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By: Sylvia Guajardo, DEPUTY

STANSBURY BROWN LAW, PC
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
ETHAN C. SURLS (SBN 327605)
esurls@stansburybrownlaw.com
2610 1/2 Abbot Kinney Blvd.
Venice, CA 90291
Tel: 323-204-3124

E&L, LLP
DAVID LAVI (SBN 277604)
dlavi@ebralavi.com
ARIE EBRAHIMIAN (SBN 274961)
arie@ebralavi.com
8889 W. Olympic Blvd., 2nd Floor
Beverly Hills, CA 90211
Tel: (213) 213-0000

Attorneys for Plaintiffs

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

RAFAEL VELOZ REYES and RAMON
VARGAS, as individuals and on behalf of all
others similarly situated,

Plaintiff,

vs.

THERMO POWER INDUSTRIES, a
California corporation; and DOES 1
through 100,

Defendants.

Case No.: CIVSB2212220

**CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516);
- (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (6) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);

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- (8) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*);**
 - (9) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*); AND**
 - (10) FAILURE TO TIMELY PAY ALL VESTED UNUSED VACATION PAY UPON TERMINATION (LABOR CODE § 227.3.**
- DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Rafael Veloz Reyes ("Plaintiff Reyes") and Plaintiff Ramon Vargas ("Plaintiff
2 Vargas")(collectively "Plaintiffs"), on behalf of themselves and all others similarly situated,
3 hereby bring this Consolidated Class and Representative Action Complaint ("CCRAC") against;
4 Thermo Power Industries, a California corporation; and DOES 1 to 100, inclusive (collectively
5 "Defendants"), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring
8 this Complaint for recovery of unpaid wages and penalties under California Business &
9 Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 221, 226 *et seq.*, 226.7, 227.3, 510,
10 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802; and Industrial Welfare
11 Commission Wage Order 16 ("Wage Order 16"), in addition to seeking declaratory relief and
12 restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This
13 Court has jurisdiction over Defendants' violations of the California Labor Code because the
14 amount in controversy exceeds this Court's jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
17 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
18 County of San Bernardino. Defendants own, maintain offices, transact business, have agent(s)
19 within the County of San Bernardino, and/or otherwise are found within the County of San
20 Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of
21 process.

22 **PARTIES**

23 3. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein,
24 Plaintiffs were and currently are California residents. During the four years immediately
25 preceding the filing of the Complaint in this action and within the statute of limitations periods
26 applicable to each cause of action pled herein, Plaintiffs were employed by Defendants as non-
27 exempt employees. Plaintiffs were, and are, victims of Defendants' policies and/or practices
28 complained of herein, lost money and/or property, and have been deprived of the rights

1 guaranteed by Labor Code §§ 201-204, 221, 226 *et seq.*, 226.7, 227.3, 510, 512, 516, 558,
2 1182.12, 1194, 1194.2, 1197, 1198, and 2802; California Business & Professions Code § 17200
3 *et seq.* ("Unfair Competition Law"); and Wage Order 16, which sets employment standards for
4 the Construction Industry.

5 4. Plaintiffs are informed and believe, and based thereon allege, that during the four
6 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
7 continue to do) business by performing construction work in California and the greater United
8 States, and employed Plaintiffs and other, similarly-situated non-exempt employees within San
9 Bernardino County and the state of California and, therefore, were (and are) doing business in
10 San Bernardino County and the State of California.

11 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or
12 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
13 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
14 amend this Complaint when such true names and capacities are discovered. Plaintiffs are
15 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
16 individual, partners, or corporate, were responsible in some manner for the acts and omissions
17 alleged herein, and proximately caused Plaintiffs and the Classes to be subject to the unlawful
18 employment practices, wrongs, injuries and damages complained of herein.

19 6. Plaintiffs are informed, and believe, and thereon alleges, that at all times
20 mentioned herein, Defendants were and are the employers of Plaintiffs and all members of the
21 Classes.

22 7. At all times herein mentioned, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
24 Defendants, and each of them, were the agents, servants, and employees of each and every one of
25 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
26 were acting within the course and scope of said agency and employment. Defendants, and each
27 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
28 omissions complained of herein.

