

1 Jason Whooper (SBN 279972)  
W LAW  
2 1916 3rd Ave  
San Diego, CA 92101  
3 Telephone: (619) 432-2836  
Facsimile: (619) 717-2111  
4 E-mail: jwhooper@wlawinc.com

5 *Counsel for Plaintiffs*

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 JULIE SOLIS; KRISTY BUETTNER; and  
11 ARMANDO MENDEZ,

12 Plaintiffs,

13 v.

14 CALIFORNIA FIRE STOP, INC.; THOMAS  
HIBINSKI; BRIAN LINTNER; and DOES 1-  
15 100, inclusive,

16 Defendants.

Case No.: 37-2022-00003527-CU-OE-NC

**FIRST AMENDED COMPLAINT**

1. Failure to Pay Wages Including Minimum Wages – LC § 1194
2. Failure to Pay Overtime Wages – LC § 1194
3. Failure to Provide Meal Periods – LC §§ 226.7 and 512
4. Failure to Indemnify or Reimburse Business Expenses – LC § 2802
5. Failure to Provide Proper Wage Statements and Keep Records – LC § 226
6. Waiting Time Penalties – LC § 203
7. Unfair Business Practices – BPC § 17200
8. Private Attorneys General Act Claim – LC § 2699

22 Complaint Filed: 01/28/2022

23 Dept.: N-28

24 Judge: Hon. Earl H. Maas, III

Plaintiffs JULIE SOLIS (hereinafter “SOLIS”); KRISTY BUETTNER (hereinafter “BUETTNER”); and ARMANDO MENDEZ (hereinafter “MENDEZ”) (hereinafter collectively referred to as “Plaintiffs”), for causes of action against Defendants CALIFORNIA FIRE STOP, INC. (hereinafter “STOP”; THOMAS HIBINSKI (hereinafter “HIBINSKI”); BRIAN LINTNER (hereinafter “LINTNER”); and DOES 1-100, inclusive (hereinafter collectively referred to as “Defendants”), allege as follows:

## JURISDICTION

1. This action arises out of acts, representations and events occurring throughout California, including within the jurisdiction of the Judicial District of San Diego County.

2. Defendants, at all times mentioned herein, were doing business throughout the State of California, and Plaintiffs are informed and believe that Defendants reside in San Diego County.

3. Whenever in this Complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of their officers, directors, agents, employees, or representatives, who were actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

4. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein as DOES 1-100, inclusive and therefore sues said Defendants (the “Doe Defendants”) by such fictitious names. Plaintiffs will amend this Complaint to plead the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants have been ascertained.

5. Plaintiffs are informed and believe, and thereon allege, that Defendants STOP; HIBINSKI; LINTNER; and DOES 1-100, inclusive, are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that named Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the named Defendants and Doe Defendants are liable to Plaintiffs to the extent of the liability of the Defendants as alleged herein.

1           6.       Plaintiffs are further informed and believe, and thereon allege, that at all times herein  
2 material, STOP and entity Doe Defendants were completely dominated and controlled by  
3 HIBINSKI, LINTNER, and Doe Defendants and each was the alter ego of the other in a single  
4 enterprise. At those times, a unity of interest and ownership between STOP and entity Doe  
5 Defendants on the one hand, and HIBINSKI, LINTNER, and Doe Defendants on the other hand  
6 existed such that the separate personalities of these entities did not in reality exist. Additionally,  
7 Plaintiffs would suffer an inequitable harm if the actions of STOP and entity Doe Defendants were  
8 not treated as the acts of all Defendants. Plaintiffs are further informed and believe, and thereon  
9 allege, that at all relevant times to this action STOP and entity Doe Defendants, *inter alia*, failed to  
10 observe the requisite entity formalities, were inadequately capitalized, and their ownership and  
11 control were inappropriately concentrated in HIBINSKI, LINTNER, and Doe Defendants.

12           7.       Plaintiffs are further informed and believe, and thereon allege, that at all times herein  
13 material, each defendant, was completely dominated and controlled by its co-defendants and each  
14 was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any  
15 conduct by Defendants, such allegations and references shall also be deemed to mean the conduct  
16 of each of the Defendants, acting individually, jointly and severally. Whenever and wherever  
17 reference is made to individuals who are not named as defendants in this Complaint, but were  
18 employees or agents of, such individuals at all relevant times acted on behalf of Defendants named  
19 in this Complaint within the scope of their respective employments.

20           8.       Whenever and wherever reference is made in this Complaint to any conduct by a  
21 defendant or Defendants, such allegations and references shall also be deemed to mean the conduct  
22 of each of the Defendants, acting individually, jointly and severally. Whenever and wherever  
23 reference is made to individuals who are not named as defendants in this Complaint, but were  
24 employees or agents of, such individuals at all relevant times acted on behalf of Defendants named  
25 in this Complaint within the scope of their respective employments.

26                                   **GENERAL ALLEGATIONS**

27           9.       Defendant STOP is a California corporation with its principal offices located in San  
28 Diego County, California. Defendants HIBINSKI and LINTNER acted individually and as officers,

1 agents, owners, and employees of STOP, who caused STOP to fail to pay employee Plaintiffs the  
2 applicable minimum regular rate and overtime wages for all hours worked, failed to timely pay all  
3 earned wages, failed to pay all earned wages upon the end of the employment relationship, failed to  
4 provide meal periods, failed to pay an additional hour of wages for each workday with a missed  
5 meal period, failed to provide compliant wage statements and keep required records, and failed to  
6 indemnify or reimburse business expenses in violation of Industrial Welfare Commission (“IWC”)  
7 Wage Orders and the Labor Code, and are therefore also individually liable pursuant to California  
8 Labor Code sections 558, 558.1, and 1197.1.

