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and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

JOSE TREJO, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

ANDERSON CHARNECKY STRUCTURAL
STEEL, INCORPORATED., a California
corporation; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: **CVRI 2201955**

CLASS ACTION

- (1) Failure to Pay Compensation for All Hours Worked (Labor Code §§ 216 and 1194 *et seq.*);
- (2) Failure to Pay Minimum Wage (Labor Code §§ 1194 *et seq.*);
- (3) Failure to Pay Overtime Compensation (Labor Code § 510);
- (4) Failure to Furnish Accurate Wage and Hour Statements (Labor Code § 226);
- (5) Failure to Provide Meal and Rest Periods (Labor Code §§ 226.7 and 512);
- (6) Failure to Ensure Safety in Employment (Labor Code § 6400);
- (7) Indemnification (Labor Code §§ 2800, and 2802); and
- (8) Unfair Competition (Business and Professions Code §§ 17200, *et seq.*).
- (9) Failure to Provide Personnel File (Labor Code §§ 1198.5, 226(f))

JURY TRIAL DEMANDED

1
2 Plaintiff JOSE TREJO (“Plaintiff”), individually, and on behalf of all similarly situated
3 individuals, alleges as follows:

4 **GENERAL ALLEGATIONS**

5 1. This is a proposed class action brought against Defendants ANDERSON
6 CHARNESKY STRUCTURAL STEEL, INCORPORATED, a California corporation; and DOES 1
7 through 25, inclusive (hereinafter referred to as “Defendants”), on behalf of Plaintiff and a Proposed
8 Class defined as:

9 all persons who are employed or have been employed as a non-exempt,
10 hourly employee by ANDERSON CHARNESKY STRUCTURAL STEEL,
11 INCORPORATED in the State of California since four years prior to the
filing of this action, and continuing to the present (hereinafter “Class
Members”)

12 2. From at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendants:

- 14 a. failed to pay wages for all hours worked, including for hours worked in excess
15 of eight hours a day or forty hours a week, to the Proposed Class;
- 16 b. failed to pay minimum wages due to the Proposed Class;
- 17 c. failed to pay overtime compensation due to the Proposed Class;
- 18 d. failed to provide the Proposed Class with timely and accurate wage and hour
19 statements;
- 20 e. failed to maintain complete and accurate payroll records for the Proposed
21 Class;
- 22 f. failed to provide the Proposed Class with adequate and timely meal periods
23 and rest periods in accordance with and in violation of the applicable Industrial
24 Welfare Commission wage orders, and California Labor Code sections 226.7
25 and 510.
- 26 g. failed to pay the Proposed Class the additional hour of pay for not providing
27 meal periods and rest periods in accordance with and in violation of the
28 applicable Industrial Welfare Commission wage orders, and California Labor

Code sections 226.7;

- h. failed to protect the life, safety, and health of the Proposed Class in violation of California Labor Code sections 6400, 6401, 6401.7, 6402, 6403, 6404, and 6407;
- i. failed to indemnify the Proposed Class for all necessary expenditures or losses;
- j. wrongfully withheld wages and compensation due to the Proposed Class; and
- k. committed unfair business practices in an effort to increase profits and to gain an unfair business advantage at the expense of the Proposed Class and the public;

3. The foregoing acts and other acts by Defendants - committed throughout California and Riverside County - violated numerous provisions of California law, including Labor Code §§ 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510-512, 558, 1174, 1174.5, 1182.1, 1182.3, 1182.12, 1194-1197.1, 1198, 1199, 2800, 2802, 6401, 6401.7, 6402, 6403, 6404, 6407 and 2698, et seq. and the applicable Wage Orders issued by the Industrial Welfare Commission (collectively, “Employment Laws and Regulations”), Business & Professions Code §§ 17200 *et seq.*, and violated Plaintiff’s rights and the rights of the Class Members. 118

JURISDICTION AND VENUE

4. This Court has jurisdiction over all causes of action herein pursuant to the California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code § 17203.

5. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because Defendants operates in this County, Plaintiff Jose Trejo resides in and/or worked in this county and the injuries that are the subject of this lawsuit arose in this county.

THE PARTIES

6. Plaintiff Jose Trejo was employed by Defendants as a helper, a cutter, and a builder in the welding warehouse from in or around September 2015 to on or about February 9, 2022 for Defendants Anderson Charnesky Structural Steel, Incorporated. Throughout his employment with Defendants, Plaintiff was a non-exempt, hourly employee. Plaintiff resided in and performed duties

1 in the County of Riverside during the last year preceding the filing of this action.

