

Ronald H. Bae (SBN 186826)
Olivia D. Scharrer (SBN 291470)
Carson M. Turner (SBN 345992)
AEQUITAS LEGAL GROUP
A Professional Law Corporation
1156 E. Green Street, Suite 200
Pasadena, California 91106
Telephone: (213) 674-6080
Facsimile: (213) 674-6081

Attorneys for Plaintiffs MARIO E. RODRIGUEZ
and MARIO A. RODRIGUEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

MARIO ENRIQUE RODRIGUEZ
and MARIO ALONSO RODRIGUEZ,
individually, and on behalf of other members
of the general public similarly situated and on
behalf of other aggrieved employees,

Plaintiffs,

vs.

RT PAINTING, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 34-2022-00318410

[Assigned for all purposes to the Honorable
Lauri Damrell, Dept. 28]

**SECOND AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code
§§ 510, 1194, and 1198 (Failure to Pay
Regular and Overtime Wages);
- (2) Violation of California Labor Code
§§ 226.7 and 512(a) (Failure to Provide
Compliant Meal Periods or Pay Premium
Compensation in Lieu Thereof);
- (3) Violation of California Labor Code
§ 226.7 (Failure to Provide Compliant
Rest Periods or Pay Premium
Compensation in Lieu Thereof);

FILED/ENDORSED

AUG 29 2023

By: G. Galaviz
Deputy Clerk

RECEIVED
MAIN LOBBY DROP BOX
2023 AUG 29 PM 12:48
GDSC COURT HOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

- (4) Violation of California Labor Code §§ 201 – 203 (Failure to Pay Wages Timely Upon Termination);
- (5) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements);
- (6) Violation of California Labor Code § 227.3 (Failure to Pay Vested Vacation Wages);
- (7) Violation of California Business & Professions Code §§ 17200, *et seq.*; and
- (8) Penalties pursuant to California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act).

JURY TRIAL DEMANDED

Plaintiffs MARIO ENRIQUE RODRIGUEZ and MARIO ALONSO RODRIGUEZ, individually and on behalf of all other members of the public similarly situated and as an aggrieved employee pursuant to the Private Attorneys General Act, allege as follows:

THE PARTIES

1. Plaintiff MARIO ENRIQUE RODRIGUEZ (“Plaintiff Mario E. Rodriguez”) is at least 18 years of age and a resident of the County of Sacramento in the State of California.

2. Plaintiff MARIO ALONSO RODRIGUEZ (“Plaintiff Mario A. Rodriguez”) is at least 18 years of age and a resident of the County of Sacramento in the State of California.

3. Defendant RT PAINTING, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and in the State of California.

4. Plaintiffs are unaware of the true names or capacities of defendants sued herein under the fictitious names DOES 1 through 10, but pray for leave to amend and serve such

1 fictitiously named defendants pursuant to California Code of Civil Procedure § 474 once their
2 names and capacities become known.

3 5. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 are
4 the partners, agents, owners, shareholders, managers or employees of RT PAINTING, INC. and
5 were acting on behalf of RT PAINTING, INC. at all relevant times.

6 6. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts
7 and omissions alleged herein were performed by, or are attributable to RT PAINTING, INC. and
8 DOES 1 through 10 (collectively, “Defendants”), each acting as the agent for the other, with legal
9 authority to act on the other’s behalf. The acts of any and all Defendants were in accordance with,
10 and represent the official policy of Defendants.

11 7. At all relevant times herein mentioned, Defendants, and each of them, ratified each
12 and every act or omission complained of herein. At all times herein mentioned, Defendants, and
13 each of them, aided and abetted the acts and omissions of each and all the other Defendants in
14 proximately causing the damages herein alleged.

15 8. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants
16 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
17 occurrences, and transactions alleged herein.

18
19 **JURISDICTION AND VENUE**

20 9. This class action is brought pursuant to California Code of Civil Procedure § 382.
21 The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits
22 of the Superior Court and will be established according to proof at trial. The amount in
23 controversy for each class representative, including claims for compensatory damages and pro rata
24 share of attorneys’ fees, is less than \$75,000.

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

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

12. Venue is proper in this Court because, upon information and belief, one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

CLASS ACTION ALLEGATIONS

13. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure § 382.

14. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

15. Plaintiffs' proposed class consists of and is defined as:

All non-exempt employees who have been employed by Defendants in the State of California within four years prior to April 15, 2022 and the date of final judgment in this lawsuit.