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
5 members of the Classes.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Plaintiff Reyes worked for Defendant from approximately July 2018 until
8 approximately September 3, 2021. Plaintiff Vargas worked for Defendant from approximately
9 April 1993 until approximately January 30, 2022. Plaintiffs worked a schedule that varied
10 depending on the needs of the business and the projects that they and other non-exempt employees
11 were tasked with working on. Plaintiffs and other non-exempt employees worked all over the
12 country in different cities and states, installing hot and cold insulation for Defendants' various
13 customers. Generally, once tasked with a project, Plaintiffs worked 7 days a week. They would
14 work 6:00 a.m. until 6:00 p.m. Monday through Saturday, and Sunday from 6:00 a.m. until 2:30
15 p.m., however since the recording of their hours was controlled by their supervisors, they were
16 only credited with the hours scheduled per week regardless of the actual amount of hours they
17 worked due to Defendants fraudulent timekeeping policies/practice which sought to deny
18 overtime compensation to Plaintiffs and the other non-exempt employees.

19 **Off-The-Clock/Overtime**

20 10. Throughout the duration of Plaintiffs' employment with Defendants, Plaintiffs were
21 not paid for all hours worked due to Defendants' failures to properly account for all hours that
22 Plaintiffs and other non-exempt employees actually worked. Specifically, Defendants paid
23 Plaintiffs and other non-exempt employees for their scheduled hours instead of properly keeping
24 track of their time, as evidenced by the fact that each of Plaintiffs' wage statements indicate
25 payment for hours worked in strictly whole numbers (i.e. 30.0 hours, 40.0 hours, etc.),
26 demonstrating that Defendants were either not properly keeping track of the actual time worked,
27 or unlawfully rounding Plaintiffs' and other non-exempt employees hours down to a whole number
28 and not compensating them for any of the additional time they necessarily would have spent

1 working in a given shift. Additionally, Plaintiffs routinely worked in excess of forty hours per
2 workweek but did not receive overtime compensation equal to one and one-half times their
3 respective regular rates of pay for all overtime hours worked. Furthermore, despite frequently
4 working in excess of 12 hours in a given shift and being entitled to double time pay, Plaintiffs and
5 other non-exempt employees were not ever compensated for double time hours as required by the
6 Labor Code. Defendants, through their fraudulent timekeeping practices have maintained a system
7 that only compensates its employees for weekly overtime hours worked in excess of 40 in a work
8 week (to the extent that their overtime hours were properly recorded) while failing to provide
9 double time compensation for those hours worked in excess of 12 in a day. Furthermore, despite
10 working seven days a week, Defendants failed to compensate Plaintiffs and other non-exempt
11 employees for the requisite double time pay for the hours worked in excess of eight on their seventh
12 consecutive day worked. Consequently, due Defendants' unlawful timekeeping and payment
13 policies and practices that failed to properly compensate for all hours worked, including overtime
14 & double time hours worked, Plaintiffs and the other non-exempt employees have been deprived
15 of all required minimum and overtime wages earned.

16 **Meal Period Violations**

17 11. During Plaintiffs' employment with Defendants, Plaintiffs were not provided all
18 required meal periods due to Defendants' meal period policies/practices which fail to provide
19 uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work commencing. On
20 those occasions that they were afforded a first meal period, it was often not timely. Furthermore,
21 there were countless occasions where Plaintiffs and other non-exempt employees at the insistence
22 of their supervisors would have their meal periods cut short, and sometimes be forced to skip
23 them entirely, in order to meet the intense deadlines imposed on them by Defendants. Defendants
24 did not actually track the time of Plaintiffs' and other non-exempt employees' meal periods.
25 Furthermore, Plaintiffs and other non-exempt employees faced intense pressure to meet tight
26 deadlines set by Defendants which in practice disincentivized their exercise of legally compliant
27 meal periods. Defendants were aware, or reasonably should have been aware, that this off-the-
28 clock work was being performed but failed to compensate Plaintiffs and other non-exempt

1 employees for such off-the-clock work, most of which constituted overtime hours worked.

2 12. In addition to Defendants' failure to provide Plaintiffs and other non-exempt
3 employees with all legally required first meal periods, Defendants also failed to provide second
4 meal periods to Plaintiffs and other non-exempt employees when they worked shifts in excess of
5 10.0 hours. At no point during Plaintiffs' tenure with Defendants were they ever afforded a
6 second meal period despite working in excess of 10.0 nearly every shift that they and other non-
7 exempt employees performed work for Defendants.