2 7. Defendants ANDERSON CHARNESKY STRUCTURAL STEEL,
3 INCORPORATED, is, and at all relevant times was, a California corporation, licensed to do business
4 and actually doing business in the State of California. Defendants is an American Institute of Steel
5 Construction certified “fabricator”, whose scope of work includes the “erection and installation” of
6 their fabricated products. (acssteeline.com). As part of ACSS Inc.’s operations, they utilize in most
7 cases their own “erection crews” or one of their “qualified subcontract erectors.” *Id.*

8 8. Plaintiff is currently unaware of the true names and capacities of the Defendants sued
9 in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sues those
10 Defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names
11 and capacities of such fictitiously named Defendants when they are ascertained. Plaintiff is informed
12 and believes and based thereon states that the persons sued herein as DOES are in some manner
13 responsible for the conduct, injuries, and damages herein alleged.

14 9. Plaintiff is informed and believes and based thereon alleges that each Defendants sued
15 in this action, including each Defendants sued by the fictitious names DOES 1 through 25, inclusive,
16 is responsible in some manner for the occurrences, controversies and damages alleged below.

17 10. Plaintiff is informed and believes and based thereon alleges that each of the
18 Defendants, inclusive, were the agents, servants and/or employees of the other Defendants and, in
19 doing the things hereinafter alleged and at all times, were acting within the scope of their authority
20 as such agents, servants and employees, and with the permission and consent of the other Defendants.

21 11. Plaintiff is informed and believes and based thereon alleges that Defendants ratified,
22 authorized, and consented to each and all of the acts and conduct of each other as alleged herein.
23 Each of the Defendants were the agent and/or employee of the others, and the conduct of each
24 Defendants herein alleged was authorized and/or ratified by the others. The conduct of Defendants
25 was carried on by and through its authorized agents, including owners, officers, directors, managers,
26 and supervisors.

27 **FACTS**

28 12. Plaintiff is an individual who resided in the County of Riverside, during the year

1 preceding the filing of this action. Plaintiff was employed by Defendants as a helper, a cutter, and a
2 builder in the welding warehouse located at 353 Risco Circle, Beaumont, California within the last
3 four years preceding the filing of this action.

4 13. During Plaintiff's employment with Defendants, Defendants did not provide Class
5 Members, including Plaintiff, with rest breaks. Defendants also did not provide Class Members,
6 including Plaintiff, with adequate and timely meal breaks. Class Members typically work eight to ten
7 hours per day.

8 14. Class Members are not provided with statutorily compliant rest breaks for every four
9 hours worked or major fraction thereof. Class Members are not provided any training about statutory
10 rest breaks under California law and are not scheduled to take compliant rest breaks. Further,
11 throughout the Class Period, Plaintiff and other Class Members were routinely denied the rest breaks
12 they were entitled to under California law, including: (a) failing to provide paid rest periods of ten
13 (10) minutes during which Plaintiff and other similarly-situated Class Members were relieved of all
14 duty for each four (4) hours of work or major fraction thereof; (b) failing to pay Plaintiff and other
15 Class Members one (1) hour of pay at their regular rate of compensation for each workday that a rest
16 period was not permitted.

17 15. With respect to rest breaks, Defendants maintained a policy, procedure, and/or practice
18 that Class Members are permitted to take one, 20-minute rest break from about 8:30 a.m. to 8:50 a.m.
19 No other rest breaks are authorized or permitted to be taken. This singular, combined rest break is in
20 stark contrast to a rest break of at least 10-minutes for every four (4) hours worked, or major fraction
21 thereof. As a result, Class Members are deprived of statutorily compliant rest breaks.

22 16. Defendants failed to regularly schedule a timely meal period where Class Members,
23 including Plaintiff, are relieved of all duty for a 30-minute period within the first five hours of their
24 shift or pay the premium compensation for the missed, short, or late meal period.

25 17. With respect to meal breaks, Class Members, including Plaintiff, take one meal period
26 from 12:20 p.m. to 12:50 p.m. However, Class Members never clock out or back in for lunch, thus
27 they never had any contemporaneous record of a meal period. Instead, Defendantss' supervisors
28 record the supposed meal period after the fact and always in whole round numbers and exactly in

thirty-minute duration. Additionally, the entirety of the meal period is not completely uninterrupted and duty-free as Class Members would continue to finish work or a project rendering the actual meal period short of the required thirty-minutes or interrupted. Defendants' managers are directed to alter and manipulate the time entries to give the false impression that Class Members, including Plaintiff, took an uninterrupted, duty-free meal period every day of work for exactly thirty minutes in length, day in and day out, when in fact, nothing could be further from the truth. Defendants therefore knowingly or intentionally misreports the meal breaks of Aggrieved Employees, including Plaintiff.