9       10. Defendants own and operate a fire stop contracting and installations company that  
10 does business in San Diego County, Orange County, Los Angeles County, and surrounding areas.

11       11. On or about February 11, 2019, Defendants hired MENDEZ as a construction  
12 estimator and project manager. Defendants paid MENDEZ approximately \$23 per hour most  
13 recently. MENDEZ worked approximately 55 hours per workweek for Defendants. However,  
14 Defendants only paid MENDEZ approximately \$23 per hour or less for 40 hours per workweek  
15 regardless of how much overtime MENDEZ WORKED. Defendants explained to MENDEZ that  
16 Defendants did not pay overtime, that Defendants would not be tracking MENDEZ’s actual hours  
17 worked, and that MENDEZ was not supposed to clock in or out with a time keeping system to track  
18 his hours worked. Defendants never paid MENDEZ any overtime.

19       12. On or about January 15, 2020, Defendants hired BUETTNER as an office manager.  
20 Defendants paid BUETTNER approximately \$25 per hour. BUETTNER worked approximately 55  
21 hours per workweek for Defendants. However, Defendants only paid BUETTNER approximately  
22 \$25 per hour for 40 hours per workweek regardless of how much overtime BUETTNER worked.  
23 Defendants explained to BUETTNER that Defendants did not pay overtime, that Defendants would  
24 not be tracking BUETTNER’s actual hours worked, and that BUETTNER was not supposed to  
25 clock in or out with a time keeping system to track her hours worked. Defendants never paid  
26 BUETTNER any overtime. BUETTNER’s claims for unpaid wages are limited to the time period  
27 of when Defendants hired BUETTNER on or about January 15, 2020, until BUETTNER suffered a  
28 leg injury on or about December 24, 2020.

1           13.     On or about July 20, 2020, Defendants hired SOLIS as compliance coordinator.  
2 Defendants paid SOLIS approximately \$25 per hour. SOLIS worked approximately 45 hours per  
3 workweek for Defendants. However, Defendants only paid SOLIS approximately \$25 per hour for  
4 40 hours per workweek regardless of how much overtime SOLIS worked. Defendants explained to  
5 SOLIS that Defendants did not pay overtime, that Defendants would not be tracking SOLIS's actual  
6 hours worked, and that SOLIS was not supposed to clock in or out with a time keeping system to  
7 track her hours worked. Defendants never paid SOLIS any overtime.

8           14.     Defendants also failed to provide Plaintiffs 30-minute uninterrupted off duty meal  
9 periods. Defendants never informed, educated, or trained Plaintiffs that they had a right to receive  
10 those breaks or that they needed to take them. Plaintiffs ate lunch while working during the  
11 occasions when they were able to eat. As a result, Plaintiffs missed 5 meal periods per workweek.  
12 Further, Defendants failed to keep records of meal periods.

13           15.     As a result of all the allegations above and other facts to be discovered, Defendants  
14 failed to provide Plaintiffs compliant wage statements (paystubs) because the wage statements do  
15 not contain all legally required information including, but not limited to, gross wages earned, total  
16 hours actually worked, and all applicable hourly rates in effect and the corresponding number of  
17 hours worked at each hourly rate. Further, Defendants failed to keep all required records regarding  
18 Plaintiffs' employment.

19           16.     Defendants also required BUETTNER to use her own personal cell phone for work  
20 purposes for 2 months such as calls and text messages, until Defendants switched BUETTNER's  
21 cell phone to Defendants' cell phone plan in or around March 2020. Part of the reason BUETTNER  
22 had to use her own personal cell phone was because Defendants only maintained one office phone  
23 in Defendants' building. Defendants never indemnified or reimbursed BUETTNER for those  
24 business expenses claimed here.

25           17.     On or about April 9, 2021, SOLIS resigned from her employment with Defendants.  
26 On or about April 16, 2021, Defendants paid SOLIS approximately \$700.02 for wages by automatic  
27 deposit. Thereafter, Defendants reversed the payment and unlawfully took back the wages already  
28 paid to SOLIS without authorization from SOLIS. On or about December 24, 2020, BUETTNER

1 suffered a leg injury. Sometime thereafter, Defendants terminated BUETTNER's employment or  
2 Defendants considered BUETTNER to have abandoned her employment with Defendants. On or  
3 about November 15, 2021, MENDEZ resigned from his employment with Defendants and  
4 Defendants unlawfully required MENDEZ to sign an illegal release before giving him his  
5 insufficient final paycheck. More than 30 days have passed since Plaintiffs' employment ended and  
6 Defendants have intentionally failed to timely pay Plaintiffs all earned wages, including from the  
7 time when Plaintiffs' employment ended until now. Defendants have unequivocally been put on  
8 notice that Plaintiffs have claims against Defendants for earned and unpaid wages, yet Defendants  
9 continue to willfully refuse and fail to pay Plaintiffs their wages. As a result, Plaintiffs are entitled  
10 to an additional 30 days of daily pay as a waiting time penalty.

11 18. Plaintiffs are informed and believe that Defendants employed many other aggrieved  
12 employees who were also victims of the same unlawful policies and practices which Defendants  
13 perpetrated against Plaintiffs as outlined above and throughout this operative Complaint. Further,  
14 Plaintiffs are informed and believe that many of Defendants current and former employees are also  
15 victims of other violations of wage and hour regulations and the Labor Code, such as independent  
16 contractor misclassification. Finally, on or about January 27, 2022, Plaintiffs filed a Private  
17 Attorneys General Act ("PAGA") claim, LWDA-CM-865135-22, with the Labor and Workforce  
18 Development Agency ("LWDA") and served copies on Defendants by certified mail. A true and  
19 correct copy is attached hereto as Exhibit 1. More than 65 days have passed since then and the  
20 LWDA never provided Plaintiffs notice that the LWDA intended to investigate.