8 13. On those occasions when Plaintiffs and other non-exempt employees were not
9 provided with all legally-compliant meal periods to which they were entitled, Defendants failed
10 to compensate Plaintiffs and other non-exempt employees with the required meal period premium
11 for each workday in which they experienced a meal period violation as mandated by Labor Code
12 § 226.7. Further, upon information and belief during at least a portion of the class period,
13 Defendants maintained no payroll code or other mechanism for the payment of meal period
14 premium payments required by Labor Code § 226.7 in the event that a legally compliant meal
15 period was not provided to their non-exempt employees.

16 **Rest Periods Violations**

17 14. Plaintiffs and other non-exempt employees were also not authorized and permitted
18 to take all required rest periods due to Defendants' rest period policies/practices, which fail to
19 authorize and permit all rest periods for every four hours worked, or major fraction thereof.
20 Plaintiffs and the other non-exempt employees were generally only afforded one rest period per
21 shift, if at all, despite working in excess of 12 hours nearly every shift. Instead, due to the
22 prevailing attitude as expressed by management that employees should be working at all times
23 while on-the-clock (because of intense pressure to meet deadlines), Plaintiffs and other non-
24 exempt employees would be required to work through the entirety of their shifts without being
25 afforded any rest periods outside of the single rest period they were inconsistently afforded.
26 Plaintiffs were constantly required to attend to their work duties, without interruption of breaks,
27 and therefore, Defendants failed to authorize and permit Plaintiffs to take off-duty rest periods
28 that were completely free of employer control, in violation of California law. Despite working at

1 least 12 hours per shift, and thus being entitled to 3 rest periods per shift, Plaintiffs and other non-
2 exempt employees would only receive their first rest period and be forced to forego the second
3 and third rest periods to which they were legally entitled.

4 15. As a result of these policies/practices, Defendants failed to authorize and permit
5 Plaintiffs and other non-exempt employees to exercise the use of off-duty rest periods that were
6 completely free of employer control, in violation of California law. On those occasions when
7 Plaintiffs and other non-exempt employees were not authorized and permitted to take all legally-
8 compliant rest periods to which they were entitled, Defendants failed to compensate them with
9 the required rest period premium for each workday in which they experienced a rest period
10 violation as mandated by Labor Code § 226.7. Furthermore, upon information and belief during
11 at least a portion of the class period, Defendants maintained no payroll code or other mechanism
12 for the payment of rest period premium payments under Labor Code § 226.7 in the event that a
13 legally compliant rest period was not provided to their non-exempt employees.

14 **Regular Rate of Pay**

15 16. Plaintiffs and other non-exempt employees routinely worked in excess of 8 hours
16 per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to
17 one and one-half times their regular rate of pay for working overtime hours. Despite Defendants'
18 payment of overtime pay to Plaintiffs and other non-exempt employees, Defendants failed to
19 properly calculate the regular rate of pay thereby causing Plaintiffs and other non-exempt
20 employees to be underpaid all required overtime wages. Specifically, Defendants paid Plaintiffs
21 and other non-exempt employees with non-discretionary per diem payments and bonuses
22 (hereinafter referred to as "Incentive Pay") which are not excludable from the regular rate of pay.
23 Despite Defendants' payment of Incentive Pay to Plaintiffs and other non-exempt employees,
24 Defendants failed to properly include them when calculating their respective regular rates of pay,
25 thereby causing Plaintiffs and other non-exempt employees to be underpaid all required overtime
26 wages. As such, Defendants failed to properly account for all forms of compensation for
27 purposes of calculating the regular overtime rate of pay for its non-exempt employees, causing a
28 systematic underpayment of wages to Plaintiffs and other aggrieved employees.

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Reimbursements

17. Defendants failed to adequately reimburse Plaintiffs for all reasonable and necessary work expenditures, including failing to reimburse for necessary tools such as scissors, rulers, tapes, drills, pliers, harnesses, screwdrivers, and steel toed boots. In addition, Plaintiffs and other non-exempt employees would perform the vast majority of their work duties on their personal cellular phones on behalf of Defendants. While at some point in Plaintiffs' employment, they began receiving a \$20 per month reimbursement for the use of their personal cellular phones, these payments were not disbursed throughout the entirety of the class period, and to the extent that they represented reimbursement for cellular phone use, they was under representative of the actual expenses incurred by Plaintiffs and other non-exempt employees for cellular phone use for business purposes. Finally, Defendants required Plaintiffs and other non-exempt employees to incur expenses related to meals and lodging on those occasions where they were tasked to work in different cities/states but did not adequately reimburse them for all necessary expenses that they incurred, including but not limited to, meal and lodging expenses.