18. Class Members are also paid according and corresponding to their assigned schedule. That means Class Members are not paid for pre-shift or post-shift work. There are many instances in which Class Members are under Defendants's control but are not compensated.

19. Defendants employ policies, practices, and/or procedures of requiring Class Members, including Plaintiff, to line up and wait to undergo and actually undergo off-the-clock COVID-19 medical screenings including temperature checks and/or questionnaires prior to clocking in for the start of their shift without paying Plaintiff and Class Members for this time. Additionally, by virtue of working minutes off-the-clock during purported meal breaks, Class Members, including Plaintiff, are owed unpaid wages and civil penalties for having worked more minutes per shift than Defendants credited them with having worked.

20. Additionally, Plaintiff and other Class Members are required to work in an environment that exposes them to aluminum, acid, and mold without any safety materials. Plaintiff and other Class Members were also expected to paint in small, confined spaces, thus being exposed to paint and paint fumes with no safety materials. As a welding warehouse, Plaintiff and other Class Members were also exposed to fire, smoke, and debris. Defendants specifically did not provide gloves, masks, or protective eyewear. In fact, Plaintiff and other Class Members were expected to purchase their own equipment. However, the use of masks and welding gloves when working in a welding warehouse and around the materials listed above, is a safety measure, requiring Defendants to purchase the necessary equipment.

21. Relatedly, Plaintiff and other Class Members were required to purchase equipment, i.e., gloves, masks, protective eyewear, to ensure their safety in the workplace – a necessary

1 expenditure as described above that should have been borne by Defendants – they are entitled to
2 reimbursement and civil penalties for incurring these expenses in connection with their work for
3 Defendants.

4 22. Moreover, Defendantss’ wage statements are facially non-compliant by virtue of
5 Defendantss’ practice of failing to pay the missed rest break and/or meal period penalty, as well as
6 Defendantss’ failure to compensate pre and post shift work. As such, the wage statements do not
7 accurately itemize or reflect showing gross hours earned, total hours worked, all deductions made,
8 net wages earned, and all applicable hourly rates in effect during each pay period and the
9 corresponding number of hours worked at each hourly rate.

10 23. Accordingly, during Plaintiff’s employment with Defendants, Defendants wrongfully
11 withheld from Plaintiff and failed to pay wages and other compensation due for all hours worked,
12 and as otherwise required per Employment Laws and Regulations. Defendants willfully and
13 knowingly failed to pay Plaintiff and other Class Members, upon termination of employment, all
14 accrued compensation including, but not limited to, payment of minimum wage compensation,
15 overtime compensation, missed meal and rest period compensation and for time spent performing
16 work off the clock at Defendantss’ direction.

17 24. Finally, to the extent that any Class Members, including Plaintiff, entered into any
18 arbitration agreement with any Defendants, such agreement is void and unenforceable. Any such
19 agreement was one of adhesion, executed under duress, lacked consideration and mutuality, and is
20 otherwise void under both Labor Code § 229 and the California Supreme Court case of *Armendariz*
21 *v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

22 **CLASS ACTION ALLEGATIONS**

23 25. All current and former crew members, or any other similarly situated non-exempt,
24 hourly employee who was employed by Defendants in California during the Class Period, including
25 Plaintiff, are proposed class members (henceforth, “Class Members”).

26 26. The Class Members’ duties and activities during their respective working hours and
27 each shift are known to and directed by Defendants and are set and controlled by Defendants.

28 27. During the Class Period, Defendants have routinely failed to provide Class Members

1 with legally compliant and mandated meal and rest breaks.

2 28. During the Class Period, Defendants refused to compensate Class Members for all
3 wages earned (“off-the-clock” work) and for all hours worked including time during which Class
4 Members were subject to Defendants’ control and were suffered or permitted to work for Defendants.
5 Defendants failed and refused to pay Class Members for all hours worked, including but not limited
6 to time worked before, during, and after the official end times of their shifts, and during their meal
7 and rest periods.

8 29. During the Class Period, Defendants have failed and refused to provide Class
9 Members with a safe and healthful environment to protect the life, safety, and health of employees.

