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

ANA VARGAS, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

SPATES FABRICATORS, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CVRI2100462

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 10

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act of 2004); and

(9) Violation of California Business & Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff ANA VARGAS, FELIPE VEGA GOMEZ, and YESSICA ALVARADO (“Plaintiffs,” “Plaintiff Vargas,” “Plaintiff Gomez,” and “Plaintiff Alvarado”), individually, and on behalf of other members of the general public similarly situated, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Riverside. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State of California, County of Riverside.

PARTIES

5. Plaintiff Vargas is an individual residing in the State of California, County of Riverside.

1 6. Plaintiff Gomez is an individual residing in the State of California, County of
2 Riverside.

3 7. Plaintiff Alvarado is an individual residing in the State of California, County of
4 Riverside.

5 8. Defendant SPATES FABRICATORS, INC., at all times herein mentioned, was
6 and is, upon information and belief, a California corporation, and at all times herein
7 mentioned, was and is, an employer whose employees are engaged throughout the State of
8 California, including the County of Riverside.

9 9. At all times herein relevant, Defendant SPATES FABRICATORS, INC., was the
10 “employer” of Plaintiffs within the meaning of all applicable California laws and statutes.

11 10. At all times herein relevant, Defendants SPATES FABRICATORS, INC., and
12 DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
13 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
14 assigns, each of the other, and at all times relevant hereto were acting within the course and
15 scope of their authority as such agents, partners, joint venturers, joint employers,
16 representatives, servants, employees, successors, co-conspirators and assigns, and all acts or
17 omissions alleged herein were duly committed with the ratification, knowledge, permission,
18 encouragement, authorization, and consent of each defendant designated herein.

19 11. The true names and capacities, whether corporate, associate, individual or
20 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
21 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on that
22 information and belief allege, each of the Defendants designated as a DOE is legally
23 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
24 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
25 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
26 capacities when the same have been ascertained.

27 12. Defendants SPATES FABRICATORS, INC., and DOES 1 through 100 will
28 hereinafter collectively be referred to as “Defendants.”

13. Plaintiffs further allege Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the other class members so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

14. Plaintiffs bring this action on their own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

15. The proposed class is defined as follows:

16. All current and former hourly-paid or non-exempt employees employed by Defendants within the State of California at any time between February 1, 2017 through June 9, 2022.

17. Plaintiffs reserve the right to establish subclasses as appropriate.

18. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time. However, the class is estimated to be greater than one thousand (1,000) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiffs' claims are typical of all other class members' claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

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1 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 each class member, with whom they have a well-defined community of
3 interest and typicality of claims. Plaintiffs have no interest antagonistic
4 to the other class members. Plaintiffs' attorneys, the proposed class
5 counsel, are versed in the rules governing class action discovery,
6 certification, and settlement. Plaintiffs have incurred, and during the
7 pendency of this action will continue to incur, costs and attorneys' fees,
8 that have been, are, and will be necessarily expended for the prosecution
9 of this action for the substantial benefit of each class member.

10 d. Superiority: A class action is superior to other available methods for the
11 fair and efficient adjudication of this litigation because individual joinder
12 of all class members is impractical.

13 e. Public Policy Considerations: Certification of this lawsuit as a class
14 action will advance public policy objectives. Employers of this state
15 violate employment and labor laws every day. Current employees are
16 often afraid to assert their rights out of fear of retaliation. However, class
17 actions provide the class members who are not named in the complaint
18 anonymity that allows for the vindication of their rights.

19 19. There are common questions of law and fact as to the class members that
20 predominate over questions affecting only individual members. The following common
21 questions of law or fact, among others, exist as to the members of the class:

22 a. Whether Defendants' failure to pay wages, without abatement or
23 reduction, in accordance with the Labor Code, was willful;

24 b. Whether Defendants failed to pay their hourly-paid or non-exempt
25 employees within the State of California for all hours worked, missed
26 meal periods and rest breaks in violation of California law;

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- c. Whether Defendants required Plaintiffs and other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiffs and the other class members;
- d. Whether Defendants properly calculated the regular rate for Plaintiffs and the other class members to worked overtime and earned bonuses and/or incentive pay;
- e. Whether Defendants deprived Plaintiffs and other class members of meal and/or rest periods or required Plaintiffs and the other class members to work during meal and/or rest periods without compensation;
- f. Whether Defendants failed to pay minimum wages to Plaintiffs and other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiffs and other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiffs and other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the Labor Code, including, inter alia, section 226;
- j. Whether Defendants failed to reimburse Plaintiffs and other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code sections 17200, *et seq.*;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- n. Whether Plaintiffs and other class members are entitled to compensatory damages pursuant to the Labor Code.