16. Plaintiffs reserve the right to establish additional subclasses as appropriate.

17. There is a well-defined community of interest in the litigation and the class is readily ascertainable:

(a) Numerosity: The members of the class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs at this time, however, the class is estimated to be sufficiently numerous and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

- 1 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
2 protect the interests of each class member with whom they have a well-
3 defined community of interest, and Plaintiffs' claims (or defenses, if any)
4 are typical of all similarly situated employees' as demonstrated herein.
- 5 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately,
6 protect the interests of each class member with whom they have a well-
7 defined community of interest and typicality of claims, as demonstrated
8 herein. Plaintiffs acknowledge that they have an obligation to make
9 known to the Court any relationship, conflicts or differences with any
10 class member. Plaintiffs' attorneys, the proposed class counsel, are well-
11 versed in the rules governing class action discovery, certification, and
12 settlement. Plaintiffs and their counsel have incurred, and throughout the
13 duration of this action, will continue to incur costs and attorneys' fees that
14 have been, are, and will be necessarily expended for the prosecution of
15 this action for the substantial benefit of each class member.
- 16 (d) Superiority: The nature of this action makes the use of class action
17 adjudication superior to other methods. A class action will achieve
18 economies of time, effort and expense as compared with separate lawsuits,
19 and will avoid inconsistent outcomes because the same issues can be
20 adjudicated in the same manner and at the same time for the entire class.
- 21 (e) Public Policy Considerations: Employers in the State of California violate
22 employment and labor laws every day. Current employees are often afraid
23 to assert their rights out of fear of direct or indirect retaliation. Former
24 employees are fearful of bringing actions because they believe their
25 former employers might damage their future endeavors through negative
26 references and/or other means. Class actions provide the similarly situated
27 employees who are not named in the complaint with a type of anonymity
28 that allows for the vindication of their rights at the same time as their

1 privacy is protected.

2 18. There are common questions of law and fact as to the class (and each subclass, if
3 any) that predominate over questions affecting only individual members, including but not limited
4 to:

- 5 (a) Whether Defendants have properly paid Plaintiffs and similarly situated
6 employees minimum wages for all hours worked, as required by
7 California law;
- 8 (b) Whether Defendants have paid Plaintiffs and similarly situated employees
9 for all of their overtime hours at the correct hourly rate, as required by
10 California law;
- 11 (c) Whether Defendants have paid Plaintiffs and similarly situated employees
12 all their prevailing wages and benefits associated with public works
13 projects;
- 14 (d) Whether Defendants have provided Plaintiffs and similarly situated
15 employees with 30-minute, duty-free meal periods within the first five
16 hours of work, and whether Defendants have paid the required premium
17 wages when compliant meal periods were not provided, as required by
18 California law;
- 19 (d) Whether Defendants have provided Plaintiffs and similarly situated
20 employees with net 10-minute rest periods for every four hours worked or
21 major fraction thereof, and whether Defendants have paid the required
22 premium wages when compliant rest periods were not provided, as
23 required by California law;
- 24 (e) Whether Defendants paid Plaintiffs and similarly situated employees all
25 wages owed upon the separation of their employment within the time
26 periods required by California law;
- 27 (f) Whether Defendants provided accurate, itemized wage statements to
28 Plaintiffs and similarly situated employees, as required by California law;

- (g) Whether Defendants failed to pay all vested vacation wages at the time of termination pursuant to California Labor Code § 227.3;
- (h) Whether Defendants' conduct, as described above, was willful or reckless;
- (i) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code §§ 17200, *et seq.*; and
- (j) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

GENERAL ALLEGATIONS

19. At all relevant times set forth herein, Defendants employed Plaintiffs and other similarly situated persons as non-exempt employees who belong to the class as set forth above.

20. Defendants employed Plaintiff MARIO E. RODRIGUEZ as a non-exempt, hourly-paid employee from approximately November 2017 to approximately May 2021. Plaintiff Mario E. Rodriguez worked as a painter. His job was to paint houses, shopping centers, buildings, and other structures.

21. Defendants employed Plaintiff MARIO A. RODRIGUEZ as a non-exempt, hourly-paid employee from approximately November 2016 to approximately August 2020. Plaintiff Mario A. Rodriguez worked as a painter. He worked on residential and commercial projects.

