

1 MAYALL HURLEY
2 A Professional Corporation
3 2453 Grand Canal Boulevard
4 Stockton, California 95207
5 Telephone (209) 477-3833
6 Facsimile (209) 473-4818
7 WILLIAM J. GORHAM III
8 CA State Bar No. 151773

9 Attorneys for Plaintiff, David Clark

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA – UNLIMITED JURISDICTION

DAVID CLARK,

Plaintiff,

vs.

CUATRO AMIGOS, INC., dba AJ BONO
PLUMBING; and DOES 1-100, inclusive,

Defendants.

FILED
APR 25 2022

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By T. Schrader, Deputy Clerk

Case No.: C22-00727

**FIRST AMENDED COMPLAINT FOR
PENALTIES AND DAMAGES**

1. VIOLATION OF LABOR CODE §§ 1194, 1197, Wage Order 16-2001 (MINIMUM WAGE VIOLATIONS)
2. VIOLATION OF LABOR CODE §§ 1194, 1198, and 510, Wage Order 16-2001 (OVERTIME PAY VIOLATIONS)
3. VIOLATION OF LABOR CODE § 202 (FAILURE TO PAY WAGES DUE AT CESSATION OF EMPLOYMENT)
4. VIOLATION OF LABOR CODE § 226 (NO WAGE STATEMENTS);
5. VIOLATION OF LABOR CODE § 2802, Wage Order 16-2001, (FAILURE TO REIMBURSE EMPLOYEE FOR EXPENSES)
6. VIOLATION OF LABOR CODE § 226.7, 512, Wage Order 16-2001, (FAILURE TO FURNISH MEAL AND REST BREAKS)
7. VIOLATION OF LABOR CODE § 218 (UNPAID WAGES)
8. FAILURE PROVIDE RECORDS IN VIOLATION OF LABOR CODE §§ 226(b) and 1198.5
9. VIOLATION OF LABOR CODE § 2698 *ET SEQ.* (PAGA)

JURY TRIAL DEMANDED

1 Plaintiff David Clark ("Clark") brings this action against defendants for compensatory
2 damages, penalties, interest, costs, and attorneys' fees resulting from the Defendants Cuatro
3 Amigos, Inc. dba AJ Bono Plumbing ("Cuatro Amigos") and DOES 1-100 unlawful conduct
4 ("Defendants"), and as grounds therefore alleges:

5 **PARTIES**

6 1. Plaintiff David Clark is and, at all times relevant herein, was, an individual
7 residing in Contra Costa County, California. Defendants employed Clark in Contra Costa
8 County.

9 2. Defendant Cuatro Amigos is a California Corporation registered to business in
10 California, with its principal place of business in Contra Costa County.

11 3. Clark is not aware of the true names and capacities of the defendants sued herein
12 as Does 1-100, whether individual, corporate, associate, or otherwise, and therefore sues such
13 defendants by these fictitious names. Clark will amend this complaint to allege their true names
14 and capacities when ascertained. Clark is informed and believes, and on that basis alleges, that
15 each of the fictitiously named defendants is responsible in some manner for the occurrences
16 herein alleged and that Clark's damages and penalties herein alleged were legally caused by such
17 defendants. Unless otherwise indicated, each defendant was acting within the course and scope
18 of said agency and/or employment, with the knowledge and/or consent of said co-
19 defendant. Collectively, Defendants Cuatro Amigos and DOES 1-100 are referred to herein as
20 "Defendants."

21 **VENUE AND JURY TRIAL DEMAND**

22 4. Venue is proper in this Court because the unlawful acts alleged herein as to Clark
23 took place in Contra Costa County, which is also the location of the place of business of Cuatro
24 Amigos. Clark hereby demands a jury trial.

25 ///

26 ///

27 ///

GENERAL ALLEGATIONS

5. Defendants are a plumbing contractor selling such services to the public. In 2018, Defendants hired Clark as a technician. As a technician, Clark worked ten to twelve hours per day for a flat sum of \$75.

6. Clark was not a licensed contractor. Clark's work for Defendant Cuatro Amigos was under contracts they procured under its contracting license. Nevertheless, Cuatro Amigos misclassified Clark as an independent contractor and paid him as such.

7. In approximately August of 2020, Defendant Cuatro Amigos issued one of its work trucks to Clark. It made him purchase tools and continued to misclassify Clark as an independent contractor. It also paid for tools and then charged Clark and other technicians to repay for the cost of the tool. It paid Clark on a per job basis, and Clark continued to work 10 to 12 hour days. Cuatro Amigos did not account for time actually worked, or issue any wage statements as required by Labor Code section 226.

