

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Broadbelt

David Alami (SBN 314628)
david@alamilawgroup.com
ALAMI LAW GROUP
620 Newport Center Drive, Suite 1100
Newport Beach, CA 92660
Telephone: (949) 287-3594

Attorney for Plaintiff MANUEL MONTOYA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MANUEL MONTOYA, an individual, on
behalf of himself and all other aggrieved
employees,

Plaintiff,

vs.

COMMERCIAL COATING COMPANY,
INC., a California corporation; ADRIAN
LOERA, an individual; WILLIAM
EMERSON, an individual; and DOES 1
through 10 inclusive,

Defendants.

CASE NO.: 22STCV21908

COMPLAINT FOR:

- 1. Failure to Pay All Wages;**
- 2. Failure to Pay Prevailing Wages;**
- 3. Meal Period Violations;**
- 4. Rest Period Violations;**
- 5. Failure to Reimburse Business Expenses;**
- 6. Wage Statement Violations;**
- 7. Failure to Permit Inspection or Copying of Records;**
- 8. Unfair Competition;**
- 9. PAGA Civil Penalties (Labor Code § 2698 et seq.)**

1 Plaintiff MANUEL MONTOYA (“Plaintiff”), as an individual and as a representative under
2 the Private Attorneys General Act (“PAGA”), hereby brings this Complaint against Defendants
3 COMMERCIAL COATING COMPANY, INC., a California corporation (“COMMERCIAL
4 COATING”); ADRIAN LOERA, an individual (“LOERA”); WILLIAM EMERSON, an
5 individual (“EMERSON”); and DOES 1 through 10 inclusive (collectively, “Defendants”), and
6 hereby alleges with knowledge with respect to his own acts and on information and belief as to
7 other matters as follows:

8 **NATURE OF ACTION**

9 1. Plaintiff brings individual claims to recover unpaid wages, liquidated and statutory
10 damages, treble damages, restitution, interest, reasonable attorneys’ fees, costs and other sums that
11 Defendants owe to him under the California Labor Code (“Labor Code”), the Industrial Welfare
12 Commission (“IWC”) Wage Orders, and the California Business and Professions Code (“Business
13 and Professions Code”).

14 2. Plaintiff further brings a claim under the Private Attorneys General Act of 2004,
15 codified as Labor Code Sections 2698 *et seq.*, to recover civil penalties, reasonable attorneys’ fees,
16 costs, wages and other recoverable sums in his representative capacity as an “aggrieved employee”
17 on behalf of all other current and former aggrieved employees of Defendants COMMERCIAL
18 COATING, LOERA, and EMERSON.

19 **JURISDICTION AND VENUE**

20 3. This Court has jurisdiction over all causes of action asserted in this Complaint
21 pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court
22 original jurisdiction in all cases except those given to other trial courts.

23 4. This Court has general personal jurisdiction over COMMERCIAL COATING
24 because it is a California corporation. This Court has general personal jurisdiction over LOERA
25 and EMERSON because they reside in California.

26 5. Pursuant to California Code of Civil Procedure Sections 395 and 395.5, venue is
27 proper in this judicial district because all Defendants reside and maintain their principal place of
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1 business in Los Angeles County, and/or the acts and omissions alleged in this Complaint occurred
2 in this County.

3 **PARTIES**

4 6. Plaintiff MANUEL MONTOYA is an individual residing in Los Angeles County,
5 California. Defendants have employed Plaintiff since approximately March 2008 as a driver on
6 private and public works construction projects in California.

7 7. Plaintiff is an “aggrieved employee” within the meaning of the PAGA since he
8 suffered one or more of the violations alleged in this Complaint. Plaintiff brings a claim for civil
9 penalties and other recoverable sums under the PAGA as a representative aggrieved employee on
10 behalf of all current and former employees of Defendants during the PAGA Period. The PAGA
11 Period is defined as commencing from one year prior to Plaintiff’s notice of Labor Code violations
12 to the Labor Workforce and Development Agency (“LWDA”) and certified mailing of said notice
13 to Defendants COMMERCIAL COATING, LOERA, and EMERSON until resolution of this
14 action.

15 8. Defendants employed Plaintiff as a non-exempt hourly employee during the PAGA
16 Period and Plaintiff’s employment with Defendants ended within one (1) year of the filing of this
17 action. The “Aggrieved Employees” for purposes of the representative claim for PAGA penalties
18 include all current and former non-exempt employees of Defendants during the PAGA Period.

19 9. Defendant COMMERCIAL COATING is a California corporation doing business
20 throughout the state of California with its principal place of business located in Los Angeles
21 County, California. COMMERCIAL COATING is, and at all relevant times was, an employer
22 subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges
23 that the practices and policies of COMMERCIAL COATING that are complained of by way of this
24 Complaint were implemented during the PAGA Period.

25 10. COMMERCIAL COATING is a licensed contractor and is licensed by the State of
26 California State Licensing Board. COMMERCIAL COATING holds a State of California General
27 Engineering Contractor’s license as well as a “C-32 - Parking and Highway Improvement
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Contractor” classification, all under license #475564 which was issued on June 25, 1985 and is active until June 30, 2023.