10 30. During the Class Period, Defendants have failed and refused to provide Class
11 Members with timely and accurate wage and hour statements.

12 31. During the Class Period, Defendants have failed and refused to maintain complete and
13 accurate payroll records for Class Members showing gross hours earned, total hours worked, all
14 deductions made, net wages earned, and all applicable hourly rates in effect during each pay period
15 and the corresponding number of hours worked at each hourly rate.

16 32. During the Class Period, Defendants have failed and refused to indemnify the Class
17 Members for all necessary expenditures or losses incurred by them in direct consequence of the
18 discharge of their duties, or of their obedience to the directions of Defendants.

19 33. During the Class Period, Defendants has wrongfully withheld and failed to pay Class
20 Members wages and other compensation earned and due them for all hours worked and as otherwise
21 required pursuant to the Employment Laws and Regulations, including the correct amounts of
22 overtime wages owed.

23 34. Defendants’ conduct violated the Employment Laws and Regulations. Defendants’
24 systematic acts and practices also violated, inter alia, Business & Professions Code §§ 17200, *et seq.*

25 35. Plaintiff also seeks all other compensation and all benefits required pursuant to the
26 Employment Laws and Regulations, plus penalties and interest, owed to Class Members.

27 36. The duties and business activities of the Class Members were essentially the same as
28 the duties and activities of the Plaintiff. At all times during the Class Period, all of the Class Members

1 were employed in the same or similar job as Plaintiff (as non-exempt, hourly employees) and were
2 paid in the same manner and under the same standard employment procedures and practices as
3 Plaintiff.

4 37. During the Class Period, Defendants were fully aware that Plaintiff and the Class
5 Members were performing “off-the-clock” unpaid work and not being paid for all hours worked in
6 violation of the provisions of the Labor Code.

7 38. Defendants’ violations of the Employment Laws and Regulations were repeated,
8 willful and intentional.

9 39. Plaintiff and the Class Members have been damaged by Defendants’ conduct.

10 40. While the exact number of Class Members are unknown to Plaintiff at the present
11 time, based on information and belief, there are more than 40 such persons. A class action is the most
12 efficient mechanism for resolution of the claims of the Class Members.

13 41. In addition, a class action is superior to other available methods for the fair and
14 efficient adjudication of this controversy because the damages suffered by individual Class Members
15 may be relatively small, and the expense and burden of individual litigation would make it impossible
16 for such Class Members individually to redress the wrongs done to them. Moreover, because of the
17 similarity of the Class Members’ claims, individual actions would present the risk of inconsistent
18 adjudications subjecting Defendants to incompatible standards of conduct.

19 42. Plaintiff is currently unaware of the identities of all the Class Members. Accordingly,
20 Defendants should be required to provide to Plaintiff a list of all persons employed as non-exempt
21 hourly employees in each of Defendants’ locations in California beginning four years prior to the
22 filing of until the present, stating their last known addresses, telephone numbers, and any other
23 identifiable contact information (e.g., e-mail address) so that Plaintiff may give such Class Members
24 notice of the pendency of this action and an opportunity to make an informed decision about whether
25 to participate in it.

26 43. The proposed Class that Plaintiff seeks to represent is defined as follows: all persons
27 who are employed or have been employed as a non-exempt, hourly employee by ANDERSON
28 CHARNESKY STRUCTURAL STEEL, INCORPORATED in the State of California since four

1 years prior to the filing of this action, and continuing to the present.

2 44. There is a well-defined community of interest in the litigation and the proposed Class
3 is easily ascertainable:

4 a. Numerosity: While the precise number of Class Members has not been
5 determined at this time, Plaintiff is informed and believes that Defendants have employed in excess
6 of 40 persons as non-exempt, hourly employees in California during the proposed Class Period.

7 b. Commonality: There are questions of law and fact common to Plaintiff and
8 the Proposed Class that predominate over any questions affecting only individual Class Members.
9 These common questions of law and fact include, without limitation:

- 10 i. Whether Defendants failed to compensate Plaintiff and the Class
11 Members for all hours worked, including overtime hours;
- 12 ii. Whether Defendants failed to pay Plaintiff and the Class Members the
13 required minimum wage for every hour where work was performed;
- 14 iii. Whether Defendants failed to provide Plaintiff and the Class Members
15 with accurate itemized statements;
- 16 iv. Whether Defendants failed to provide complaint meal and rest breaks
17 for Plaintiff and the Class Members;
- 18 v. Whether Defendants failed to provide a safe and healthful environment
19 for Class Members.
- 20 vi. Whether Defendants failed to indemnify Plaintiff and the Class
21 Members for necessary business expenditures;
- 22 vii. Whether Defendants engaged in unfair business practices under
23 Business and Professions Code §17200;
- 24 viii. The effect upon and the extent of damages suffered by Plaintiff and the
25 Class Members and the appropriate amount of compensation.

