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12 Attorneys for Plaintiff,
13 JORGE L. LEON, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF FRESNO**
16 **(UNLIMITED JURISDICTION)**

17 JORGE L. LEON, on behalf of himself and all
18 others similarly situated, and as an “aggrieved
19 employee” on behalf of other “aggrieved
20 employees” under the Labor Code Private
21 Attorneys General Act of 2004,

22 *Plaintiff,*

23 vs.

24 DAVIS & ROBERTS CONSTRUCTION, INC.,
25 a California corporation; and DOES 1–50,
26 inclusive,

27 *Defendants.*

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3/7/2022 3:31 PM
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

Case No.: 22CECG00407

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code § 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED



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1 Plaintiff, JORGE L. LEON (hereafter “Plaintiff” or “Leon”), on behalf of himself and all
2 others similarly situated, and the State of California, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants DAVIS &
7 ROBERTS CONSTRUCTION, INC., a California corporation, and Does 1 through 50, inclusive
8 (collectively “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
11 related relief. These claims are based on Defendants’ failures to:

12 (A) Pay all wages without deductions, including minimum, regular, overtime
13 wages, earned for all hours worked at the correct rates of pay;

14 (B) Provide all meal periods;

15 (C) Authorize and permit all rest breaks;

16 (D) Pay premium wages for unprovided meal periods;

17 (E) Pay premium wages for unprovided rest breaks;

18 (F) Only deduct wages lawfully;

19 (G) Issue only accurate and complete itemized wage statements; and

20 (H) Timely pay wages upon termination of employment;

21 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
22 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

23 **II. THE PARTIES**

24 3. Plaintiff JORGE L. LEON is a resident of California.

25 4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
26 California Code of Regulations Section 11160 and an “aggrieved employee” within the meaning
27 of Labor Code Section 2699(c).

28 5. Defendant DAVIS & ROBERTS CONSTRUCTION, INC. is a corporation



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1 organized and existing under the laws of California and also a citizen of California based on
2 Plaintiff's information and belief.

3 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
4 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
5 is informed and believes and thereon alleges that said Defendants are legally responsible for the
6 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
7 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
8 when ascertained.

9 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
11 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
12 within the course and scope of such agency, employment, direction and control, and with the
13 approval and ratification of each of the other Defendants.

14 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
15 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
16 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
17 Members or otherwise complying with their rights in accordance with applicable California labor
18 laws as alleged herein.

19 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
20 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
21 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
22 described class in accordance with applicable laws as alleged herein.

23 **III. CLASS ALLEGATIONS**

24 10. This action has been brought and may be maintained as a class action pursuant to
25 California Code of Civil Procedure section 382 because there is a well-defined community of
26 interest among the persons who comprise the readily ascertainable class defined below and
27 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
28 a class action.



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1 11. **Class Definition:** The Class is defined as follows: All persons Defendants
2 employed in California as hourly, non-exempt workers, including but not limited to finishers,
3 laborers, individuals performing work comparable to the aforementioned, compensated
4 comparably to the aforementioned, and individuals in similar positions, at any time during the
5 period beginning four years prior to the filing of this action and ending on the date that final
6 judgment is entered in this action (“Class” or “Class Members”).

7 12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
8 right to amend or modify the class definition with greater specificity, by further division into
9 subclasses and/or by limitation to particular issues.

10 13. **Numerosity:** The Class Members are so numerous that the individual joinder of
11 each individual Class Member is impractical. While Plaintiff does not currently know the exact
12 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
13 minimum required for numerosity under California laws.

14 14. **Commonality and Predominance:** Common questions of law and fact exist as to
15 all Class Members and predominate over any questions which affect only individual Class
16 Members. These questions include, but are not limited to:

17 A. Whether Defendants failed to pay all wages earned to Class Members for
18 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
19 premium, and rest period premium;

20 B. Whether Defendants unlawfully deducted wages from Class Members;

21 C. Whether Defendants failed to provide the Class Members with all meal
22 periods in compliance with California law;

23 D. Whether Defendants failed to authorize and permit the Class Members to
24 take all rest periods in compliance with California law;

25 E. Whether Defendants knowingly and intentionally failed to provide the
26 class with accurate and complete itemized wage statements;

27 F. Whether Defendants willfully failed to provide the class with timely final
28 wages;



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1 G. Whether Defendants engaged in unfair competition within the meaning of
2 Business and Professions Code sections 17200, et seq., with respect to the Class; and

3 H. Whether Class Members are entitled to restitution of money or property
4 that Defendants may have acquired from them through alleged Labor Code violations.