11. Plaintiff is informed, believes, and thereon alleges that COMMERCIAL COATING acted as a contractor and/or subcontractor as defined by Labor Code Section 1722.1 and was engaged under and by virtue of the laws of the State of California in execution of public works contracts.

12. Plaintiff is informed, believes, and thereon alleges that LOERA is the General Manager of COMMERCIAL COATING. LOERA is, and at all relevant times was, an employer subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies of LOERA that are complained of by way of this Complaint were implemented during the four years preceding the filing of this Complaint and during the PAGA Period in violation of Labor Code Sections 203, 226, 2267, 1194, and 2802 and is therefore directly liable under Labor Code Sections 558 and 558.1.

13. Plaintiff is informed, believes, and thereon alleges that EMERSON is the Superintendent of COMMERCIAL COATING. EMERSON is, and at all relevant times was, an employer subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies of EMERSON that are complained of by way of this Complaint were implemented during the four years preceding the filing of this Complaint and during the PAGA Period in violation of Labor Code Sections 203, 226, 2267, 1194, and 2802 and is therefore directly liable under Labor Code Sections 558 and 558.1.

14. Defendants continue to employ non-exempt employees within California.

15. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Defendants were and are employers and/or joint employers of Plaintiff and the other Aggrieved Employees as defined in and subject to the Labor Code and IWC Wage Orders.

16. Defendant Does 1 through 10, are sued under fictitious names pursuant to Code of Civil Procedure Section 474. Plaintiff will seek leave of court to amend this Complaint in the event such names and identities are ascertained. Plaintiff is informed, believes, and thereon alleges that each of the fictitiously named defendants is and/or was responsible in some manner for, gave

1 consent to, ratified, and/or authorized the conduct alleged herein, thereby causing damage to
2 Plaintiff and the other Aggrieved Employees. At all relevant times mentioned in this Complaint,
3 all defendants acted as agents of all other defendants in committing the acts alleged in this
4 Complaint.

5 17. Plaintiff is informed, believes, and thereon alleges that each defendant directly or
6 indirectly, through agents or other persons or entities, employed and/or exercised control over the
7 wages, hours and working conditions of Plaintiff and the other Aggrieved Employees. Plaintiff is
8 further informed, believes, and thereon alleges that each defendant acted in all respects pertinent to
9 this action as the agent of the other defendants, carried out in a joint scheme, plan or policy, such
10 that that the acts of each defendant are legally attributable to all other defendants. Plaintiff is further
11 informed, believes, and thereon alleges that Defendants LOERA and EMERSON are alter egos of
12 COMMERCIAL COATING and in all respects acted as the employers and/or joint employers of
13 Plaintiff and the other Aggrieved Employees.

14 18. At all relevant times herein, Defendants were agents of each other and acting within
15 the course and scope of their agency.

16 **FACTUAL ALLEGATIONS**

17 19. Defendants have employed Plaintiff as a non-exempt employee since approximately
18 March 2008. Plaintiff's job duties included driving trucks, hauling or delivering ready-mixed
19 concrete, installing and moving construction equipment, and/or performing clean-up work at
20 jobsites during the postconstruction phase of construction.

21 20. Plaintiff is informed, believes, and thereon alleges that Defendants employed
22 Plaintiff and the other Aggrieved Employees on private and public works projects in California.
23 The Aggrieved Employees participate in construction, alteration, demolition, installation, or repair
24 work on public works projects. In addition, the Aggrieved Employees also haul or deliver ready-
25 mixed concrete on public works projects. The Aggrieved Employees also perform clean-up work
26 on public works projects during the postconstruction phase of construction. Plaintiff is informed,
27 believes, and thereon alleges that Defendants currently pay Plaintiff approximately \$30 per hour.

1 21. Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein,
2 Defendants were advised by skilled lawyers, employees and other professionals who were
3 knowledgeable about California wage and hour law, employment and personnel practices, and the
4 requirements under California law.

5 22. Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein,
6 Defendants knew or should have known that they had a duty to compensate Plaintiff and the other
7 Aggrieved Employees, and that Defendants had the financial ability to pay such compensation but
8 willfully, knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

9 23. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
10 pattern of wage and hour violations under the Labor Code and IWC Wage Orders.

11 24. Defendants committed the violations set forth in this Complaint against all
12 Aggrieved Employees, continuing through the present date. Defendants maintained non-compliant
13 employment policies and practices which were applied to Plaintiff and all other Aggrieved
14 Employees.

15 **Unpaid Overtime, Minimum, and Prevailing Wages**

16 25. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
17 have known that Plaintiff and other Aggrieved Employees were entitled to receive at least minimum
18 wages, wages at their regular rate of pay, overtime wages, and prevailing wages, and that they were
19 not receiving minimum, regular, overtime, and prevailing wages for all work that was required to
20 be performed.