22. Plaintiffs and other similarly situated employees were not paid all their earned regular and overtime wages because Defendants directed, encouraged, or otherwise permitted Plaintiffs and other employees to work off the clock. Defendants regularly understaffed the jobs such that Plaintiffs and other employees were forced to skip meal and rest periods, as well as work past the scheduled shift end time, to finish the jobs. These off-the-clock hours worked were not compensated. Plaintiffs and other employees were not allowed to record these additional times on their timesheets. In addition, Plaintiffs and other employees worked on public works projects for which they were not compensated with the correct prevailing wages and benefits.

23. Further, Plaintiffs and other similarly situated employees were paid non-discretionary bonuses for doing good work. These bonuses were not factored into their overtime

1 rate for purposes of paying overtime and meal and rest break premiums.

2 24. Defendants also failed to pay employees for all of the time recorded on their
3 timesheets. For example, there are instances where double time was recorded (i.e., 13 hours per
4 day), but employees were not paid for these hours at twice their regular rate, or at all. As a further
5 example, Plaintiff Mario E. Rodriguez was not paid at all for 2 overtime hours in the week ending
6 on May 19, 2021. His timesheet for this week shows that he worked 8 hours per day, Monday
7 through Saturday. His supervisor only approved 6 hours of pay for Saturday. As a result, Plaintiff
8 Mario E. Rodriguez was shorted 2 hours of pay.

9 25. Plaintiffs and other similarly situated employees were not provided with a
10 compliant 30-minute, duty-free meal period. They were not able to take duty-free meal breaks of
11 at least 30 minutes for every 5 hours of work. Employees regularly suffered from late, short,
12 and/or missed meal periods because Defendants understaffed the job with insufficient number of
13 employees such that employees were forced to cut short or forego their meal periods to try to
14 finish the jobs to meet Defendants' deadlines. Defendants did not pay meal period premium
15 wages to Plaintiffs and similarly situated employees when compliant meal periods were not
16 provided.

17 26. Plaintiffs and similarly situated employees were not provided with compliant rest
18 periods in violation of California Labor Code §§ 226.7. Plaintiffs and similarly situated
19 employees were unable to take net 10 minutes of rest period because of reasons described in ¶ 23,
20 *supra*. Defendants did not pay rest period premium wages to Plaintiffs and similarly situated
21 employees when compliant rest periods were not provided.

22 27. Defendants did not pay Plaintiffs and similarly situated employees all wages owed
23 upon the separation of their employment, including unpaid regular/overtime wages, prevailing
24 wages, and bonuses.

25 28. Defendants did not provide Plaintiffs and similarly situated employees with
26 accurate itemized wage statements, as required by California Labor Code § 226(a), because the
27 wage statements provided by Defendants fail to accurately state Plaintiffs' and similarly situated
28 employees' total hours worked and the corresponding hourly rates as a result of the failure to pay

1 regular and overtime time wages described herein.

2 29. Defendants failed to pay all accrued vacation wages to Plaintiffs and other similarly
3 situated employees upon the separation of their employment with Defendants in violation of
4 California Labor Code § 227.3.

5 30. Defendants continue to employ non-exempt employees, who belong to the class as
6 set forth above, within California.

7 31. Plaintiffs are informed and believe, and thereon allege, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
9 advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and similarly situated employees were entitled to receive
13 minimum wage for all hours worked as well as overtime pay at one-and-a-half times the regular
14 rate of pay, but that Plaintiffs and similarly situated employees were not paid all their hours
15 worked and/or at the correct overtime rate.

16 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that Plaintiffs and similarly situated employees were entitled to receive
18 prevailing wages and related benefits when working on public works projects, but that Defendants
19 failed to pay the appropriate amount of prevailing wages and related benefits.

20 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and similarly situated employees were entitled to receive all
22 meal periods as required by California law, or payment of one additional hour of pay at the regular
23 rate of pay when a compliant meal period was not provided.

24 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and similarly situated employees were entitled to receive all rest
26 periods as required by California law, or payment of one additional hour of pay at the regular rate
27 of pay when a compliant rest period was not provided.

28 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs and similarly situated employees were entitled to timely
2 payment of all wages—including, without limitation, regular and overtime wages, prevailing
3 wages/benefits, premium wages for meal/rest period violations, bonuses, and vacation wages - due
4 upon termination or discharge in accordance with California law.

5 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and similarly situated employees were entitled to receive
7 complete and accurate wage statements in accordance with California law.

8 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and similarly situated employees were entitled to receive all
10 vacation wages earned by Plaintiffs and similarly situated employees in accordance with
11 California law.

