defendants' intentional and willful violation of Labor Code section 226(a) because they were
23 denied both their legal right to receive, and their protected interest in receiving, accurate and
24 itemized wage statements pursuant to Labor Code section 226(a).

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

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1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.2)**

3 **(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through 100)**

4 95. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 94, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 96. Labor Code section 226.2(a)(1) requires that employees compensated on a
8 piece-rate basis during a pay period shall “be compensated for rest and recovery periods and
9 other nonproductive time separate from any piece-rate compensation.”

10 97. pursuant to Labor Code section 226.2(a)(2)(A), the itemized wage statements
11 that are required by Labor Code section 226(a) shall also include the following, “The total
12 hours of compensable rest and recovery periods, the rate of compensation, and the gross wages
13 paid for those periods during the pay period.” The itemized wage statements must also include
14 “the total hours of other nonproductive time” pursuant to Labor Code section 226.2(a)(2)(B).

15 98. Labor Code section 226.2(a)(3)(A) explains “employees shall be compensated
16 for rest and recovery periods at a regular hourly rate that is no less than the higher of: (a) [a]n
17 average hourly rate determined by dividing the total compensation for the workweek ... by the
18 total hours worked during the workweek ... ” or “(b) [t]he applicable minimum wage.” Finally,
19 Labor Code section 226.2(a)(4) states, “Employees shall be compensated for other
20 nonproductive time at an hourly rate that is no less than the applicable minimum wage.”

21 99. During the relevant time period, Defendants intentionally and willfully failed to
22 compensate Plaintiff and the other class members who are paid on a piece-rate basis during a
23 pay period for rest and recovery periods and other nonproductive time separate from any piece-
24 rate compensation pursuant to Labor Code section 226.2(a)(1).

25 100. Defendant also intentionally and willfully failed to provide Plaintiff and the
26 other class members with itemized wage statements pursuant to the requirements of Labor
27 Code section 226.2(a)(2)(A) and 226.2(a)(2)(B).

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101. Finally, Defendants intentionally and willfully failed to calculate and pay Plaintiff and the other class members for rest and recovery periods and other nonproductive time using the methods outlined in Labor Code section 226.2(a)(3)(A) and section 226(a)(4).

102. Under Labor Code section 226.3, Plaintiff and the other class members are entitled to recover from Defendants civil penalties of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in the subsequent violation.

EIGHT CAUSE OF ACTION

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

(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through 100)

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

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

105. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

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1 **NINTH CAUSE OF ACTION**

2 **(Violation of Labor Code §§ 2698, *et seq.* (“PAGA”))**

3 **(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through**
4 **100)**

5 106. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 105, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

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

13 108. On November 5, 2021, Plaintiff provided written notice to the LWDA and
14 Defendants of the specific provisions of the Labor Code he contends were violated, and the
15 theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by reference
16 is a copy of the written notice to the LWDA. Plaintiff believes that on or about January 10, 2022,
17 the 65-day notice period expired as to all Defendants, and the LWDA did not take any action to
18 investigate or prosecute this matter. Thus, Plaintiff exhausted his administrative remedies.

19 109. On May 12, 2022, Plaintiff provided an amended written notice to the LWDA and
20 Defendants of the specific provisions of the Labor Code he contends were violated, and the
21 theories supporting his contentions. Attached hereto as **Exhibit 2** and incorporated by reference
22 is a copy of the amended written notice to the LWDA. Plaintiff believes that on our about July
23 18, 2022, the 65-day notice period will expire as to all Defendants, and the LWDA will not take
24 any action to investigate or prosecute this matter. Thus, Plaintiff will have exhausted his
25 administrative remedies.

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110. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all current and former hourly-paid or non-exempt employees employed by Defendants within the State of California at any time between November 5, 2020 through May 20, 2022, and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

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

112. As a policy and practice, Defendants failed to compensate Plaintiff and other aggrieved employees for all hours worked, resulting in a failure to pay all minimum wages and overtime wages, where applicable.

Failure to Provide Paid Sick Leave

113. At all times relevant herein, Defendants were required to provide employees with paid sick leave of not less than one (1) hour per every thirty (30) hours worked, pursuant to Labor Code section 246.

114. At all times relevant herein, Defendants were required to pay paid sick leave at a non-exempt employee’s regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior ninety (90) days of employment, pursuant to Labor Code section 246(l).

115. As a policy and practice, Defendants failed to provide Plaintiff and other aggrieved employees with compliant paid sick leave of one (1) hour worked per every thirty (30) hours worked, by failing to pay paid sick leave at the proper rate of pay.