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Inaccurate Wage Statements

18. As a result of Defendants' failure to pay all minimum wages, overtime wages, meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements.

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Failure to Timely Pay All Final Wages

19. As a further result of Defendants' failure to pay all minimum wages, overtime wages, and meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiffs upon their separation of employment from Defendants.

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Failure to Pay Unused Vested Vacation Time

20. Defendants further failed to provide Plaintiffs and other non-exempt employees with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code § 227.3.

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CLASS ACTION ALLEGATIONS

21. **Class Definitions:** Plaintiffs bring this action on behalf of themselves and the

1 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 2 a. The Minimum Wage Class consists of all Defendants' current and former non-
3 exempt employees in California who were subject to Defendants' timekeeping
4 systems and/or practices, during the four years immediately preceding the filing
5 of the Complaint through the present.
- 6 b. The Overtime Class consists of all Defendants' current and former non-exempt
7 employees in California who worked more than (i) eight (8) hours per day; and/or
8 (ii) twelve (12) hours per day; and/or (iii) forty (40) hours per week and were
9 subject to Defendants' timekeeping systems and/or practices during the four years
10 immediately preceding the filing of the Complaint through the present.
- 11 c. The Meal Period Class consists of all Defendants' current and former non-exempt
12 employees in California who: worked at least one shift: (i) in excess of 5.0 hours;
13 and/or (ii) in excess of 10.0 hours, during the four years immediately preceding
14 the filing of the Complaint through the present;
- 15 d. The Rest Period Class consists of all Defendants' current and former non-exempt
16 employees in California who worked at least one shift of 3.5 hours or more, during
17 the four years immediately preceding the filing of the Complaint through the
18 present;
- 19 e. The Employee Expense Class consists of all Defendants' current and former non-
20 exempt employees in California who: (i) were not reimbursed for necessary tools
21 and equipment; and/or (ii) cellular phone expenses necessarily incurred in the
22 performance of their duties; and/or (iii) hotel and food expenses during the four
23 years immediately preceding the filing of the Complaint through the present;
- 24 f. The Wage Statement Class consists of all members of the Minimum Wage Class,
25 Overtime Class, Meal Period Class, and Rest Period Class, who received a wage
26 statement during the one year immediately preceding the filing of the Complaint
27 through the present;
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1 g. The Waiting Time Class consists of all Defendants' formerly employed members
2 of the Minimum Wage Class, the Overtime Class, Meal Period Class, and Rest
3 Period Class who separated from employment during the three years immediately
4 preceding the filing of the Complaint through the present; and

5 h. The Vacation Pay Class consists of all of Defendants current and former non-
6 exempt employees in California who: (i) accrued vested, unused paid vacation
7 days; and (ii) were not timely paid the value of their accrued vested, unused paid
8 vacation days at the time of their separation of employment with Defendants
9 during the four years immediately preceding the filing of the Complaint through
10 the present.

11 22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
12 joinder of all members would be unfeasible and not practicable. The membership of the Classes
13 is estimated is estimated to be greater than seventy (70) individuals. The identity of such
14 membership is readily ascertainable via inspection of Defendants' employment records.

15 23. **Common Questions of Law and Fact Predominate/Well Defined Community**
16 **of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly
17 situated employees, which predominate over questions affecting only individual members. Those
18 common questions include, without limitation:

- 19 i. Whether Defendants paid all minimum wages owed for all hours worked to
20 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
21 1194.2, and 1197;
- 22 ii. Whether Defendants' timekeeping policies/practices resulted in the failure to
23 properly compensate members of the Minimum Wage Class;
- 24 iii. Whether Defendants violated the applicable Labor Code provisions including, but
25 not limited to §§ 510 1194 by requiring work, including overtime work, and not
26 paying for said work in accordance with the laws of the state of California;
- 27 iv. Whether Defendants failed to properly include all forms of compensation when
28 computing the respective regular rate for members of the Overtime Class;

