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8 and on behalf of all others similarly situated.

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

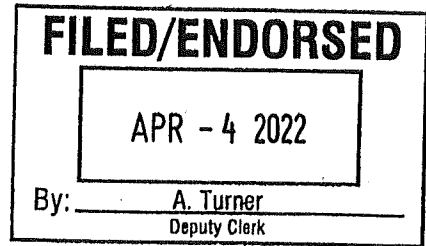
13 CARLOS HERNANDEZ JR., individually
14 and on behalf of all others similarly
15 situated,

16 Plaintiff,

17 vs.

18 HANFORD SAND & GRAVEL, INC.;
19 HANFORD READY-MIX, INC.; and
20 DOES 1 through 20, inclusive,

21 Defendants.
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Case No. 34-2022-00314657

Assigned for All Purposes to:
Hon. Jill Talley
Dept. 25

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment;
6. Failure to Reimburse Necessary Business Expenses;
7. Violation of Business and Professions Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Carlos Hernandez Jr., individually, and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Carlos Hernandez Jr. ("Plaintiff") brings this putative class action and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendants Hanford Sand & Gravel, Inc. and DOES 1 through 20,
7 inclusive (collectively, "Defendants"), on behalf of himself individually and on behalf of
8 California citizens who are and were employed by Defendants as non-exempt employees
9 throughout California.

10 2. Defendants provide ready-mix cement in California.

11 3. Through this action, Plaintiff alleges that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate
14 unfair competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages;
- 18 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (c) failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;
- 21 (d) failing to provide accurate itemized wage statements;
- 22 (e) failing to reimburse necessary business expenses; and
- 23 (f) failing to pay all wages due upon separation of employment.

24 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
25 others similarly situated in California to recover, among other things, unpaid wages and
26 benefits, interest, attorneys' fees, costs and expenses, and penalties pursuant to Labor Code §§
27 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
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1 1194.2, 1197, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure §
2 1021.5.

3 **=JURISDICTION AND VENUE**

4 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
5 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
6 of the Superior Court and will be established according to proof at trial.

7 7. This Court has jurisdiction over this action pursuant to the California
8 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
9 causes, except those given by statutes to other courts. The statutes under which this action is
10 brought do not specify any other basis for jurisdiction.

11 8. This Court has jurisdiction over all Defendants because, upon information and
12 belief, they are citizens of California, have sufficient minimum contacts in California, or
13 otherwise intentionally avail themselves of the California market so as to render the exercise of
14 jurisdiction over them by the California courts consistent with traditional notions of fair play
15 and substantial justice.

16 9. Venue is proper in this Court because, upon information and belief, Defendants
17 reside, transact business, or have offices in this county, or the acts and omissions alleged herein
18 took place in this county.

19 **THE PARTIES**

20 10. Plaintiff is a resident of California and worked for Defendants in California
21 during the relevant time periods as alleged herein.

22 11. Plaintiff is informed and believes, and thereon alleges that at all times
23 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
24 Orders as employers, whose employees were and are engaged throughout this county and the
25 State of California.

26 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
27 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
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1 Complaint and serve such fictitiously named defendants once their names and capacities
2 become known.

3 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
5 at all relevant times.

6 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
10 the employer and/or joint employer of Plaintiff and the class members.

11 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
15 the official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment, or ratified each and every act or omission complained of herein.
18 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
19 each and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiff is informed and believes, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
25 himself and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200, and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiff seeks
28 relief authorized by California law.

1 20. Plaintiff's proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between January 28, 2018
5 and the date of class certification ("Class").

6 21. Plaintiff also seeks to certify the following subclass of employees:

7 Waiting Time Subclass

8 All Class Members who separated their employment with Defendants at any time
9 between August 2, 2018 and the date of class certification ("Subclass" or
10 "Waiting Time Subclass").

11 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Subclass described above will be collectively
15 referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants fail to pay Plaintiff and Class Members all wages
20 for all hours worked by Plaintiff and Class Members.

21 (b) Whether Defendants required Plaintiff and Class Members to call in to
22 report for work and did not pay them reporting time.