8. In 2020, Clark was issued a citation for not having proof of insurance on Cuatro Amigos truck, which Cuatro had failed to provide to Clark. As a result, Clark paid fines that were incurred in the course and scope of his employment by Cuatro Amigos, and which should have been paid by Cuatro Amigos.

9. Defendant Cuatro Amigos then imposed a \$100 deduction per paycheck to pay for a boat Cuatro Amigos was buying. Clark did not agree to this and it was not accounted for on his wages.

10. Defendants failed to provide any sick pay required to Clark because it misclassified him as an independent contractor.

11. Clark's employment terminated in January of 2022. Defendants withheld his final paycheck and failed to pay him all wages otherwise earned by him in violation of Labor Code § 202.

1 12. On February 9, 2022, Clark requested records from Defendant Cuatro Amigos
2 pursuant to Labor Code sections 1198.5(a), and 226(c). Defendant Cuatro Amigos failed and
3 refused to produce records.

4 13. While employed by Defendants, Clark was not furnished a meal period, nor was
5 he paid for rest periods or down time. Again, this is because Clark was misclassified as an
6 independent contractor.

7 14. As a result of its misclassification of Clark, and the other acts alleged herein,
8 Cuatro Amigos violated numerous Labor Code requirements, including:

- 9 a. Failing to pay minimum wage for all time Clark worked in violation of Labor
10 Code §§ 1194, 1197 and Industrial Wage Commission (IWC) Work Order 16-
11 2001;
- 12 b. Failing to pay required overtime worked by Clark in violation of Labor Code
13 §§ 1194, 1198, 510, and IWC Work Order 16-2001;
- 14 c. Failing to issue any wage statements to Clark in violation of Labor Code §
15 226(a);
- 16 d. Failing to issue accurate wage statements to Clark in violation of Labor Code §
17 226(a);
- 18 e. Failure to reimburse Clark for expenditures made on behalf of Defendants in
19 the course of his employment in violation of Labor Code § 2802, and IWC
20 Wage Order 16-2001;
- 21 f. Failure to furnish a compliant meal break in violation of Labor Code § 226.7
22 and IWC Wage Order 16-2001;
- 23 g. Failure to furnish a paid rest break in violation of Labor Code § 226.7 and
24 Industrial Wage Order 16-2001; and,
- 25 h. Failure to provide required sick day pay as in violation of Labor Code § 246;
26 and
- 27
28

- 1 i. Failing to make employment records available pursuant to Labor Code §§
2 226(c) and 1198.5(a).

3 15. Defendants acted willfully with respect to their misclassification of Plaintiff as an
4 independent contractor, and not as their employee. *Dynamex Operations West, Inc. v. Superior*
5 *Court* (2018) 4 Cal.5th 903 provides that workers are presumptively employees, and are only
6 properly classified as independent contractors if the hiring entity can establish all three “ABC”
7 factors:

- 8 a. The worker is free from the company’s control;
9 b. The worker performs work outside the company’s usual course of business;
10 and
11 c. The worker is customarily engaged in an independently established trade,
12 occupation or business.

13 At all times, Clark was working in exactly the business Cuatro Amigos markets and provides to
14 the public, worked on contracts or jobs provided by it, and worked under Cuatro Amigos
15 contracting license.

16 16. As such, at all times, Clark was an employee for Defendants, and each them, and
17 Defendants willfully misclassified Clark, and other of its current and former plumber technicians
18 as independent contractors.

19 **PAGA ALLEGATIONS**

20 17. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and
21 allegations in this First Amended Complaint, except to the extent any paragraph or allegation is
22 inconsistent with the allegations of this cause of action.

23 18. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
24 pursue a civil action arising under the California Private Attorneys General Act of 2004
25 (“PAGA”) after the following requirements have been met:

- 26 a. The aggrieved employee shall give written notice by certified mail to the LWDA
27 and the employer (hereinafter “Employee’s Notice”) of the specific provisions of
28

1 the Labor Code alleged to have been violated, including the facts and theories to
2 support the alleged violations;

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

11 19. On February 10, 2022, Clark provided written notice by online submission to the
12 LWDA, and by certified mail to Defendant of Defendant's violations of the Labor Code set forth
13 below, including the facts and theories to support the alleged violations. The notice is attached
14 as Exhibit 1, and are hereby incorporated by this reference as though set forth in full. As of
15 today's date, more than 65 days have passed without the LWDA providing written notices that it
16 intends to investigate the allegations in the notices. Accordingly, Clark has satisfied the
17 administrative prerequisites under Labor Code § 2699.3 in effect at the time of the postmark of
18 his notice to bring a civil action to recover penalties against Defendant under PAGA.