## 21 **FIRST CAUSE OF ACTION**

### 22 **(Failure to Pay Wages Including Minimum Wages – LC § 1194)**

#### 23 **(By all Plaintiffs Against all Defendants)**

24 19. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this  
25 section as though fully set forth herein.

26 20. Pursuant to Labor Code section 200(a), "'Wages' includes all amounts for labor  
27 performed by employees of every description, whether the amount is fixed or ascertained by the  
28 standard time, task, piece, commission basis, or other method of calculation." Pursuant to Labor

1 Code section 1197, “The minimum wage for employees fixed by the commission or by any  
2 applicable state or local law, is the minimum wage to be paid to employees, and the payment of a  
3 lower wage than the minimum so fixed is unlawful.”

4 21. Labor Code section 1194(a), provides that, “...any employee receiving less than the  
5 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to  
6 recover in a civil action the unpaid balance of this minimum wage or overtime compensation,  
7 including interest thereon, reasonable attorney’s fees, and costs of suit.” Pursuant to Labor Code  
8 section 1194.2, “... an employee shall be entitled to recover liquidated damages in an amount equal  
9 to the wages unlawfully unpaid and interest thereon.” Labor Code section 1197.1 specifically states,  
10 in part, as follows: “Any employer or other person acting either individually or as an officer, agent,  
11 or employee of another person who pays or causes to be paid to any employee a wage less than the  
12 minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages,  
13 [and] liquidated damages payable to the employee...”

14 22. BUETTNER estimates she worked approximately 55 hours per workweek and  
15 SOLIS estimates she worked approximately 45 hours per workweek for Defendants. MENDEZ  
16 estimates he worked approximately 55 hours per workweek for Defendants. Plaintiffs were non-  
17 exempt and entitled to at least minimum wage for all hours worked and the applicable overtime rates  
18 for overtime hours for several reasons including, but not limited to, because Defendants paid  
19 Plaintiffs on an hourly basis. However, Defendants paid BUETTNER and SOLIS approximately  
20 only \$25 per hour and MENDEZ a maximum of approximately \$23 per hour for 40 hours per  
21 workweek regardless of how many hours Plaintiffs worked for Defendants in a day or workweek.  
22 As a result, Defendants failed to pay Plaintiffs anything including minimum wage, much less  
23 overtime rates, for overtime hours worked.

24 23. Accordingly, Plaintiffs are entitled to recover the unpaid wages, liquidated damages  
25 equal to the unpaid wages, interest, penalties, attorneys’ fees, and costs pursuant to Labor Code  
26 sections 204, 210, 215, 558.1, 1182.11, 1182.12, 1194, 1194.2, 1194.3, 1197.1, Civil Code section  
27 3289, and the Industrial Welfare Commission’s Wage Orders. BUETTNER explicitly limits the  
28 time scope of her claims.

1           24. Defendants HIBINSKI and LINTNER and DOES 1-100 acted individually and as  
2 officers, agents, owners, and employees of STOP, who caused STOP to fail to pay employee  
3 Plaintiffs the applicable minimum regular and overtime wages, fail to timely pay all earned wages,  
4 fail to pay all earned wages upon separation of employment, fail to provide meal periods, fail to pay  
5 an additional hour of wages for each workday with a missed meal period, fail to provide compliant  
6 wage statements and keep required records, and fail to indemnify or reimburse business expenses  
7 in violation of Industrial Welfare Commission Wage Orders and the Labor Code, and are therefore  
8 also individually liable pursuant to California Labor Code sections 558, 558.1, and 1197.1 et al.

9                                   **SECOND CAUSE OF ACTION**

10                                   **(Failure to Pay Overtime Wages – LC § 1194)**

11                                   **(By all Plaintiffs Against all Defendants)**

12           25. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this  
13 section as though fully set forth herein.

14           26. Pursuant to Labor Code section 200, “wages” includes all amounts for labor  
15 performed by employees of every description, whether the amount is fixed or ascertained by the  
16 standard time, task, piece, commission basis, or other method of calculation. Pursuant to Labor Code  
17 section 1197, payment of a wage less than the minimum wage as delineated by the commission is  
18 unlawful.

19           27. Labor Code section 1194(a), provides that, “...any employee receiving less than the  
20 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to  
21 recover in a civil action the unpaid balance of this minimum wage or overtime compensation,  
22 including interest thereon, reasonable attorney’s fees, and costs of suit.” Pursuant to Labor Code  
23 section 1194.2, “... an employee shall be entitled to recover liquidated damages in an amount equal  
24 to the wages unlawfully unpaid and interest thereon.” Labor Code section 1197.1 specifically states,  
25 in part, as follows: “Any employer or other person acting either individually or as an officer, agent,  
26 or employee of another person who pays or causes to be paid to any employee a wage less than the  
27 minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages,  
28 [and] liquidated damages payable to the employee...”