26 c. Typicality: Plaintiff's claims are typical of the claims of the proposed Class.
27 Plaintiff and all Class Members sustained injuries and damages arising out of and caused by
28 Defendants' common course of conduct in violation of law as alleged herein.

1 ///

2 d. Adequacy of Representation: Plaintiff is a member of the proposed Class and
3 will fairly and adequately represent and protect the interests of the Class Members. Counsel who
4 represents Plaintiff are competent and experienced in litigating large wage and hour and other
5 employment class actions.

6 e. Superiority of Class Action: A class action is superior to other available means
7 for the fair and efficient adjudication of this controversy. Questions of law and fact common to the
8 proposed Class predominate over any questions affecting only individual Class Members. Each
9 proposed Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal
10 policies and/or practices of failing to pay full and correct wages, including the minimum wage and
11 overtime premium wages, as required by law. A class action will allow those similarly situated
12 persons to litigate their claims in the manner that is most efficient and economical for the parties and
13 the judicial system.

14 **FIRST CAUSE OF ACTION**

15 **(Failure to Pay Compensation For All Hours Worked - Labor Code §§ 216 and 1194 By**
16 **Plaintiff Individually and on Behalf of All Class Members)**

17 45. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
18 allegations contained in this complaint and incorporates them by reference into this cause of action
19 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of
20 action.

21 46. Plaintiff brings this action to recover unpaid compensation for all hours worked,
22 including for work over eight hours in a day and over forty hours in a workweek.

23 47. Defendants' conduct described in this Complaint violates, among other things, Labor
24 Code §§ 204, 216, 510, 1194, and 1198 and the IWC Wage Orders.

25 48. Defendants failed to pay Plaintiff and the Class Members for all of the actual hours
26 worked, including for work over eight hours in a day and over forty hours in a workweek. Defendants
27 knew or should have known that Plaintiff and the Class Members were working these hours.

28 49. Plaintiff and the Class Members are also entitled to penalties pursuant to Paragraph

No. 20 of the applicable IWC Wage Order which provides, in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of the IWC Wage Order, shall be subject to a civil penalty of \$50.00 (for initial violations) or \$100.00 (for subsequent violations) for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

50. As a result of Defendants' unlawful acts, Plaintiff and the Class Members have been deprived of compensation in an amount according to proof at the time of trial, and are entitled to recovery of such amounts, plus interest thereon, liquidated damages pursuant to Labor Code § 1194.2, and attorneys' fees and costs, pursuant to Labor Code §§ 1194 and 2698, in an amount according to proof at the time of trial. Plaintiff and the Class Members are also entitled to additional penalties and/or liquidated damages pursuant to statute.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages - Labor Code § 1194 By Plaintiff Individually and on Behalf of All Class Members)

51. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

52. At all relevant times, the IWC Wage Orders contained in Title 8 of the Code of Regulations ("Wage Orders") applied to Plaintiff in Plaintiff's capacity as an employee of Defendants. The Wage Orders and California law provided, among other things, that Plaintiff must receive minimum wage earnings for all hours worked.

53. During the Class Period, Defendants has routinely failed to pay Class Members, including Plaintiff, the minimum wage required by the Employment Laws and Regulations for all hours worked.

54. The Class Members, including Plaintiff, have been deprived of their rightfully earned minimum wages as a direct and proximate result of Defendants' policies and practices and

Defendants' failure and refusal to pay said wages for all hours worked. The Class Members, including Plaintiff, are entitled to recover the past wages owed to them, under the minimum wage laws, plus an additional equal amount as liquidated damages as permitted under the Wage Orders and California law, plus interest thereon and attorneys' fees and costs pursuant to Labor Code §§ 1194 and 2698, in an amount according to proof at the time of trial.

THIRD CAUSE OF ACTION

(Failure to Pay Overtime Compensation - By Plaintiff Individually and on Behalf of All Class Members: California Labor Code §§ 510 and 1194)

55. As a separate and distinct cause of action, Plaintiff complains and realleges all the allegations contained in this complaint and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

56. During the Class Period, Defendants have routinely required Class Members, including Plaintiff, to work over eight hours in a day and over forty hours in a workweek. However, Defendants have failed and refused to pay the Class Members, including Plaintiff, the overtime compensation required by the Employment Laws and Regulations.