- 1 v. Whether Defendants provided all legally compliant meal periods to members of
2 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 3 vi. Whether Defendants authorized and permitted all legally compliant rest periods to
4 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 5 vii. Whether Defendants failed to reimburse members of the Employee Expense Class
6 for business expenditures necessarily incurred in the performance of their duties;
- 7 viii. Whether Defendants provided accurate, itemized wage statements to members of
8 the Classes;
- 9 ix. Whether Defendants failed to pay all unused vested vacation hours to members of
10 the Vacation Pay Class at the time of their separation of employment; and
- 11 x. Whether Defendants' policies and/or practices for the timing and amount of
12 payment of final wages to members of the Waiting Time Class at the time of
13 separation from employment were lawful.

14 24. **Predominance of Common Questions:** Common questions of law and fact
15 predominate over questions that affect only individual members of the Classes. The common
16 questions of law set forth above are numerous and substantial and stem from Defendants' policies
17 and/or practices applicable to each individual class member, such as Defendants' uniform
18 timekeeping, meal and rest period, non-reimbursement, wage statement, and payment of final
19 wages policies/practices. As such, the common questions predominate over individual questions
20 concerning each individual class member's showing as to their eligibility for recovery or as to the
21 amount of their damages.

22 25. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because
23 Plaintiffs were employed by Defendants as non-exempt employees in California during the
24 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
25 herein, Plaintiffs, like the members of the Classes, were not paid for all hours worked, provided
26 all required meal periods, were not authorized and permitted to take all required rest periods, did
27 not receive meal and rest period premium wages when they were not provided compliant meal
28 and rest periods, were not reimbursed for all necessary business expenses, did not receive accurate

1 and itemized wage statements, and were not paid all wages owed at time of separation of
2 employment from Defendants.

3 26. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
4 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
5 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of
6 the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted and defended numerous wage-
7 and-hour class actions in state and federal courts in the past and are committed to vigorously
8 prosecuting this action on behalf of the members of the Classes.

9 27. **Superiority:** The California Labor Code is broadly remedial in nature and serves
10 an important public interest in establishing minimum working conditions and standards in
11 California. These laws and labor standards protect the average working employee from
12 exploitation by employers who have the responsibility to follow the laws and who may seek to
13 take advantage of superior economic and bargaining power in setting onerous terms and
14 conditions of employment. The nature of this action and the format of laws available to Plaintiffs
15 and members of the Classes make the class action format a particularly efficient and appropriate
16 procedure to redress the violations alleged herein. If each employee were required to file an
17 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
18 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
19 their vastly superior financial and legal resources. Moreover, requiring each member of the
20 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
21 employees who would be disinclined to file an action against their former and/or current employer
22 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
23 employment. Further, the prosecution of separate actions by the individual class members, even
24 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
25 with respect to the individual class members against Defendants herein; and which would
26 establish potentially incompatible standards of conduct for Defendants; and/or legal
27 determinations with respect to individual class members which would, as a practical matter, be
28 dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil
5 Procedure.

6 **FIRST CAUSE OF ACTION**
7 **MINIMUM WAGE VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

9 28. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

10 29. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
11 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
12 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
13 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
14 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
15 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
16 their pay practices to the requirements of the law by failing to pay Plaintiffs and the Minimum
17 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
18 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
19 and Wage Order 16.

20 30. California Labor Code § 1198 makes unlawful the employment of an employee
21 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
22 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
23 those employees the balance of the unpaid wages as well as liquidated damages in an amount
24 equal to the wages due and interest thereon.

25 31. As a direct and proximate result of Defendants' unlawful conduct as alleged
26 herein, Plaintiffs and the Minimum Wage Class have sustained economic damages, including but
27 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
28 entitled to recover economic and statutory damages and penalties and other appropriate relief as

1 a result of Defendants' violations of the California Labor Code and Wage Order 16.

2 32. Defendants' practice and uniform administration of corporate policy regarding
3 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs
4 and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum
5 wages, liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and
6 costs of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code
7 of Civil Procedure § 1021.5.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGES**

10 **(AGAINST ALL DEFENDANTS)**

11 33. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

12 34. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
13 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
14 overtime hours worked, and provide a private right of action for the failure to pay all overtime
15 compensation for overtime work performed.