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

2 116. In accordance with Labor Code sections 226.7 and 512, Defendants were required
3 to authorize and permit their non-exempt employees to take a 10-minute rest break for every four
4 (4) hours worked or major fraction thereof and were further required to provide their non-exempt
5 employees with a 30-minute meal period for every five (5) hours worked.\

6 117. As a policy and practice, Defendants failed to provide Plaintiff and other
7 aggrieved employees with legally mandated meal periods and rest breaks and failed to pay
8 proper compensation for this failure.

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

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

12 119. As a policy and practice, Defendants failed to pay Plaintiff and other aggrieved
13 employees all wages due and owing them within the required time period.

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

15 120. At all times relevant herein, Defendants were required to pay their employees all
16 wages owed in a timely fashion at the end of employment pursuant to Labor Code sections 201
17 to 204.

18 121. As a result of Defendants' Labor Code violations alleged above, Defendants
19 failed to pay Plaintiff and the other aggrieved employees their final wages pursuant to Labor
20 Code sections 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code
21 section 203.

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

23 122. At all times relevant herein, Defendants were required to keep *accurate* records
24 regarding their California employees pursuant to Labor Code sections 226 and 1174.

25 123. As a result of Defendants' Labor Code violations, Defendants failed to keep
26 accurate records regarding Plaintiff and other aggrieved employees. For example, Defendants
27 failed in their affirmative obligation to keep accurate records regarding Plaintiff and other
28 aggrieved employees' gross wages earned, total hours worked, all deductions, net wages

1 earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

2 **Failure to Keep Complete and Accurate Payroll Records**

3 124. At all times relevant herein, Defendants were required to keep, at a central
4 location in the state or at the plants or establishments at which employees are employed,
5 payroll records showing the hours worked daily by and the wages paid to, and the number of
6 piece-rate unit earned by and any applicable piece rate paid to, employees employed at the
7 respective plants or establishments, pursuant to Labor Code section 1174(d).

8 125. As a policy and practice, Defendants failed to keep accurate and complete
9 payroll records showing the hours worked daily and the wages paid to Plaintiff and other
10 aggrieved employees.

11 **Failure to Reimburse Business Expenses**

12 126. At all times relevant herein, Defendants were required to reimburse its
13 employees for any and all necessary expenditures or losses incurred by the employees in direct
14 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
15 sections 2800 and 2802.

16 127. As a policy and practice, Defendants failed to pay Plaintiff and other aggrieved
17 employees all business expenses incurred and owing them within the required time period.

18 **Failure to Compensate For Rest and Recovery Periods and Other**
19 **Nonproductive Time**

20 128. At all relevant times herein, Defendants were required to pay employees who
21 are compensated on a piece-rate basis during a pay period for rest and recovery periods and
22 other nonproductive time separate from any piece-rate compensation pursuant to Labor Code
23 section 226.2(a)(1).

24 129. As a policy and practice, Defendants failed to compensate Plaintiff and other
25 aggrieved employees for all rest and recovery periods and other nonproductive time, which
26 resulting in Defendants issuing itemized wage statements in violation of Labor Code section
27 226.2(a)(2)(A) and 226.2(a)(2)(B).

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Penalties

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

- a. Penalties under Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

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TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)
(Against APEX CONTRACTING AND RESTORATION, INC. and DOES 1 through 100)

131. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 130, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

134. A violation of Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' policy and practice of requiring Plaintiff and the other class members work overtime hours without paying them proper compensation violate Labor Code sections 510 and 1198. Additionally, Defendants' policy and practice of requiring Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate Labor Code sections 226.7 and 512(a). Moreover, Defendants' policy and practice of failing to timely pay wages to Plaintiff and the other class members violate Labor Code sections 201 and 202. Defendants also violated Labor Code sections 226(a), 226.2, 246, 1194, 1197, 2800, and 2802.

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

136. Plaintiff and the other class members have been injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

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

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, individually, and on behalf of other members of the general public similarly
8 situated, requests a trial by jury.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually, on behalf of all other members of the general
11 public similarly situated, and on behalf of aggrieved employees pursuant to PAGA, prays for
12 relief and judgment against Defendants, jointly and severally, as follows:

13 **Class Certification**

- 14 1. That this action be certified as a class action;
15 2. That Plaintiff be appointed as representative of the Class;
16 3. That counsel for Plaintiff be appointed as Class Counsel; and
17 4. That Defendants provide to Class Counsel immediately the names and most
18 current contact information (address, email, and telephone numbers) of all class members.