GENERAL ALLEGATIONS

20. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

21. Defendants, jointly and severally, employed Plaintiff Vargas as an hourly-paid, non-exempt employee from in or about January of 2017 to August of 2018 in the State of California, County of Riverside.

22. Defendants, jointly and severally, employed Plaintiff Gomez as an hourly-paid, non-exempt employee from in or about April 2011 to July 2018 in the State of California, County of Riverside.

23. Defendants, jointly and severally, employed Plaintiff Alvarado as an hourly-paid, non-exempt employee from in or about January 2018 to June 2019 in the State of California, County of Riverside.

24. Defendants, jointly and severally, hired Plaintiffs and other class members and classified them as hourly-paid, non-exempt employees, and failed to compensate them for all hours worked, missed meal periods, and/or missed rest breaks.

25. Defendants had the authority to hire and terminate Plaintiffs and other class members; to set work rules and conditions governing Plaintiffs' and the other class members' employment; and to supervise their daily employment activities.

26. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs and other class members.

27. Defendants directly hired and paid wages and benefits to Plaintiffs and other class members.

28. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

29. Plaintiffs and other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

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1 30. Plaintiffs are informed and believe, and based thereon allege, Defendants
2 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
3 employees within the State of California. This scheme involved, *inter alia*, failing to pay them
4 for all hours worked, missed meal periods, and missed rest breaks.

5 31. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
6 or should have known Plaintiffs and other class members were entitled to receive certain wages
7 for overtime compensation, and they did not receive wages for overtime compensation.

8 32. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
9 or should have known Plaintiffs and other class members were receiving non-discretionary
10 bonuses and incentives but that such non-discretionary bonuses and incentives were not
11 factored into Plaintiffs' and other class members' regular rates of pay for overtime purposes.

12 33. Plaintiffs are informed and believe, and based thereon allege, Defendants failed
13 to provide Plaintiffs and other class members the required rest and meal periods during the
14 relevant time period as required under the Industrial Welfare Commission Wage Orders, and
15 they are entitled to any and all applicable penalties.

16 34. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
17 or should have known Plaintiffs and other class members were entitled to receive all timely
18 and complete meal periods or payment of one additional hour of pay at Plaintiffs' and other
19 class members' regular rate of pay when a meal period was missed, late, or interrupted, and
20 they did not receive all timely and proper meal periods or payment of one additional hour of
21 pay at Plaintiffs' and other class members' regular rate of pay when a meal period was missed,
22 late, or interrupted.

23 35. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
24 or should have known Plaintiffs and other class members were entitled to receive all timely
25 rest periods without interruption or payment of one additional hour of pay at Plaintiffs' and the
26 other class members' regular rate of pay when a rest period was missed, late or interrupted, and
27 they did not receive all rest periods or payment of one additional hour of pay at Plaintiffs' and
28 the other class members' regular rate of pay when a rest period was missed, late, or interrupted.

1 36. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
2 or should have known Plaintiffs and other class members were entitled to receive at least
3 minimum wages for compensation, and they were not receiving at least minimum wages for all
4 hours worked.

5 37. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
6 or should have known Plaintiffs and other class members were entitled to receive the wages
7 owed to them upon discharge or resignation, including overtime and minimum wages and meal
8 and rest period premiums, and they did not, in fact, receive such wages owed to them at the
9 time of their discharge or resignation.

10 38. Plaintiffs is informed and believe, and based thereon allege, Defendants knew or
11 should have known Plaintiffs and other class members were entitled to receive complete and
12 accurate wage statements in accordance with California law, but they did not receive complete
13 and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the
14 failure to include the total number of hours worked by Plaintiffs and other class members.