23 (c) Whether Defendants deprived Plaintiff and Class Members of timely
24 meal periods without proper compensation.

25 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks
26 or required Plaintiff and Class Members to work through rest breaks
27 without proper compensation.

- 1 (e) Whether Defendants failed to provide Plaintiff and Class Members
2 accurate itemized wage statements.
- 3 (f) Whether Defendants failed to timely pay the Waiting Time Subclass all
4 wages due upon termination or within seventy-two (72) hours of
5 resignation.
- 6 (g) Whether Defendants required Plaintiff and Class Members to incur
7 business expenses without reimbursing them.
- 8 (h) Whether Defendants' conduct was willful or reckless.
- 9 (i) Whether Defendants engaged in unfair business practices in violation of
10 Business and Professions Code §§ 17200, *et seq.*

11 25. There is a well-defined community of interest in this litigation and the proposed
12 Class and Subclass are readily ascertainable:

13 (a) Numerosity: The Class Members are so numerous that joinder of all
14 members is impractical. Although the members of the entire Class and Subclass are unknown
15 to Plaintiff at this time, on information and belief, the class is estimated to be greater than
16 twenty-five (25) individuals. The identities of the Class Members are readily ascertainable by
17 inspection of Defendants' employment and payroll records.

18 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
19 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
20 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
21 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
22 sustained by the Class Members because they arise out of and are caused by Defendants'
23 common course of conduct as alleged herein.

24 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
25 interests of all Class Members because it is in his best interest to prosecute the claims alleged
26 herein to obtain full compensation and penalties due to him and the Class Members. Plaintiff's
27 attorneys, as proposed class counsel, are competent and experienced in litigating large
28 employment class actions and versed in the rules governing class action discovery,

1 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
2 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
3 for the prosecution of this action for the substantial benefit of the Class Members.

4 (d) Superiority: The nature of this action makes use of class action
5 adjudication superior to other methods. A class action will achieve economies of time, effort,
6 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
7 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
8 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
9 manage this case as a class action.

10 (e) Public Policy Considerations: Employers in the State of California
11 violate employment and labor laws every day. Current employees are often afraid to assert their
12 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
13 actions because they believe their former employers might damage their future endeavors
14 through negative references and/or other means. Class actions provide class members who are
15 not named in the complaint with a type of anonymity that allows for the vindication of their
16 rights while affording them privacy protections.

17 **GENERAL ALLEGATIONS**

18 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
19 California residents as non-exempt employees at Defendants' California business location(s).

20 27. Defendant employed Plaintiff as a non-exempt employee at Defendants'
21 California business location(s).

22 28. Defendants continue to employ non-exempt employees within California.

23 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
25 who were knowledgeable about California's wage and hour laws, employment and personnel
26 practices, and the requirements of California law.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and Class Members were entitled to receive wages for all time

1 worked and that they were not receiving all wages earned for work that was required to be
2 performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members
3 were not paid all wages for all hours worked, including but not limited to reporting time wages
4 and on-call wages.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Class Members were entitled to receive all required meal
7 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
8 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
9 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
10 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
11 rate of pay when they did not receive a timely, uninterrupted meal period.

12 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
14 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
15 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
16 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
17 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

18 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Class Members were entitled to receive itemized wage
20 statements that accurately showed the following information pursuant to the Labor Code: (1)
21 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
22 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
23 deductions, provided that all deductions made on written orders of the employee may be
24 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
25 for which the employee is paid; (7) the name of the employee and only the last four digits of his
26 or her social security number or an employee identification number other than a social security
27 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at

1 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
2 were not provided with accurate itemized wage statements.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that the Waiting Time Subclass was entitled to timely payment of wages
5 due upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass
6 did not receive payment of all wages within permissible time periods.

7 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to reimbursement for
9 necessary expenditures incurred in connection with the performance and execution of their job
10 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
11 adequate reimbursement for necessary business expenses, including but not limited to
12 reimbursement for use of their personal cell phones.