21 26. Plaintiff is informed, believes, and thereon alleges that Plaintiff and other Aggrieved
22 Employees regularly worked in excess of eight (8) and/or 10 hours per workday and/or 40 hours
23 per workweek. In violation of the Labor Code, Defendants failed to pay the minimum, regular,
24 overtime, and prevailing wage rate of pay to Plaintiff and other Aggrieved Employees for all hours
25 worked. Defendants failed to pay the minimum, regular, and overtime wages when Plaintiff and
26 Aggrieved Employees were on call or worked off-the-clock (*e.g.*, time spent working before and
27 after their scheduled shifts performing work-related tasks). Specifically, Defendants required
28 Plaintiff and other Aggrieved Employees to complete work-related tasks off-the-clock, such as

1 picking up materials for COMMERCIAL COATING on their way home. Moreover, Defendants
2 did not compensate Plaintiff and the other Aggrieved Employees for all hours worked because
3 Plaintiff and the other Aggrieved Employees were regularly on-duty during their meal periods and
4 were expected to eat meals while driving or while otherwise on duty to meet the demands of
5 Employer's fast-paced environment. Further, Defendants rounded Plaintiff and the other Aggrieved
6 Employees hours worked, including meal periods, thereby depriving them of compensation for time
7 worked during their shifts. Defendants' rounding practice systematically undercompensated
8 Plaintiff and the other Aggrieved Employees and favored the employer rather than the employees.

9 27. Plaintiff is informed, believes, and thereon alleges that on public works projects,
10 Defendants failed to compensate Plaintiff and the other Aggrieved Employees at the prevailing
11 wage rate classification for the type of work performed by Plaintiff and the other Aggrieved
12 Employees on that project.

13 28. As a result of Defendants' failure to properly compensate Plaintiff and the other
14 Aggrieved Employees, they were underpaid wages owed (including overtime and prevailing wages)
15 and, in certain pay periods, compensated at a rate less than the lawful minimum wage for all hours
16 worked.

17 **Meal Period Violations**

18 29. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
19 have known that Plaintiff and the other Aggrieved Employees were entitled to receive a timely, off-
20 duty, uninterrupted 30-minute meal period for every five hours of work, or payment of one
21 additional hour of pay at their regular rate of pay when they did not receive a compliant meal period.

22 30. In violation of the Labor Code and IWC Wage Orders, Plaintiff and the other
23 Aggrieved Employees did not receive compliant meal periods due to Defendants' policies,
24 workload, and understaffing, among other things. Specifically, although Plaintiff's shifts generally
25 began at 5:00 a.m., Defendants regularly failed to provide Plaintiff with his meal period within the
26 first five hours of work. Plaintiff and the other Aggrieved Employees were also on-duty during
27 their meal periods and had their meal periods regularly interrupted. For example, due to
28 understaffing and Defendants' fast-paced environment, Plaintiff and the other Aggrieved

1 Employees would often be required to work through their meal periods. Further, Defendants failed
2 to provide second meal periods when Plaintiff and the other Aggrieved Employees worked over 10
3 hours.

4 31. Defendants also failed to pay Plaintiff and the other Aggrieved Employees one
5 additional hour of pay at their regular rate of pay when Plaintiff and the other Aggrieved Employees
6 did not receive a compliant meal period. Plaintiff is informed, believes, and thereon alleges that
7 Defendants maintained no mechanism for the payment of meal period premiums in the event a
8 lawful meal period was not provided.

9 **Rest Period Violations**

10 32. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
11 have known that Plaintiff and Aggrieved Employees were entitled to receive a 10-minute, off-duty,
12 uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or payment of
13 one additional hour of pay at their regular rate of pay when they were not permitted to take a
14 compliant rest period. Specifically, Defendants failed to implement a rest break policy and/or
15 practice, and failed to provide uninterrupted, off-duty 10-minute rest breaks. For example, rest
16 breaks were simply not provided to Plaintiff and the other Aggrieved Employees due to
17 understaffing and Employer's fast-paced environment. As such, Plaintiff and the other Aggrieved
18 Employees regularly missed their rest breaks or had them interrupted or governed by Defendants'
19 practices and policies.

20 33. Despite these violations, Defendants failed to pay Plaintiff and Aggrieved
21 Employees one additional hour of pay at their regular rate of pay when they did not receive a
22 compliant rest break. Plaintiff is informed, believes, and thereon alleges that Defendants maintained
23 no mechanism for the payment of premiums in the event a lawful rest period was not provided.

24 **Unreimbursed Business Expenses:**

25 34. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
26 have known that Plaintiff and the other Aggrieved Employees were entitled to reimbursement for
27 their necessary work-related business expenses.

28 35. In violation of the Labor Code and IWC Wage Orders, Plaintiff and the other

1 Aggrieved Employees were required to use their personal cell phones, without reimbursement, to
2 carry out their jobs, including to communicate with Defendants and to use their phone's data plan
3 and GPS applications to navigate to various jobsites.