57. Class Members, including Plaintiff, have been deprived of their rightfully earned overtime compensation as a direct and proximate result of Defendants' policies and practices and Defendants' failure and refusal to pay that compensation. The Class Members, including Plaintiff, are entitled to recover such amounts, plus interest, attorney's fees and costs.

FOURTH CAUSE OF ACTION

(Failure to Furnish Accurate Wage and Hour Statements - Labor Code § 226 By Plaintiff Individually and on Behalf of All Class Members)

58. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

59. During the Class Period, Defendants have routinely failed to provide Class Members,

1 including Plaintiff, with timely and accurate wage and hour statements showing gross hours earned,
2 total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect
3 during each pay period and the corresponding number of hours worked at each hourly rate.

4 60. As a consequence of Defendants' actions, Class Members are entitled to all available
5 statutory penalties, costs and reasonable attorneys' fees, including those provided in Labor Code §
6 226(e), as well as all other available remedies.

7 **FIFTH CAUSE OF ACTION**

8 **(Failure to Provide Meal and Rest Periods - Labor Code §§ 226.7 and 512 By Plaintiff** 9 **Individually and on Behalf of All Class Members)**

10 61. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
11 allegations contained in this complaint and incorporates them by reference into this cause of action
12 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of
13 action.

14 62. During the Class Period, Defendants have failed to provide Class Members, including
15 Plaintiff, legally compliant meal and rest periods during their work shifts, and have failed to
16 compensate Class Members, including Plaintiff, for those meal and rest periods, as required by Labor
17 Code § 226.7 and the other applicable sections of the Employment Laws and Regulations.

18 63. The Class Members, including Plaintiff, have been deprived of their rightfully earned
19 compensation for meal and rest periods as a direct and proximate result of Defendants' policies and
20 practices and Defendants' failure and refusal to pay that compensation. The Class Members,
21 including Plaintiff, are entitled to recover such amounts pursuant to Labor Code § 226.7(b), plus
22 interest.

23 **SIXTH CAUSE OF ACTION**

24 **(Failure to Ensure Safety in Employment- Labor Code §§ 6400, 6401, 6401.7, 6402, 6403, and** 25 **6407 By Plaintiff Individually and on Behalf of All Class Members)**

26 64. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
27 allegations contained in this complaint and incorporates them by reference into this cause of action
28 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of

1 action.

2 65. California Labor Code section 6400 requires that every employer shall furnish
3 employment and a place of employment that is safe and healthful for employees therein.

4 66. At all relevant times, California Labor Code § 6401 requires every employer to
5 "...furnish and use safety devices and safeguards, and... adopt and use practices, means, methods,
6 operations, and processes which are reasonably adequate to render such employment and place of
7 employment safe and healthful. Every employer shall do every other thing reasonably necessary to
8 protect the life, safety, and health of employees."

9 67. Additionally, Labor Code § 6403, requires, in pertinent part, employers 'To provide
10 and use safety devices and safeguards reasonably adequate to render the employment and place of
11 employment safe."

12 68. Plaintiff requests relief as described below.

13 **SEVENTH CAUSE OF ACTION**

14 **(For Indemnification- Labor Code §§ 2800 and 2802 By Plaintiff Individually and on Behalf**
15 **of All Class Members)**

16 69. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
17 allegations contained in this complaint and incorporates them by reference into this cause of action
18 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of
19 action.

20 70. Cal. Labor Code § 2802 provides: "An employer shall indemnify his or her employee
21 for all necessary business expenditures or losses incurred by the employee in direct consequence of
22 the discharge of his or her duties, or of his or her obedience to the direction of the employer... [which
23 includes] all reasonable costs, including, but not limited to, attorneys' fees incurred by the employee
24 enforcing the rights granted by this section."

25 71. As a direct consequence of discharging their duties for Defendants and/or obeying
26 Defendants' directions, Plaintiff and Class Members have necessarily incurred expenses for which
27 they have been indemnified by Defendants, including the purchase of work gloves, masks, and
28 protective eyewear required by Defendants; and the attorneys' fees incurred to enforce Plaintiff's and

1 Class Members' rights under Cal. Labor Code § 2802.

2 72. Defendants have failed to indemnify or in any manner reimburse Plaintiff and Class
3 Members for these expenditures and losses by requiring Plaintiff and Class Members to pay expenses
4 and cover losses that they incurred in direct consequence of the discharge of their duties for
5 Defendants and/or in obedience of Defendants' direction, in violation of Cal. Labor Code § 2802.