5 15. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
6 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
7 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
8 Code, the Wage Order, and the Business and Professions Code.

9 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
10 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
11 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
12 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
13 Members.

14 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
15 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
16 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
17 Plaintiff and absent Class Members.

18 18. **Superiority:** A class action is vastly superior to other available means for fair and
19 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
20 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
21 and efficiently prosecute their common claims in a single forum without the unnecessary
22 duplication of effort and expense that numerous individual actions would entail. In addition, the
23 monetary amounts due to many individual Class Members are likely to be relatively small and
24 would thus make it difficult, if not impossible, for individual Class Members to both seek and
25 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
26 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
27 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

28 ///



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1 **IV. STATEMENT OF FACTS**

2 19. The Wage Order applies to

3 all persons employed in the on-site occupations of construction, including but not
4 limited to alteration, demolition, building, excavating, renovation, remodeling,
5 maintenance, improvement, and repair work, and work for which a contractor's
6 license is required by the California Business and Professions Code, Division 3,
7 Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work
8 required to drill, establish, repair, and rework wells for the exploration or
9 extraction of oil, gas, or water resources; logging work for which a timber
10 operator's license is required pursuant to California Public Resources Code
11 Sections 4571 through 4586; and mining (not covered by Labor Code Section 750
12 et seq.), including all work required to mine and/or establish pits, quarries, and
13 surface or underground mines for the purposes of exploration or extraction of
14 nonmetallic minerals and ores, coal, and building materials such as stone and
15 gravel, whether paid on a time, piece rate, commission, or other basis."

16 Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

17 all job classifications associated with construction, including but not limited to
18 work involving alteration, demolition, building, excavation, renovation,
19 remodeling, maintenance, improvement, and repair work, by the California
20 Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and
21 any other similar or related occupations or trades. (D) "Division" means the
22 Division of Labor Standards Enforcement of the State of California.

23 Wage Order, § 2(L). At all relevant times during the applicable limitations period, the Defendants,
24 Leon, and all of the Class Members were covered by the Wage Order because Leon and all of the
25 Class Members worked for the Defendants in construction occupations, including pouring
26 concrete. Accordingly, Leon and all of the other Class Members are entitled to the protections the
27 Wage Order provides.

28 20. On approximately December 30, 2020, the Defendants began to employ Leon in
Clovis (Fresno County) in the position of finisher. The Defendants continuously employed him
in that capacity and as a laborer until on or about March 21, 2021 when his employment ended.

21. At all relevant times, the Defendants issued wages to Leon and all of the other
Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant
times, the Defendants classified Leon and all of the other Class Members as non-exempt



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1 employees entitled to the protections of the Labor Code and the Wage Order.

2 22. At all relevant times, the Defendants failed to compensate Leon and all of the other
3 Class Members for all hours worked at the applicable minimum or regular rates of pay.
4 Defendants required Plaintiff and the Class Members to work through their meal periods though
5 Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff
6 and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and
7 the Class Members. Defendants also failed to record other time worked by Plaintiff and the Class
8 Members on the timesheets Defendants filled out for them. Defendants required Plaintiff and the
9 Class Members to approve the time sheets regardless of whether their hours were under reported.

10 23. At all relevant times, the Defendants failed to compensate Leon and all of the other
11 Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a
12 week, and for the first eight hours of the seventh day of the workweek. As stated above,
13 Defendants did not Plaintiff and the Class Members with all of hours they worked. They worked
14 in excess of eight hours per day and 40 hours per week, so the under reported hours should have
15 been paid at overtime premium rates of pay.

16 24. At all relevant times, the Defendants failed to provide Leon and all of the other
17 Class Members with all timely 30-minute, off-duty meal periods. As stated above, Defendants
18 required Plaintiff and the Class Members to work through their meal periods though the
19 Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff
20 and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and
21 the Class Members. The Defendants also failed to pay premium wages for days on which they
22 failed to provide Leon and all of the other Class Members with meal periods as required by law.

23 25. At all relevant times, the Defendants failed to authorize and permit Leon and all
24 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
25 or major portion thereof. Defendants required Plaintiff and the Class Members to work through
26 their rest breaks. The Defendants also failed to pay premium wages for days on which they failed
27 to authorize and permit Leon and all of the other Class Members to take rest breaks as required
28 by law.