16 35. At all times relevant herein, Defendants were required to properly compensate
17 Plaintiffs and members of the Overtime Class for all overtime hours worked pursuant to California
18 Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an
19 employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess
20 of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 16,
21 § 3 also requires an employer to pay an employee double the employee's regular rate of pay for
22 work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh
23 consecutive day of work in the workweek. Defendants caused Plaintiffs to work overtime hours,
24 but did not compensate Plaintiffs or members of the Overtime Class at one and one-half times
25 their regular rate of pay for such hours or two times their regular rate of pay for double time hours
26 worked.

27 36. The foregoing policies and practices are unlawful and create entitlement to
28 recovery by Plaintiffs and the Overtime Class in a civil action for the unpaid amount of overtime

1 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
2 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 16, and
3 Code of Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 37. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

8 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 failed in their affirmative obligation to provide all of their non-exempt employees in California,
10 including Plaintiffs and members of the Meal Period Class, with all legally compliant meal
11 periods in accordance with the mandates of the California Labor Code and Wage Order 16, § 11.
12 Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiffs and
13 members of the Meal Period Class at their respective regular rates of compensation, in accordance
14 with California Labor Code §§ 226.7, and 512.

15 39. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations including interest thereon, as well as statutory penalties, civil penalties, and
17 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, and Civil Code §§
18 3287(b) and 3289.

19 **FOURTH CAUSE OF ACTION**

20 **REST PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 40. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

23 41. Wage Order 16, § 12 and California Labor Code §§ 226.7 and 516 establish the
24 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
25 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

26 42. As alleged herein, Defendants failed to authorize and permit Plaintiffs and
27 members of the Rest Period Class to take all required rest periods.

28 43. The foregoing violations create an entitlement to recovery by Plaintiffs and

1 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
2 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
3 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 **(AGAINST ALL DEFENDANTS)**

7 44. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

8 45. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
9 states that “an employer shall indemnify his or her employees for all necessary expenditures or
10 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
11 his or her obedience to the directions of the employer...”

12 46. Due to Defendants’ unlawful policy and practice of requiring employees to
13 purchase and maintain their own steel toed boots in the performance of their job duties, along
14 with failing to adequately reimburse for the use of their cellular phones in the performance of
15 their job duties and failing to reimburse for all meal and lodging expenditures on those occasions
16 where they were made to work at remote job sites, Defendants have violated Labor Code § 2802.

17 47. Plaintiffs and members of the Employee Expense Class are entitled to attorneys’
18 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

19 48. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
20 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
21 Plaintiffs and members of the Employee Expense Class are entitled to interest, which shall accrue
22 from the date on which they incurred the initial necessary expenditure.

23 **SIXTH CAUSE OF ACTION**

24 **WAGE STATEMENT VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

26 49. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

27 50. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
28 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiffs

1 and the Wage Statement Class with accurate, itemized wage statements that included, among
2 other requirements, accurate total gross wages earned, meal and rest period premiums, and total
3 net wages earned in violation of Labor Code §226 *et seq.*

4 51. Defendants' failure to furnish Plaintiffs and the members of the Wage Statement
5 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
6 failures led to, among other things, the non-payment of all of their earned wages, meal and rest
7 period premiums, and deprived them of the information necessary to identify discrepancies in
8 Defendants' reported data.

9 52. Defendants' failures created an entitlement to Plaintiffs and members of the Wage
10 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
11 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
12 pursuant to Labor Code § 226 *et seq.*

13 **SEVENTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(AGAINST ALL DEFENDANTS)**

16 53. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

17 54. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
18 an employer to pay all wages immediately at the time of termination of employment in the event
19 the employer discharges the employee or the employee provides at least 72 hours of notice of
20 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
21 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
22 employee's last date of employment.

23 55. Defendants failed to timely pay Plaintiffs all of their final wages at the time of
24 termination, which include, among other things, underpaid minimum and overtime wages, and
25 meal and rest period premium wages. Further, Plaintiffs are informed and believe, and based
26 thereon allege, that as a matter of uniform policy and practice, Defendants continue to fail to pay
27 members of the Waiting Time Class all earned wages at the end of employment in a timely manner
28 pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final

1 wages was willful within the meaning of Labor Code § 203.

2 56. Defendants' willful failure to timely pay Plaintiffs and the members of the Waiting
3 Time Class their earned wages upon separation from employment results in a continued payment
4 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and
5 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
6 plus reasonable attorneys' fees and costs of suit.