4 **Waiting Time Penalties**

5 36. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
6 have known that other Aggrieved Employees who separated from their employment with
7 Defendants during the statutory period were entitled to timely payment of all wages due. In
8 violation of the Labor Code, other Aggrieved Employees did not receive payment of all wages
9 owed upon separation within the permissible time period due to, *inter alia*, Defendants' failure to
10 pay all wages, meal and rest period premiums, and reimburse expenses.

11 **Wage Statement Violations**

12 37. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
13 have known that Plaintiff and the other Aggrieved Employees were entitled to receive complete
14 and accurate wage statements. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
15 the other Aggrieved Employees were not furnished with complete and accurate wage statements
16 that show all of the information required by Labor Code Section 226, including, but not limited to,
17 the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during
18 the pay period, the corresponding number of hours worked at each hourly rate, and the entity
19 name(s).

20 **Failure to Keep Accurate Records**

21 38. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should
22 have known that Defendants were required to keep accurate records of the hours worked by Plaintiff
23 and the other Aggrieved Employees. In violation of the Labor Code, Defendants failed to maintain
24 accurate records of hours worked by Plaintiff and the other Aggrieved Employees due to the
25 unlawful practices described above.

26 39. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
27 described throughout this Complaint were willful.
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1 **Failure to Permit Inspection or Copying of Records**

2 40. On April 28, 2022, Plaintiff, through his counsel, sent a written request to
3 Defendants for time and pay records pursuant to Labor Code Sections 226 and 1198.5, for copies
4 of Plaintiff's payroll records, personnel records, and documents signed regarding his employment
5 pursuant to Labor Code Section 432. Defendants did not respond to the request for records and did
6 not comply with Labor Code Sections 226, 432, and 1198.5 by providing any of the records they
7 were obligated to provide. To date, Defendants have not provided any of the requested records.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY ALL WAGES**

10 **(Against All Defendants)**

11 41. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
12 as though fully set forth herein.

13 42. At all relevant times, Defendants had a duty to comply with Labor Code Sections
14 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, 1811, and 1815 and the applicable IWC Wage
15 Orders and California Code of Regulations.

16 43. Labor Code Section 204 and the IWC Wage Orders require timely payment of all
17 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
18 designated in advance by the Defendants as the regular paydays. All wages earned in excess of
19 the normal work period must be paid no later than the payday for the next regular payroll period.

20 44. Labor Code Section 206 provides that in case of a dispute over wages, the
21 Defendants shall pay, without condition and promptly under the Labor Code all wages conceded
22 due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

23 45. At all times relevant, Labor Code Section 510, and applicable Sections of the
24 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
25 Defendants and continued to apply to his employment with Defendants. Labor Code Section 510
26 and applicable provisions of the California Code of Regulations and IWC Wage Orders state that
27 any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must be
28 paid at one and one-half times the employee's regular rate of pay. Any work performed in excess

1 of 12 hours in a workday must be compensated at the rate of no less than twice the regular rate of
2 pay for an employee.

3 46. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be paid
4 to all employees in California for all hours worked. Local minimum wage ordinances, may provide
5 for higher minimum wage rates that must be paid to employees for all hours worked in those locales
6 where each local ordinance is in effect. Labor Code Section 1197 affirms that it is unlawful to pay
7 less than the state or local minimum wage, whichever is higher, for any hour of work.

8 47. Labor Code Section 1194 provides that any employee receiving less than the legal
9 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
10 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
11 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

12 48. Labor Code Section 1194.2 authorizes the recovery of liquidated damages in an
13 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

14 49. Labor Code Section 1198 prohibits Defendants from employing for longer hours or
15 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
16 set by the Labor Commissioner.

17 50. Labor Code Section 1811 provides: "The time of service of any workman employed
18 upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours
19 during any one calendar week, except as hereinafter provided for under Section 1815."

20 51. Labor Code Section 1815 provides in relevant part: "work performed by employees
21 of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted
22 upon public work upon compensation for all hours worked in excess of 8 hours per day at not less
23 than 1 1/2 times the basic rate of pay."

24 52. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Plaintiff
25 regularly worked more than eight (8) hours and/or 10 hours per workday, more than 40 hours per
26 workweek, and/or more than eight (8) hours on the seventh consecutive day of work.

27 53. Plaintiff is informed, believes, and thereon alleges that at all relevant times,
28 Defendants failed to pay Plaintiff all wages for hours worked (including minimum, regular, and

1 overtime wages), failed to pay overtime wages at the proper rates of pay, auto-deducted and
2 rounded meal periods, unlawfully deducted wages, and required off-the-clock work without
3 compensation, among other things.