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1 26. At all relevant times, the Defendants unlawfully deducted wages belonging to
2 Leon and all of the other Class Members. As stated above, Defendants required Plaintiff and the
3 Class Members to work through their meal periods though the Defendants did not include this
4 time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or
5 removed this time from the timesheets they filled out for Plaintiff and the Class Members.

6 27. At all relevant times, the Defendants failed to issue to Leon and all of the other
7 Class Members complete and accurate wage statements that state all hours worked at the correct
8 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
9 the wage statements they issued to Leon and all of the other Class Members the unpaid wages
10 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
11 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
12 wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, and related
13 information.

14 28. At all relevant times, the Defendants also failed to timely pay Leon and all of the
15 other Class Members all earned wages as described above during and at the conclusion of
16 employment.

17 29. At all relevant times, the Defendants failed to maintain accurate employee records
18 of Leon and all of the other Class Members.

19 30. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
20 unlawful practices and policies, Plaintiff and the Class Members were:

- 21 A. Not provided with all off duty meal periods;
- 22 B. Not authorized and permitted to take all rest break periods;
- 23 C. Not paid one hour's pay for each workday in which Defendants failed to
24 authorize and permit them to take one or more timely rest periods;
- 25 D. Not paid one hour's pay for each workday in which Defendants failed to
26 provide them with one or more timely meal periods;
- 27 E. Not paid all wages earned, including, but not limited to, minimum, regular,
28 and overtime wages for work performed while clocked out;



1 F. Not provided with accurate and complete wage statements; and
2 G. Not timely paid all earned and unpaid wages at the time their employment
3 ended.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
6 **CORRECT RATES**

7 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

8 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

9 31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 32. At all relevant times, Plaintiff and the Class Members have been non-exempt
11 employees entitled to the protections of both the Labor Code and the Wage Order.

12 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
13 **THE CORRECT RATES OF PAY**

14 33. Section 2 of the Wage Order defines “hours worked” as “the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so.”

17 34. Section 3 of the Wage Order states:

18 The following overtime provisions are applicable to employees 18 years of age or
19 over and to employees 16 or 17 years of age who are not required by law to attend
20 school and are not otherwise prohibited by law from engaging in the subject work.
21 Such employees shall not be employed more than eight (8) hours in any workday
22 or more than 40 in a workweek unless the employee receives one and one half
23 (1½) times such employee’s regular rate of pay for all hours worked over 40 hours
24 in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment
25 beyond eight (8) hours in any workday or more than six (6) days in any workweek
26 is permissible provided the employee is compensated for such overtime at not less
27 than:

28 (a) One and one-half (1½) times the employee’s regular rate of pay for all
hours worked in excess of eight (8) hours up to and including twelve (12)
hours in any workday, and for the first eight (8) hours worked on the
seventh (7th) consecutive day of work in a workweek;

(b) Double the employee’s regular rate of pay for all hours worked in excess
of 12 hours in any workday and for all hours worked in excess of eight (8)



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hours on the seventh (7th) consecutive day of work in a workweek.

- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

35. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

36. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

37. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

38. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

39. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

40. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22



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1 Cal.4th 575, 585.)

2 41. With respect to overtime wages, the regular rate of pay under California law must
3 include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
4 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g.,*
5 *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses
6 must be included in the regular rate whether they are the sole source of the employee’s
7 compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117,
8 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

9 42. At all relevant times during their work for the Defendants, Leon and all of the other
10 Class Members earned monetary incentives, subsistence pay, travel subsistence, health insurance
11 pay, and related compensation during pay periods in which they worked hours qualifying for
12 overtime premium pay rates. However, the Defendants failed to pay to Leon and all of the other
13 Aggrieved Employees overtime premium pay on such monetary incentives, subsistence pay,
14 travel subsistence, health insurance pay, and related compensation.

15 43. At all relevant times during the applicable limitations period, Defendants failed to
16 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
17 minimum, regular, overtime wages for all minimum, regular, overtime hours, respectively, that
18 they worked at the correct rates of pay.

19 44. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
20 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
21 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
22 rates of pay as required by California law.

23 **B. UNLAWFUL WAGE DEDUCTIONS**

24 45. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
25 receive from an employee any part of wages theretofore paid by said employer to said employee.”
26 The Defendants deducted wages from the wages earned by Leon and all of the other Class
27 Members for in violation of Labor Code § 221.