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

- 20 5. That the Court declare, adjudge, and decree that Defendants violated Labor
21 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
22 overtime wages due to Plaintiff and the other class members;

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

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

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

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

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

3 10. That the Court declare, adjudge, and decree that Defendants violated Labor
4 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide
5 all meal periods (including second meal periods) to Plaintiff and the other class members;

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

9 12. For all actual, consequential, and incidental losses and damages, according to
10 proof;

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

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

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

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

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

17 17. That the Court declare, adjudge, and decree that Defendants violated Labor
18 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
19 periods to Plaintiff and the other class members;

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

23 19. For all actual, consequential, and incidental losses and damages, according to
24 proof;

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

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and the other class members;

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

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

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

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

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

As to the Fifth Cause of Action

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

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

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

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

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

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As to the Sixth Cause of Action

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

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

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

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

As to the Seventh Cause of Action

38. That the Court declare, adjudge, and decree that Defendants violated Labor Code section 226.2 failed to compensate Plaintiff and the other class members for rest and recovery periods and other nonproductive times.

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

40. For statutory penalties pursuant to Labor Code section 226.3; and

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

As to the Eight Cause of Action

42. That the Court declare, adjudge, and decree that Defendants violated Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by Labor Code sections 2800 and 2802;

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

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

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

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

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

As to the Ninth Cause of Action

48. Upon the Ninth Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code sections 2698 *et seq.*, for Defendants' violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.2, 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.

49. Upon the Eight Cause of Action, for costs and attorneys' fees pursuant to Labor Code sections 210, 218.5, 1194, and 2699, and any other applicable statute; and

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

As to the Tenth Cause of Action

51. That the Court declare, adjudge, and decree that Defendants violated Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff and the other class members' wages timely as required by Labor Code section 201 and 202.

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

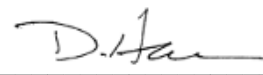
53. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of Business and Professions Code sections 17200, *et seq.*;

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

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

Dated: June 22, 2022

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Lizette Rodriguez
Haig Hogdanian
Attorneys for Plaintiff

EXHIBIT 1

November 5, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: APEX CONTRACTING AND RESTORATION, INC.

Dear Representative:

We have been retained to represent Jesus Fuentes against Apex Contracting and Restoration, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "APEX").

Mr. Fuentes is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Fuentes may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Apex Contracting and Restoration, Inc. is California corporation located at 5183 Mercury Pt., San Diego, California 92111.

APEX employed Mr. Fuentes as an hourly-paid non-exempt Dry Wall Lead within one year of the date of this letter (until in or around February of 2021²) in the State of California. APEX directly controlled the wages, hours and/or working conditions of Mr. Fuentes and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

¹ Mr. Fuentes does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Fuentes will amend this notice when the true names and capacities are known. Mr. Fuentes is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Fuentes and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Fuentes's PAGA cause of action is tolled.

The “aggrieved employees” that Mr. Fuentes may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of APEX within the State of California.

APEX failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Fuentes has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at APEX, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

APEX has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Fuentes and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. APEX failed to compensate Mr. Fuentes and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, donning and doffing uniforms, travelling to jobsites, and during meal breaks. APEX also failed to include non-discretionary bonuses and incentives in other aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Mr. Fuentes and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, APEX failed to pay Mr. Fuentes and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, APEX routinely required Mr. Fuentes and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with APEX's policies and expectations, and meet strict project deadlines. APEX failed to provide coverage to Mr. Fuentes and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, APEX also failed to authorize and permit Mr. Fuentes and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, APEX failed to compensate Mr. Fuentes and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Mr. Fuentes and other aggrieved employees' regular rate of pay.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, 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. During the relevant time period, APEX failed to pay Mr. Fuentes and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, APEX failed to pay Mr. Fuentes and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, APEX did not provide Mr. Fuentes and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from APEX were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Fuentes and other aggrieved employees, (2) total hours worked by Mr. Fuentes and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Fuentes and other aggrieved employees (4) all deductions for Mr. Fuentes and other aggrieved employees, (5) net wages earned by Mr. Fuentes and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Fuentes and other aggrieved employees are paid, (7) the name of the aggrieved 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 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Fuentes and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Fuentes and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, APEX failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Fuentes and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, APEX did not provide Mr. Fuentes and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, donning and doffing uniforms, travelling to jobsites, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Fuentes and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by APEX, including for purchasing equipment and tools they were required to use while working, using their personal cellular phones to communicate with management and take work progress pictures, and using their personal vehicles to travel to jobsites.

We believe that Mr. Fuentes and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Fuentes will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of APEX within one year of the date of this letter, as allowed by law.

