

Assigned for All Purposes
Judge Glenda Sanders
CX-101

TRAVIS J. BURCH (SBN 216175)
ALI SHALCHI (SBN 239164)
Email: tb@shalchiburchllp.com
Email: as@shalchiburchllp.com
SHALCHI BURCH LLP
23 Corporate Plaza Dr., Suite 150
Newport Beach, California 92660
Telephone: (949) 359-0334

Attorneys for Plaintiff,
DAVID MONTROSS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

DAVID MONTROSS, on behalf of the State of
California and Aggrieved Employees, as a private
attorney general,

Plaintiff,

vs.

SOLAR INTEGRATED ROOFING
CORPORATION, a Nevada Corporation;
DAVID MASSEY, an individual; C.
SCOTT WIDDES, an individual;
MONTROSS COMPANIES, INC.; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2022-01264034-CU-OE-CXC

COMPLAINT FOR:

**1. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
("PAGA") – LABOR CODE
SECTION 2698 ET SEQ. FOR
VIOLATIONS OF LABOR CODE
SECTIONS 201, 202, 203, 204, 207,
208, 213, 218, 226(a)-(c), 226.3, 226.7,
227.3, 246, 248.5, 510, 512(a), 558,
558.1, 1174(d), 1194, 1198, 1198.5,
1199, 2751, 2802, 3550, 3551, 6400,
6401, 6401.7, 6402, 6403, 6404, 6406,
and 6407**

1 Plaintiff DAVID MONTROSS, on behalf of the State of California as an aggrieved
2 employee pursuant to Labor Code Section 2698 et seq. ("PAGA") alleges against Defendants
3 SOLAR INTEGRATED ROOFING CORPORATION, a Nevada Corporation; DAVID MASSEY,
4 an individual; C. SCOTT WIDDES, an individual; Montross Companies, Inc.; (collectively
5 "Defendants"), and each of them as follows:

6 **THE PARTIES**

7
8 1. Plaintiff David Montross is the former owner of Montross Roofing (sold to Solar
9 Integrated Roofing Corporation) which was headquartered in Rancho Santa Margarita, California.
10 He now resides in Tennessee but during his employment with SIRC (as alleged herein) continued
11 to conduct business in California (specifically Orange County, California). Plaintiff is, and at all
12 relevant times was, an "aggrieved employee" as that term is defined in California Labor Code
13 Section 2699, subdivision (c).

14 2. Plaintiff is informed and believes, and based upon that information and belief,
15 alleges that Defendant Solar Integrated Roofing Corporation ("SIRC") is a Nevada Corporation
16 doing business in California and with a headquarters in California at 1475 N. Cuyamaca St., El
17 Cajon, California 92020. Based on information and belief, Defendant SIRC has aggrieved
18 employees in the County of Orange.

19 3. Plaintiff is informed and believes, and based upon that information and belief,
20 alleges that Defendant Montross Companies, Inc. is a California Corporation doing business in
21 California and with a headquarters in California at 2649 W. Woodland Dr., Anaheim, CA 92801.
22 Per records filed by the company with the California Secretary of State, David Massey ("Massey")
23 is the Chief Executive Officer of the Montross Companies, Inc. (as well as agent of service).
24 Based on information and belief Defendant Montross Companies, Inc. has aggrieved employees
25 in the County of Orange.

26 4. Plaintiff is informed and believes, and based upon that information and belief,
27 alleges that Defendant David Massey ("Massey") is the Chairman and CEO of SIRC and is a
28 resident of San Diego County, California. For purposes of this Action, Massey is therefore an

1 “owner”, “officer”, “director” and/or “managing agent” of SIRC and Montross Companies, Inc.
2 for the purposes of Section 558.1 of the California Labor Code. Massey is also the CEO of the
3 Montross Companies, Inc. Defendant Massey is doing business in the County of Orange.

4 5. Plaintiff is informed and believes, and based upon that information and belief,
5 alleges that Defendant Widdes is the former President of Roofing in Southern California for SIRC
6 and is currently the President of SIRC. Widdes is also the current President of Montross
7 Companies, Inc. Widdes is a resident of San Diego County, California. For purposes of this
8 Action, Widdes is therefore an “owner”, “officer”, “director” and/or “managing agent” of SIRC
9 and Montross Companies, Inc. for the purposes of Section 558.1 of the California Labor Code.
10 Defendant Widdes is doing business in the County of Orange.

11 6. Plaintiff is informed and believes, and based upon that information and belief,
12 alleges that at all times herein mentioned, Defendants, and each of them, were and are the agents,
13 servants, employers, and, specifically, alter egos and/or partners of each of the other Defendants.