28 46. At all relevant times, Defendants required Plaintiff and the Class Members to work



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1 through their meal periods though the Defendants did not include this time as time worked on the
2 timesheets they filled out for Plaintiff and the Class Members, or removed this time from the
3 timesheets they filled out for Plaintiff and the Class Members.

4 47. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
6 deduction of wages belonging to Plaintiff and the other Class Members in violation of California
7 law.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **Lab. Code §§ 226.7 and 512**

11 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

12 48. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

13 49. At all relevant times during the applicable limitations period, Plaintiff and the
14 Class Members have been employees of Defendants and entitled to the benefits and protections
15 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

16 50. In relevant part, California Labor Code § 1198 states:

17
18 The maximum hours of work and the standard conditions of labor fixed by the
19 commission shall be the maximum hours of work and the standard conditions of
20 labor for employees. The employment of any employee for longer hours than those
21 fixed by the order or under conditions of labor prohibited by the order is unlawful.

22 51. In relevant part, In relevant part, California Labor Code § 512 states:

23
24 An employer shall not employ an employee for a work period of
25 more than five hours per day without providing the employee with
a meal period of not less than 30 minutes, except that if the total
work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the
employer and employee.

26
27 An employer shall not employ an employee for a work period of
28 more than 10 hours per day without providing the employee with
a second meal period of not less than 30 minutes, except that if the
total hours worked is no more than 12 hours, the second meal



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period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

52. In relevant part, Section 10 of the Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. (See Labor Code Section 512.)

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (See Labor Code Section 512.)

(C) In all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

(D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.

(F) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

53. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of



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Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

54. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

55. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. As stated above, Defendants required Plaintiff and the Class Members to work through their meal periods though the Defendants did not include this time as time worked on the timesheets they filled out for Plaintiff and the Class Members, or removed this time from the timesheets they filled out for Plaintiff and the Class Members.

56. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

57. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

58. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



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1 suffered damages in amounts subject to proof to the extent they were not paid additional wages
2 owed for all meal periods not provided to them.

3 59. By reason of the above, Plaintiff and the Class Members are entitled to premium
4 wages for workdays in which one or more meal periods were not provided to them pursuant to
5 California Labor Code § 226.7.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

8 **Lab. Code § 226.7**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

10 60. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

11 61. At all relevant times during the applicable limitations period, Plaintiff and the
12 Class Members have been employees of Defendants and entitled to the benefits and protections
13 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

14 62. In relevant part, California Labor Code § 1198 states:

15
16 The maximum hours of work and the standard conditions of labor
17 fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment
19 of any employee for longer hours than those fixed by the order or
20 under conditions of labor prohibited by the order is unlawful.

21 63. In relevant part, Section 11 of the Wage Order states:

22 **Rest Periods:**

23 (A) Every employer shall authorize and permit all employees to take
24 rest periods, which insofar as practicable shall be in the middle of
25 each work period. Nothing in this provision shall prevent an
26 employer from staggering rest periods to avoid interruption in the
27 flow of work and to maintain continuous operations, or from
28 scheduling rest periods to coincide with breaks in the flow of work
that occur in the course of the workday. The authorized rest period
time shall be based on the total hours worked daily at the rate of
ten (10) minutes net rest time for every four (4) hours worked, or
major fraction thereof. Rest periods shall take place at employer
designated areas, which may include or be limited to the



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employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

64. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

65. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

66. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the



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1 Wage Order.

2 67. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
3 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
4 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
5 Plaintiff and the other Class Members to take timely rest periods.

6 68. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
8 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
9 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
10 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
11 to authorize and permit them to take 10-minute rest periods every four hours worked or major
12 fraction thereof.

13 69. Plaintiff is informed and believes and thereon alleges that, at all relevant times
14 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
15 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
16 take all rest breaks required by California law.

17 70. Defendants failed to provide Plaintiff with all required rest breaks in accordance
18 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
19 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
20 which resulted in Defendants not providing the Class Members with all rest breaks required by
21 California law.

22 71. Defendants failed to pay Plaintiff the additional wages required by California
23 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
24 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
25 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
26 Class Members with additional wages for all rest breaks not provided to them as required by
27 California Labor Code § 226.7.

28 72. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



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1 suffered damages in amounts subject to proof to the extent they were not paid additional wages
2 owed for all rest breaks not provided to them.