19 20. As set forth in detail in Exhibit 1, within the relevant time period, including the
20 past year and 65 days and continuing, and in accordance with a uniform policy, Defendant has
21 violated the Labor Code as to Clark and other former and current employees, including Labor
22 Code Sections 226.8(a)(1) (misclassification of employees), 226(a) (failure to furnish wage
23 statements), 226(a)(1) to (a)(9) (failure to furnish accurate wage statements), 226(a) (failure to
24 maintain wage statements), 512 and 226.7 (failure to furnish compliant meal and rest breaks),
25 246(b)(1) (failure to provide compliant sick days), 201 and 202 (failure to pay all wages due on
26 cessation of employment), and 2802 (failure to reimburse employees for employment related
27 expenses).

1 21. On information and belief, a real and actual controversy exists over the magnitude
2 of the Labor Code violations as set forth in Paragraph 20 above regarding other former and
3 current employees of Defendants.

4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE §§ 1194, 1197, and Wage Order 16-2001**
6 **(Failure to Pay Minimum Wage)**
 Against All Defendants

7 22. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and
8 allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent
9 with the allegations of this cause of action.

10 23. Labor Code § 1194, in relevant part, “[n]otwithstanding any agreement to work
11 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
12 overtime compensation applicable to the employee is entitled to recover in a civil action the
13 unpaid balance of the full amount of this minimum wage or overtime compensation.”

14 24. Labor Code section 1197 provides that the minimum wage for employees fixed by
15 the commission is the minimum wage to be paid to employees, and the payment of a lesser wage
16 is unlawful.

17 25. IWC Wage Order 16-2001 provides the minimum hourly wage for construction
18 workers for employers of 25 or fewer employees to be \$10.50 in 2018, \$11.00 in 2019, \$12.00 in
19 2020; \$13.00 in 2021; and \$14.00 in 2022.

20 26. Because Defendants wrongfully classified Clark as an independent contractor, it
21 did not pay him wages for all hours he worked. Consequently, Defendants violated Labor Code
22 § 1197, and are required to pay Clark the balance of any unpaid wages pursuant to Labor Code §
23 1194.

24 27. In addition, at Labor Code § 1194.2(a) provides, in pertinent part: “[i]n any
25 action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage
26 less than the minimum wage fixed by an order of the commission, an employee shall be entitled
27 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
28 thereon.”

1 28. The interest applicable for unpaid wages is 10%, pursuant to Labor Code section
2 218.5.

3 29. In addition, Labor Code § 1194(a) entitles Plaintiff Clark to an award of
4 reasonable attorneys' fees and costs.

5 30. Wherefore, Plaintiff seeks unpaid wages and liquidated damages of unpaid wages
6 with 10% interest thereon, in addition to reasonable attorneys' fees and costs.

7 **SECOND CAUSE OF ACTION**
8 **VIOLATION OF 1194, 1198, 510 and Wage Order 16-2001**
9 **(Failure to Pay Overtime Wages)**
 Against All Defendants

10 31. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and
11 allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent
12 with the allegations of this cause of action.

13 32. Plaintiff Clark worked over 40 hours per week while employed by Defendants.
14 Clark estimates that he worked 50 to 60 hours per week on average, while employed by
15 Defendants.

16 33. Labor Code § 510 provides, in pertinent part: "(a) Eight hours of labor constitutes
17 a day's work. Any work in excess of eight hours in one workday and any work in excess of 40
18 hours in any one workweek and the first eight hours worked on the seventh day of work in any
19 one workweek shall be compensated at the rate of no less than one and one-half times the regular
20 rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at
21 the rate of no less than twice the regular rate of pay for an employee. In addition, any work in
22 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
23 less than twice the regular rate of pay of an employee. Nothing in this section requires an
24 employer to combine more than one rate of overtime compensation in order to calculate the
25 amount to be paid to an employee for any hour of overtime work."

26 34. Nevertheless, Defendants failed to pay overtime wages to Clark even though he
27 consistently worked more than 8 hours in a day, and 40 hours per week while employed by
28 Defendants.