6 73. As a direct and proximate result of Defendants' conduct, Plaintiff and Class Members
7 have suffered substantial losses according to proof, as well as pre-judgment interest, costs, and
8 attorneys' fees for the prosecution of this action, which losses are compensable under Cal. Labor
9 Code § 2802.

10 74. Plaintiff requests relief as described below.

11 **EIGHTH CAUSE OF ACTION**

12 **(For Unfair Competition - Business & Professions Code § 17200, et seq. By Plaintiff**

13 **Individually and on Behalf of All Class Members)**

14 75. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
15 allegations contained in this complaint and incorporates them by reference into this cause of action
16 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of
17 action.

18 76. As a result of Defendants' unfair business practices, Defendants have reaped unfair
19 benefits and illegal profits at the expense of Class Members, including Plaintiff, and members of the
20 public. Defendants should be made to disgorge their ill-gotten gains and to restore them to Class
21 Members, including Plaintiff.

22 77. Defendants' unfair business practices violate the Unfair Competition Laws and entitle
23 Plaintiff to seek preliminary and permanent injunctive relief including, but not limited to, orders that
24 Defendants account for, disgorge, and restore to the Class Members, including Plaintiff, the wages
25 and other compensation unlawfully withheld from them.

26 78. In addition to the actual damages caused by the unlawful conversion, the Class
27 Members, including Plaintiff, are entitled to recover exemplary damages for the sake of example and
28 by way of punishing Defendants.

1 **NINTH CAUSE OF ACTION**

2 **(Failure to Provide Employee Records & Access to Payroll Records – Cal. Labor Code §§**
3 **1198.5 and 226(f), Against Defendant and DOES 1 to 25)**

4 79. Plaintiff incorporates by reference the allegations set forth above.

5 80. On March 14, 2022, Plaintiff's Counsel of record, as Plaintiff's legal representative,
6 caused a written request via certified mail to be delivered to Defendant for Plaintiff's personnel and
7 employment records, including but not limited to (1) payroll records, (2) employment contracts; (3)
8 itemized pay stubs, and (4) Plaintiff's complete employment file, true and correct copies of which are
9 attached hereto as Exhibit 1.

10 81. Defendant failed to provide and/or make available to Plaintiff his personnel records,
11 payroll records, employment contracts, and entire employment files within thirty (30) days of all his
12 requests stated above. In fact, as of the filing of this Complaint, Defendant still has not provided
13 Plaintiff his personnel records, pay stubs, and employment file and Defendant has failed to pay
14 Plaintiff the statutory penalty in the amount of \$750.00.

15 82. Defendant has violated Cal. Lab. Code Sections 1198.5, subdivision (k), and 226(f) by
16 failing to respond and provide Plaintiff with his employment file and payroll records. Section 1198.5
17 states that employees (and former employees) have the right to inspect personnel records maintained
18 by the employer "related to the employee's performance or to any grievance concerning the
19 employee." Employers must allow inspection or copying within thirty (30) days of the request.
20 Plaintiff requested his employment file via certified mail and Defendant failed to respond. Similarly,
21 Labor Code section 226(f), provides that failure by an employer to permit a current or former
22 employee to inspect or copy itemized payroll records, no later than 21 calendar days from the date of
23 the request to inspect or copy such records, entitles the employee to recover a penalty of \$750 from
24 the employer. As a result, Plaintiff is now entitled to and requests injunctive relief to obtain
25 compliance with Cal. Lab Code Sections 1198.5 and 226(f), a statutory penalty of \$750 for each
26 violation, and an award of attorneys' fees and costs for bringing this action.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment against
3 Defendants as follows:

- 4 1. For an Order certifying the First through Eighth Causes of Action as a class action;
5 2. For an Order appointing Plaintiff's counsel as Class Counsel;
6 3. For compensatory damages in an amount to be ascertained at trial;
7 4. For restitution in an amount to be ascertained at trial;
8 5. For punitive and exemplary damages in an amount to be ascertained at trial;
9 6. For all penalties allowed by law;
10 7. For prejudgment interest;
11 8. For reasonable attorneys' fees pursuant to Labor Code § 1194;
12 9. For costs of suit incurred herein;
13 10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to pay
14 wages, including overtime wages, earned; and
15 11. For such further relief as the Court may deem appropriate.