3 73. By reason of the above, Plaintiff and the Class Members are entitled to premium
4 wages for workdays in which one or more rest breaks were not provided to them pursuant to
5 California Labor Code § 226.7.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

8 **Lab. Code § 226**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

10 74. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 75. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
12 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
13 statement showing:

- 14 1. Gross wages earned;
- 15 2. Total hours worked by the employee, except for any employee
16 whose compensation is solely based on a salary and who is exempt
17 from payment of overtime under subdivision (a) of Section 515 or
18 any applicable order of the Industrial Welfare Commission;
- 19 3. The number of piece rate units earned and any applicable piece rate
20 if the employee is paid on a piece-rate basis;
- 21 4. All deductions, provided that all deductions made on written
22 orders of the Employee may be aggregated and shown as one item;
- 23 5. Net wages earned;
- 24 6. The inclusive dates of the period for which the employee is paid;
- 25 7. The name of the employee and his or her social security number,
26 except that by January 1, 2008, only the last four digits of his or
27 her social security number or an employee identification number
28 other than a social security number may be shown on the itemized
statement;
8. The name and address of the legal entity that is the employer and,



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1 if the employer is a farm labor contractor, as defined in subdivision
2 (b) of Section 1682, the name and address of the legal entity that
3 secured the services of the employer; and

- 4 9. All applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the
6 employee.

7 Lab.Code § 266(a).

8 76. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
9 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
10 the employer fails to provide accurate and complete information as required by California Labor
11 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
12 alone one or more of the following:

13 A. The amount of the gross wages or net wages paid to the employee during
14 the pay period or any of the other information required to be provided on the itemized wage
15 statement pursuant to California Labor Code § 226(a);

16 B. Which deductions the employer made from gross wages to determine the
17 net wages paid to the employee during the pay period;

18 C. The name and address of the employer and, if the employer is a farm labor
19 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
20 and address of the legal entity that secured the services of the employer during the pay period;

21 D. The name of the employee and only the last four digits of his or her
22 social security number or an employee identification number other than a social security number;
23 and

24 E. The number of piece-rate units earned and the piece rate.

25 77. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
26 means a reasonable person would be able to readily ascertain the information without reference
27 to other documents or information.

28 78. As alleged herein, at all relevant times during the applicable limitations period,
Defendants violated California Labor Code section 226 because they did not properly and



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1 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
2 the corresponding number of hours worked at each rate by the employee and other requirements
3 of California Labor Code section 226. Defendants failed to state in the wage statements they
4 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
5 including, but not limited to, regular and overtime wages for work they performed off-the-clock
6 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
7 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
8 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
9 Members that state all minimum wages earned, all regular wages earned, all overtime wages
10 earned, all meal period premium wages earned, all rest break premium wages earned, all
11 unlawfully deducted wages, gross wages earned, net wages earned.

12 79. Defendants' failure to provide Plaintiff and the other Class Members with accurate
13 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
14 the other Class Members with accurate wage statements but intentionally provided wage
15 statements that Defendants knew were not accurate.

16 80. Similarly, section 6(B) of the Wage Order states

17 Every employer who has control over wages, hours, or working conditions shall
18 semimonthly or at the time of each payment of wages furnish each employee an
19 itemized statement in writing showing:

- 20 (1) all deductions;
- 21 (2) the inclusive dates of the period for which the employee is paid;
- 22 (3) the name of the employee or the employee's social security number; and
- 23 (4) the name of the employer, provided all deductions made on written orders
24 of the employee may be aggregated and shown as one item. (See Labor
25 Code Section 226.)

26 This information shall be furnished either separately or as a detachable part of the
27 check, draft, or voucher paying the employee's wages.

28 81. As a result of being provided with inaccurate wage statements by Defendants,



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1 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
2 wage statements were violated and they were misled about the amount of wages they had actually
3 earned and were owed. In addition, the absence of accurate information on their wage statements
4 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
5 and mathematical computations to determine the amounts of wages owed, has caused difficulty
6 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
7 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
8 and the other Class Members were not able to ascertain from the wage statements whether
9 Defendants complied with their obligations under California Labor Code section 226(a).

10 **FIFTH CAUSE OF ACTION**

11 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

12 **(Lab. Code §§ 201, 202, and 203)**

13 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

14 82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 83. At all relevant times during the applicable limitations period, Plaintiff and the
16 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
17 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

18 84. Labor Code § 201 provides that all earned and unpaid wages of an employee who
19 is discharged are due and payable immediately at the time of discharge.

20 85. Labor Code § 202 provides that all earned and unpaid wages of an employee who
21 quits after providing at least 72-hours notice before quitting are due and payable at the time of
22 quitting and that all earned and unpaid wages of an employee who quits without providing at least
23 72-hours notice before quitting are due and payable within 72 hours.