1           28. Pursuant to the Industrial Welfare Commission Wage Orders and Labor Code  
2 sections 200, 500, 510, 558.1, and 1198, Defendants were required to compensate Plaintiffs for all  
3 overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked  
4 in excess of eight (8) hours in one workday and forty (40) hours in any one workweek, and for the  
5 first eight (8) hours on the seventh consecutive workday in any one workweek; with double (2) time  
6 after eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

7           29. BUETTNER estimates she worked approximately 55 hours per workweek and  
8 SOLIS estimates she worked approximately 45 hours per workweek for Defendants. MENDEZ  
9 estimates he worked approximately 55 hours per workweek for Defendants. Plaintiffs were non-  
10 exempt and entitled to at least minimum wage for all hours worked and the applicable overtime rates  
11 for overtime hours for several reasons including, but not limited to, because Defendants paid  
12 Plaintiffs on an hourly basis. However, Defendants paid BUETTNER and SOLIS approximately  
13 only \$25 per hour and MENDEZ a maximum of approximately \$23 per hour for 40 hours per  
14 workweek regardless of how many hours Plaintiffs worked for Defendants in a day or workweek.  
15 As a result, Defendants failed to pay Plaintiffs anything including minimum wage, much less  
16 overtime rates, for overtime hours worked.

17           30. Accordingly, Plaintiffs are entitled to recover the unpaid overtime wages, interest,  
18 penalties, attorneys' fees, and costs pursuant to Labor Code sections 204, 210, 215, 510, 558.1,  
19 1182.11, 1182.12, 1194, 1194.2, 1194.3, 1197.1, Civil Code section 3289, and the Industrial Welfare  
20 Commission's Wage Orders.

21           31. Defendants HIBINSKI and LINTNER and DOES 1-100 acted individually and as  
22 officers, agents, owners, and employees of STOP, who caused STOP to fail to pay employee  
23 Plaintiffs the applicable minimum regular and overtime wages, fail to timely pay all earned wages,  
24 fail to pay all earned wages upon separation of employment, fail to provide meal periods, fail to pay  
25 an additional hour of wages for each workday with a missed meal period, fail to provide compliant  
26 wage statements and keep required records, and fail to indemnify or reimburse business expenses  
27 in violation of Industrial Welfare Commission Wage Orders and the Labor Code, and are therefore  
28 also individually liable pursuant to California Labor Code sections 558, 558.1, and 1197.1 et al.

1 **THIRD CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods – LC §§ 226.7 and 512)**

3 **(By all Plaintiffs Against all Defendants)**

4 32. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this  
5 section as though fully set forth herein.

6 33. Pursuant to Labor Code sections 226.7, 512, and the Industrial Welfare Commission  
7 Wage Orders, uninterrupted off duty meal periods of thirty (30) minutes are required for all non-  
8 exempt employees before exceeding a work period of five (5) hours in a shift, except that when a  
9 work period of not more than six (6) hours will complete the day's work then the meal period may  
10 be waived by written mutual consent of the employer and employee. An employer may not employ  
11 an employee for a work period of more than 10 hours per day without providing the employee with  
12 a second uninterrupted off duty meal period of not less than 30 minutes, except that if the total hours  
13 worked is no more than 12 hours, the second meal period may be waived by written mutual consent  
14 of the employer and the employee only if the first meal period was not waived. The Industrial  
15 Welfare Commission Wage Orders require employers to keep time records of meal periods.  
16 Pursuant to Labor Code section 226.7, an employer who fails to provide an uninterrupted off duty  
17 meal period must pay the employee an additional one (1) hour of pay at the employee's regular rate  
18 of pay for each workday a meal period is not provided.

19 34. Plaintiffs were non-exempt employees. Defendants maintained an unlawful policy  
20 and practice of failing to provide Plaintiffs compliant uninterrupted off duty meal periods of at least  
21 30 minutes and failed to record any meal periods taken. Defendants never informed Plaintiffs that  
22 they hey had a right to receive legally compliant meal periods and never directed them to take any.  
23 Plaintiffs ate lunch while working. As a result, Plaintiffs estimate they missed 5 meal periods per  
24 workweek.

25 35. Defendants also never paid Plaintiffs an additional hour of regular rate pay for each  
26 workday with a missed meal period.

27 36. Accordingly, Plaintiffs seek unpaid meal period wage premium damages, interest,  
28 attorneys' fees, and costs available pursuant to the Labor Code, including but not limited to Labor

1 Code sections 201, 202, 204, 218.5, 218.6, 226.7, 512, 1194, 1194.3, Civil Code section 3289, and  
2 the Industrial Welfare Commission's Wage Orders.

3 37. Defendants HIBINSKI and LINTNER and DOES 1-100 acted individually and as  
4 officers, agents, owners, and employees of STOP, who caused STOP to fail to pay employee  
5 Plaintiffs the applicable minimum regular and overtime wages, fail to timely pay all earned wages,  
6 fail to pay all earned wages upon separation of employment, fail to provide meal periods, fail to pay  
7 an additional hour of wages for each workday with a missed meal period, fail to provide compliant  
8 wage statements and keep required records, and fail to indemnify or reimburse business expenses  
9 in violation of Industrial Welfare Commission Wage Orders and the Labor Code, and are therefore  
10 also individually liable pursuant to California Labor Code sections 558, 558.1, and 1197.1 et al.

11 **FOURTH CAUSE OF ACTION**

12 **(Failure to Indemnify or Reimburse Business Expenses – LC § 2802)**

13 **(By Kristy Buettner Against all Defendants)**

14 38. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this  
15 section as though fully set forth herein.

16 39. Labor Code section 2802 provides that, "(a) An employer shall indemnify his or her  
17 employees for all necessary expenditures or losses incurred by the employee in direct consequence  
18 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
19 even though unlawful, unless the employee, at the time of obeying the directions, believed them to  
20 be unlawful. (b) All awards made by a court or by the Division of Labor Standards Enforcement for  
21 reimbursement of necessary expenditures under this section shall carry interest at the same rate as  
22 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the  
23 necessary expenditure or loss. (c) For purposes of this section, the term 'necessary expenditures or  
24 losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by  
25 the employee enforcing the rights granted by this section."

26 40. Defendants failed to indemnify and reimburse BUETTNER for all the costs of her  
27 personal cell phone use, incurred performing work duties for Defendants' benefit, during  
28 approximately her first 2 months of employment for Defendants. BUETTNER concedes that

1 Defendants paid for the business use of BUETTNER's cell phone approximately after the first 2  
2 months of employment. As a result, BUETTNER suffered financial losses for Defendants' benefit.  
3 Defendants should have indemnified or reimbursed BUETTNER for all necessary business  
4 expenses incurred.

5 41. Accordingly, BUETTNER seeks unpaid reimbursement for business expenses, plus  
6 interest, attorneys' fees, and costs pursuant to Labor Code sections 558.1 and 2802, Civil Code  
7 section 3289, and the Industrial Welfare Commission Wage Orders.

8 42. Defendants HIBINSKI and LINTNER and DOES 1-100 acted individually and as  
9 officers, agents, owners, and employees of STOP, who caused STOP to fail to pay employee  
10 Plaintiffs the applicable minimum regular and overtime wages, fail to timely pay all earned wages,  
11 fail to pay all earned wages upon separation of employment, fail to provide meal periods, fail to pay  
12 an additional hour of wages for each workday with a missed meal period, fail to provide compliant  
13 wage statements and keep required records, and fail to indemnify or reimburse business expenses  
14 in violation of Industrial Welfare Commission Wage Orders and the Labor Code, and are therefore  
15 also individually liable pursuant to California Labor Code sections 558, 558.1, and 1197.1 et al.

16 **FIFTH CAUSE OF ACTION**

17 **(Failure to Provide Proper Wage Statements and Keep Records – LC § 226)**

18 **(By all Plaintiffs Against all Defendants)**

19 43. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this  
20 section as though fully set forth herein.

21 44. Labor Code section 226(a) states in pertinent part, as follows: "[a]n employer,  
22 semimonthly or at the time of each payment of wages, shall furnish to his or her employee ... an  
23 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by  
24 the employee ..., (5) net wages earned ..., and (9) all applicable hourly rates in effect during the  
25 pay period and the corresponding number of hours worked at each hourly rate by the employee..."

26 45. Labor Code section 1174 and the Industrial Welfare Commission Wage Orders also  
27 require employers to maintain payroll and time records, including for all meal periods taken.

28 46. Labor Code section 226(e) provides that, "[a]n employee suffering injury as a result

1 of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to  
2 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a  
3 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent  
4 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to  
5 an award of costs and reasonable attorney's fees.”

6 47. Defendants failed to provide Plaintiffs with compliant wage statements that  
7 accurately reflected total hours worked, gross wages earned including overtime wages, and the rate  
8 of pay for all the respective hours for all hours worked. Defendants also failed to keep accurate  
9 payroll and time records for the required time. Consequently, Defendants’ failure to provide  
10 compliant accurate itemized wage statements and failure to keep records violated Labor Code  
11 section 226.

12 48. Defendants knowingly and intentionally failed to comply with Labor Code section  
13 226(a), as delineated above. As a result, Defendants are liable for damages and penalties owed to  
14 Plaintiffs as specified in Labor Code section 226(e)(1).

15 49. Accordingly, Plaintiffs seek damages, interest, penalties, attorneys’ fees, and costs  
16 available pursuant to Labor Code section 226, 246, 1174, and the Industrial Welfare Commission  
17 Wage Orders.

18 50. Defendants HIBINSKI and LINTNER and DOES 1-100 acted individually and as  
19 officers, agents, owners, and employees of STOP, who caused STOP to fail to pay employee  
20 Plaintiffs the applicable minimum regular and overtime wages, fail to timely pay all earned wages,  
21 fail to pay all earned wages upon separation of employment, fail to provide meal periods, fail to pay  
22 an additional hour of wages for each workday with a missed meal period, fail to provide compliant  
23 wage statements and keep required records, and fail to indemnify or reimburse business expenses  
24 in violation of Industrial Welfare Commission Wage Orders and the Labor Code, and are therefore  
25 also individually liable pursuant to California Labor Code sections 558, 558.1, and 1197.1 et al.

26 **SIXTH CAUSE OF ACTION**

27 **(Waiting Time Penalties – LC § 203)**

28 **(By all Plaintiffs Against all Defendants)**

1           51.       Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this  
2 section as though fully set forth herein.

3           52.       Pursuant to Labor Code sections 201 to 203, employers are required to pay  
4 employee all earned wages at the time of resignation if the employee provides at least 72 hours of  
5 notice, within 72 hours if an employee does not provide advanced notice of the resignation, or at the  
6 time of termination if the employer terminates the employment.

7           53.       SOLIS resigned on or about April 9, 2021. On or about December 24, 2020,  
8 BUETTNER suffered a leg injury. Sometime thereafter, Defendants terminated BUETTNER's  
9 employment or Defendants considered BUETTNER to have abandoned her employment with  
10 Defendants. On or about November 15, 2021, MENDEZ resigned from his employment with  
11 Defendants. Defendants failed to pay Plaintiffs all their earned wages when their employment  
12 terminated and continue to fail to pay those earned unpaid wages. This entitles Plaintiffs to an  
13 additional 30 days of daily wages as a waiting time penalty pursuant to Labor Code section 203.