16 DATED: May 9, 2022

BOYAMIAN LAW, INC.

17
18 By: 
19 Heather M. Zermeno
20 Attorneys for Plaintiff JOSE TREJO,
individually and on behalf of all others
similarly situated

21 **DEMAND FOR JURY TRIAL**

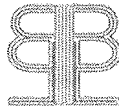
22 Plaintiff JOSE TREJO, individually, and on behalf of all similarly situated individuals,
23 demands jury trial of this matter.

24 DATED: May 9, 2022

BOYAMIAN LAW, INC.

25
26 By: 
27 Heather M. Zermeno
28 Attorneys for Plaintiff JOSE TREJO,
individually and on behalf of all others
similarly situated

EXHIBIT 1



BOYAMIAN LAW

March 14, 2022

Kevin M. Charnesky
Agent for Service
39325 Raspberry Ct
Yucaipa, CA 92399

Sent via USPS Certified Mail

OFFICIAL WRITTEN REQUEST
MADE PURSUANT TO
CALIFORNIA LABOR CODE

Re: Our Client, Mr. Jose Trejo ([REDACTED])

Official Written Request Pursuant to California Labor Code §§ 226(b)-(c);
Official Written Request Pursuant to California Labor Code § 1198.5;
Official Written Request Pursuant to California Labor Code § 432.

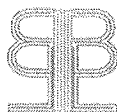
To Whom It May Concern:

This law firm has been retained to represent Mr. Jose Trejo in connection with his employment with Anderson Charnesky Structural Steel, Inc. (hereinafter collectively referred to as "Anderson Charnesky Structural Steel, Inc.").

Please let this correspondence serve as a written request, made pursuant to California Law, for Mr. Trejo's: (i) complete personnel file; (ii) complete payroll records; and (iii) a true and correct copy of any instrument Mr. Trejo has ever signed relating to his obtaining or holding of employment or work-related services with Anderson Charnesky Structural Steel, Inc.

California Labor Code § 226(b) requires all California employers to afford current and former employees copies of their payroll records, upon reasonable request. Pursuant to § 226(a) of the California Labor Code, request is hereby made of Mr. Trejo's entire payroll and wage history with Anderson Charnesky Structural Steel, Inc., including all payroll and wage records and paycheck copies. Please note that all itemized statements that reflect this history must include the following items, per California Law:

- Gross wages earned;
- Total hours worked;
- The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- All deductions;



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- Net wages earned
- The inclusive dates of the period for which the employee is paid;
- The last four digits of the employee's social security number (an employee identification number other than a social security number may be shown on the itemized statement);
- The name and address of the legal entity that is the employer; and
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

See Cal. Lab. Code § 226(a).¹

Further, California Labor Code § 1198.5 dictates that every California employee has a right to inspect the personnel file that an employer maintains for him or her. See Cal. Lab. Code § 1198.5. This requirement applies to records related to an employee's performance and to any grievance concerning the employee, including any reasons why an employee has been terminated from employment. § 1198.5(a).

Lastly, California Labor Code § 432 states: "If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." § 432.

Accordingly, demand is hereby made that Anderson Charnesky Structural Steel, Inc., forward my office true and correct copies of the documents requested above.

I look forward to your attention to this matter. Should you need to discuss the contents of this correspondence further or should you have any questions regarding the foregoing, please feel free to contact me directly. As Mr. Trejo is now represented by counsel, all communication and correspondence to him must be made through my office.

Very truly yours,

BOYAMIAN LAW, INC.

Michael H. Boyamian, Esq.

Jose Trejo

¹ Please note that should my office not receive the documents requested pursuant to California Labor Code § 226(b) within twenty-one (21) days of the date of this correspondence, Anderson Charnesky Structural Steel, Inc. will be subject to civil penalties under California Law and will also be responsible for our client's attorney's fees and costs related to this firm's efforts in enforcing § 226 of the Labor Code.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kevin M. Charnesky
Agent for service
39325 Raspberry Ct.
Yucaipa, CA 92399



9590 9402 6877 1104 6354 13

2. Article Number (Transfer from service label)

7021 0950 0000 7232 2633

COMPLETE THIS SECTION ON DELIVERY

A. Signature

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Chad Charnesky

C. Date of Delivery

3/21/22

D. Is delivery address different from item 1?

If YES, enter delivery address below:

- ☐ Yes
☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (\$500)
- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery