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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

TOMAS CASILLAS, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

PREMIER SCAFFOLD, INC., a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 37-2022-00020690-CU-OE-CTL

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
- (8) UNFAIR COMPETITION; and
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Tomas Casillas (“Plaintiff”), on behalf of himself and all other similarly situated non-
2 exempt employees, alleges and complains of Defendant Premier Scaffold, Inc. (“Defendant”), and
3 DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Premier Scaffold, Inc. is a scaffolding company in California.
6 2. Plaintiff brings this class and PAGA representative action against Defendant for alleged
7 violations of the California Labor Code and Business and Professions Code.

8 3. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked
9 due to its failure to accurately and lawfully record non-exempt employees’ time entries. Plaintiff
10 further alleges that Defendants failed to include all forms of compensation, including, but not limited
11 to, shift differential pay, non-discretionary bonuses, incentive pay, and other forms of remuneration
12 when calculating the “regular rate of pay” used in payment of overtime wages.

13 4. Moreover, Plaintiff alleges that Defendants’ uniform meal and rest period policies and
14 practices did not allow and permit all compliant/timely meal and rest periods or pay premium wages
15 at the “regular rate of pay” in lieu thereof. Further, Plaintiff alleges that Defendants failed to
16 reimburse necessary business expenses. As a result, Plaintiff alleges that Defendants failed to provide
17 non-exempt employees with accurate written itemized wage statements and timely pay all final wages
18 upon separation of employment.

19 5. Based on these alleged Labor Code violations, Plaintiff now brings this class and
20 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
21 for himself and all others similarly situated.

22 **JURISDICTION AND VENUE**

23 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
24 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
25 203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1174, 1174.2, 1194, 1194.2,
26 1197.1, 1199, 2802-2804, 2698 et seq., and applicable Industrial Welfare Commission Wage Orders
27 (“Wage Orders”), in addition to seeking declaratory relief and restitution pursuant to California
28 Business and Professions Code § 17200 *et. seq.*

7. This class action is brought pursuant to California Code of Civil Procedure § 382.

8. This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants own, maintain offices, transact business, have an agent or agents in the City of San Diego within the County of San Diego, and/or otherwise are found within the County of San Diego, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

10. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt employee in San Diego, California, in the County of San Diego.

11. Plaintiff is informed and believes and thereon alleges that defendant Premier Scaffold, Inc. is a California corporation authorized to do business in California and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1174, 1174.2, 1194, 1194.2, 1197.1, 1199, 2802-2804, 2698 *et seq.*, and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

12. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of San Diego.

13. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or

1 corporate, were responsible in some manner for the acts and omissions alleged herein and proximately
2 caused Plaintiff and the Classes to be subject to the unlawful employment practices alleged herein.

3 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
5 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
6 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
7 were the agents, servants, and employees of each and every one of the other Defendants, as well as
8 the agents of all Defendants, and at all times herein mentioned were acting within the course and
9 scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
10 otherwise ratified each and every one of the acts or omissions complained of herein.

11 15. At all times mentioned herein, Defendants, and each of them, were members of and
12 engaged in a joint venture, partnership, and common enterprise and acting within the course and
13 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
14 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
15 Classes.

16 **COMMON FACTUAL ALLEGATIONS**

17 16. Defendants is a scaffolding company providing commercial and industrial scaffolding
18 solutions to clients in California. Defendants employed Plaintiff as a non-exempt employee working
19 out of San Diego, California. Plaintiff began working for Defendants on approximately December
20 29, 2021, until his separation from employment on or about April 15, 2022. Plaintiff and other non-
21 exempt employees (including, but not limited to, scaffolders, foreman, laborers, and all other non-
22 exempt positions) were responsible for all aspects of Defendants' business operations in California.

23 17. First, at all relevant times, Defendants have had a uniform practice of failing to
24 accurately record Plaintiff's and other non-exempt employees' time entries, resulting in a failure to
25 pay for all hours worked, including all minimum and overtime wages. Instead of recording non-
26 exempt employees' actual hours to the minute worked, Defendants utilized a timekeeping
27 policy/practice that assumed that non-exempt employees arrived and departed exactly at the
28 scheduled shifts without accounting for actual time worked.

1 18. Indeed, Defendants' uniform timekeeping policy/practice is not neutral, as non-exempt
2 employees were subject to discipline for being tardy in reporting to work or returning from a meal or
3 rest period. Because Defendants can track the actual time worked to the minute, the policy/practice
4 exists not for the convenience or benefit of the employees who are reporting to work early and hoping
5 to report their time correctly but for the Defendants' benefit.

6 19. As a result of this policy/practice, Plaintiff and other non-exempt employees are not
7 compensated for all the hours that they work, including all minimum and overtime wages, in violation
8 of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

9 20. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
10 by an applicable state or local law or by an order of the commission a civil penalty, restitution of
11 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
12 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
13 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
14 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
15 underpaid regardless of whether the initial violation is intentionally committed.

16 21. Labor Code § 510 requires an employer to compensate an employee who works more
17 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
18 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
19 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
20 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
21 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
22 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
23 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
24 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

25 22. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
26 employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204,
27 210, 510, 1194, 1197.1, 1199, and 1197.1.

1 23. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
2 denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
3 Defendants' uniform meal period policies/practices, Plaintiff and other non-exempt employees often
4 could not take uninterrupted 30-minute first meal periods before the end of the fifth hour of work.
5 When Plaintiff and other non-exempt employees worked in excess of 10.0 hours in a shift, they were
6 not always allowed and permitted to take a mandated second meal period before the end of the tenth
7 hour of work in violation of the Labor Code and applicable Wage Orders.

8 24. Each time Plaintiff and other non-exempt employees were unable to take a compliant
9 meal period, Defendants failed and continue to fail to adequately pay meal period premium payments
10 at the "regular rate of pay" as required by *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858
11 and Labor Code § 226.7.

12 25. Accordingly, due to Defendants' uniform meal period policies and practices, Plaintiff
13 and other non-exempt employees were regularly denied legally compliant meal periods in violation
14 of Labor Code §§ 226.7, 512, 516, and applicable Wage Orders.

15 26. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were not
16 provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due
17 to Defendants' uniform rest period policies/practices, work demands, and staffing shortages.
18 Specifically, Defendants maintained a uniform policy and practice wherein it failed to provide non-
19 exempt employees with authorized and permitted rest periods at legally compliant times with respect
20 to the employee's particular work period and/or, in some instances, failed to provide legally mandated
21 rest period (or rest periods) altogether. Rather, Defendants required its employees to take
22 uncompensated meal periods as off-sets for these unprovided rest breaks, a clear violation of
23 California labor laws. *See Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1037 (rest periods
24 cannot be combined and should fall in the middle of work periods, insofar as practicable).

25 27. Specifically, Plaintiff and the non-exempt employees were not provided all rest periods
26 for those shifts where one was mandated. Under IWC Wage Order, an employer must authorize and
27 permit all employees to take ten (10) minute duty-free rest periods for every major fraction of four
28 hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (2016).

1 Furthermore, in an eight-hour (8) shift, rest breaks should fall on either side of the meal break, absent
2 factors rendering such scheduling impossible. *See Rodriguez v. E.M.E., Inc.* (2016) 246 Cal. App.
3 4th 1027, 1037. (citing to *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal. 4th 1004, 1032). In
4 *Rodriguez*, the Court supported this preferred schedule for rest breaks by noting that “Section 12(A)
5 of Wage Order 1–2001, by its plain language, specifies that rest periods should fall in the middle of
6 work periods, insofar as practicable.” *Rodriguez*, 246 Cal. App. 4th at 1040.

7 28. Each time Plaintiff and other non-exempt employees could not take a compliant rest
8 period, Defendants failed and continues to fail to adequately pay rest period premium payments at
9 the “regular rate of pay” as required by Labor Code § 226.7.

10 29. Accordingly, due to Defendants’ uniform rest period policies/practices, Plaintiff and
11 other non-exempt employees were regularly denied legally compliant rest breaks in violation of Labor
12 Code §§ 226.7, 512, and applicable Wage Orders.