13 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known they had a duty to compensate Plaintiff and Class Members, and
15 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
16 intentionally failed to do so in order to increase Defendants' profits.

17 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
18 against Defendants on behalf of himself and all Class Members to recover, among other things,
19 unpaid wages (including minimum wages and overtime wages), unpaid meal period premium
20 payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and
21 expenses.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES**

24 (Violation of Labor Code §§ 510, 1182.12, 1194, 1194.2, 1197, and 1198;

25 Violation of IWC Wage Order)

26 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.

1 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
2 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
3 wage than the minimum so fixed is unlawful.

4 40. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
5 unlawful to employ persons without compensating them at a rate of pay either one and one-half
6 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
7 worked by the person on a daily or weekly basis.

8 41. Specifically, the applicable IWC Wage Orders provide that Defendants are and
9 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
10 and one-half times (1½) their regular rate of pay when working and for all hours worked in
11 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
12 eight (8) hours of work on the seventh day of work in a workweek.

13 42. The applicable IWC Wage Orders further provide that Defendants are and were
14 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
15 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
16 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

17 43. California Labor Code § 510 codifies the right to overtime compensation at one
18 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
19 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
20 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
21 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
22 seventh day of work in a workweek.

23 44. Labor Code § 510 and the applicable IWC Wage Orders provide that
24 employment of more than six days in a workweek is only permissible if the employer pays
25 proper overtime compensation as set forth herein.

26 45. Plaintiff and Class Members were employees entitled to the protections of
27 California Labor Code §§ 510 and 1194.
28

1 46. During the relevant time period, Defendants required Plaintiff and Class
2 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a
3 seventh consecutive day of work, entitling them to overtime wages.

4 47. During the relevant time period, Defendants failed to pay Plaintiff and Class
5 Members all wages earned, including but not limited to reporting time pay and on-call pay at
6 either the minimum wage, regular rate, or overtime rate.

7 48. During the relevant time period, Defendants regularly failed to pay at least
8 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
9 §§ 1194 and 1197.

10 49. In violation of California law, Defendants knowingly and willfully refused to
11 perform their obligations and compensate Plaintiff and Class Members for all wages earned and
12 all hours worked.

13 50. Defendants' failure to pay Plaintiff and Class Members the required wages
14 violates Labor Code §§ 510, 1194, 1197, and 1198. Pursuant to these sections, Plaintiff and
15 Class Members are entitled to recover the unpaid balance of their wages as well as interest,
16 costs, and attorneys' fees.

17 51. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
18 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
19 interest thereon.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

23 52. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein

25 53. Labor Code § 226.7 provides that no employer shall require an employee to work
26 during any meal period mandated by the IWC Wage Orders.

27 54. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
28 employ any person for a work period of more than five (5) hours without a meal period of not

1 less than 30 minutes, except that when a work period of not more than six (6) hours will
2 complete the day's work the meal period may be waived by mutual consent of the employer and
3 the employee."

4 55. Labor Code § 512(a) provides that an employer may not require, cause, or permit
5 an employee to work for a period of more than five (5) hours per day without providing the
6 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
7 the total work period per day of the employee is not more than six (6) hours, the meal period
8 may be waived by mutual consent of both the employer and the employee.

9 56. Labor Code § 512(a) also provides that an employer may not employ an
10 employee for a work period of more than ten (10) hours per day without providing the employee
11 with a second meal period of not less than thirty (30) minutes, except that if the total hours
12 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
13 consent of the employer and the employee only if the first meal period was not waived.

14 57. During the relevant time period, Plaintiff and Class Members did not receive
15 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
16 their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
17 second meal period.

18 58. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order
19 requires an employer to pay an employee one (1) additional hour of pay at the employee's
20 regular rate of compensation for each work day that a compliant meal period is not provided.

21 59. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
22 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
23 § 226.7(b) and section 11 of the applicable IWC Wage Order.

24 60. As a result of Defendants' failure to pay Plaintiff and Class Members an
25 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
26 Class Members suffered and continue to suffer a loss of wages and compensation.