24 86. The Defendants failed to pay Leon and all of the other Class Members whose
25 employment ended all of the earned but unpaid wages described above by the conclusion of their
26 employment with Defendants, including minimum wages, regular wages, overtime wages,
27 unprovided meal period premium wages, unprovided rest break premium wages, and deducted
28 wages.



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1 comparable money and property.

2 94. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
3 Class Members are entitled to restitution of all monies rightfully belonging to them that
4 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
5 practices.

6 95. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
7 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
8 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

9 **SEVENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES**

11 **(By Plaintiff and the Class against all Defendants)**

12 96. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 97. The "Aggrieved Employees" are all members of the Class defined above who
14 Defendants employed during the period beginning December 23, 2020 and ending on the date
15 that final judgment is entered in this action.

16 98. Labor Code § 204 states

17 (d) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned
18 by any person in any employment are due and payable twice during each calendar month,
19 on days designated in advance by the employer as the regular paydays. Labor performed
20 between the 1st and 15th days, inclusive, of any calendar month shall be paid for between
21 the 16th and the 26th day of the month during which the labor was performed, and labor
22 performed between the 16th and the last day, inclusive, of any calendar month, shall be
23 paid for between the 1st and 10th day of the following month. ...

24 (b) (1) Notwithstanding any other provision of this section, all wages
25 earned for labor in excess of the normal work period shall be paid no later than the
26 payday for the next regular payroll period.

27 (2) An employer is in compliance with the requirements of subdivision (a) of
28 Section 226 relating to total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay period are itemized as
corrections on the paystub for the next regular pay period. Any corrections set out
in a subsequently issued paystub shall state the inclusive dates of the pay period
for which the employer is correcting its initial report of hours worked.

(e) ©However, when employees are covered by a collective bargaining agreement that



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provides different pay arrangements, those arrangements shall apply to the covered employees.

(f) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

96. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

97. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

98. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

99. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 221, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation (if found to be neither willful nor intentional) and \$200 for each aggrieved employee for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalty amount set by California Labor Code § 225.5).



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1 C. For violations of California Labor Code § 226(a), two hundred fifty dollars
2 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
3 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
4 California Labor Code § 226.3).

5 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
6 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
7 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
8 established by California Labor Code § 558).

9 E. For violations of California Labor Code § 1197, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
11 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
12 (regardless of whether the initial violations were intentionally committed) (penalty amounts
13 established by California Labor Code § 1197.1).

14 F. For violations of California Labor Code § 1174, five hundred dollars
15 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
16 California Labor Code § 1174.5).

17 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and
18 1198, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
19 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
20 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

21 100. Plaintiff has complied with the procedures for bringing suit specified in California
22 Labor Code § 2699.3. By letter dated December 23, 2021, Plaintiff filed written notice online
23 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
24 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
25 have been violated, including the facts and theories to support the alleged violations. A true and
26 correct copy of the notice to the LWDA dated December 23, 2021 is attached as Exhibit A.
27 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
28 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but



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1 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
2 does not intend to investigate these allegations.

3 101. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
4 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
5 connection with their claims for civil penalties.

6 **V. PRAYER FOR RELIEF**

7 102. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
8 relief and judgment against Defendants as follows:

9 A. An order that the action be certified as a class action with respect to
10 Plaintiff's claims for violations of California law;

11 B. An order that Plaintiff be appointed class representative;

12 C. An order that counsel for Plaintiff be appointed class counsel;

13 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
14 missed rest period and unlawfully deducted wages;

15 E. Liquidated damages;

16 F. Statutory penalties, including waiting time penalties;

17 G. Civil penalties;

18 H. Restitution;

19 I. Declaratory relief;

20 J. Actual damages;

21 K. Pre-judgment interest;

22 L. Costs of suit;

23 M. Reasonable attorneys' fees; and

24 N. Such other relief as the Court deems just and proper.

25 ///

26 ///

27 ///

28 ///



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VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 7, 2022

By: 

DAVID G. SPIVAK,
CAROLINE TAHMASSIAN,
MAYA CHEAITANI, Attorneys for
Plaintiff, JORGE L. LEON, and all
others similarly situated



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EXHIBIT A



SPIVAK LAW

**SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND
EMAIL***

December 23, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Jorge L. Leon / Davis & Roberts

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jorge L. Leon (hereafter “Leon” or “Complainant”) provides notice that Davis & Roberts Construction, Inc., a California corporation, and related entities (collectively “the Davis & Roberts Employers” or “the Employers”) violated his rights and those of all other individuals the Davis & Roberts Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including but not limited to finishers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Leon hereby provides this notice to the Labor & Workforce Development Agency and the Davis & Roberts Employers and their agents and representatives.