1 35. Clark may obtain those unpaid premium wages pursuant to Labor Code § 1194.

2 36. Clark may also obtain 10% interest on said unpaid wages pursuant to Labor Code
3 § 1194(a).

4 37. Wherefore, Plaintiff seeks unpaid overtime wages with 10% interest thereon, in
5 addition to reasonable attorneys' fees and costs.

6 **THIRD CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 202 ET SEQ.**
8 **(Failure to Pay Wages upon Cessation of Employment)**
9 **Against All Defendants**

10 38. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and
11 allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent
12 with the allegations of this cause of action.

13 39. Labor Code § 202 requires an employer to pay an employee all wages earned and
14 unpaid within 72 hours after an employee ends the employment relationship.

15 40. Nevertheless, Defendants did not pay to Plaintiff Clark all wages due after the
16 employment relationship terminated, as it, among other wrongdoings, failed to pay for all time
17 worked, overtime, deducted \$100 from paychecks so it could buy a boat, and wrongfully
18 deducted from wages to pay for tools.

19 41. Labor Code § 203 provides: "If an employer willfully fails to pay, without
20 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
21 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
22 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
23 the wages shall not continue for more than 30 days".

24 42. As a result of Defendants' conduct, Plaintiff Clark has been damaged as set forth
25 above. Plaintiff Clark hereby requests the applicable statutory penalty under Labor Code § 203,
26 10% interest thereon, reasonable attorneys' fees and costs of suit.

27 ///

28 ///

///

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226
(Failure to Furnish Accurate Itemized Wage Statements)
Against All Defendants

43. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent with the allegations of this cause of action.

44. Pursuant to Labor Code § 226(a), every employer shall furnish each of his or her employees an accurate itemized statement in writing showing, amongst other things, total hours worked, gross and net wages earned, and each applicable rate and the total hours worked at each rate.

45. Nevertheless, as set forth above, defendants intentionally and willfully failed to furnish any wage statements to Clark.

46. Labor Code § 226(e)2(A) provides that an employee that does not receive a wage statement is deemed to suffer an injury.

47. The penalty for failure to furnish a wage statement is fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period pursuant to Labor Code § 226(e)(1), up to \$4,000.00.

48. Labor Code § 226(e)(1) entitles Plaintiff Clark to an award of \$4,000 and fees and costs.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2802 and Wage Order 16-2001
(Failure to Reimburse for Expenses Incurred for Employer)
Against All Defendants

49. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent with the allegations of this cause of action.

50. Labor Code § 2802 provides, in relevant part: "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful.”

3 51. IWC Wage Order 16-2001 (8) provides, in pertinent part: “(B) When the
4 employer requires the use of tools or equipment or they are necessary for the performance of a
5 job, such tools and equipment shall be provided and maintained by the employer, except that an
6 employee whose wages are at least two (2) times the minimum wage may provide and maintain
7 hand tools and equipment customarily required by the particular trade or craft in conformity with
8 Labor Code Section 2802.”

9 52. Nevertheless, Defendants, and each them, required Clark to buy tools, and pay for
10 a citation related to its failure to provide Clark with proof of insurance on Defendants’ work
11 issued vehicle. Defendants also deducted \$100 per paycheck for the purchase of a boat.

12 53. Labor Code § 2802(b) provides for legal interest to accrue from the time of the
13 expenditure. Labor Code § 2802(c) provides for attorneys’ fees and costs incurred in collecting
14 the unreimbursed expenses charged to, or incurred by, the employee.

15 54. Clark seeks reimbursement for all tools, the citation, in addition to interest
16 thereon, attorneys’ fees and costs.

17 **SIXTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE §§ 226.7, 512, Wage Order 16-2001**
19 **(Failure to Furnish Meal and Rest Breaks)**
20 **Against All Defendants**

21 55. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and
22 allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent
23 with the allegations of this cause of action.

24 56. Labor Code § 226.7 provides: “(a) No employer shall require any employee to
25 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
26 Commission. (b) If an employer fails to provide an employee a meal period or rest period in
27 accordance with an applicable order of the Industrial Welfare Commission, the employer shall
28 pay the employee one additional hour of pay at the employee s regular rate of compensation for
each work day that the meal or rest period is not provided.”