12 39. Plaintiffs are informed and believe, and thereon allege, that at all times herein
13 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs
14 and similarly situated employees, and that Defendants had the financial ability to pay such
15 compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to
16 Plaintiffs and similarly situated employees that they were properly compensated, all in order to
17 increase Defendants' profits.

18 40. California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall
19 limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or
20 her] under this article.

21 41. At all times herein set forth, California Private Attorneys General Act, Labor Code
22 §§ 2698, *et seq.* ("PAGA") was applicable to Plaintiff Mario E. Rodriguez' employment by
23 Defendants.

24 42. At all times herein set forth, PAGA provides that any provision of law under the
25 California Labor Code that provides for a civil penalty to be assessed and collected by the Labor
26 and Workforce Development Agency for violations of the California Labor Code may, as an
27 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
28 himself or herself and other current or former employees pursuant to procedures outlined in

1 California Labor Code § 2699.3.

2 43. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
3 employee,” who is any person that was employed by the alleged violator and against whom one or
4 more of the alleged violations was committed.

5 44. Plaintiff Mario E. Rodriguez was employed by Defendants and the alleged
6 violations were committed against him during his time of employment and he is, therefore, an
7 aggrieved employee. Plaintiff Mario E. Rodriguez and other employees are “aggrieved
8 employees” as defined by California Labor Code § 2699(c) in that they are all current or former
9 employees of Defendants, and one or more of the alleged violations were committed against them.

10 45. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
11 including Plaintiff Mario E. Rodriguez, may pursue a civil action arising under PAGA after the
12 following requirements have been met:

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the Labor and Workforce Development Agency and by
15 certified mail to the employer of the specific provisions of this code alleged
16 to have been violated, including the facts and theories to support the alleged
17 violation.
- 18 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
19 employer and the aggrieved employee by certified mail that it does not
20 intend to investigate the alleged violation within sixty (60) calendar days of
21 the postmark date of the Employee’s Notice. Upon receipt of the LWDA
22 Notice, or if the LWDA Notice is not provided within sixty-five (65)
23 calendar days of the postmark date of the Employee’s Notice, the aggrieved
24 employee may commence a civil action pursuant to California Labor Code
25 § 2699 to recover civil penalties in addition to any other penalties to which
26 the employee may be entitled.
- 27 (c) On December 14, 2021, Plaintiff Mario E. Rodriguez provided the requisite
28 written notice by online filing to the LWDA and by certified mail to

Defendant, informing them of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. As of the filing date of this complaint, Plaintiff Mario E. Rodriguez and his counsel have not received any response from the LWDA.

46. Plaintiff Mario E. Rodriguez has satisfied the administrative prerequisites under California Labor Code § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code §§ 201, 202, 226, 226.7, 227.3, 510, 512, 1194 and 1198.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510, 1194, and 1198

(Against All Defendants)

47. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 46.

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

49. During the relevant time period, Plaintiffs and similarly situated employees consistently worked in excess of eight (8) hours in a day and/or in excess of forty (40) hours in a week.

50. California Labor Code § 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at minimum wage for all hours worked and at an applicable overtime rate of pay for all overtime hours worked.

51. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and similarly situated employees employed by Defendants, and

1 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
2 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than
3 forty (40) hours in a workweek.

4 52. Plaintiffs and other similarly situated employees were not paid all their earned
5 regular and overtime wages because Defendants directed, encouraged, or otherwise permitted
6 Plaintiffs and other employees to work off the clock. Defendants regularly understaffed the jobs
7 such that Plaintiffs and other employees were forced to skip meal and rest periods, as well as work
8 past the scheduled shift end time, to finish the jobs. These off-the-clock hours worked were not
9 compensated. Plaintiffs and other employees were not allowed to record these additional times on
10 their timesheets. In addition, Plaintiffs and other employees worked on public works projects for
11 which they were not compensated with the correct prevailing wages and benefits.

12 53. Further, Plaintiffs and other similarly situated employees were paid non-
13 discretionary bonuses for doing good work. These bonuses were not factored into their overtime
14 rate for purposes of paying overtime and meal and rest break premiums.

15 54. Defendants also failed to pay employees for all of the time recorded on their
16 timesheets. For example, there are instances where double time was recorded (i.e., 13 hours per
17 day), but employees were not paid for these hours at twice their regular rate, or at all. As a further
18 example, Plaintiff Mario E. Rodriguez was not paid at all for 2 overtime hours in the week ending
19 on May 19, 2021. His timesheet for this week shows that he worked 8 hours per day, Monday
20 through Saturday. His supervisor only approved 6 hours of pay for Saturday. As a result, Plaintiff
21 Mario E. Rodriguez was shorted 2 hours of pay.