4 54. As a direct and proximate result of Defendants' unlawful conduct, as set forth
5 herein, Plaintiff has sustained and continues to sustain damages, including loss of earnings
6 including minimum, regular, and overtime compensation due, in an amount to be established at
7 trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

8 55. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
9 conduct described herein, have committed an "intentional theft of wages in an amount greater than
10 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
11 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12- month
12 period" within the meaning of California Penal Code Section 487m. Specifically, Defendants have
13 intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor Code, gratuities,
14 as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means,
15 with the knowledge that the wages, gratuities, benefits, or other compensation is due to the
16 employee under the law. Plaintiff is thus entitled to recover from Defendants treble damages and
17 costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

18 56. WHEREFORE, Plaintiff requests relief as described herein and below.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY PREVAILING WAGES**

21 **(Against All Defendants)**

22 57. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
23 as though fully set forth herein.

24 58. At all times relevant to this Complaint, Defendants were subject to the minimum
25 wage requirements pursuant to Labor Code Section 1194 and to California's Prevailing Wage Law
26 pursuant to Labor Code Sections 1771 *et seq.*, regarding work undertaken in execution of public
27 contracts. Pursuant to Labor Code Section 1194, Defendants had a duty to pay Plaintiff not less
28 than the minimum required hourly rate of pay and legal overtime wage for his work on public works

1 projects. Pursuant to Labor Code Sections 1771 and 1774, Defendants had a duty to pay Plaintiff
2 not less than the general prevailing rate of per diem wages, and not less than the general prevailing
3 rate of per diem wages for holiday and overtime work.

4 59. The per diem wages and prevailing wages required to be paid pursuant to Labor
5 Code Sections 1194, 1771, and 1774 are set forth in annual and semi-annual bulletins published by
6 the California Department of Industrial Relations.

7 60. Plaintiff is informed, believes, and thereon alleges that Plaintiff was paid less than
8 the minimum required general prevailing rate of per diem wages for his work as required by Labor
9 Code Sections 1194, 1771, and 1774. Plaintiff is informed, believes, and thereon alleges that
10 Plaintiff was paid a fraction of the required pay rate.

11 61. As a direct and proximate result of Defendants' unlawful conduct, as set forth in this
12 Complaint, Plaintiff has sustained and continues to sustain damages in an amount to be established
13 at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

14 62. Plaintiff seeks the difference between the required prevailing wage rate for each
15 hour worked and the amount actually paid.

16 63. Pursuant to Labor Code Section 1194.2, Plaintiff seeks liquidated damages for
17 failure to pay minimum wage.

18 64. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
19 conduct described herein, have committed an "intentional theft of wages in an amount greater than
20 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
21 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12- month
22 period" within the meaning of California Penal Code Section 487m. Specifically, Defendants have
23 intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor Code, gratuities,
24 as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means,
25 with the knowledge that the wages, gratuities, benefits, or other compensation is due to the
26 employee under the law. Plaintiff is thus entitled to recover from Defendants treble damages and
27 costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

28 65. WHEREFORE, Plaintiff requests relief as described herein and below.

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1 with the knowledge that the wages, gratuities, benefits, or other compensation is due to the
2 employee under the law. Plaintiff is informed, believes, and thereon alleges that meal period
3 premiums are wages, gratuities, benefits, or other compensation within the meaning of California
4 Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendants treble damages and
5 costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

6 **FOURTH CAUSE OF ACTION**

7 **REST PERIOD VIOLATIONS**

8 **(Against All Defendants)**

9 72. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
10 as though fully set forth herein.

11 73. California law and applicable Wage Orders require employers to authorize and
12 permit all employees to take uninterrupted rest periods. The rest period time shall be based on the
13 total hours worked daily at the rate of 10 minutes net rest time per four hours or major fraction
14 thereof.

15 74. During the relevant time period, Defendants failed to provide compliant rest breaks.
16 Specifically, Plaintiff had his rest breaks on-duty, interrupted, missed, or shortened. Consequently,
17 Plaintiff did not receive a 10-minute rest period for every four (4) hours worked or major fraction
18 thereof.

19 75. During the relevant time period, Defendants failed to pay Plaintiff rest period
20 premiums for noncompliant rest periods pursuant to Labor Code Section 226.7(b) and the
21 applicable IWC Wage Order.

22 76. Defendants have willfully, unfairly, fraudulently or unlawfully failed to allow
23 Plaintiff to take rest periods pursuant to California law. As a result, Defendants are liable to
24 Plaintiff for premium compensation of one hour of pay at the employee's regular rate for each
25 workday that the rest period was not provided pursuant to Labor Code Section 226.7, in an amount
26 to be established at trial.

27 77. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
28 conduct described herein, have committed an "intentional theft of wages in an amount greater than

1 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
2 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12- month
3 period” within the meaning of California Penal Code Section 487m. Specifically, Defendants have
4 intentionally deprived Plaintiff of wages, as defined in Section 200 of the Labor Code, gratuities,
5 as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means,
6 with the knowledge that the wages, gratuities, benefits, or other compensation is due to the
7 employee under the law. Plaintiff is informed, believes, and thereon alleges that rest period
8 premiums are wages, gratuities, benefits, or other compensation within the meaning of California
9 Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendants treble damages and
10 costs, including reasonable attorneys’ fees, pursuant to California Penal Code Section 496(c).

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 **(Against All Defendants)**

14 78. Plaintiff hereby re-alleges and incorporates by reference the allegations in all
15 paragraphs in this Complaint as though fully set forth herein.

16 79. At all relevant times, Defendants had a duty to comply with Labor Code Sections
17 2800 and 2802. Defendants failed to comply with these indemnification and reimbursement
18 requirements with respect to Plaintiff.

19 80. Labor Code Section 2800 requires employers to indemnify employees for losses
20 caused by the employer’s want of ordinary care. To the extent Defendants claim that Plaintiff failed
21 to request, demand, notify or otherwise seek reimbursement for their expenses and losses,
22 Defendants were obligated to nevertheless indemnify Plaintiff due to their own negligence.

23 81. Labor Code Section 2802(a) requires that employers indemnify and reimburse
24 employees for all business expenses, which are defined as all necessary expenditures or losses
25 incurred by the employee in direct consequence of the discharge of the employee’s duties or
26 otherwise incurred based on the employee’s obedience to the employer’s directions. Labor Code
27 Section 2802(b) authorizes employees to recover in a court action interest which shall accrue from
28 the date on which the employee incurred the necessary expenditure or loss. Labor Code

1 Section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
2 Code Section 2802, to also recover attorneys' fees and costs.

3 82. During the relevant time period, Defendants required Plaintiff to incur out-of-
4 pocket expenses without reimbursement, such as, using his personal cell phone to communicate
5 with Defendants and using his phone's data plan and GPS applications to navigate to various
6 jobsites.

7 83. As a result of Defendants' failure to indemnify and reimburse Plaintiff for all
8 business and work-related costs, expenditures, losses and expenses in accordance with Labor Code
9 Sections 2800 and 2802, Plaintiff is entitled to recover the full unreimbursed balance of
10 reimbursements, expenditures and losses, prejudgment interest, and statutory penalties, along with
11 attorneys' fees and costs in amounts that will be established at trial.

12 **SIXTH CAUSE OF ACTION**

13 **WAGE STATEMENT VIOLATIONS**

14 **(Against All Defendants)**

15 84. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
16 as though fully set forth herein.

17 85. Labor Code Section 226(a) requires employers, at the time of each payment of
18 wages, to furnish each employee with an accurate statement itemizing, among other things: (1)
19 gross wages earned; (2) the total hours worked by the employee; (3) all deductions; (4) net wages
20 earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the
21 employee and his or her social security number (last four digits); (7) the name and address of the
22 legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period
23 and the corresponding number of hours worked at each hourly rate by the employee. Labor Code
24 § 1174 further requires that such payroll records be kept in a central location.

25 86. Labor Code Section 226(e) further provides that if an employer knowingly and
26 intentionally fails to provide a statement itemizing, among other things, the total hours worked by
27 the employee, then the employee is entitled to recover the greater of all actual damages or fifty
28

1 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation,
2 up to four thousand dollars (\$4,000).

3 87. As alleged herein, Defendants failed to pay all wages, reimbursements, and
4 premiums. Thus, Defendants have knowingly and intentionally failed to comply with the Labor
5 Code on each and every wage statement that should have been provided to Plaintiff by failing to
6 provide itemized wage statements to Plaintiff that accurately reported, among other things, the
7 gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the
8 pay period, and the corresponding number of hours worked at each hourly rate.

9 88. By failing to keep accurate records and provide such records to Plaintiff as required
10 by Labor Code Sections 226(a) and 1174, Defendants have injured Plaintiff and made it difficult to
11 calculate the unpaid wages earned and due to Plaintiff. Moreover, Defendants' failure to comply
12 with Labor Code Section 1174 is unlawful pursuant to Labor Code Section 1175.

13 89. Because of Defendants' willful failure to provide Plaintiff with accurate records as
14 required by Labor Code Section 226(a), Plaintiff is entitled to damages pursuant to Labor Code
15 Section 226(e) in an amount to be established at trial.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO PERMIT INSPECTION OR COPYING OF RECORDS**

18 **(Against All Defendants)**

19 90. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
20 as though fully set forth herein.

21 91. Labor Code Section 226(b) and (c) require an employer to afford current and former
22 employees the right to inspect or copy records pertaining to that current or former employee, upon
23 reasonable request to the employer, as soon as practicable, but no later than 21 calendar days from
24 the date of the request.

25 92. Labor Code Section 1198.5(a) and (b) require that within 30 days of an employer's
26 receipt of a request, an employer afford every current and former employee the right to inspect and
27 receive a copy of the personnel records that the employer maintains relating to the employee's
28 performance or to any grievance concerning the employee.

1 93. On or about April 28, 2020, Plaintiff made a written request to Defendants for his
2 wage records pursuant to Labor Code Sections 226 and 1198.5. Employer did not respond and did
3 not permit Plaintiff to inspect or copy any wage records or Plaintiff's personnel file. As a proximate
4 result of these violations, Plaintiff has been damaged in an amount to be established at trial.
5 Pursuant to Labor Code Sections 226(f) and 1198.5, Plaintiff is entitled to recover penalties for a
6 minimum of \$1,500 and an award of reasonable attorneys' fees and costs in connection with his
7 claims for these civil penalties.

8 94. Pursuant to the Labor Code, and because Plaintiff seeks to enforce important rights
9 affecting the public interest within the meaning of California Code of Civil Procedure Section
10 1021.5, Plaintiff is entitled to recover attorneys' fees incurred in prosecuting this action, as well as
11 his other costs and expenses of litigation.

12 **EIGHTH CAUSE OF ACTION**

13 **UNFAIR BUSINESS PRACTICES**

14 **(Against All Defendants)**

15 95. Plaintiff incorporates by reference the allegations in all paragraphs in this Complaint
16 as though fully set forth herein.

17 96. The Unfair Competition Law as codified in California Business and Professions
18 Code Sections 17200 *et seq.* ("UCL") defines unfair business competition to include any "unlawful,
19 unfair or fraudulent" act or practice.

20 97. A business act or practice is "illegal" under the UCL if it violates any statute,
21 regulation, or ordinance

22 98. A business practice is "unfair" under the UCL if the reasons, justifications, and
23 motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

24 99. A business act or practice is "fraudulent" under the UCL if it is "likely to deceive"
25 members of the general public.

26 100. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful failure
27 to timely pay wages, meal and rest periods or compensation, provide accurate itemized wage
28 statements, reimburse expenses, among other things, constitute violations of the UCL.

101. Defendants' failure to pay Plaintiff in a lawful manner as set forth above and below is fraudulent and deceptive and constitutes an ongoing and continuous unfair business practice within the meaning of the UCL. Members of the public have been deceived in the past, and will be in the future continue to be deceived, by these continuous unfair business practices.

102. The illegal conduct alleged in this Complaint is continuing, and there is no indication that Defendants will not continue such activity in the future. Plaintiff alleges that if Defendants are not enjoined from their illegal conduct, they will continue to fail to provide rest periods and meal breaks or provide appropriate compensation in-lieu thereof.

103. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by the UCL. Thus, on behalf of himself and the general public, Plaintiff seeks injunctive relief, restitution, and the disgorgement of all unlawfully earned profits as a result of Defendants' alleged acts or omissions described in this Complaint. Furthermore, Plaintiff requests attorneys' fees and costs pursuant to Code of Civil Procedure Section 1021.5.

104. Plaintiff is informed, believes, and thereon alleges that unless restrained and ordered to pay restitution and disgorge profits derived from said unfair and unlawful business practices, Defendants will continue to engage in the alleged acts and/or omissions described in this Complaint.

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(Against All Defendants)

105. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

106. Pursuant to Labor Code Section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, can be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself or herself and other current or former employees pursuant to the procedures specified in
2 Labor Code Section 2699.3.

3 107. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under
4 PAGA only after giving the LWDA and the employer notice of the Labor Code Sections alleged to
5 have been violated, and after receiving notice from the LWDA of its intention not to investigate or
6 after 65 days have passed without notice from the LWDA.

7 108. On April 29, 2022, Plaintiff gave written notice of the specified provisions alleged
8 to have been violated, including the facts and theories to support the alleged violations, as required
9 by Labor Code Section 2699.3. This written notice was provided via certified mail to Defendants
10 COMMERCIAL COATING, LOERA, and EMERSON and to the LWDA by electronically filing
11 the notice via the Department of Industrial Relations' website. More than 65 days have passed since
12 Plaintiff submitted his PAGA notice to the LWDA without notice from the LWDA. Accordingly,
13 Plaintiff has exhausted the procedural requirements under Labor Code Section 2699.3 as to
14 Defendants COMMERCIAL COATING, LOERA, and EMERSON and is therefore able to pursue
15 a claim for penalties on behalf of himself and all other Aggrieved Employees under PAGA.

16 109. For all provisions of the Labor Code except those for which a civil penalty is
17 specifically provided, Labor Code Section 2699(f) imposes upon Defendants COMMERCIAL
18 COATING, LOERA, and EMERSON a penalty of one hundred dollars (\$100.00) for each
19 Aggrieved Employee per pay period for the initial violation and two hundred dollars (\$200.00) for
20 each Aggrieved Employee per pay period for each subsequent pay period in which Defendants
21 COMMERCIAL COATING, LOERA, and EMERSON violated these provisions of the Labor
22 Code.

23 110. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil
24 penalties for any alleged violation of the following provisions: subdivision (k) of Section 96,
25 Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
26 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223,
27 and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections
28 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section

232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 7 51.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 17 00.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, 6399.7, 6400, 6401, 6401.7, 6402, and 6403.

111. Labor Code Section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor Code], shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

112. Labor Code section 1197.1 provides “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period

1 for which the employee is underpaid regardless of whether the initial violation is intentionally
2 committed.”

3 113. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a)
4 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
5 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
6 each violation in a subsequent citation, for which the employer fails to provide the employee a
7 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
8 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

9 114. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
10 maintain accurate and complete payroll records showing the hours worked daily by and the wages
11 paid to employees.

12 115. Plaintiff is informed, believes, and thereon alleges that Defendants COMMERCIAL
13 COATING, LOERA, and EMERSON’s conduct with respect to Plaintiff and the other Aggrieved
14 Employees violates numerous Labor Code Sections including, but not limited to, the following:

- 15 a. Violation of Labor Code Sections 204, 206, 210, 510, 558, 1194, 1197, 1197.1,
16 1198, 1771, 1774, 1811, and 1815 for failure to timely pay all earned wages
17 (including minimum, regular, overtime, and prevailing wages) owed to Plaintiff
18 and the other Aggrieved Employees during employment and upon separation of
19 employment as herein alleged;
 - 20 b. Violation of Labor Code Section 1776 for failure to keep accurate payroll records,
21 showing the name, address, social security number, work classification, straight
22 time and overtime hours worked each day and week, and the actual per diem
23 wages paid to each journeyman, apprentice, worker, or other Aggrieved Employee
24 employed by them on public works projects;
 - 25 c. Violation of Labor Code Sections 226.7 and 512 for failure to provide meal
26 periods to Plaintiff and the other Aggrieved Employees and failure to pay premium
27 wages for missed meal periods as herein alleged;
- 28

- 1 d. Violation of Labor Code Sections 226.7 for failure to permit rest breaks to Plaintiff
2 and the other Aggrieved Employees and failure to pay premium wages for missed
3 rest periods as herein alleged;
- 4 e. Violation of Labor Code Sections 226 and 226.3 for failure to provide accurate
5 itemized wage statements to Plaintiff and the other Aggrieved Employees as herein
6 alleged;
- 7 f. Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain accurate
8 records regarding the employment of Plaintiff and the other Aggrieved Employees
9 as herein alleged; and
- 10 g. Violation of Labor Code Sections 2800 and 2802 for failure to reimburse business
11 expenses to Plaintiff and the other Aggrieved Employees as herein alleged.

12 116. As set forth above, Defendants have violated numerous provisions of the Labor
13 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
14 also seeks the civil penalties set forth in Labor Code Sections 558 and 1197.1 for himself, the
15 underpaid employees, and the State of California.

16 117. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
17 and had one or more of the alleged violations committed against him, and therefore is properly
18 suited to represent the interests of all other Aggrieved Employees.

19 118. Pursuant to Labor Code Sections 2699(a), 2699.3, and 2699.5, Plaintiff is entitled
20 to recover civil penalties, in addition to other remedies, for violations of the Labor Code Sections
21 cited above.

22 119. Plaintiff is also entitled to attorneys’ fees and costs.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
25 follows:

- 26 1. For compensatory damages and general damages according to proof with interest
27 thereon;
- 28 2. For economic and/or special damages, and/or liquidated damages according to proof

1 with interest thereon;

2 3. For other compensatory damages for emotional distress and other economic losses;

3 4. For damages, monetary relief, wages, premiums, reimbursements, benefits and
4 penalties, including interest thereon;

5 5. For prejudgment interest on all sums recovered pursuant to other compensatory
6 damages at the legal rate from the date of injury or pursuant to California Code of Civil Procedure
7 Sections 3287 and 3289, and Labor Code Section 218.6;

8 6. For all damages and penalties available for violations of the Labor Code;

9 7. For waiting time penalties pursuant to Labor Code Section 203;

10 8. For liquidated damages pursuant to Labor Code Section 1194.2;

11 9. For treble damages pursuant to Penal Code Section 496(c);

12 10. For statutory penalties to the extent permitted by law, including those pursuant to
13 the Labor Code and IWC Wage Orders;

14 11. For injunctive relief, disgorgement, and restitution of all money and property
15 unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to
16 Business and Professions Code sections 17200 *et seq.*;

17 12. For attorneys' fees pursuant to Labor Code Sections 226, 1194, 2802, Code of Civil
18 Procedure Section 1102.5 and any other applicable provisions of law;

19 13. For costs of suit incurred; and

20 14. For any other and further relief as the Court deems just and proper.

21
22 WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for
23 judgment against Defendants, jointly and severally, as follows:

24 15. For civil penalties against Defendants on behalf of all Aggrieved Employees
25 pursuant to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698 *et seq.*;

26 16. For reasonable attorneys' fees and costs of suit to the extent permitted by
27 law,
28 including pursuant to Labor Code Sections 2699(g), 2802(c) and California Code of Civil

1 Procedure Section 1021.5; and

2 17. For such other relief as the Court deems just and proper.

3
4 Dated: July 7, 2022

ALAMI LAW GROUP

5
6 By 

David Alami
Attorney for Plaintiff MANUEL MONTOYA

7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff demands a trial by jury on all issues so triable.

10
11 Dated: July 7, 2022

ALAMI LAW GROUP

12
13 By 

David Alami
Attorney for Plaintiff MANUEL MONTOYA