1 57. Labor Code § 512 provides: “(a) An employer shall not employ an employee for
2 a work period of more than five hours per day without providing the employee with a meal
3 period of not less than 30 minutes, except that if the total work period per day of the employee is
4 no more than six hours, the meal period may be waived by mutual consent of both the employer
5 and employee. An employer shall not employ an employee for a work period of more than 10
6 hours per day without providing the employee with a second meal period of not less than 30
7 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
8 may be waived by mutual consent of the employer and the employee only if the first meal period
9 was not waived.”

10 58. IWC Wage Order 16-2001 (10) provides, in relevant part: “(A) No employer
11 shall employ any person for a work period of more than five (5) hours without a meal period of
12 not less than 30 minutes, except that when a work period of not more than six (6) hours will
13 complete the day’s work the meal period may be waived by mutual consent of employer and
14 employee. (See Labor Code Section 512.) (B) An employer may not employ an employee for a
15 work period of more than ten (10) hours per day without providing the employee with a second
16 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
17 hours, the second meal period may be waived by mutual consent of employer and employee only
18 if the first meal period was not waived. (See Labor Code Section 512.)”

19 59. IWC Wage Order 16-2001 (11) provides, in relevant part: “(A) Every employer
20 shall authorize and permit all employees to take rest periods, which insofar as practicable shall
21 be in the middle of each work period. Nothing in this provision shall prevent an employer from
22 staggering rest periods to avoid interruption in the flow of work and to maintain continuous
23 operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur
24 in the course of the workday. The authorized rest period time shall be based on the total hours
25 worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or
26 major fraction thereof. Rest periods shall take place at employer designated areas, which may
27 include or be limited to the employees’ immediate work area.”

1 60. Nevertheless, Defendants had no meal or rest break policy. They had no
2 designated rest areas. They did not furnish meal periods, nor pay for rest periods. Clark did not
3 waive his right to a meal period. Because Defendants misclassified Clark as an independent
4 contractor, he was not paid for any breaks during his employment. Further, Clark was never
5 furnished with, or advised of, his right to take a meal period.

6 61. The penalty for the failure to furnish a meal period is an additional hour of pay.
7 The penalty for the failure to pay for rest periods is an additional hour of pay. Clark seeks two
8 additional hours of pay per day of his employment. In addition, reasonable fees and costs are
9 sought by Clark pursuant to Labor Code § 218.5.

10 **SEVENTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE § 218**
12 **(For Unpaid Wages)**
 Against All Defendants

13 62. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and
14 allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent
15 with the allegations of this cause of action.

16 63. Because Defendants withheld wages to buy a boat, pay for tools, and failed to pay
17 Clark for the last pay period of work by Clark, Defendants owe Clark wages.

18 64. Labor Code § 218 provides, in pertinent part: "Nothing in this article shall limit
19 the right of any wage claimant to sue directly or through an assignee for any wages or penalty
20 due him under this article."

21 65. In addition, Labor Code § 218.5, a wage claimant may recover reasonable fees
22 and costs in an action to obtain unpaid wages.

23 66. Clark seeks all unpaid wages during his employment, reasonable attorneys fees
24 and costs.

25 ///

26 ///

27 ///

28 ///

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226(b), 1198.5
(Failure to Provide Records)
Against All Defendants

67. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent with the allegations of this cause of action.

68. Labor Code § 226(b) provides: “(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.”

69. Labor Code § 1198.5 provides, in pertinent part: “(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee. (b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of the written request. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to

1 produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days
2 from the employer's receipt of the written request."

3 70. Clark requested records from Defendant Cuatro Amigos via certified mail on
4 February 9, 2022. Cuatro Amigos did not provide records in response to the request.

5 71. The penalty for non-compliance is \$750 pursuant to Labor Code § 226(f), and
6 \$750 pursuant to Labor Code § 1198.5(k). Clark seeks \$1500 from Defendant Cuatro Amigos
7 for its failure to provide records.

8 **NINTH CAUSE OF ACTION**
9 **VIOLATIONS OF LABOR CODE § 2698 *ET SEQ.***
10 **(Private Attorneys General Act)**
11 **Against All Defendants**

12 72. Plaintiff Clark hereby realleges and incorporates by reference all paragraphs and
13 allegations in this Complaint, except to the extent any paragraph or allegation is inconsistent
14 with the allegations of this cause of action.

15 73. Plaintiff Clark has standing as an aggrieved employee pursuant to the provisions
16 of Labor Code § 2699.3, because he was the victim of Labor Code violations as set forth above,
17 and exhausted the legal prerequisite of providing the LWDA with notice of the same on February
18 10, 2022, and then waited the required statutory time frame before amending his complaint to
19 add claims pursuant to the PAGA.

20 74. Clark has identified Labor Code violations as to him and other former and current
21 employees of Defendant, as set forth above, and detailed to the LWDA in Exhibit 1.

22 75. An actual controversy exists as to the magnitude of said violations as to current
23 and former employees.

24 76. Wherefore, Clark prays for relief under the PAGA as set forth below.
25

26 ///

27 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff Clark prays judgment against each defendant as follows.

3 **As to the First Cause of Action:**

- 4 1. For compensatory damages, including wages for all hours worked, in an amount
5 according to proof;
- 6 2. For liquidated damages pursuant to Labor Code § 1194.2;
- 7 3. For statutory attorneys' fees and costs, including but not limited to those available
8 under Labor Code §§ 218.5, and 1194;
- 9 4. For prejudgment and post-judgment interest according to any applicable provision
10 of law or as otherwise permitted by law, including but not limited to that available
11 under Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
- 12 5. For such other and further relief as the court deems just and proper.

13 **As to the Second Cause of Action:**

- 14 1. For compensatory damages, including overtime wages for all hours worked in
15 excess of 8 hours per day, or 40 hours per week, in an amount according to proof;
- 16 2. For statutory attorneys' fees and costs, including but not limited to those available
17 under Labor Code §§ 218.5, and 1194;
- 18 3. For prejudgment and post-judgment interest according to any applicable provision
19 of law or as otherwise permitted by law, including but not limited to that available
20 under Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
- 21 4. For such other and further relief as the court deems just and proper.

22 **As to the Third Cause of Action:**

- 23 1. For statutory penalties under Labor Code § 203 according to proof;
- 24 2. For prejudgment and post-judgment interest according to any applicable provision
25 of law or as otherwise permitted by law, including but not limited to Civil Code
26 §§ 3287(a) and 3289(b);
- 27 3. For costs of suit; and
- 28

1 4. For such other and further relief as the court deems just and proper.

2 **As to the Fourth Cause of Action:**

- 3 1. For statutory penalties of \$4,000 under Labor Code § 226(e);
- 4 2. For attorneys' fees and costs under Labor Code § 226(e);
- 5 3. For prejudgment and post-judgment interest according to any applicable provision
- 6 of law or as otherwise permitted by law, including but not limited to that available
- 7 under Civil Code §§ 3287(a) and 3289(b); and

8 4. For such other and further relief as the court deems just and proper.

9 **As to the Fifth Cause of Action:**

- 10 1. For compensatory damages in the form of reimbursement of all expenses incurred
- 11 by Clark, and deductions by Defendants from Clark's pay for tools and a boat,
- 12 pursuant to Labor Code § 2802;
- 13 2. For interest at 10% pursuant to Labor Code § 2802(b), to accrue from the time of
- 14 the expenditure or deduction;
- 15 3. For provides for reasonable attorneys' fees and costs incurred in collecting the
- 16 unreimbursed expenses charged to, or incurred by, Clark pursuant to employee
- 17 Labor Code § 2802(c);
- 18 4. For such other and further relief as the court deems just and proper.

19 **As to the Sixth Cause of Action:**

- 20 1. For penalties for unfurnished meal breaks and unpaid rest breaks pursuant to
- 21 226.7(b);
- 22 2. For statutory attorneys' fees and costs, including but not limited to those available
- 23 under Labor Code § 218.5;
- 24 3. For prejudgment and post-judgment interest according to any applicable provision
- 25 of law or as otherwise permitted by law, including but not limited to that available
- 26 under Labor Code § 218.6, Civil Code §§ 3287(a) and 3289(b); and
- 27 4. For such other and further relief as the court deems just and proper.
- 28

1 **As to the Seventh Cause of Action:**

- 2 1. For all unpaid wages pursuant to Labor Code § 218;
- 3 2. For statutory attorneys' fees and costs, including but not limited to those available
- 4 under Labor Code § 218.5;
- 5 3. For prejudgment and post-judgment interest according to any applicable provision
- 6 of law or as otherwise permitted by law, including but not limited to that available
- 7 under Labor Code § 218.6, Civil Code §§ 3287(a) and 3289(b); and
- 8 4. For such other and further relief as the court deems just and proper.

9 **As to the Eighth Cause of Action:**

- 10 1. For \$750 pursuant to Labor Code § 226(f), and \$750 pursuant to Labor Code §
- 11 1198.5(k);
- 12 2. For costs of suit; and
- 13 3. For such other and further relief as the court deems just and proper.

14 **As to the Ninth Cause of Action:**

- 15 1. For civil penalties under the PAGA, including
- 16 a. Penalties of between \$5,000 and \$25,000, per violation, pursuant to Labor
- 17 Code sections 226.8(b), and (c);
- 18 b. Penalties of \$250 per violation pursuant to Labor Code section 226.3 for each
- 19 instance no wage statement was furnished to an employee when it was
- 20 required to be;
- 21 c. Penalties of \$250 per violation pursuant to Labor Code section 226.3 for each
- 22 instance an inaccurate wage statement was furnished to an employee;
- 23 d. Penalties of \$250 per violation pursuant to Labor Code section 226.3 for each
- 24 instance Defendant failed to maintain a wage statement;
- 25 e. Penalties of \$50 pursuant to Labor Code § 558 per pay period for each
- 26 instance an employee was not furnished complaint meal period;
- 27
- 28

- 1 f. Penalties of \$50 pursuant to Labor Code § 558 per pay period for each
2 instance an employee was not furnished complaint rest period;
- 3 g. Penalties of \$100 per pay period pursuant Labor Code §2699(f), for each
4 instance an employee was not properly compensated for a sick day;
- 5 h. Penalties of \$100 per pay period pursuant Labor Code §2699(f), for each
6 instance an employee was not properly paid all wages due at the cessation of
7 employment;
- 8 i. Penalties of \$100 per pay period pursuant Labor Code §2699(f), for each
9 instance an employee was not properly reimbursed for employment related
10 expenses;
- 11 2. For a judicial declaration that Defendant violated Labor Code §§ 226.8(a)(1)
12 (misclassification of employees), 226(a) (failure to furnish wage statements),
13 226(a)(1) to (a)(9) (failure to furnish accurate wage statements), 226(a) (failure to
14 maintain wage statements), 512 and 226.7 (failure to furnish compliant meal and
15 rest breaks), 246(b)(1) (failure to provide compliant sick days), 201 and 202
16 (failure to pay all wages due on cessation of employment), and 2802 (failure to
17 reimburse employees for employment related expenses).
- 18 3. For statutory attorneys' fees and costs, including but not limited to those available
19 under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
- 20 4. For prejudgment and post-judgment interest according to any applicable provision
21 of law or as otherwise permitted by law, including those available under Civil
22 Code §§ 3287(a) and 3289(b); and
- 23 5. For such other and further relief as the court deems just and proper.
- 24

25 **DATED:** April 22, 2022

26
27 By

MAYALL HURLEY, P.C.

WILLIAM J. GORHAM III
Attorneys for Plaintiff David Clark

Exhibit 1

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253

FAX (209) 473-4818

TELEPHONE (209) 477-3833

MAILING ADDRESS:

2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

February 10, 2022

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

AJ Bono Plumbing
5036 Commercial Circle, Suite A
Concord, CA 94520

Re: David Clark

To Whom It May Concern:

This firm represents David Clark relating to his former employment as a plumber for AJ Bono Plumbing ("Employer"). In accordance with California Labor Code § 2699.3, this letter shall serve as Mr. Clark's written notice regarding the following violations, and facts and theories supporting the violations, on his behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

AJ Bono Plumbing is a plumbing contractor and provides plumbing services to the public. Mr. Clark worked as a plumber for Employer from 2018 until the recent termination of the employment relationship in 2022.

As to Mr. Clark and current and other former employees, Employer enforced the following conditions of employment. Plumbers worked under Employer's contracting license. Plumbers were paid by the job, purportedly on a commission basis. Employer provided a truck and a phone. Employer illegally deducted \$100 for paychecks to "buy a boat." There was no written agreement or other accounting for this deduction. Employer

Labor and Workforce Development Agency
AJ Bono Plumbing
Re: David Clark
February 10, 2022
Page 2 of 4

required employees to purchase, without reimbursement, tools and parts necessary for the jobs they worked on. Employer charged for the use of the required company phone. Employer deducted from pay for property stolen by third parties, again, without accounting for this deduction. Employer never issued wage statements, or provided a written accounting for what it was paying employees. Employer did not provide paid breaks, furnish meal breaks, or provide sick pay. Employer did not pay Mr. Clark all wages due to him at the cessation of employment, nor did it do so for other former employees. Employer did not pay Mr. Clark for his last two weeks of work, without explanation.

Employer misclassified all of its plumbers and technicians as independent contractor. Yet, it denies the existence of an employment relationship with the persons that provide the services, such as Mr. Clark, as employees. It has done so willfully, as it has been clear at least since *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 that contracted persons who perform the very services sold by a company to the public are employees.

Because Employer misclassified Mr. Clark and other employees, it failed to comply with its obligation to provide wage statements and all of the information required therein. Mr. Clark never received a wage statement, nor did other current or former employees. Employer failed to furnish compliant meal and rest breaks, and had no policy permitting the same, or paying for rest breaks. Employer failed to pay Mr. Clark and others for all time worked, or for any overtime.

In so acting, as to Mr. Clark, and current and other former California employees of Employer, has resulted in numerous violations of the California Labor Code, including:

1. Violation of Labor Code section 226.8(a)(1) – willful misclassification of an individual as an independent contractor. The violations include penalties of between \$5,000 and \$25,000 pursuant to Labor Code sections 226.8(b), and (c).
2. Violation of Labor Code section 226(a) – failure to furnish a wage statement. Each instance carries a \$250 fine pursuant to Labor Code section 226.3.
3. Violation of Labor Code section 226(a)(1) through (9) – failure to furnish wage statements that accurately itemize writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable

piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period. . . . Each instance carries a \$250 fine pursuant to Labor Code section 226.3.

4. Violation of Labor Code section 226(a) – failure to maintain wage statements. Each instance carries a \$250 fine pursuant to Labor Code section 226.3.
5. Violation of Labor Code sections 512, 226.7, and applicable Wage Order(s) – failure furnish compliant meal breaks. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
6. Violation of Labor Code section 226.7 and applicable IWC Wage Order(s) – failing to provide a paid rest break. The civil penalty for these violations is \$50 per pay period per affected employee pursuant to Labor Code § 558.
7. Violation of Labor Code section 246(b)(1) – failure to provide sick days for employees. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per violation.
8. Violation of Labor Code Sections 201 and 202 – failure to pay all wages due at the cessation of employment. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per violation. Alternatively, a penalty not to exceed 30 days of wages may be applied pursuant to Labor Code § 256.
9. Violation of Labor Code section 2802 – failure to reimburse employees for expenses incurred on behalf of the employer. The civil penalty for these violations is, pursuant Labor Code §2699(f), \$100 per violation.

In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

Labor and Workforce Development Agency
AJ Bono Plumbing
Re: David Clark
February 10, 2022
Page 4 of 4

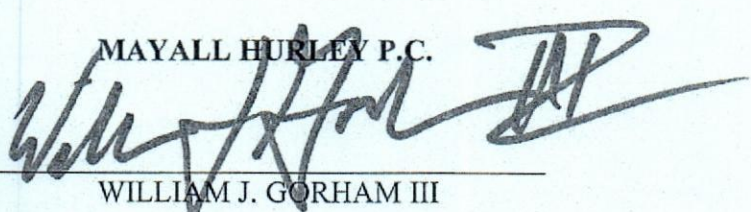
If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Mr. Clark.

If the LWDA does not intend to investigate these violations, Mr. Clark intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By


WILLIAM J. GORHAM III

cc: client

LAW OFFICES

MAYALL, HURLEY
A PROFESSIONAL CORPORATION

— 2453 GRAND CANAL BOULEVARD

SECOND FLOOR

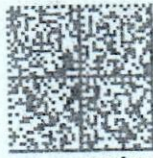
STOCKTON, CALIFORNIA 95207-8253

POSTAL SERVICE CERTIFIED MAIL



9489 0090 0027 6312 4277 77

Label 690-PB, Oct. 2015
Pliny Bowes



US POSTAGE PLINY BOWES
ZIP 95207 \$ 006.13⁰
02 4W
0000369527 FEB 10 2022

AJ Bono Plumbing
5036 Commercial Circle, Suite A
Concord, CA 94520



February 15, 2022

Dear Julie Zeyen:

The following is in response to your request for proof of delivery on your item with the tracking number:
9489 0090 0027 6312 4277 77.

Item Details

Status:	Delivered, Front Desk/Reception/Mail Room
Status Date / Time:	February 15, 2022, 10:02 am
Location:	CONCORD, CA 94520
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic

Shipment Details

Weight: 8.5oz

Recipient Signature

Signature of Recipient:

Address of Recipient:

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004