22 55. Defendants' failure to pay Plaintiffs' and similarly situated employees' regular and
23 overtime wages violates the provisions of California Labor Code §§ 510, 1194 and 1198, and is
24 therefore unlawful.

25 56. Plaintiffs and similarly situated employees are entitled to recover unpaid wages and
26 such general and special damages as may be appropriate and interest thereon.

27 57. Pursuant to California Labor Code § 1194, Plaintiffs and similarly situated
28 employees are entitled to recover their unpaid overtime compensation, as well as interest, costs,

1 and attorneys' fees.

2
3 **SECOND CAUSE OF ACTION**

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

5 **(Against All Defendants)**

6 58. Plaintiffs incorporate by reference and re-allege as if fully stated herein the
7 material allegations set out in paragraphs 1 through 57.

8 59. At all relevant times, the applicable IWC Wage Order and California Labor Code
9 §§ 226.7 and 512(a) were applicable to Plaintiffs' and similarly situated employees' employment
10 by Defendants.

11 60. At all relevant times, California Labor Code § 226.7 provides that no employer
12 shall require an employee to work during any meal period mandated by an applicable order of the
13 California IWC.

14 61. At all relevant times, the applicable IWC Wage Order and California Labor Code §
15 512(a) provide that an employer may not require, cause or permit an employee to work for a
16 period of more than five (5) hours per day without providing the employee with an uninterrupted
17 meal period of not less than thirty (30) minutes, except that if the total work period per day of the
18 employee is not more than six (6) hours, the meal period may be waived by mutual consent of
19 both the employer and the employee.

20 62. At all relevant times, the applicable IWC Wage Order and California Labor Code
21 section 512(a) further provide that an employer may not require, cause or permit an employee to
22 work for a period of more than ten (10) hours per day without providing the employee with a
23 second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours
24 worked is not more than twelve (12) hours, the second meal period may be waived by mutual
25 consent of the employer and the employee only if the first meal period was not waived.

26 63. During the relevant time period, Plaintiffs and similarly situated employees who
27 were scheduled to work for a period of time no longer than six (6) hours, and who did not waive
28 their legally-mandated meal periods by mutual consent, were required to work for periods longer

1 than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

2 64. During the relevant time period, Plaintiffs and similarly situated employees who
3 were scheduled to work for a period of time in excess of six (6) hours were required to work for
4 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
5 minutes.

6 65. Plaintiffs and other similarly situated employees were not provided with a
7 compliant 30-minute, duty-free meal period. They were not able to take duty-free meal breaks of
8 at least 30 minutes for every 5 hours of work. Employees regularly suffered from late, short,
9 and/or missed meal because Defendants understaffed the job with insufficient number of
10 employees such that employees were forced to cut short or forego their meal periods to try to
11 finish the jobs to meet Defendants' deadlines. Defendants did not pay meal period premium
12 wages to Plaintiffs and similarly situated employees when compliant meal periods were not
13 provided.

14 66. During the relevant time period, Defendants failed to pay Plaintiffs and similarly
15 situated employees the full meal period premium due for non-compliant meal periods pursuant to
16 California Labor Code § 226.7.

17 67. Defendants' conduct violates the applicable IWC Wage Orders and California
18 Labor Code §§ 226.7 and 512(a).

19 68. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b),
20 Plaintiffs and similarly situated employees are entitled to recover from Defendants one additional
21 hour of pay at the employees' regular hourly rate of compensation for each work day that a
22 compliant meal period was not provided.

23
24 **THIRD CAUSE OF ACTION**

25 **Violation of California Labor Code § 226.7**

26 **(Against All Defendants)**

27 69. Plaintiffs incorporate by reference and re-allege as if fully stated herein the
28 material allegations set out in paragraphs 1 through 68.

70. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code § 226.7 were applicable to Plaintiffs' and similarly situated employees' employment by Defendants.

71. At all relevant times, California Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

72. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

73. During the relevant time period, Defendants required Plaintiffs and similarly situated employees to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof.

74. Plaintiffs and similarly situated employees were not provided with compliant rest periods in violation of California Labor Code §§ 226.7. Plaintiffs and similarly situated employees were unable to take net 10 minutes of rest period because of reasons described in ¶ 23, *supra*. Defendants did not pay rest period premium wages to Plaintiffs and similarly situated employees when compliant rest periods were not provided.