14           54.       Accordingly, Plaintiffs seek damages, interest, penalties, attorneys' fees, and costs  
15 pursuant to Labor Code section 203.

16           55.       Defendants HIBINSKI and LINTNER and DOES 1-100 acted individually and as  
17 officers, agents, owners, and employees of STOP, who caused STOP to fail to pay employee  
18 Plaintiffs the applicable minimum regular and overtime wages, fail to timely pay all earned wages,  
19 fail to pay all earned wages upon separation of employment, fail to provide meal periods, fail to pay  
20 an additional hour of wages for each workday with a missed meal period, fail to provide compliant  
21 wage statements and keep required records, and fail to indemnify or reimburse business expenses  
22 in violation of Industrial Welfare Commission Wage Orders and the Labor Code, and are therefore  
23 also individually liable pursuant to California Labor Code sections 558, 558.1, and 1197.1 et al.

24                               **SEVENTH CAUSE OF ACTION**

25                               **(Unfair Business Practices – BPC § 17200)**

26                               **(By all Plaintiffs Against all Defendants)**

27           56.       Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this  
28 section as though fully set forth herein.

1           57.     The acts, omissions, and practices of Defendants as alleged throughout this  
2 Complaint for violations of the Labor Code constitute unlawful and unfair business acts and  
3 practices within the meaning of sections 17200, et seq. of the Business & Professions Code.

4           58.     Plaintiffs are informed and believe Defendants have engaged in “unlawful” business  
5 acts and practices by their failure to pay wages for all hours worked including minimum wages,  
6 failure to pay overtime rates and overtime wages, failure to pay wages timely, failure to provide  
7 meal periods, failure to pay wage premiums for missed meal periods, failure to provide compliant  
8 wage statements and keep records, failure to indemnify or reimburse business expenses, failure to  
9 pay all earned wages at the termination of the employment relationship, etc. Plaintiffs are also  
10 informed and believe that Defendants have an unlawful policy and practice of intentionally  
11 misclassifying employees as independent contractors. These failures are all in violation of the  
12 statutes and regulations referenced throughout this Complaint, and in violation of other laws.

13           59.     Defendants’ “unfair” business acts and practices, alleged above, caused harm to  
14 Plaintiffs and many other employees, estimated to exceed 50 employees, which outweighs the utility  
15 of such conduct. Such conduct offends public policy, is unethical and dishonest, caused substantial  
16 injury to Defendants’ current and former employees, and provides Defendants with an unfair  
17 competitive advantage over those employers that abide by the law.

18           60.     As a result of the conduct described above, Defendants have been and will be  
19 unjustly enriched at the expense of Defendants’ current and former employees. Specifically,  
20 Defendants have been unjustly enriched by the retention of a significant sum of dollars in  
21 employees’ earned wages wrongfully withheld from Defendants’ current and former employees.

22           61.     Pursuant to section 17203 of the Business & Professions Code, Plaintiffs request  
23 that this Court order Defendants to disgorge all ill-gotten gains and award Plaintiffs full restitution  
24 of all monies wrongfully acquired by Defendants by such “unfair” business act and practices as  
25 outlined herein above, plus interest and attorneys’ fees pursuant to, *inter alia*, section 1021.5 of the  
26 Code of Civil Procedure. Plaintiffs additionally request that such funds be impounded by the Court  
27 or that an asset freeze or constructive trust be imposed upon such revenues and profits to avoid  
28 dissipation and or fraudulent transfers or concealment of such monies by Defendants. Plaintiffs may

1 be irreparably harmed or denied an effective and complete remedy if such an order is not granted.

2         62. Pursuant to section 17203 of the Business & Professions Code, Plaintiffs further  
3 seek an order of this Court for equitable or injunctive relief in the form of requiring Defendants to  
4 correct their unfair business acts and practices by way of treating employees Defendants  
5 misclassifies as independent contractors as employees, paying at least minimum applicable wage  
6 rates for all hours worked; paying at least minimum applicable overtime rates for all overtime hours  
7 worked; paying all earned wages; providing required meal periods and wage premiums when the  
8 meal periods are not provided; providing compliant wage statements and keeping required records  
9 such as time records; and indemnifying and reimbursing business expenses incurred by employees  
10 for Defendants' benefit.

11         63. Accordingly, Plaintiffs seeks injunctive relief, restitution, damages, interest,  
12 penalties, attorneys' fees, and costs available pursuant to the Labor Code, Business & Professions  
13 Code, and the Industrial Welfare Commission Wage Orders.

14                                   **EIGHTH CAUSE OF ACTION**

15                                   **(Private Attorneys General Act Claim – LC § 2699)**

16                                   **(By all Plaintiffs Against all Defendants)**

17         64. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this  
18 section as though fully set forth herein.

19         65. Labor Code section 2699 states that, “(a) Notwithstanding any other provision of  
20 law, any provision of this code that provides for a civil penalty to be assessed and collected by the  
21 Labor and Workforce Development Agency or any of its departments, divisions, commissions,  
22 boards, agencies, or employees, for a violation of this code, may, as an alternative be recovered  
23 through a civil action brought by an aggrieved employee on behalf of himself or herself and other  
24 current or former employees pursuant to the procedures specified in Section 2699.3.”

25         66. As a result of the acts alleged throughout this operative Complaint, the General  
26 Allegations, and all Plaintiffs' other causes of action in this operative Complaint, Plaintiffs are  
27 entitled to recovery of civil penalties pursuant to various regulations and statutes including, but not  
28 limited to, IWC Wage Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections

1 including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 206, 206.5, 210,  
2 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 226.8, 230.8,  
3 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174,  
4 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802,  
5 2698, 2699, 2699.3, and 2699.5 et al.