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 **(AGAINST ALL DEFENDANTS)**

10 57. Plaintiffs re-allege and incorporates by reference all previous paragraphs.

11 58. Defendants have engaged and continue to engage in unfair and/or unlawful
12 business practices in California in violation of California Business and Professions Code § 17200
13 *et seq.*, by failing to pay Plaintiffs and the Classes all overtime and minimum wages, provide all
14 required meal periods and failing to authorize and permit all required rest periods, and failing to
15 pay meal and rest period premium wage payments, failing to reimburse all necessary business
16 expenses, failing to furnish accurate, itemized wage statements, and willfully failing to timely pay
17 Plaintiffs and members of the Waiting Time Class all final wages upon separation of employment.

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

23 60. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct
24 alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, seek full
25 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,
26 acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
27 and 17208.

28 61. The acts complained of herein occurred within the last four years immediately

1 preceding the filing of the Complaint in this action.

2 62. Plaintiffs were compelled to retain the services of counsel to file this court action
3 to protect their interests and those of the Classes, to obtain restitution and injunctive relief on
4 behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
5 the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and
6 costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

7 **NINTH CAUSE OF ACTION**

8 **PRIVATE ATTORNEYS GENERAL ACT**

9 **(AGAINST ALL DEFENDANTS)**

10 63. Plaintiffs re-allege and incorporates by reference all prior paragraphs as though
11 fully set forth herein.

12 64. Defendants have committed several Labor Code violations against Plaintiffs,
13 members of the Classes, and other aggrieved employees. Plaintiffs, "aggrieved employees" within
14 the meaning of Labor Code § 2698 *et seq.*, acting on behalf of themselves and other aggrieved
15 employees, bring this representative action against Defendants to recover the civil penalties due
16 to Plaintiffs, the members of the Classes, other aggrieved employees, and the State of California
17 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
18 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
19 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
20 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
21 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
22 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
23 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
24 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
25 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
26 subsequent violation per employee per pay period for those violations of the Labor Code for which
27 no civil penalty is specifically provided, based on the following Labor Code violations:

28 a. Failing to pay minimum wages for all hours worked to Plaintiffs, the Minimum

1 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
2 1182.12, 1194, 1194.2, 1197, and 1198;

3 b. Failing to pay Plaintiffs, the Overtime Class, and other aggrieved employees all
4 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
5 1194, and 1198;

6 c. Failing to authorize and permit all legally required rest periods, and failure to
7 pay rest period premium wages, to Plaintiffs, the Rest Period Class, and other
8 aggrieved employees at the regular rate of compensation in violation of Labor
9 Code §§ 226.7, 516, 558, and 1198;

10 d. Failing to provide all legally required meal periods, and failure to pay meal
11 period premium wages, to Plaintiffs, the Meal Period Class, and other aggrieved
12 employees at the regular rate of compensation in violation of Labor Code §§
13 226.7, 512, 558, and 1198;

14 e. Failing to reimburse Plaintiffs, the Employee Expense Class, and other
15 aggrieved employees for all necessary work expenses incurred in violation of
16 Labor Code §§ 2802 and 2804;

17 f. Failing to furnish Plaintiffs, the Wage Statement Class, and other aggrieved
18 employees with complete, accurate, itemized wage statements in violation of
19 Labor Code § 226;

20 g. Failing to timely pay all final wages and compensation earned by Plaintiffs, the
21 Waiting Time Class, and other aggrieved employees at the time of separation
22 in violation of Labor Code §§ 201, 202, and 203;

23 h. Failing to pay non-exempt employees all earned wages at least twice during
24 each calendar month in violation of Labor Code § 204;

25 i. Failing to permit and authorize Plaintiffs and other non-exempt employees to
26 exercise the use of their accrued paid sick leave days in violation of Labor
27 Code § 245.5;

28 j. Failing to provide legally mandated disclosures and/or written notices
regarding the terms of employment of Plaintiffs and other non-exempt

employees in violation of Labor Code § 2810.5;

k. Failing to pay all vested, unused paid vacation hours to Plaintiffs and the Vacation Pay Class at the time of their separation of employment; and

l. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees in violation of Labor Code § 1174.

65. On June 25, 2022, Plaintiff Reyes notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and his intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 64 (a)-(l). Now that sixty-five days have passed from Plaintiff Reyes notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff Reyes has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

66. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to receive under California Labor Code § 2699(g).

TENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL VESTED UNUSED VACATION PAY UPON TERMINATION IN VIOLATION OF LABOR CODE SECTION 227.3 (AGAINST ALL DEFENDANTS)

67. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though fully set forth herein.

68. Pursuant to Labor Code § 227.3, whenever a contract of employment or employer policy provides for paid vacations, and an employee separates their employment without having used their vested vacation time, all vested vacation shall be paid to them as wages at their final rate in accordance with such a contract of employment or employer policy.

69. Defendants failed to timely pay Plaintiffs and the Vacation Pay Class all of their

1 vested unused vacation wages at the time of their termination of employment. Further, Plaintiffs
2 are informed and believe, and based thereon allege, that as a matter of uniform policy and practice,
3 Defendants continue to fail to pay Plaintiffs and the Vacation Pay Class their vested, unused
4 vacation wages at the time of their separation of employment.

5 70. As a proximate result of Defendants' failures to pay vested vacation at the final
6 rate of Plaintiffs and the Vacation Pay Class Members upon their termination, Defendants violated
7 Labor Code § 227.3, entitling Plaintiffs and Vacation Pay Class Members to all vested and unused
8 vacation pay at their final rate of pay, as set forth in Defendants' policies and/or contracts of
9 employment between Plaintiffs and Vacation Pay Class Members and Defendants.

10 71. As a further proximate result of Defendants' above-described actions, Plaintiffs
11 and Vacation Pay Class Members are entitled to recover reasonable attorneys' fees, costs of suit
12 and prejudgment interest.

13 PRAYER

14 WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose
15 behalf this suit is brought against Defendants, as follows:

- 16 1. For an order certifying the proposed Classes;
- 17 2. For an order appointing Plaintiffs as representatives of the Classes;
- 18 3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
- 19 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
20 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
21 1197;
- 22 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
23 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 24 6. Upon the Third Cause of Action, for compensatory, consequential, general and
25 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 26 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 28 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and

1 special damages according to proof pursuant to Labor Code § 2802;

2 9. Upon the Sixth Cause of Action, for actual damages, statutory and civil penalties
3 pursuant to Labor Code § 226, *et seq.*;

4 10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code
5 § 203.;

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

10 12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each
11 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
12 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
13 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
14 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
15 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
16 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
17 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
18 each initial violation and \$200 for each subsequent violation per employee per pay period for the
19 violations of the Labor Code Sections cited in Labor Code § 2699.5.;

20 13. Upon the Tenth Cause of Action, for compensatory, consequential, general, and
21 special damages and/or penalties according to proof pursuant to Labor Code § 227.3;

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

24 15. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
25 Procedure § 1021.5 and all other applicable statutes; and

26 16. For such other and further relief the Court may deem just and proper.

27 ///

28 ///

1 Dated: February 14, 2024

Respectfully submitted,
STANBURY BROWN LAW, PC

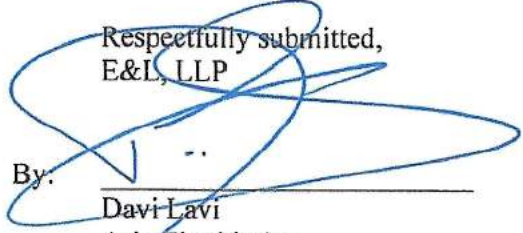
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3 By:


Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiffs

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5
6 Dated: February 14, 2024

Respectfully submitted,
E&L, LLP

7
8 By:


Davi Lavi
Arie Ebrahimian
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90291

On February 15, 2024 I served the document listed below on the parties in this action as follows:

- CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 15, 2024 at Frazier Park, California.

Isabella C. Aguinaga

Isabella C. Aguinaga

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SERVICE LIST

Mark T. Risner
Law office of Mark T. Risner
1 Park Plaza, Suite 600
Irvine, CA 92614
949-442-8302
mark@markrisnerlaw.com

Attorneys for Defendant Thermo Power Industries

E&L, LLP
David Lavi
dlavi@ebralavi.com
Arie Ebrahimian
arie@ebralavi.com
8889 W. Olympic Blvd., 2nd Floor
Beverly Hills, CA 90211
Tel: 213-213-0000

Attorneys for Plaintiff Ramon Vargas