75. During the relevant time period, Defendants failed to pay Plaintiffs and similarly situated employees the full rest period premium due for non-compliant rest periods pursuant to California Labor Code § 226.7.

76. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code § 226.7.

77. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b), Plaintiffs and similarly situated employees are entitled to recover from Defendants one additional hour of pay at the employee's regular hourly rate of compensation for each work day that the rest

1 period was not provided.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 201, 202 and 203**

5 **(Against All Defendants)**

6 78. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material
7 allegations set out in paragraphs 1 through 77.

8 79. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if
9 an employer discharges an employee, the wages earned and unpaid at the time of discharge are
10 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
11 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
12 unless the employee has given seventy-two (72) hours previous notice of his or her intention to
13 quit, in which case the employee is entitled to his or her wages at the time of quitting.

14 80. The unpaid wages owed to Plaintiffs and putative similarly situated employees at
15 the time of termination of their employment include unpaid regular/overtime wages, prevailing
16 wages, premium wages for non-compliant meal/rest periods, and bonuses as set forth herein.

17 81. Defendants' failure to pay Plaintiffs and those similarly situated employees who are
18 no longer employed by Defendants their wages earned and unpaid at the time of discharge, or
19 within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California
20 Labor Code §§ 201, 202 and 203.

21 82. All California employers know or should know that employees must be paid for all
22 time spent under the employer's control and that overtime wages are paid at one and a half times
23 the regular rate of pay. Defendant's failure to abide by these well-established laws is willful and
24 not in good faith.

25 83. California Labor Code § 203 provides that if an employer willfully fails to pay
26 wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as
27 a penalty from the due date, and at the same rate until paid or until an action is commenced; but
28 the wages shall not continue for more than thirty (30) days.

84. Plaintiffs and similarly situated employees are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

FIFTH CAUSE OF ACTION

Violation of California Labor Code § 226(a)

(Against All Defendants)

85. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 84.

86. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing the following information: (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.

87. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements because the wage statements provided by Defendants fail to accurately state Plaintiffs' and similarly situated employees' total hours worked and the corresponding hourly rates as a result of the failure to pay regular and overtime time wages described herein.

1 88. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs
2 and similarly situated employees have suffered injury and damage to their statutorily-protected
3 rights.

4 89. Specifically, Plaintiffs and other similarly situated employees have been injured by
5 Defendants' intentional violation of California Labor Code § 226(a) because they were denied
6 both their legal right to receive, and their protected interest in receiving, accurate, itemized wage
7 statements under California Labor Code § 226(a). Plaintiffs and other similarly situated
8 employees have been injured by Defendants' intentional violation of California Labor Code §
9 226(a) in that it has caused confusion over whether they had received all of the wages owed them,
10 in addition to their difficulty and expense in reconstructing pay records and making mathematical
11 computations to analyze whether the wages paid them did in fact compensate them for all hours
12 worked

13 90. Furthermore, Labor Code § 226(e)(2)(B) provides that an employee is deemed to
14 suffer injury if the wage statement fails to accurately and completely provide certain pieces of
15 information and the employee cannot promptly and easily determine such information from the
16 wage statement alone. In relevant part, Labor Code § 226(e)(2)(B) provides that an employee is
17 deemed to suffer injury if the wage statement does not accurately and completely state the total
18 number of hours worked by the employee, and all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate.

20 91. Plaintiffs and similarly situated employees are entitled to recover from Defendants
21 the greater of their actual damages caused by Defendants' failure to comply with California Labor
22 Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

23 92. Plaintiffs and similarly situated employees are also entitled to injunctive relief to
24 ensure compliance with this section, pursuant to California Labor Code § 226(g).

25 ///

26 ///

27 ///

28 ///

SIXTH CAUSE OF ACTION

Violation of California Labor Code § 227.3

(Against All Defendants)

93. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 92.

94. At all material times set forth herein, California Labor Code § 227.3 provides that unless otherwise stipulated by a collective bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, all vested vacation must be paid to the employee.

95. Defendants failed to pay accrued vacation wages to Plaintiffs and other similarly situated employees upon the separation of their employment with Defendants in violation of California Labor Code § 227.3.

96. As a result of Defendants' violation of California Labor Code § 227.3, Plaintiffs and other class members have suffered injury and damage to their statutorily-protected rights.