6 67. Defendants failed to pay at least minimum wage for all hours, failed to pay overtime  
7 rate wages, failed to timely pay all earned wages, failed to pay all earned wages upon the end of the  
8 employment relationship, engaged in self-help and took back wages already paid, failed to provide  
9 meal periods, failed to pay an additional hour of regular rate wages for each workday with a missed  
10 meal period, failed to provide compliant wage statements and keep records, failed to indemnify or  
11 reimburse business expenses, etc., all in violation of Industrial Welfare Commission Wage Orders  
12 and the Labor Code.

13 68. Accordingly, Plaintiffs seek civil penalties, attorneys' fees, and costs pursuant to  
14 Labor Code section 2699 et al.

15 69. Defendants HIBINSKI and LINTNER and DOES 1-100 acted individually and as  
16 officers, agents, owners, and employees of STOP, who caused STOP to fail to pay employee  
17 Plaintiffs the applicable minimum regular and overtime wages, fail to timely pay all earned wages,  
18 fail to pay all earned wages upon separation of employment, fail to provide meal periods, fail to pay  
19 an additional hour of wages for each workday with a missed meal period, fail to provide compliant  
20 wage statements and keep required records, and fail to indemnify or reimburse business expenses  
21 in violation of Industrial Welfare Commission Wage Orders and the Labor Code, and are therefore  
22 also individually liable pursuant to California Labor Code sections 558, 558.1, 1197.1, and 2699 et  
23 al.

#### 24 **PRAYER**

25 WHEREFORE, Plaintiff prays for judgment against Defendants in an amount exceeding  
26 \$25,000 as follows:

- 27 1. For compensatory damages in an amount to be proven at trial;
- 28 2. For liquidated damages in an amount to be proven at trial;

- 1 3. For penalties in an amount to be proven at trial;
- 2 4. For civil penalties in an amount to be proven at trial;
- 3 5. For attorneys' fees in an amount to be proven at trial;
- 4 6. For costs of suit in an amount to be proven at trial;
- 5 7. For interest;
- 6 8. For restitution;
- 7 9. For injunctive relief;
- 8 10. For declaratory relief; and
- 9 11. For such other and further and relief as the court may deem just and proper.

10 Respectfully submitted,

11 Date: 04/08/2022

12   
13 \_\_\_\_\_  
14 Jason Whooper (SBN 279972)  
15 W LAW  
16 Counsel for Plaintiffs  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT 1

January 27, 2022

**UPLOADED VIA DIR WEBSITE**

Department of Industrial Relations  
Accounting Unit  
455 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, CA 94102  
dir.ca.gov

**W LAW**  
1916 3<sup>rd</sup> Ave  
San Diego, CA 92101  
Tel: (619) 432-2836  
Fax: (619) 717-2111  
Email: info@wlawinc.com

**Re: *Julie Solis; Kristy Buettner; and Armando Mendez v. California Fire Stop, Inc.; Thomas Hibinski; Brian Lintner; and Does 1-100, inclusive***

To Whom It May Concern:

I, Jason Whooper, of the law firm W Law, represent JULIE SOLIS (“SOLIS”); KRISTY BUETTNER (“BUETTNER”); and ARMANDO MENDEZ (“MENDEZ”) (hereinafter also referred to collectively with all other similarly aggrieved employees jointly as “Plaintiffs” or “Plaintiffs and other aggrieved employees”), who are either former or current employees of CALIFORNIA FIRE STOP, INC. (“STOP”); THOMAS HIBINSKI (“HIBINSKI”); BRIAN LINTNER (“LINTNER”) and DOES 1-100, inclusive (all of whom are also, hereinafter sometimes referred to collectively as “Defendants”).

Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendants’ various Labor Code violations and our intent to recover statutory penalties under the Labor Code’s Private Attorney General Act (“PAGA”) of 2004. The \$75 filing fee payment will be made with the filing of this PAGA notice letter.

**GENERAL ALLEGATIONS**

Defendant STOP is a California corporation with its principal offices located in San Diego County, California. Defendants HIBINSKI and LINTNER acted individually and as officers, agents, owners, and employees of STOP, who caused STOP to fail to pay employee Plaintiffs the applicable minimum regular rate and overtime wages for all hours worked, failed to timely pay all earned wages, failed to pay all earned wages upon the end of the employment relationship, failed to provide meal periods, failed to pay an additional hour of wages for each workday with a missed meal period, failed to provide compliant wage statements and keep required records, and failed to indemnify or reimburse business expenses in violation of Industrial Welfare Commission (“IWC”) Wage Orders and the Labor Code, and are therefore also individually liable pursuant to California Labor Code sections 558, 558.1, and 1197.1.

Defendants own and operate a fire stop contracting and installations company that does business in San Diego County, Orange County, Los Angeles County, and surrounding areas.

On or about February 11, 2019, Defendants hired MENDEZ as a construction estimator and project manager. Defendants paid MENDEZ approximately \$23 per hour most recently. MENDEZ worked approximately 55 hours per workweek for Defendants. However, Defendants only paid MENDEZ approximately \$23 per hour or less for 40 hours per workweek regardless of how much overtime MENDEZ WORKED. Defendants explained to MENDEZ that Defendants

did not pay overtime, that Defendants would not be tracking MENDEZ's actual hours worked, and that MENDEZ was not supposed to clock in or out with a time keeping system to track his hours worked. Defendants never paid MENDEZ any overtime.