13 30. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
14 all hours they were subject to the control of Defendants, including all minimum and overtime wages,
15 and Defendants’ failure to adequately pay for meal and rest period premiums at the “regular rate of
16 pay,” Defendants issued wage statements which failed to accurately identify the gross wages earned,
17 the total hours worked, the net wages earned, and the correct corresponding number of hours worked
18 at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

19 31. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
20 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
21 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
22 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
23 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

24 32. Accordingly, for the violations of Labor Code section 226 described above, Plaintiff
25 and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’
26 violations of Labor Code § 226(a).

27 33. Moreover, at all relevant times, Defendants required Plaintiff and other non-exempt
28 employees to incur necessary business expenses associated with using their personal cell phones,

1 vehicles, and tools for work-related purposes but did not reimburse non-exempt employees
2 adequately in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan's Home Service, Inc.*,
3 (2014) 228 Cal.App.4th 1137, 1144 “[i]f an employee is required to make work-related calls on a
4 personal cell phone, then he or she is incurring an expense for the purposes of section 2802...To show
5 liability under section 2802, an employee need only show that he or she was required to use a personal
6 cell phone to make work-related calls, and he or she was not reimbursed”]. Accordingly, Defendants
7 uniformly failed to adequately reimburse for necessary business expenditures in violation of Labor
8 Code §§ 2802-2804 and applicable Wage Orders.

9 34. Finally, because of Defendants’ failure to pay all minimum and overtime wages and
10 meal and rest period premiums at the “regular rate of pay”, Defendants also failed and continue to
11 fail to pay Plaintiff and other non-exempt employees all wages owed at their time of separation from
12 employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees
13 would be entitled to recover penalties under Labor Code §§ 201-203.

14 **CLASS ACTION ALLEGATIONS**

15 35. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
16 § 382 of the Code of Civil Procedure:

17 All non-exempt employees who work or worked for Defendants in
18 California during the four years immediately preceding the filing of the
Complaint through the date of trial. (“Class”);

19 All non-exempt employees who worked for Defendants in California and
20 who worked overtime hours during at least one shift during the four years
21 immediately preceding the filing of the Complaint through the date of trial.
22 (“Overtime Subclass”);

23 All employees who work or worked for Defendants in California during the
24 one year immediately preceding the filing of the Complaint through the date
25 of trial. (“Wage Statement Subclass”)

26 All employees who work or worked for Defendants in California and who
27 left their employment during the three years immediately preceding the
28 filing of the Complaint through the date of trial. (“Waiting Time Penalty
Subclass”)

(collectively “the Classes”)

1 36. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
3 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
4 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
5 Defendants' employment and payroll records.

6 37. **Common Questions of Law and Fact Predominate/Well-Defined Community of**
7 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
8 employees, which predominate over questions affecting only individual members, including, without
9 limitation to:

10 1. Whether Defendants' timekeeping/payroll policies/practices resulted in a failure to pay
11 for all hours worked to the members of the Class;

12 2. Whether Defendants provided legally compliant meal and rest periods or proper
13 compensation in lieu thereof to members of the Class;

14 3. Whether Defendants furnished legally compliant wage statements to members of the
15 Wage Statement Subclass pursuant to Labor Code § 226(a);

16 4. Whether the timing and amount of payment of final wages to members of the Waiting
17 Time Penalty Subclass at the time of separation from employment were unlawful; and

18 5. Whether Defendants reimbursed all necessary business expenses to Class members.

19 38. **Predominance of Common Questions:** Common questions of law and fact
20 predominate over questions that affect only individual members of the Classes. The common
21 questions of law set forth above are numerous and substantial and stem from Defendants' policies
22 and/or practices applicable to each individual class member, such as Defendants' failure to pay for
23 all hours worked, Defendants' failure to provide all compliant meal and rest periods or compensation
24 at the "regular rate of pay" in lieu thereof, and Defendants' failure to provide accurate itemized wage
25 statements, Defendants' failure to reimburse necessary business expenses, and Defendants' failure to
26 pay for all wages due upon separation of employment. As such, the common questions predominate
27 over individual questions concerning each class member's showing as to his or her eligibility for
28 recovery or the amount of his or her damages.

1 39. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
3 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
4 Plaintiff, like the members of the Classes, was deprived of minimum and overtime wages, was
5 deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest
6 period policies/practices, was not provided accurate itemized wage statements, was not reimbursed
7 business expenses, and was not timely paid all wages owed upon separation of employment.

8 40. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
9 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
10 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
11 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
12 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
13 members of the Classes.

14 41. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
15 important public interest in establishing minimum working conditions and standards in California.
16 These laws and labor standards protect the average working employee from exploitation by
17 employers who have the responsibility to follow the laws and who may seek to take advantage of
18 superior economic and bargaining power in setting onerous terms and conditions of employment. The
19 nature of this action and the format of laws available to Plaintiff and members of the Classes make
20 the class action format a particularly efficient and appropriate procedure to redress the violations
21 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
22 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
23 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

24 42. Moreover, requiring each member of the Classes to pursue an individual remedy would
25 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
26 against their former and/or current employer for real and justifiable fear of retaliation and permanent
27 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
28 the individual class members, even if possible, would create a substantial risk of inconsistent or

1 varying verdicts or adjudications with respect to the individual class members against Defendants
2 herein; and which would establish potentially incompatible standards of conduct for Defendants;
3 and/or legal determinations with respect to individual class members which would, as a practical
4 matter, be dispositive of the interest of the other class members not parties to adjudications or which
5 would substantially impair or impede the ability of the class members to protect their interests.
6 Further, the claims of the individual members of the class are not sufficiently large to warrant
7 vigorous individual prosecution, considering all of the concomitant costs and expenses attending
8 thereto. As such, the Classes identified in Paragraph 33 are maintainable as Classes under § 382 of
9 the Code of Civil Procedure.

10 **FIRST CAUSE OF ACTION**
11 **MINIMUM WAGE VIOLATIONS**
12 **(AGAINST ALL DEFENDANTS)**

13 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 44. Section 4 of the applicable Wage Orders and California Labor Code §§ 1197 and
15 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts
16 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
17 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
18 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to
19 the unpaid wages and interest accrued thereon.

20 45. At all relevant times herein, Defendants failed to conform their pay practices to the
21 requirements of the law. This unlawful conduct includes but is not limited to the Defendants'
22 timekeeping policy/practice, which failed to accurately record all hours worked, resulting in these
23 individuals not being paid for all hours worked. Accordingly, Plaintiff and Class members were not
24 compensated for all hours worked, including, but not limited to, all hours they were subject to the
25 control of Defendants and/or suffered or permitted to work under the California Labor Code and
26 applicable Wage Orders.

27 46. Labor Code § 1198 makes the employment of an employee unlawful under conditions
28 that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer

1 who has failed to pay its employees the legal minimum wage is liable to pay those employees the
2 unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
3 due and interest thereon.

4 47. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
5 Plaintiff and the Class have sustained economic damages, including but not limited to unpaid wages
6 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
7 statutory damages and penalties and other appropriate relief as a result of Defendants' violations of
8 the California Labor Code and applicable Wage Orders.

9 48. Defendants' practice and uniform administration of corporate policy regarding illegal
10 employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members
11 of the Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including
12 interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204,
13 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL OVERTIME WAGES**

16 **(AGAINST ALL DEFENDANTS)**

17 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 50. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
19 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
20 hours worked and provide a private right of action for the failure to pay all overtime compensation
21 for overtime work performed.

22 51. At all times relevant herein, Defendants were required to properly pay Plaintiff and
23 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
24 § 1194 and the applicable Wage Orders.

25 52. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
26 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
27 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
28 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve

1 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
2 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
3 Plaintiff or members of the Overtime Subclass at one and one-half times their regular rate of pay for
4 such hours.

5 53. Defendants failed to conform their pay practices to the requirements of the law. This
6 unlawful conduct includes but is not limited to Defendants' timekeeping policy/practice, which failed
7 to accurately record all hours worked, resulting in these individuals not being paid for all hours
8 actually worked, which resulted in Plaintiff and the Overtime Subclass not being paid all overtime
9 wages owed.

10 54. The foregoing policies and practices are unlawful and create an entitlement to recovery
11 by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid amount of
12 overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit
13 according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code
14 of Civil Procedure § 1021.5.

15 **THIRD CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
20 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
21 and members of the Class, with all required meal periods in accordance with the mandates of the
22 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
23 Allegations section of this Complaint.

24 57. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
25 the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay
26 for each violation, in accordance with *Ferra* and Labor Code § 226.7.

27 58. As a result, Defendants are responsible for paying premium compensation for meal
28 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the

1 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

2 **FOURTH CAUSE OF ACTION**

3 **REST PERIOD VIOLATIONS**

4 **(AGAINST ALL DEFENDANTS)**

5 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

6 60. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
7 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
8 each four (4) hour period worked, or major fraction thereof.

9 61. Due to their unlawful rest period policy and practices, Defendants did not authorize
10 and permit Plaintiff and Class members to take all rest periods to which they were legally entitled.

11 62. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
12 the "regular rate of pay" to Plaintiff and Class members at their respective regular rates of pay for
13 each violation, per California Labor Code § 226.7.

14 63. The foregoing violations create an entitlement to recovery by Plaintiff and members
15 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
16 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
17 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

20 **(AGAINST ALL DEFENDANTS)**

21 64. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 65. Labor Code 226(a) states in pertinent part the following:

23 "(a) An employer, semimonthly or at the time of each payment of wages,
24 shall furnish to his or her employee, either as a detachable part of the check,
25 draft, or voucher paying the employee's wages, or separately if wages are
26 paid by personal check or cash, an accurate itemized statement in writing
27 showing (1) gross wages earned, (2) total hours worked by the employee,
28 (3) the number of piece-rate units earned and any applicable piece rate if the
employee is paid on a piece-rate basis, (4) all deductions, provided that all
deductions made on written orders of the employee may be aggregated and

1 shown as one item, (5) net wages earned, (6) the inclusive dates of the
2 period for which the employee is paid, (7) the name of the employee and
3 only the last four digits of his or her social security number or an employee
4 identification number other than a social security number, (8) the name and
5 address of the legal entity that is the employer, and (9) all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee.”

6 66. As set forth above, during the Class Period, Defendants issued and continue to issue
7 wage statements to its employees, including Plaintiff and members of the Wage Statement Subclass,
8 which are inadequate under Labor Code Section 226(a).

9 67. As a result of Defendants' failure to pay Plaintiff and the Wage Statement Subclass for
10 all regular and overtime wages and missed meal and rest period premiums at the appropriate legal
11 rate, Defendants failed to include required information on Plaintiff and the Wage Statement Subclass'
12 wage statements, including, but not limited to, the gross wages earned, the net wages earned in
13 violation of Labor Code section 226(a)(1,2,5, and 9).

14 68. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
15 and intentional.

16 69. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
17 and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor
18 Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial
19 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty
20 of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants
21 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

22 **SIXTH CAUSE OF ACTION**

23 **WAITING TIME PENALTIES**

24 **(AGAINST ALL DEFENDANTS)**

25 70. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 71. The actionable period for this cause of action is three years before the filing of this
27 Complaint through the present and ongoing until the violation is corrected or the class is certified.

28 72. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing

1 to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or
2 around the time their employment is terminated or ended.

3 73. Labor Code § 203 provides that if an employer willfully fails to pay compensation
4 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, the
5 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

6 74. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
7 including all minimum and overtime wages, and their meal and rest period premiums at the “regular
8 rate of pay” before or upon termination or separation from employment with Defendants as required
9 by Labor Code §§ 201 and 202.

10 75. Consequently, Defendants are liable to the Waiting Time Subclass for waiting time
11 penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant
12 to Labor Code § 203. *See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon*
13 *termination entitles an employee to recover waiting time penalties).*

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

16 **(AGAINST ALL DEFENDANTS)**

17 76. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 77. Labor Code 2802(a) states in pertinent part the following:

19 “(a) An employer shall indemnify his or her employee for all necessary
20 expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions
22 of the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.”

23 76. As set forth above, Plaintiff and members of the Class must be compensated for all
24 necessary business expenditures, including, but not limited to, business expenses associated with
25 using their personal cell phones, vehicles, tools for work-related purposes and other charges
26 necessarily incurred in the discharge of their duties. (See *Cochran v. Schwan’s Home Service, Inc.*
27 (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal cell phones
28 for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether

1 the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
2 owed is a reasonable percentage of their cell phone bills.”); *Aguilar v. Zep, Inc.*, 2014 WL 4245988
3 *17 (N.D. Cal. 2014) (granting Plaintiff’s motion for partial summary judgment on Plaintiff’s cell
4 phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.
5 Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

6 77. At all relevant times, Defendants have failed to comply with Labor Code Sections
7 2802 and the applicable Wage Orders by failing to reimburse Plaintiff and the Class for all
8 necessary business expenditures. As a result, Defendants will be held liable for unreimbursed
9 expenses and reasonable costs and attorney's fees pursuant to Labor Code § 2802

10 **EIGHTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(AGAINST ALL DEFENDANTS)**

13 78. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 79. Defendants have engaged and continue to engage in unfair and/or unlawful business
15 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
16 failing to pay for all hours worked, including minimum and overtime wages, by failing to provide all
17 legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu
18 thereof, by failing to provide accurate wage statements, by failing to reimburse necessary business
19 expenses, and by failing to pay all earned wages at the time of separation from employment.

20 80. Defendants’ utilization of these unfair and/or unlawful business practices deprived
21 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
22 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
23 Defendants’ competitors who have been and/or are currently employing workers and attempting to
24 do so in honest compliance with applicable wage and hour laws.

25 81. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged
26 herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of
27 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
28 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

82. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

83. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

84. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

85. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this PAGA representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a. Failing to provide Plaintiff and other similarly Aggrieved Employees with all of their statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 1194, and 1198;

b. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and 516.

c. Failing to furnish Plaintiff and other similarly situated employees with complete, accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;

d. Failing to reimburse Plaintiff and other aggrieved employees with all necessary business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders; and

e. Failing to pay Plaintiff and similarly aggrieved employees for all minimum wages for

1 all hours worked or for which they were subject to the control of the employer.

2 86. On or about May 25, 2022, Plaintiff notified Defendant Premier Scaffold, Inc. and the
3 California Labor and Workforce Development Agency (“LWDA”) via email of Defendant’s
4 violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California
5 Labor Code identified in Paragraph 86.

6 87. Now that sixty-five days have passed since Plaintiff notified Defendant of these
7 violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the
8 Private Attorneys General Act with respect to these violations.

9 88. Plaintiff was compelled to retain the services of counsel to file this court action to
10 protect his interests and the interests of similarly aggrieved employees and to assess and collect the
11 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which he
12 is entitled to receive under California Labor Code § 2699.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff prays for judgment for himself and all others on whose behalf this
15 suit is brought against Defendants, as follows:

- 16 1. For an order certifying the proposed Classes;
- 17 2. For an order appointing Plaintiff as representative of the Classes;
- 18 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 19 4. Upon the First Cause of Action, for compensatory, consequential, general, and
20 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, and 1194;
- 21 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 23 6. Upon the Third Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 25 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
26 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 27 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
28 reasonable costs and attorneys’ fees;

1 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
2 Labor Code §§ 201-203;

3 10. Upon the Seventh Cause of Action, for unreimbursed expenses and reasonable costs
4 and attorneys' fees pursuant to Labor Code § 2802;

5 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
7 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

8 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other similarly
9 Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699
10 (a) and (f) including, but not limited to (1) \$100.00 for each initial violation and \$200 for each
11 subsequent violation per employee per pay period for those violations of the Labor Code for which
12 no civil penalty is specifically provided under the Labor Code;

13 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
14 § 218.6 and Civil Code §§ 3287 and 3289;

15 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
16 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and

17 15. For such other relief that the Court may deem just and proper.

18 Dated: February 5, 2024

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

19
20
21 By: _____

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars,
Suite 450, Los Angeles, California 90067.

5 On February 13, 2024, I served the following document(s) described as **FIRST**
6 **AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

7 Amber S. Healy, Esq.
AHealy@aalrr.com
8 Geoffrey D. La Val, Esq.
Geoffrey.LaVal@aalrr.com
9 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
4275 Executive Square, Suite 700
10 La Jolla, California 92037

11 **Counsel for defendant Premier Scaffold, Inc.**

12 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
13 electronic service provider First Legal to the person(s) identified above at the email address(es)
14 indicated and did not, within a reasonable time after transmission, receive any message or
communication indicating that delivery failed or that any other error had occurred which would
15 delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

17 Executed on February 13, 2024, at Los Angeles, California.

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20 Carlos Garcia
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