97. Plaintiffs and class members entitled to recover reasonable attorneys' fees and costs pursuant to California Labor Code § 218.5, as well as interest pursuant to California Labor Code § 218.6.

SEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.*

(Against All Defendants)

98. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 97.

99. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, other similarly situated employees, and to the general public. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

100. Defendants' activities, as alleged herein, are violations of California law, and

1 constitute unlawful business acts and practices in violation of California Business & Professions
2 Code §§ 17200, *et seq.*

3 101. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
4 predicated on the violation of any state or federal law. In this case, Defendants' policy and
5 practice of not paying all minimum and overtime wages due violates California Labor Code §§
6 510, 1194, and 1198; Defendants' policy and practice of not paying prevailing wages and related
7 benefits on public works projects violates California Labor Code §§ 1720, *et seq.* Defendants'
8 policy and practice of requiring Plaintiffs and similarly situated employees to work through their
9 meal and rest periods without paying them proper compensation violates California Labor Code
10 §§ 226.7 and 512(a); Defendants' policy and practice of not timely paying all wages owed to
11 Plaintiffs and other similarly situated employees upon resignation or termination violates
12 California Labor Code §§ 201, 202, and 203; Defendants' policy and practice of failing to provide
13 accurate itemized wage statements violate California Labor Code § 226; and Defendants' policy
14 and practice of failing to pay all vacation wages earned violate California Labor Code § 227.3.

15 102. Plaintiffs and putative similarly situated employees have been personally injured by
16 Defendants' unlawful business acts and practices as alleged herein, including but not necessarily
17 limited to the loss of money and/or property.

18 103. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiffs
19 and putative similarly situated employees are entitled to restitution of the wages withheld and
20 retained by Defendants during a period that commences four years prior to the filing of this
21 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
22 Plaintiffs and similarly situated employees; an award of attorneys' fees pursuant to California
23 Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

24 ///

25 ///

26 ///

27 ///

28 ///

EIGHTH CAUSE OF ACTION

Penalties pursuant to California Labor Code §§ 2698, *et seq.*

(Private Attorneys General Act)

(Against all Defendants)

104. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 103.

105. At all times herein set forth, PAGA was applicable to Plaintiffs' employment by Defendants.

106. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to procedures outlined in California Labor Code § 2699.3.

107. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

108. Plaintiff Mario E. Rodriguez was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff Mario E. Rodriguez and other employees are "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

109. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee, including Plaintiff Mario E. Rodriguez, may pursue a civil action arising under PAGA after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories

1 to support the alleged violation.

2 (b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
3 employer and the aggrieved employee by certified mail that it does not
4 intend to investigate the alleged violation within sixty (60) calendar days of
5 the postmark date of the Employee's Notice. Upon receipt of the LWDA
6 Notice, or if the LWDA Notice is not provided within sixty-five (65)
7 calendar days of the postmark date of the Employee's Notice, the aggrieved
8 employee may commence a civil action pursuant to California Labor Code
9 § 2699 to recover civil penalties in addition to any other penalties to which
10 the employee may be entitled.

11 (c) On December 14, 2021, Plaintiff Mario E. Rodriguez provided the requisite
12 written notice by online filing to the LWDA and by certified mail to
13 Defendant, informing them of the specific provisions of the California
14 Labor Code alleged to have been violated, including the facts and theories
15 to support the alleged violations. As of the filing date of this complaint, the
16 LWDA has not responded.

17 110. Plaintiff Mario E. Rodriguez has satisfied the administrative prerequisites under
18 California Labor Code § 2699.3(a) to recover civil penalties against Defendants, in addition to
19 other remedies, for violations of California Labor Code §§ 201, 202, 226, 226.7, 227.3, 510, 512,
20 1194, 1198 and 1720, *et seq.*

21
22 **REQUEST FOR JURY TRIAL**

23 Plaintiffs request a trial by jury.

24
25 **PRAYER FOR RELIEF**

26 Plaintiffs, and on behalf of all others similarly situated, pray for relief and judgment
27 against Defendants, jointly and severally, as follows:

28 ///

As to the First Cause of Action

1. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510, 1194 and 1198 and applicable IWC Wage Orders by willfully failing to pay all wages, including regular and overtime wages, due to Plaintiffs and similarly situated employees;

2. For general unpaid wages at the applicable wage rates and such general and special damages as may be appropriate;

3. For pre-judgment interest on any unpaid wages commencing from the date such amounts were due;

4. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and

5. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

6. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods to Plaintiffs and similarly situated employees;

7. That the Court make an award to the Plaintiffs and similarly situated employees of one (1) hour of pay at each employee's regular rate of compensation for each workday that a compliant meal period was not provided;

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

9. For premiums pursuant to California Labor Code § 226.7(b);

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

11. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

12. That the Court declare, adjudge and decree that Defendants violated California Labor Code § 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest

periods to Plaintiffs and similarly situated employees;

13. That the Court make an award to the Plaintiffs and similarly situated employees of one (1) hour of pay at each employee's regular rate of compensation for each workday that a compliant rest period was not provided;

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

15. For premiums pursuant to California Labor Code § 226.7(b);

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

17. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

18. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay Plaintiffs and similarly situated employees all compensation owed to them at the time of their termination of the employment;

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

20. For statutory penalties pursuant to California Labor Code § 203; and

21. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

22. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders as to Plaintiffs and similarly situated employees, and willfully failed to provide accurate itemized wage statements thereto;

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

24. For statutory penalties pursuant to California Labor Code § 226(e);

25. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g); and

26. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

27. That the Court declare, adjudge and decree that Defendants violated California Labor Code § 227.3 by failing to pay Plaintiffs and class members all earned, accrued and vested vacation wages to terminated employees;

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

29. For reasonable attorneys' fees and costs pursuant to California Labor Code § 218.5;

30. For interest pursuant to California Labor Code § 218.6;

31. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

32. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code §§ 17200, *et seq.* by failing to pay Plaintiffs and similarly situated employees all wages due to them, including regular and overtime wages; failing to provide compliant meal and rest periods to Plaintiffs and similarly situated employees; failing to pay premium wages when compliant meal and rest periods were not provided; failing to timely pay all wages due upon employees' resignation or termination under California Labor Code § 201 – 203; failing to provide Plaintiffs and similarly situated employees with compliant wage statements under California Labor Code § 226; and failing to reimburse business expenses incurred by Plaintiffs and similarly situated employees.

33. For restitution of unpaid wages to Plaintiffs and all similarly situated employees and prejudgment interest from the day such amounts were due and payable;

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

35. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

36. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and

1 37. For such other and further relief as the Court may deem equitable and appropriate.

2 As to the Eighth Cause of Action

3 37. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the
4 amount of \$100 dollars for each violation per pay period for the initial violation and \$200 for each
5 aggrieved employee per pay period for each subsequent violation, plus attorneys' fees and costs;
6 and,

7 38. For such other and further relief as the Court may deem equitable and appropriate.

8
9 Dated: August 28, 2023

AEQUITAS LEGAL GROUP

10
11 By: 

12 RONALD H. BAE

OLIVIA D. SCHARRER

CARSON M. TURNER

13 Attorneys for Plaintiffs MARIO E. RODRIGUEZ
14 and MARIO A. RODRIGUEZ
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18, and my business address is 1156 E. Green Street, Suite 200, Pasadena, California 91106.

On August 28, 2023, I served the document described as **SECOND AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT** on the following interested parties and/or their counsel in this action by the methods noted below:

Ari Hersher
Ryan McCoy
SEYFARTH SHAW LLP
560 Mission Street, 31st Floor
San Francisco, CA 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549
Email(s): ahersher@seyfarth.com
rmccoy@seyfarth.com

Attorneys for Defendant RT PAINTING,
INC.

Steven A. Erkel
SEYFARTH SHAW LLP
400 Capital Mall, Suite 2300
Sacramento, CA 95814
Telephone: (916) 448-0159
Facsimile: (916) 558-4839
Email(s): serkel@seyfarth.com

Attorney for Defendant RT PAINTING,
INC.

- ☐ **(BY FIRST CLASS MAIL):** I caused an envelope containing the above-described document to be deposited in the United States mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ **(BY FACSIMILE):** I sent the above-described document via facsimile to the office of the above addressee(s) at the above-noted fax number(s).
- ☒ **(BY EMAIL):** The above-described document was emailed to the above addressee(s)' email address(es) as full and complete service pursuant to California Code of Civil Procedure § 1010.6(a).
- ☐ **(BY ELECTRONIC SERVICE):** I caused the above-described document to be served electronically via Green Filing (authorized and court-approved Electronic Filing Service Provider).
- ☐ **(BY PERSONAL SERVICE):** I personally served the above-described document to the above addressee(s) on this day.
- ☒ **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 28, 2023, at Pasadena, California.


MICHAELA MURPHY