On or about January 15, 2020, Defendants hired BUETTNER as an office manager. Defendants paid BUETTNER approximately \$25 per hour. BUETTNER worked approximately 55 hours per workweek for Defendants. However, Defendants only paid BUETTNER approximately \$25 per hour for 40 hours per workweek regardless of how much overtime BUETTNER worked. Defendants explained to BUETTNER that Defendants did not pay overtime, that Defendants would not be tracking BUETTNER's actual hours worked, and that BUETTNER was not supposed to clock in or out with a time keeping system to track her hours worked. Defendants never paid BUETTNER any overtime.

On or about July 20, 2020, Defendants hired SOLIS as compliance coordinator. Defendants paid SOLIS approximately \$25 per hour. SOLIS worked approximately 45 hours per workweek for Defendants. However, Defendants only paid SOLIS approximately \$25 per hour for 40 hours per workweek regardless of how much overtime SOLIS worked. Defendants explained to SOLIS that Defendants did not pay overtime, that Defendants would not be tracking SOLIS's actual hours worked, and that SOLIS was not supposed to clock in or out with a time keeping system to track her hours worked. Defendants never paid SOLIS any overtime.

Defendants also failed to provide Plaintiffs 30-minute uninterrupted off duty meal periods. Defendants never informed, educated, or trained Plaintiffs that they had a right to receive those breaks or that they needed to take them. Plaintiffs ate lunch while working during the occasions when they were able to eat. As a result, Plaintiffs missed 5 meal periods per workweek. Further, Defendants failed to keep records of meal periods.

As a result of all the allegations above and other facts to be discovered, Defendants failed to provide Plaintiffs compliant wage statements (paystubs) because the wage statements do not contain all legally required information including, but not limited to, gross wages earned, total hours actually worked, and all applicable hourly rates in effect and the corresponding number of hours worked at each hourly rate. Further, Defendants failed to keep all required records regarding Plaintiffs' employment.

Defendants also required BUETTNER to use her own personal cell phone for work purposes for 2 months such as calls and text messages, until Defendants switched BUETTNER's cell phone to Defendants' cell phone plan in or around March 2020. Part of the reason BUETTNER had to use her own personal cell phone was because Defendants only maintained one office phone in Defendants' building. Defendants never indemnified or reimbursed BUETTNER for business expenses claimed here.

On or about April 9, 2021, SOLIS resigned from her employment with Defendants. On or about April 16, 2021, Defendants paid SOLIS approximately \$700.02 for wages by automatic deposit. Thereafter, Defendants reversed the payment and unlawfully took back the wages already paid to SOLIS without authorization from SOLIS. On or about December 24, 2020, BUETTNER suffered a leg injury. Sometime thereafter, Defendants terminated BUETTNER's employment or Defendants considered BUETTNER to have abandoned her employment with Defendants. On or about November 15, 2021, MENDEZ resigned from his employment with Defendants and

Defendants unlawfully required MENDEZ to sign an illegal release before giving him his insufficient final paycheck.

More than 30 days have passed since Plaintiffs' employment ended and Defendants have intentionally failed to timely pay Plaintiffs all earned wages, including from the time when Plaintiffs' employment ended until now. Defendants have unequivocally been put on notice that Plaintiffs have claims against Defendants for earned and unpaid wages, yet Defendants continue to willfully refuse and fail to pay Plaintiffs their wages. As a result, Plaintiffs are entitled to an additional 30 days of daily pay as a waiting time penalty.

Plaintiffs are informed and believe that Defendants employed many other aggrieved employees whom Defendants employed and who were also victims of the same unlawful policies and practices which Defendants perpetrated against Plaintiffs as outlined above and throughout this document. Further, Plaintiffs are informed and believe that many of Defendants current and former employees are also victims of other violations of wage and hour regulations and the Labor Code, such as independent contractor misclassification.

Defendants' violations were all knowing and willful in disregard of the Labor Code and Industrial Welfare Commission ("IWC") Wage Orders. Accordingly, Plaintiffs are entitled to recovery of civil penalties pursuant to various regulations and statutes including, but not limited to, IWC Wage Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 206, 206.5, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 226.8, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

### **REQUEST TO THE LWDA**

Accordingly, Plaintiffs respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs intend to litigate the PAGA claim with a Superior Court action on their own behalf for their individual claims and in a representative capacity on behalf of California for the other current or former aggrieved employees, for penalties pursuant to various regulations and statutes including, but not limited to, IWC Wage Order 4-2001, sections 3, 4, 7, 11, 12, 20, and pursuant to Labor Code sections including, but not limited to, sections 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 206, 206.5, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 226.8, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al.

If you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,



Jason Whooper

cc:

**SENT VIA CERTIFIED U.S. MAIL**

California Fire Stop, Inc.  
106 Copperwood Way, Suite 4  
Oceanside, California 92058

Thomas Hibinski  
106 Copperwood Way, Suite 4  
Oceanside, California 92058

Brian Lintner  
106 Copperwood Way, Suite 4  
Oceanside, California 92058



Jason Whooper <jwhooper@wlawinc.com>

---

## Thank you for submission of your PAGA Case.

---

**LWDA DO NOT REPLY** <lwdadonotreply@dir.ca.gov>  
To: "jwhooper@wlawinc.com" <jwhooper@wlawinc.com>

Thu, Jan 27, 2022 at 11:55 PM

1/27/2022

LWDA Case No. LWDA-CM-865135-22  
Law Firm : W Law  
Plaintiff Name : Julie Solis, Armando Mendez  
Employer: California Fire Stop, Inc.  
Filing Fee : \$75.00  
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)