27 **THIRD CAUSE OF ACTION**

28 **FAILURE TO PERMIT REST BREAKS**

(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

62. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

63. Section 12 of the applicable IWC Wage Order states “[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 the “[a]uthorized 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.

64. During the relevant time period, Plaintiff and Class Members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods, were not permitted to take timely rest periods, and/or were not authorized to take their rest periods.

65. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of compensation for each work day that a compliant rest period is not provided.

66. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

67. As a result of Defendants’ failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226)

68. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

1 69. Labor Code § 226(a) requires Defendants to provide each employee with an
2 accurate wage statement in writing showing nine pieces of information, including, the
3 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
4 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
5 basis, (4) all deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
7 period for which the employee is paid, (7) the name of the employee and the last four digits of
8 his or her social security number or an employee identification number other than a social
9 security number, (8) the name and address of the legal entity that is the employer, and (9) all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate by the employee.

12 70. During the relevant time period, Defendants have knowingly and intentionally
13 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
14 and Class Members. Defendants provided Plaintiff and Class Members with wage statements
15 that were missing or inaccurately stated one or more of the following items: (1) gross wages
16 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and
17 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
18 provided that all deductions made on written orders of the employee may be aggregated and
19 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
20 employee is paid, (7) the name of the employee and the last four digits of his or her social
21 security number or an employee identification number other than a social security number, (8)
22 the name and address of the legal entity that is the employer, and/or (9) all applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked at each
24 hourly rate by the employee.

25 71. As a result of Defendants' knowing and intentional failure to comply with Labor
26 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
27 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
28 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor

1 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and
2 their protected interest in receiving, accurate itemized wage statements under Labor Code
3 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
4 statements, Defendants prevented Plaintiff and Class Members from determining if all hours
5 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had
6 to file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff
7 to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and
8 incur these costs had Defendants provided the accurate hours worked, wages earned, and rates
9 of pay. This has also delayed Plaintiff's ability to demand and recover the underpayment of
10 wages from Defendants.

11 72. Plaintiff and Class Members are entitled to recover from Defendants the greater
12 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or
13 fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred
14 dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not
15 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

16 73. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
17 and Class Members from knowing, understanding, and disputing the wages paid to them and
18 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
19 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
20 Class Members have suffered an injury, in the exact amount of damages and/or penalties to be
21 shown according to proof at trial.

22 74. Class Members that are still employed by Defendants are also entitled to
23 injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with
24 California Labor Code § 226. Accordingly, affected Class Members seek the recovery of
25 attorneys' fees and costs incurred in obtaining this injunctive relief.

26 **FIFTH CAUSE OF ACTION**

27 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

28 (Violation of Labor Code §§ 201, 202, and 203)

75. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

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

77. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

78. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

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

80. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

81. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

82. Labor Code § 2800 states that an employer shall in all cases indemnify his employee for losses.

83. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

84. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

85. During the relevant time period, Defendants required Plaintiff and class members to use their personal cellular devices for business purposes, without paying Plaintiff and class members for a reasonable percentage of their cell phone bills

86. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

87. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

SEVENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

89. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice”

1 90. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
2 be predicated on a violation of any state or federal law. In the instant case, Defendants' policies
3 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
4 suffer injuries-in-fact.

5 91. Defendants' policies and practices violated state law in at least the following
6 respects:

- 7 (a) Failing to pay all wages earned to Plaintiff and Class Members in
8 violation of Labor Code §§ 510, 1182.12, 11194, 1194.2, 1197, and
9 1198.
- 10 (b) Failing to provide compliant meal periods without paying Plaintiff and
11 Class Members premium wages for every day said meal periods were not
12 provided in violation of Labor Code §§ 226.7 and 512.
- 13 (c) Failing to authorize or permit compliant rest breaks without paying
14 Plaintiff and Class Members premium wages for every day said rest
15 breaks were not authorized or permitted in violation of Labor Code §
16 226.7.
- 17 (d) Failing to provide Plaintiff and Class Members with accurate itemized
18 wage statements in violation of Labor Code § 226.
- 19 (e) Failing to timely pay all earned wages to the members of the Waiting
20 Time Subclass upon separation of employment in violation of Labor
21 Code §§ 201, 202, and 203.
- 22 (f) Failing to provide Plaintiff and Class Members with reimbursements for
23 necessary business expenses in violation of Labor Code § 2802.

24 92. As alleged herein, Defendants systematically engaged in unlawful conduct in
25 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
26 (minimum and overtime wages), failing to provide meal periods and rest breaks or
27 compensation in lieu thereof, failing to furnish accurate wage statements, failing to pay all
28 wages due and owing upon separation of employment in a timely manner, and failing to

1 reimburse business expenses, all in order to decrease their costs of doing business and increase
2 their profits.

3 93. At all relevant times herein, Defendants held themselves out to Plaintiff and
4 Class Members as being knowledgeable concerning the labor and employment laws of
5 California.

6 94. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
7 and Class Members wages and monies, thereby creating for Defendants an artificially lower
8 cost of doing business in order to undercut their competitors and establish and/or gain a greater
9 foothold in the marketplace.

10 95. As a result of Defendants' intentional, willful, purposeful, and wrongful
11 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
12 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
13 according to proof at trial.

14 96. By violating the foregoing statutes and regulations as herein alleged,
15 Defendants' acts constitute unfair and unlawful business practices under California Business
16 and Professions Code §§ 17200, *et seq.*

17 97. As a result of the unfair and unlawful business practices of Defendants, as
18 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
19 restitution in an amount to be shown according to proof at trial.

20 98. Plaintiff seeks to enforce important rights affecting the public interest within the
21 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
22 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
23 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
24 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
25 Procedure § 1021.5.

26 **NINTH CAUSE OF ACTION**

27 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

1 99. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
2 though fully set forth herein.

3 100. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
4 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
5 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
6 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
7 an aggrieved employee on behalf of himself or herself and other current or former employees
8 pursuant to the procedures specified in Labor Code § 2699.3.

9 101. For all provisions of the Labor Code except those for which a civil penalty is
10 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
11 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
12 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
13 period in which Defendants violated these provisions of the Labor Code.

14 102. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
15 including, but not limited to, the following:

- 16 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194,
17 1197, and 1198 for failure to timely pay all earned wages (including
18 minimum wage and overtime wages) owed to Plaintiff and other aggrieved
19 employees during employment and upon separation of employment as
20 herein alleged;
- 21 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
22 periods to Plaintiff and other aggrieved employees and failure to pay
23 premium wages for missed meal periods as herein alleged;
- 24 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
25 Plaintiff and other aggrieved employees and failure to pay premium wages
26 for missed rest periods as herein alleged;

27 ///

28 ///

- d. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
- e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees; and
- f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and other aggrieved employees for necessary business expenses as herein alleged.

103. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

104. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

105. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

106. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;
2. For appointment of Carlos Hernandez Jr. as the class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;

1 5. For an award of damages in the amount of unpaid compensation including, but
2 not limited to, unpaid wages, benefits, and penalties;

3 6. For economic and/or special damages in an amount according to proof at trial;

4 7. For liquidated damages pursuant to Labor Code § 1194.2;

5 8. For statutory penalties to the extent permitted by law, including those pursuant
6 to the Labor Code and IWC Wage Orders;

7 9. For injunctive relief as provided by the California Labor Code and California
8 Business and Professions Code §§ 17200, *et seq.*;

9 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

10 11. For an order requiring Defendants to restore and disgorge all funds to each
11 employee acquired by means of any act or practice declared by this Court to be unlawful,
12 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
13 Professions Code §§ 17200, *et seq.*;

14 12. For pre-judgment interest;

15 13. For civil penalties;

16 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
17 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
18 226(e), 1194, and 2698 *et seq.*; and

19 15. For such other relief as the Court deems just and proper.
20

21 Dated: April 4, 2022

AEGIS LAW FIRM, PC

22
23 By: 

Jessica L. Campbell

Attorneys for Plaintiff Carlos Hernandez Jr.