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LWDA

November 5, 2021

Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Robert C. Martinez

c/o Apex Contracting and Restoration, Inc.

600 B St., Ste 2210

San Diego, California 92101

Agent for Service of Process for Apex Contracting and Restoration, Inc.

EXHIBIT 2

May 12, 2022

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: APEX CONTRACTING AND RESTORATION, INC.

Dear Representative:

We hereby amend our November 5, 2021, letter sent to your office in compliance with the reporting requirements of Labor Code section 2699.3. A true and correct copy of the November 5, 2021, letter is attached to this submission as **Exhibit A** for reference. We are amending that notice to include the violation of Labor Code section 226.2.

We have been retained to represent Jesus Fuentes against Apex Contracting and Restoration, Inc. ("APEX") (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "APEX").

Mr. Fuentes is pursuing his Labor Code sections 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Fuentes may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of Labor Code section 2699.3.

APEX is California corporation located at 5183 Mercury Pt., San Diego, California 92111.

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¹ Mr. Fuentes does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Fuentes will amend this notice when the true names and capacities are known. Mr. Fuentes is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Fuentes and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

APEX employed Mr. Fuentes as an hourly-paid non-exempt Dry Wall Lead within one year of the date of this letter (until in or around February of 2021²) in the State of California. APEX directly controlled the wages, hours and/or working conditions of Mr. Fuentes and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Fuentes may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of APEX within the State of California.

APEX failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements, failed to compensate piece-rate employees for rest and recovery periods and other nonproductive times, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Fuentes has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at APEX, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

APEX has violated and/or continues to violate, among other provisions of the Labor Code and applicable wage law, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.2, 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

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² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Fuentes's PAGA cause of action is tolled.

Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Fuentes and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. APEX failed to compensate Mr. Fuentes and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, donning and doffing uniforms, travelling to jobsites, and during meal breaks. APEX also failed to include non-discretionary bonuses and incentives in other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Fuentes and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, APEX failed to pay Mr. Fuentes and other aggrieved employees with paid sick leave that complied with Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, APEX routinely required Mr. Fuentes and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with APEX's policies and expectations, and meet strict project deadlines. APEX failed to provide coverage to Mr. Fuentes and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, APEX also failed to authorize and permit Mr. Fuentes and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, APEX failed to compensate Mr. Fuentes and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Mr. Fuentes and other aggrieved employees' regular rate of pay.

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Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 requires that if 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. Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, 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. During the relevant time period, APEX failed to pay Mr. Fuentes and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by Labor Code sections 201 and 203 and therefore is liable under Labor Code section 203.

Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, APEX failed to pay Mr. Fuentes and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by Labor Code section 204.

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Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, APEX did not provide Mr. Fuentes and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from APEX were in violation of Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Fuentes and other aggrieved employees, (2) total hours worked by Mr. Fuentes and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Fuentes and other aggrieved employees (4) all deductions for Mr. Fuentes and other aggrieved employees, (5) net wages earned by Mr. Fuentes and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Fuentes and other aggrieved employees are paid, (7) the name of the aggrieved 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 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Fuentes and other aggrieved employees.

Labor Code section 226.2(a)(1) requires that employees compensated on a piece-rate basis during a pay period shall "be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation." Moreover, pursuant to Labor Code section 226.2(a)(2)(A), the itemized wage statements that are required by Labor Code section 226(a) shall also include the following, "The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period." The itemized wage statements must also include "the total hours of other nonproductive time" pursuant to Labor Code section 226.2(a)(2)(B). Labor Code section 226.2(a)(3)(A) explains "employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (a) [a]n average hourly rate determined by dividing the total compensation for the workweek ... by the total hours worked during the workweek ... " or "(b) [t]he applicable minimum wage." Finally, Labor Code section 226.2(a)(4) states, "Employees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage." During the relevant time period, APEX did not compensate aggrieved employees who are paid on a piece-rate basis during a pay period for rest and recovery periods and other nonproductive time separate from any piece-rate compensation. By extension, APEX did not provide aggrieved employees with itemized wage statements pursuant to the requirements of Labor Code section 226.2(a)(2)(A) and 226.2(a)(2)(B). Finally, APEX failed to calculate and pay aggrieved employees for rest and recovery periods and other nonproductive time using the methods outlined in Labor Code section 226.2(a)(3)(A) and section 226(a)(4).

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Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Fuentes and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, APEX failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Fuentes and other aggrieved employees.

Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, APEX did not provide Mr. Fuentes and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, donning and doffing uniforms, travelling to jobsites, and during meal breaks.

Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Fuentes and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by APEX, including for purchasing equipment and tools they were required to use while working, using their personal cellular phones to communicate with management and take work progress pictures, and using their personal vehicles to travel to jobsites.

We believe that Mr. Fuentes and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the Labor Code.

Mr. Fuentes will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of APEX within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal stroke extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Robert C. Martinez
c/o Apex Contracting and Restoration, Inc.
600 B St., Ste 2210
San Diego, California 92101
Agent for Service of Process for Apex Contracting and Restoration, Inc.

EXHIBIT A

November 5, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: APEX CONTRACTING AND RESTORATION, INC.

Dear Representative:

We have been retained to represent Jesus Fuentes against Apex Contracting and Restoration, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "APEX").

Mr. Fuentes is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Fuentes may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Apex Contracting and Restoration, Inc. is California corporation located at 5183 Mercury Pt., San Diego, California 92111.

APEX employed Mr. Fuentes as an hourly-paid non-exempt Dry Wall Lead within one year of the date of this letter (until in or around February of 2021²) in the State of California. APEX directly controlled the wages, hours and/or working conditions of Mr. Fuentes and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

¹ Mr. Fuentes does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Fuentes will amend this notice when the true names and capacities are known. Mr. Fuentes is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Fuentes and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Mr. Fuentes's PAGA cause of action is tolled.

The “aggrieved employees” that Mr. Fuentes may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of APEX within the State of California.

APEX failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Fuentes has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at APEX, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

APEX has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Fuentes and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. APEX failed to compensate Mr. Fuentes and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, donning and doffing uniforms, travelling to jobsites, and during meal breaks. APEX also failed to include non-discretionary bonuses and incentives in other aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Mr. Fuentes and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, APEX routinely required Mr. Fuentes and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with APEX's policies and expectations, and meet strict project deadlines. APEX failed to provide coverage to Mr. Fuentes and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, APEX also failed to authorize and permit Mr. Fuentes and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, APEX failed to compensate Mr. Fuentes and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Mr. Fuentes and other aggrieved employees' regular rate of pay.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, 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. During the relevant time period, APEX failed to pay Mr. Fuentes and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, APEX failed to pay Mr. Fuentes and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, APEX did not provide Mr. Fuentes and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from APEX were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Fuentes and other aggrieved employees, (2) total hours worked by Mr. Fuentes and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Fuentes and other aggrieved employees (4) all deductions for Mr. Fuentes and other aggrieved employees, (5) net wages earned by Mr. Fuentes and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Fuentes and other aggrieved employees are paid, (7) the name of the aggrieved 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 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Fuentes and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Fuentes and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, APEX failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Fuentes and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, APEX did not provide Mr. Fuentes and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, donning and doffing uniforms, travelling to jobsites, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Fuentes and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by APEX, including for purchasing equipment and tools they were required to use while working, using their personal cellular phones to communicate with management and take work progress pictures, and using their personal vehicles to travel to jobsites.

We believe that Mr. Fuentes and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Fuentes will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of APEX within one year of the date of this letter, as allowed by law.

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LWDA

November 5, 2021

Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Robert C. Martinez

c/o Apex Contracting and Restoration, Inc.

600 B St., Ste 2210

San Diego, California 92101

Agent for Service of Process for Apex Contracting and Restoration, Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103.

On June 22, 2022, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Mandy Hexom (mhexom@fmglaw.com)
Gaia T. Linehan (gaia.linehan@fmglaw.com)
FREEMAN MATHIS & GARY, LLP
225 Broadway, Suite 1460
San Diego, CA 92101

Attorney(s) for Defendant Apex Contracting and Restoration, Inc.

Cc: Melissa Colum (mcolum@fmglaw.com)

[X] BY E-MAIL

The above-referenced document was transmitted to the addressee(s) at the e-mail addresses listed herein, which are their most recently known e-mail addresses or e-mail addresses of record in this action. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] STATE

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

Executed on June 22, 2022, at Pasadena, California.



Jillian Kislow

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On June 30, 2022, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Fuentes v. Apex Contracting and Restoration, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 851399-21**
Court Case No.: 37-2022-00001417-CU-OE-CTL
San Diego County Superior Court

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

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

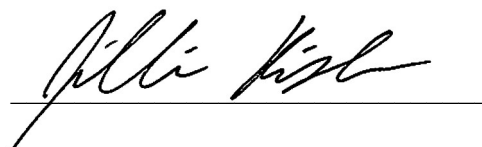
[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on June 30, 2022, at Pasadena, California.


Jillian Kislow