14 7. It is the purpose and function of the alter ego doctrine to prevent injustice. The
15 doctrine of alter ego is generally resorted to when it is necessary to avoid a grave injustice.
16 Adherence to the fiction of the separate existence(s) of the corporations constituting the
17 Defendants and DOE Defendants identified herein would, under the particular circumstances,
18 sanction a fraud and/or promote injustice. Plaintiff is informed and believe that the situation
19 presented herein regarding the Defendants and DOE Defendants are that they, and each of them,
20 acted without corporate separateness and in bad faith in failing to apply and/or comply with
21 California laws, including as to the underlying claims in the action (as well as the claims in the
22 Complaint). As such corporate separateness was illusory and not real, Plaintiff accordingly
23 alleges that the separateness of each of the Defendant and DOE Defendants are not recognized to
24 avoid probable fraud, confusion and/or injustice to Plaintiff. Defendant and DOE Defendants are
25 each, some, or all alter egos of each other, in accordance with proof. Specifically, this is
26 established by SIRC and its subsidiaries co-mingling of funds, lack of formal corporate structures,
and other pertinent issues.

27 8. Plaintiff is informed and believes, and based upon that information and belief,
28 alleges that the Defendants were joint employers of the Plaintiff and/or engaged in a joint venture,

1 partnership, and/or common enterprise and were acting within the course and scope of, and in
2 pursuit of, said joint employment and/or joint venture, partnership, and/or common enterprise
3 over Plaintiff and, as such, were joint employers of Plaintiff. This joint employer relationship
4 meets the requirements of applicable California law, including, but not limited to, the standards
5 set forth in *Martinez v. Combs* (2010) 49 Cal.4th 35 and *Medina v. Equilon Enter., LLC* (2021)
6 68 Cal. App. 5th 868.

7 9. Defendants, and each of them, at all times mentioned in this Complaint, concurred
8 with, contributed to, approved of, aided and abetted, condoned, and/or otherwise ratified, the
9 various acts and omissions of each and every one of the other Defendants in proximately causing
10 the injuries and/or damages alleged in this Complaint.

11 10. As an example, the Defendants, under SIRC, co-mingled funds back and forth
12 between companies, including, for example, covering payroll for one company from the other and
13 sharing and splitting (or downright stealing) PPP loan funds taken from one company and given
14 to others under the SIRC umbrella. For all intent and purposes, Defendants operated as a single-
15 enterprise and eschewed the corporate separateness of SIRC or Montross Companies, Inc.

16 11. The true names or capacities, whether individual, corporate, associate, or otherwise,
17 of Defendants DOES 1 – 10, inclusive, are presently unknown to Plaintiff, who therefore sues
18 such Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this
19 Complaint to allege the true names and capacities when they are ascertained by Plaintiff.

20 12. Defendants have sufficient contacts with California or otherwise purposefully avail
21 themselves of the benefits in the State, so as to render the exercise of jurisdiction over each by a
22 California Court consistent with traditional notions of fair play and substantial justice.

23 13. Venue is proper in this Court because Defendants transact business throughout
24 California including in Orange County, California. At all relevant times, aggrieved employees
25 worked in Orange County and suffered PAGA violations therein.

26 **PAGA EXHAUSTION**

27 14. Plaintiff met all jurisdictional requirements in order to exhaust administrative
28 remedies prior to filing his PAGA claim.

1 15. Specifically, he electronically filed a PAGA Notice of his claims and theories of
2 Labor Code violations with the Labor and Workforce Development Agency (“LWDA”) and
3 Division of Occupational Health and Safety (Cal-OSHA”) at least 65 days prior to filing the instant
4 action. Additionally, he sent the PAGA Notice via certified mail to all the Defendants.

5 16. Plaintiff provided his initial PAGA Notice on or about March 25, 2022. Neither the
6 LWDA, nor Cal-OSHA expressed interest in investigating the matter. Plaintiff seeks PAGA
7 remedies on behalf of all exempt or non-exempt employees of Defendants that were subjected to
8 at least the following Labor Code violations: Labor Code Sections 201, 202, 203, 204, 207, 208,
9 213, 218, 226(a)-(c), 226.3, 226.7, 227.3, 246, 248.5, 510, 512(a), 558, 558.1, 1174(d), 1194, 1198,
10 1199, 2751, 2800/2802, 3550, 3551, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

11 **GENERAL ALLEGATIONS**

12 17. Plaintiff worked for Defendants until the Spring of 2021. Throughout his
13 employment, Plaintiff suffered sundry Labor Code violations and was an aggrieved employee as
14 defined by the PAGA statutory scheme.

15 18. Labor Code Section 1194(a) provides that notwithstanding any agreement to work
16 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
17 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
18 of the full amount of this minimum wage or overtime compensation, including interest thereon,
19 reasonable attorneys’ fees, and costs of suit.

20 19. California law requires employers to pay hourly employees for “all hours worked,”
21 which includes all time that an employee is under the control of the employer and all times the
22 employee is suffered and permitted to work. This includes the time an employee spends, either
23 directly or indirectly, performing services which inure to the benefit of the employer.

24 20. Labor Code Section 1194 and 1197 require an employer to compensate employees
25 for all “hours worked” at least the minimum wage rate of pay as established by the IWC Wage
26 Orders.

27 21. Defendants failed to pay Plaintiff and other aggrieved employees for “all hours”
28 worked at the minimum wage or proper regular rate of pay because some aggrieved employees

1 were denied their promised salary and were misclassified as exempt employees. In other
2 instances, Defendants failed to pay aggrieved employees for all hours worked.

3 22. Labor Code Section 510 and 1194 and the Wage Orders require employers to
4 compensate employees at a higher rate of pay for hours worked in excess of eight (8) hours in a
5 workday, more than forty (40) hours in a workweek, and on any seventh consecutive day of work
6 in a workweek:

7 Any work in excess of eight hours in one workday and any work in
8 excess of 40 hours in any one workweek and the first eight hours
9 worked on the seventh day of work in any one workweek shall be
10 compensated at the rate of no less than one and one-half times the
11 regular rate of pay for an employee. Any work in excess of 12 hours
12 in one day shall be compensated at the rate of no less than twice the
regular rate of pay for an employee. In addition, any work in excess
of eight hours on any seventh day of a workweek shall be
compensated at the rate of no less than twice the regular rate of pay
of an employee.

13 23. Defendants knew or should have known that Plaintiff and aggrieved employees
14 worked over eight hours in a day or over forty hours in a week, or both, without overtime
15 compensation. However, at all relevant times, Defendants failed to pay overtime wages to Plaintiff
16 and the aggrieved employees for hours worked over eight hours in a day. Additionally, they
17 worked through rest breaks but had rest breaks deducted from their wages. Additionally, Plaintiff
18 and other aggrieved employees had other off the clock time that Defendants did not compensate
19 them for.

20 24. Labor Code Section 512 and the relevant Wage Order(s) require an employer to
21 authorize or permit an uninterrupted meal period of no less than thirty (30) minutes before the sixth
22 hour of work and a second meal period no later than the employee's tenth hour of work. If the
23 employee is not relieved of all duties during a meal period, the meal period is an on-duty meal
24 period and counted as time worked. A paid on-duty meal period is only permitted when (1) the
25 nature of the work prevents an employee from being relieved of all duty and (2) the parties have a
26 written agreement agreeing to on-duty meal periods. If the employee is not free to leave the work
27 premises or worksite during the meal period, even if the employee is relieved of all other duty
28 during the meal period, the employee is subject to the employer's control and the meal period is

1 counted as time worked. If an employer fails to provide an employee a meal period in accordance
2 with the law, the employer must pay the employee one (1) hour of pay at the employee's regular
3 rate of pay for each workday that a legally required and compliant meal period was not provided.
4 Labor Code Section 226.7 and the relevant Wage Orders.

5 25. Defendants violated Plaintiff and the aggrieved employees' right to take duty free
6 meal breaks before the sixth hour of work. Plaintiff and the aggrieved employee were deprived of
7 meal breaks or had to work through the meal break period. Defendants further violated Labor
8 Code Sections 512, 226.7 and the relevant Wage Order by failing to pay premium pay for missed
9 or non-compliant meal breaks.

10 26. Labor Code Section 226.7 and the relevant Wage Order(s) require every employer
11 to authorize and permit an employee a rest period of ten (10) minutes for every four (4) hours
12 worked or major fraction thereof. If the employer fails to authorize or permit a required rest period,
13 the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for
14 each workday the employer did not authorize or permit a legally required rest period.

15 27. Defendants violated Section 226.7 and the Wage Order(s) because Plaintiff and the
16 aggrieved employees were not provided with rest breaks. Defendants further violated Section 226.7
17 and the Wage Order(s) by failing to properly pay Plaintiff and the aggrieved employees their
18 premium pay for missed rest breaks.

19 28. Labor Code Section 2802 states that: "[a]n employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence
21 of the discharge of his or her duties, or of his or her obedience to the directions of the employer . .
22 .“ An employer is prohibited from passing the ordinary business expenses and losses of the
23 employer onto the employee.

24 29. Defendants violated Labor Code Section 2800 and 2802 by requiring Plaintiff and
25 the aggrieved employees to use their personal cellphones for work, for buying supplies for work
26 related purposes. Additionally, some aggrieved employees worked remotely, and Defendants
27 never reimbursed the aggrieved employees for Wi-Fi, and/or internet usage, home office supplies,
28 or increased energy consumption for use of their home utilities. In one egregious instance, Plaintiff

1 had a line of credit he guaranteed for the benefit of Defendants, and they ceased payment on it in
2 an effort to financially ruin Plaintiff.

3 30. Labor Code Section 226(a) provides, *inter alia*, that upon paying an employee his
4 or her wages, the employer must “furnish each his or her employees . . . an itemized wage statement
5 in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any
6 employee whose compensation is solely based on a salary and who is exempt from payment of
7 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
8 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
10 written orders of the employee and his or her social security number, (8) the name and address of
11 the legal entity that is the employer, and all (9) all applicable hourly rates in effect during the pay
12 period and the corresponding number of hours worked at each hourly rate by the employee.”

13 31. Defendants violated Plaintiff and the aggrieved employees’ rights under Labor
14 Code Section 226 because the wage statements did not have an accurate rendering of the hours
15 worked or the correct overtime rate. Additionally, the full legal entity names of the employers are
16 not on the wage statements. In some instances, no wage statements were received. The wage
17 statements did not contain missed meal or rest break premium pay.

18 32. Labor Code Section 1174 and 1174.5 and the relevant Wage Order(s) require
19 employers to maintain accurate and complete payroll records showing the beginning and end of
20 each work period and meal period and total hours worked. They must be kept in the state and at
21 the plant or establishment the employees are employed.

22 33. Defendants violated Plaintiff and the aggrieved employees’ rights under Section
23 1774, 1174.5 and the Wage Orders because their time was inaccurate. Additionally, Defendants’
24 payroll records do not record meal breaks.

25 34. Labor Code Section 227.3 provides “whenever a contract of employment or
26 employer policy provides for paid vacations, and an employee is terminated without having taken
27 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
28 accordance with such contract of employment or employer policy respecting eligibility or time
served.”

1 35. Defendants violated the aggrieved employees' rights under Labor Code Section
2 227.3 because it failed to pay them all accrued vacation or PTO as wages in his or her final rate of
3 pay upon termination or separation.

4 36. Labor Code Section 204 requires employers to pay wages twice during each
5 calendar month on days designated in advance as regular paydays, subject to certain exceptions.
6 Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between
7 the 16th and the 26th day of that month and wages earned between the 16th and the last day,
8 inclusive, of any calendar month must be paid between the 1st and 10th day of the following month.
9 Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
10 seven (7) calendar days following the close of the payroll period in which wages were earned.

11 37. Defendants failed to pay Plaintiff and the aggrieved employees timely during their
12 employment. Defendants failed to pay aggrieved employees their full and complete wages,
13 including overtime and missed meal and rest premium pay.

14 38. Labor Code Section 201, 202, and 203 require employers to pay employees with
15 their final wages immediately upon termination and within seventy-two (72) hours of resignation.

16 39. Defendants violated Labor Code Section 201, 202, and 203 by failing to pay
17 Plaintiff and the aggrieved employees their final wages in a timely fashion. Defendants failed to
18 pay aggrieved employees their full and complete wages, including overtime and missed meal and
19 rest premium pay.

20 40. Labor Code Section 208 requires that employers pay every employee who is
21 discharged, at the place of discharge, and every employee who quits shall be paid at the office or
22 agency of the employer in the county where the employer was working. Plaintiff and other
23 aggrieved employees did not receive their last paycheck at Defendants' offices where Plaintiff and
24 other aggrieved employees were working.

25 41. Labor Code Section 207 requires every employer to conspicuously at the place of
26 work, a notice specifying the regular pay days and time and place of payment. Defendants violated
27 Section 207 because they failed to place such notice where the aggrieved employees could see such
28 notice.

1 42. Labor Code Section 213 authorizes employers to deposit an employee's wages in a
2 bank account of the employee's choosing according to the employee's authorization. The
3 Defendants violated Section 213 by not allowing aggrieved employees a choice to have a paper
4 check.

5 43. California Labor Code Section 3550(a) states that every employer shall post and
6 keep posted in a conspicuous location frequented by employees, and where the notice may be
7 easily read by employees during the hours of the workday, a notice that states the name of the
8 current compensation insurance carrier of the employer, or when such is the fact, that the employer
9 is self-insured, and who is responsible for claims adjustment. Additionally, 3550(d) states that the
10 form and content of the notice required by this section shall advise employees that all injuries
11 should be reported to their employer. The notice shall be easily understandable. It shall be posted
12 in both English and Spanish where there are Spanish-speaking employees. The notice shall include
13 the following information how to get emergency treatment; events, injuries and illnesses covered
14 by workers' compensation; and the injured employee's right to receive medical care; the rights of
15 the employee to receive temporary disability indemnity, permanent disability indemnity,
16 supplemental job displacement, and death benefits, as appropriate; to whom injuries should be
17 reported; the existence of time limits for the employer to be notified of an occupational injury; the
18 protections against discrimination provided pursuant to Section 132a; the Internet Web site address
19 and contact information that employees may use to obtain further information about the workers'
20 compensation claims process and an injured employee's rights and obligations, including the
21 location and telephone number of the nearest information and assistance officer.

22 44. Defendants violated Labor Code Section 3550 by failing to post a notice where it
23 may easily be read by Plaintiff and other aggrieved employees during the workday, and one that
24 contained the notice with the required specified information in both Spanish and English.

25 45. Labor Code Section 3551 requires every employer to provide every employee at
26 the time of employment, or by the end of the first pay period, a written notice of all the information
27 contained in Labor Code Section 3550. The notice is required to be easily understandable and in
28 English and Spanish. In addition, Section 3551 also requires the employer to provide notice to the

1 employee how to obtain appropriate medical care for a job injury; the role and function of the
2 primary treating physician; and a form that the employee may use as an optional method of
3 notifying the employer of the name of the employee's person physician or personal chiropractor.

4 46. Defendants violated Labor Code Section 3551 by failing to provide Plaintiff and
5 other aggrieved employees, with written notice containing all of the information required under
6 Labor Code Section 3550, failed to provide such information by the end of the first pay period,
7 failed to provide the information in both English and Spanish, and failed to provide notice to the
8 employees how to obtain medical care for a job injury, what the primary treating physician's role
9 is. Additionally, the Defendants failed to provide a form that the employee could use to notify the
10 employer of their own personal physician or chiropractor.

11 47. Labor Code Section 6401 requires that every employer shall furnish and use safety
12 devices and safeguards, and shall adopt and use practices, means, methods, operations, and
13 processes which are reasonably adequate to render such employment and place of employment
14 safe and healthful. Every employer shall do every other thing reasonably necessary to protect the
15 life, safety, and health of employees.

16 48. Labor Code Section 6403 prohibits (a) employer from failing to provide safety
17 devices and safeguards reasonably adequate to render the employment and place of employment
18 safe; (b) employer from failing to use methods and processes reasonably adequate to render the
19 employment and place of employment safe; and (c) employer from failing to do any other thing
20 reasonably necessary to protect the life, safety and health of employees.

21 49. Labor Code Section 6406 (d) prohibits employers from failing or neglecting to do
22 everything reasonably necessary to protect the life, safety and health of employees.

23 50. California Code of Regulations, Title 8 Section 3205 went into effect in November
24 2020. It requires at least the following: Under subpart (c): That employers establish, implement
25 and maintain an effective written COVID-19 Prevention Program, that contains (1) a system for
26 communicating that is readily understandable to employees; (2) a system for identifying and
27 evaluating COVID-19 hazards; (3) a system for investigating and responding to COVID-19 cases
28 in the workplace; (4) a system for the correction of COVID-19 hazards; (5) a system for training

1 and instructing employees; (6) a system for physical distancing; (7) a system and implementation
2 of providing face coverings; (8) a system of other engineering controls, administrative controls,
3 and personal protective equipment; (9) a system for reporting, recordkeeping and access.

4 51. Moreover, Section 3205 (c)(9)(C) requires the employer to maintain records of the
5 steps taken to implement the written COVID-19 Prevention Program. Under (c)(9)(D) the
6 employer must make the COVID-19 Prevention Program available to employees. Under (c)(9)(E)
7 the employer must keep record of all COVID-19 cases with the employee's name, contact
8 information, occupation, location where they worked, last date at the workplace, and date of
9 positive test.

10 52. Here, Defendants failed to establish, implement, maintain and enforce a compliant
11 written COVID-19 Prevention Program that is in a form readily understandable to employees.
12 Moreover, they have failed to maintain records of the steps taken to implement the written
13 COVID-19 Prevention Program. To the extent they had a COVID-19 Prevention Program it failed
14 to contain the required sections of: (1) a system for communicating that is readily understandable
15 to employees; (2) a system for identifying and evaluating COVID-19 hazards; (3) a system for
16 investigating and responding to COVID-19 cases in the workplace; (4) a system for the correction
17 of COVID-19 hazards; (5) a system for training and instructing employees; (6) a system for
18 physical distancing; (7) a system and implementation of providing face coverings; (8) a system
19 of other engineering controls, administrative controls, and personal protective equipment; (9) a
20 system for reporting, recordkeeping and access. As a result, Defendants violated Labor Code
21 Sections 6401, 6403, and 6406, by failing to provide the aggrieved employees with a safe and
22 healthful working environment with the appropriate face coverings, gloves, and properly
23 implementing a system to appropriately clean and disinfecting machinery, equipment, tools,
24 locker rooms and door knobs, buttons and switches and areas, the clock in and clock-out areas,
25 keyboards, and telephones, and things touched throughout the work day by the numerous
26 employees.

27 53. Labor Code Section 6401 requires that every employer shall furnish and use safety
28 devices and safeguards, and shall adopt and use practices, means, methods, operations, and

1 processes which are reasonably adequate to render such employment and place of employment
2 safe and healthful. Every employer shall do every other thing reasonably necessary to protect the
3 life, safety, and health of employees.

4 54. Labor Code Section 6403 prohibits (a) employer from failing to provide safety
5 devices and safeguards reasonably adequate to render the employment and place of employment
6 safe; (b) employer from failing to use methods and processes reasonably adequate to render the
7 employment and place of employment safe; and (c) employer from failing to do any other thing
8 reasonably necessary to protect the life, safety and health of employees.

9 55. Labor Code Section 6406 (d) prohibits employers from failing or neglecting to do
10 everything reasonably necessary to protect the life, safety and health of employees.

11 56. California Code of Regulations, Title 8 Section 3205 went into effect in November
12 2020. It requires at least the following: Under subpart (c): That employers establish, implement
13 and maintain an effective written COVID-19 Prevention Program, that contains (1) a system for
14 communicating that is readily understandable to employees; (2) a system for identifying and
15 evaluating COVID-19 hazards; (3) a system for investigating and responding to COVID-19 cases
16 in the workplace; (4) a system for the correction of COVID-19 hazards; (5) a system for training
17 and instructing employees; (6) a system for physical distancing; (7) a system and implementation
18 of providing face coverings; (8) a system of other engineering controls, administrative controls,
19 and personal protective equipment; (9) a system for reporting, recordkeeping and access.

20 57. Moreover, Section 3205 (c)(9)(C) requires the employer to maintain records of the
21 steps taken to implement the written COVID-19 Prevention Program. Under (c)(9)(D) the
22 employer must make the COVID-19 Prevention Program available to employees. Under (c)(9)(E)
23 the employer must keep record of all COVID-19 cases with the employee's name, contact
24 information, occupation, location where they worked, last date at the workplace, and date of
25 positive test. Here, Defendants failed to establish, implement, maintain and enforce a compliant
26 written COVID-19 Prevention Program that is in a form readily understandable to employees.
27 Moreover, they have failed to maintain records of the steps taken to implement the written COVID-
28 19 Prevention Program. To the extent they had a COVID-19 Prevention Program it failed to contain

1 the required sections of: (1) a system for communicating that is readily understandable to
2 employees; (2) a system for identifying and evaluating COVID-19 hazards; (3) a system for
3 investigating and responding to COVID-19 cases in the workplace; (4) a system for the correction
4 of COVID-19 hazards; (5) a system for training and instructing employees; (6) a system for
5 physical distancing; (7) a system and implementation of providing face coverings; (8) a system of
6 other engineering controls, administrative controls, and personal protective equipment; (9) a
7 system for reporting, recordkeeping and access. As a result, Defendants violated Labor Code
8 Sections 6401, 6403, and 6406, by failing to provide the aggrieved employees with a safe and
9 healthful working environment with the appropriate face coverings, gloves, and properly
10 implementing a system to appropriately clean and disinfecting machinery, equipment, tools, locker
11 rooms and door knobs, buttons and switches and areas, the clock in and clock-out areas, keyboards,
12 and telephones, and things touched throughout the work day by the numerous employees.

13 58. Labor Code Section 6401.7 requires employers to maintain effective injury
14 prevention programs, and timely correct unsafe and unhealthy conditions and practices, failing to
15 and provide with employee training obligations and record steps taken to implement injury
16 prevention programs. Defendants failed to comply with Labor Code Section 6401.7.

17 59. Labor Code Section 2751 requires that whenever an employer uses a contemplated
18 method of payment involving commissions, the contract shall be in writing and shall set forth the
19 method by which the commissions shall be computed and paid. Here, Defendants did not utilize
20 valid written commission agreements and therefore violated Section 2751.

21 60. Labor Code Section 246 states that: An employee shall accrue paid sick days at the
22 rate of not less than one hour per every 30 hours worked, beginning at the commencement of
23 employment or the operative date of this article, whichever is later, subject to the use and accrual
24 limitations set forth in this section. An employee who is exempt from overtime requirements as
25 an administrative, executive, or professional employee under a wage order of the Industrial
26 Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section,
27 unless the employee's normal workweek is less than 40 hours, in which case the employee shall
28 accrue paid sick days based upon that normal workweek. An employer may use a different accrual

1 method, other than providing one hour per every 30 hours worked, provided that the accrual is on
2 a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time
3 off by the 120th calendar day of employment, or in each 12-month period. An employer may
4 satisfy the accrual requirements of this section by proving not less than 24 hours or three days of
5 paid sick leave that is available to the employee to use by the completion of his or her 120th
6 calendar day of employment.

7 61. Labor Code Section 246(i) further requires that an employer provide employees
8 written notice setting forth the amount of paid sick leave available either on an employee's wage
9 statement pursuant to Section 226 or in a separate writing on the designated pay date. Here,
10 Defendants violation Section 246 because they did not provide sick leave and did not denote the
11 amount of paid sick leave on wage statements or other separate writings.

12 62. Labor Code Section 1198.5 provides that employers must permit current and/or
13 former employees the right to inspect and receive a copy of the personnel files and records that
14 relate to the employee. Labor Code Section 226(b) states that an employer shall "afford current
15 and former employees the right to inspect or copy records pertaining to their employment, upon
16 reasonable request to the employer." Under Labor Code Section 226(c), an "employer who
17 received a written or oral notice to inspect or copy records pursuant to subdivision (b) pertaining
18 to a current or former employee shall comply with the request as soon as practicable, but no later
19 than 21 calendar days from the date of the request." Here, Defendants failed to provide aggrieved
20 employees with their requested wage statements and personnel file within the statutory time
21 constraints.

22 63. Labor Code Section 558 subjects any employer or other person acting on behalf of
23 an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor
24 Code or any provision regulating hours and days of work in any IWC Wage Order to a civil
25 penalty in the amount of \$50 for any initial violation for each pay period in which an employee is
26 underpaid in addition to an amount sufficient to recover underpaid wages and \$100 for each
27 subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall
28 be paid to each affected employee.

1 64. Labor Code Section 558.1(a) states that any employer or other person acting on
2 behalf of an employer who violates or causes to be violated, any provision regulating minimum
3 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
4 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
5 Employer for such violation. Labor Code Section 558.1 expressly defines “employer or other
6 person acting on behalf of an employer to include a natural person who is an owner, director,
7 officer, or managing agent of the employer.

8 65. Labor Code Section 1197.1 states that any employer or other person acting either
9 individually or as an officer, agent, or employee of another person, which pays or causes to be paid
10 to any employee a wage less than the minimum fixed by an order of the commission shall be
11 subject to a civil penalty and restitution of wages payable to the employee in the amount of \$100
12 for the initial violation for each pay period in which an employee was underpaid in addition to an
13 amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition
14 to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

15 66. Defendants violated Sections 558, 558.1 and 1197.1 by underpaying aggrieved
16 employees and by failing to pay them all compensation that was due and owing to them and failing
17 to issue them premium pay for rest break violations under Labor Code Section 203, 226, 226.7,
18 1194 and the relevant Wage Orders.

19 **FIRST CAUSE OF ACTION**

20 **(Violation of Labor Code Section 2698, *et seq.* California Private Attorneys General**

21 **Act – “PAGA”)**

22 **(Against All Defendants)**

23 67. Plaintiff hereby incorporates by reference the allegations in the above paragraphs
24 of this Complaint as though fully set forth herein.

25 68. PAGA permits an “aggrieved employee” to bring a civil action on behalf of him or
26 herself and on behalf of all other aggrieved employees to recover civil penalties for an employer’s
27 violation of sections enumerated in Labor Code Section 2699.5 and 2699.3. An “aggrieved
28 employee” is defined in Labor Code Section 2699, subdivision (c), as “any person who was

1 employed by the alleged violator and against whom one or more of the alleged violations was
2 committed.”

3 69. Plaintiff and other aggrieved employees are “aggrieved employees” as defined by
4 Labor Code Section 2699, subdivision (c) because they are all current or former employees of
5 Defendants and were subject to Defendants’ violations of various labor code sections.

6 70. Plaintiff satisfied the requirements of Labor Code Section 2699.3 (a)(1)(A) and
7 (a)(1)(B). Additionally, neither Cal/OSHA nor the LWDA provided notice it was investigating
8 the violation within 65 days of the postmark date of the notice provided in Section 2699.3
9 (a)(1)(A).

10 71. Plaintiff and other aggrieved employees were subject to violations of the following
11 Labor Code Sections, entitling them to penalties under PAGA: Labor Code Sections 201, 202,
12 203, 204, 207, 208, 213, 218, 226(a)-(c), 226.3, 226.7, 227.3, 246, 248.5, 510, 512(a), 558, 558.1,
13 1174(d), 1194, 1198.5, 1199, 2751, 2800/2802, 3550, 3551, 6400, 6401, 6401.7, 6402, 6403,
14 6404, 6406, and 6407. In particular, Defendants’ unlawful policies, practices, and procedures
15 comprising the violations include:

16 a. Defendants failed to pay Plaintiff and aggrieved employees all wages due
17 and owing for all time worked, including minimum wages and overtime in violation of Labor Code
18 Sections 510, 218, 1194, 1197.1, 1198, 1199, and applicable Wage Orders;

19 b. Defendants failed to provide Plaintiff and aggrieved employees with
20 compliant duty-free meal breaks before the end of the fifth hour and duty-free rest breaks for at
21 least ten minutes for every four hours of work in violation of Labor Code Sections 226.7, 512,
22 1198 and the relevant IWC Wage Orders and the premium penalty wage did not properly use the
23 regular rate of pay;

24 c. Defendants failed to compensate Plaintiff and aggrieved employees vested
25 vacation time upon separation or termination under Labor Code Section 227.3;

26 d. Defendants failed to provide Plaintiff and aggrieved employees with
27 accurate itemized wage statements under Labor Code Section 226(a), 226.3, and 1198 and the
28 relevant IWC Wage Orders;

1 e. Defendants failed to maintain accurate and complete employment records
2 showing all hours worked daily by Plaintiff and aggrieved employees in violation of Labor Code
3 Section 1174 and 1174.5 and the relevant Wage Orders;

4 f. Defendants failed to timely pay Plaintiff and aggrieved employees with full
5 wages during and upon termination of employment in violation of 201, 202, 203, and 204;

6 g. Defendants failed to conspicuously post the dates and location of pay for
7 Plaintiff and aggrieved employees in violation of Labor Code Section 207;

8 h. Defendants failed to pay final pay to Plaintiff and aggrieved employees at
9 the proper location and time in violation of Labor Code Section 208;

10 i. Defendants failed to provide written commission agreements in compliance
11 with Labor Code Section 2751;

12 j. Defendants failed to provide paid sick leave to the aggrieved employees and
13 failed to provide aggrieved employees with written notice of the amount of paid sick leave
14 available either on wage statements or on a separate writing in violation of Labor Code Section
15 246 and 248.5;

16 k. Defendants failed to give aggrieved employees a choice to have direct
17 deposit of their wages or paper checks in violation of Labor Code Section 213;

18 l. Defendants failed to provide aggrieved employees access to their personnel
19 files and records or wages statements in violation of Labor Code Section 1198.5 and 226(b);

20 m. Defendants failed to post and provide Plaintiff and aggrieved employees
21 with workers' compensation information in violation of Labor Code Section 3550 and 3551;

22 n. Defendants failed to provide Plaintiff and aggrieved employees with a safe
23 and healthful working environment and for failing to maintain and implement a written COVID-
24 19 Prevention Program in violation of Labor Code Sections 6400, 6402, 6404, and 6407;

25 o. Defendants failed to provide Plaintiff and aggrieved employees proper
26 safety equipment and protect employee health care and for failure to implement and maintain a
27 written COVID-19 Prevention Program in violation of Labor Code Sections 6401, 6403, and
28 6406;

1 p. Defendants failed to maintain and implement injury prevention programs
2 for Plaintiff and aggrieved employees;

3 q. Defendants violated Labor Code Sections 558, 558.1, and 1197.1 by failing
4 to pay the aggrieved employees for all wages, and for violating Sections 203, 226, 226.7, 1194,
5 and 2802 of the Labor Code.

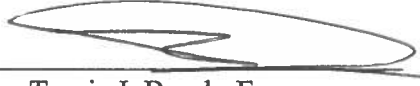
6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as
8 follows:

- 9 1. For all penalties permitted under the California Labor Code Section 2699 (f);
- 10 2. For attorney's fees under at least the following statutes: Labor Code 2699 (g); and
11 Code of Civil Procedure Section 1021.5;
- 12 3. For the costs of the suit herein;
- 13 4. For such other and further relief as this Court may deem just and proper

14
15 DATED: June 9, 2022

SHALCHI BURCH LLP

16
17 By: 

18 Travis J. Burch, Esq.
19 Attorneys for Plaintiff David Montross
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