At all relevant times, the Davis & Roberts Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies,

throughout California. Leon and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699©.

Statement of Facts

On approximately December 30, 2020, the Davis & Roberts Employers began to employ Leon in Clovis (Fresno County) in the position of laborer. The Davis & Roberts Employers continuously employed him in that capacity until on or about May 21, 2021 when his employment ended.

At all relevant times, the Davis & Roberts Employers issued wages to Leon and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Davis & Roberts Employers classified Leon and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to record other time worked by Leon and the Aggrieved Employees on the timesheets the Davis & Roberts Employers filled out for them. The Davis & Roberts Employers required Leon and the Aggrieved Employees to approve the time sheets regardless of whether their hours were under reported.

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. As stated above, the Davis & Roberts Employers did not credit Leon

and the Aggrieved Employees with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so they under reported hours should have been paid at overtime premium rates of pay.

At all relevant times, the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. As stated above, The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to pay premium wages for days on which failed to provide Leon and all of the other Aggrieved Employees with meal periods as required by law. On those occasions in which the David & Roberts Employers paid a “meal premium” to Leon and the Aggrieved Employees, it was paid at less than the regular rate of pay.

At all relevant times, the Davis & Roberts Employers failed to authorize and permit Leon and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their rest breaks. The Davis & Roberts Employers also failed to pay premium wages for days on which failed to authorize and permit Leon and all of the other Aggrieved Employees to take rest breaks as required by law.

The Davis & Roberts Employers unlawfully deducted wages belonging to Leon and all of the other Aggrieved Employees. As stated above, the Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees.

At all relevant times, the Davis & Roberts Employers failed to issue to Leon and all of the other Aggrieved Employees complete and accurate wage statements

that state all hours worked at the correct rates of pay, and all wages earned. The Davis & Roberts Employers knowingly and intentionally failed to state on the wage statements they issued to Leon and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, and net wages earned.

The Davis & Roberts Employers also failed to timely pay Leon and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Davis & Roberts Employers failed to maintain accurate employee records of Leon and all of the other Aggrieved Employees.

For the reasons stated herein, Leon alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Davis & Roberts Employers failed to authorize and permit Leon and all of the other Aggrieved Employees to take rest breaks in compliance with California law;

- (d) The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the Davis & Roberts Employers failed to provide them with one or more meal periods as required by law;
- (e) The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees at one hour's pay at the regular rate of pay for each day in which the Davis & Roberts Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Davis & Roberts Employers unlawfully deducted wages belonging to Leon and all of the other Aggrieved Employees;
- (g) The Davis & Roberts Employers knowingly and intentionally failed to provide Leon and all of the other Aggrieved Employees with accurate and complete wage statements;
- (h) The Davis & Roberts Employers willfully failed to timely pay Leon and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Davis & Roberts Employers and when their employment ended; and
- (i) The Davis & Roberts Employers failed to maintain accurate employment records pertaining to Leon and all of the other Aggrieved Employees.

Accordingly, Leon now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Davis & Roberts Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis."

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) "Division" means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(C).

At all relevant times during the applicable limitations period, the Davis & Roberts “Employers, Leon, and all of the Aggrieved Employees were covered by the Wage Order because Leon and all of the Aggrieved Employees worked for the Davis & Roberts Employers in construction occupations, including pouring concrete. Accordingly, Leon and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in

excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. The Davis & Roberts Employers also failed to record other time worked by Leon and the Aggrieved Employees on the timesheets the Davis & Roberts Employers filled out for them. The Davis & Roberts Employers required Leon and the Aggrieved Employees to approve the time sheets regardless of whether their hours were under reported.

As stated above, the Davis & Roberts Employers did not credit Leon and the Aggrieved Employees with all of hours they worked. They worked in excess of eight hours per day and 40 hours per week, so they under reported hours should have been paid at overtime premium rates of pay. As stated above, the Davis & Roberts Employers did not credit Leon and the Aggrieved Employees with all of hours they worked. Additionally, the Davis & Roberts Employers include all

forms of hours worked in determining whether Leon and the Aggrieved Employees had worked into overtime hours requiring compensation at overtime premium rates of pay.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Davis & Roberts Employers, Leon and all of the other Aggrieved Employees earned monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Davis & Roberts Employers, Leon failed to pay to Leon and all of the other Aggrieved Employees monetary incentives, subsistence pay, travel subsistence, health insurance pay overtime premium pay on such monetary incentives, subsistence pay, travel subsistence, health insurance pay, and related compensation.

At all relevant times during the applicable limitations period, the Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Leon now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. (See Labor Code Section 512.)
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (See Labor Code Section 512.)
- (C) ...

- (D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with all timely meal periods. The Davis & Roberts Employers denied Leon and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. As stated above, The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their meal periods though the Davis & Roberts Employers did not include this time as time worked on the timesheets they filled out for Leon and the Aggrieved Employees, or removed this time from the timesheets they filled out for Leon and the Aggrieved Employees. Furthermore, the Davis & Roberts Employers failed to pay premium wages for days on which they failed to provide Leon and all of the other Aggrieved Employees with timely meal periods. Accordingly, Leon now seeks civil penalties for these Labor Code violations that the Davis & Roberts Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 11 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.
- (B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the

employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

(d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial

Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Davis & Roberts Employers failed to authorize and permit Leon and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Davis & Roberts Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Davis & Roberts Employers required Leon and the Aggrieved Employees to work through their rest breaks. Moreover, the Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees premium wages on workdays the Davis & Roberts Employers failed to provide Leon and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Leon now seeks civil penalties for these Labor Code violations that the Davis & Roberts Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Similarly, section 7 of the Wage Order states,

No employer shall collect or deduct from any employee any part of the wages that are paid unless such deductions are allowed by law. (See Labor Code Sections 220-226.) No fee shall be charged by the employer or agent of the employer for cashing a payroll check.

The Davis & Roberts Employers deducted wages from the wages earned by Leon and all of the other Aggrieved Employees for and similar deductions in violation of Labor Code § 221, including for time worked during meal periods. Accordingly, Leon seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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 the employee.

Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number; and

- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Davis & Roberts Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Davis & Roberts Employers failed to state in the wage statements they issued to Leon and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Davis & Roberts Employers knowingly and intentionally failed to state on the wage statements they issued to Leon and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, net wages earned, and similar information. Accordingly, Leon seeks civil penalties for the Labor Code violations that the Davis & Roberts Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due

and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages, at the intervals stated above. As a result, the Davis & Roberts Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Leon now seeks civil penalties for the Labor Code violations that the Davis & Roberts Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing

address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the 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.

The Davis & Roberts Employers failed to pay Leon and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Leon, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages and similar forms of compensation. By failing to pay Leon and all of the other Aggrieved Employees as set forth above at the end of employment, the Davis & Roberts Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Leon seeks civil penalties from the Davis & Roberts Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) 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 in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and

complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working

conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Davis & Roberts Employers failed to compensate Leon and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, and net wages earned. As a result, the Davis & Roberts Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Leon and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Leon seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Jorge L. Leon will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this

matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Jorge L. Leon
Walter L. Haines, Esq.

Davis & Roberts Construction, Inc.
c/o Ian B. Wieland, Esq.
Sagaser, Watkins & Wieland PC
5260 N. Palm Ave., Ste. 400
Fresno, CA 93704
ian@sw2law.com

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 15303 Ventura Blvd., Suite
900, Sherman Oaks, CA 91403.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United States
Postal Service. It is the practice that correspondence is deposited with the
United States Postal Service the same day it is submitted for mailing.

9 On Monday, March 07, 2022, I served the foregoing document described as
10 **FIRST AMENDED COMPLAINT** on interested parties by electronic mail, addressed as
follows:

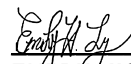
11 Ian B. Wieland, Esq.
12 Sagaser, Watkins & Wieland PC
13 5260 N. Palm Ave., Ste. 400
14 Fresno, CA 93704
ian@sw2law.com
tristan@sw2law.com

15 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
16 electronic service addresses listed above from my electronic service address
emily@spivaklaw.com.

17 EXECUTED on Monday, March 07, 2022, at Los Angeles, California.

18 XXXX (State) I declare under penalty of perjury under the laws of the State
19 of California that the above is true and correct.

20 _____ (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

21
22 
23 _____
24 EMILY HOUNG LY



25 SPIVAK LAW

26 Employee Rights Attorneys

27 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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