15 39. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
16 or should have known Plaintiffs and other class members were entitled to reimbursement for
17 necessary business-related expenses.

18 40. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
19 or should have known Defendants had to keep complete and accurate payroll records for
20 Plaintiffs and other class members in accordance with California law but did not keep complete
21 and accurate payroll records.

22 41. Plaintiffs are informed and believe, and based thereon allege, Defendants knew
23 or should have known they had a duty to compensate Plaintiffs and other class members
24 pursuant to California law, and Defendants had the financial ability to pay such compensation,
25 but Defendants willfully, knowingly, and intentionally failed to do so, and falsely represented
26 to Plaintiffs and other class members they were properly denied wages, all to increase
27 Defendants' profits.

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1 42. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
3 worked. Plaintiffs and other class members were required to work more than eight (8) hours
4 per day and/or forty (40) hours per week without overtime compensation.

5 43. As a pattern and practice, during the relevant time period set forth herein,
6 Defendants failed to factor non-discretionary and incentives into Plaintiffs' and other class
7 members' regular rates of pay for overtime compensation purposes.

8 44. As a pattern and practice, during the relevant time period set forth herein,
9 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
10 Plaintiffs and other class members.

11 45. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants failed to pay Plaintiffs and other class members at least minimum wages for all
13 hours worked.

14 46. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants failed to pay Plaintiffs and other class members the wages owed to them upon
16 discharge or resignation.

17 47. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class
19 members.

20 48. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class
22 members.

23 49. As a pattern and practice, during the relevant time period set forth herein,
24 Defendants failed to reimburse Plaintiffs and other class members for necessary business-
25 related expenses.

26 50. As a pattern and practice, during the relevant time period set forth herein,
27 Defendants failed to properly compensate Plaintiffs and other class members pursuant to
28 California law in order to increase Defendants' profits.

51. Labor Code section 218 states nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against SPATES FABRICATORS, INC. and DOES 1 through 100)

52. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

53. Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

54. Specifically, the applicable IWC Wage Order provides Defendants are and were required to pay Plaintiffs and other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

55. The applicable IWC Wage Order further provides Defendants are and were required to pay Plaintiffs and other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

56. Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

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57. During the relevant time period set forth herein, Plaintiffs and other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

58. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and other class members.

59. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to factor non-discretionary bonuses and incentives into Plaintiffs' and other class members' regular rates of pay for overtime compensation.

60. Defendants' pattern and practice of failing to pay Plaintiffs and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of Labor Code sections 510 and 1198, and is unlawful.

61. Pursuant to Labor Code section 1194, Plaintiffs and other class members are entitled to recover unpaid overtime compensation, interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against SPATES FABRICATORS, INC. and DOES 1 through 100)

62. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 61, and each and every part thereof with the same force and effect as though fully set forth herein.

63. During the relevant time period set forth herein, the IWC Order and Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members' employment by Defendants.

64. During the relevant time period set forth herein, Labor Code section 226.7 provides no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the IWC.

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1 65. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and Labor Code section 512(a) provide an employer may not require, cause or permit an
3 employee to work for a work period of more than five (5) hours per day without providing the
4 employee with a meal period of not less than thirty (30) minutes, except if the total work
5 period per day of the employee is no more than six (6) hours, the meal period may be waived
6 by mutual consent of both the employer and employee.

7 66. During the relevant time period set forth herein, the applicable IWC Wage
8 Order and Labor Code section 512(a) further provide an employer may not require, cause, or
9 permit an employee to work for a work period of more than ten (10) hours per day without
10 providing the employee with a second uninterrupted meal period of not less than thirty (30)
11 minutes, except if the total hours worked is no more than twelve (12) hours, the second meal
12 period may be waived by mutual consent of the employer and the employee only if the first
13 meal period was not waived.

14 67. As a pattern and practice, during the relevant time period set forth herein,
15 Plaintiffs and other class members who were scheduled to work for a period of time no longer
16 than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
17 consent, were required to work for periods longer than five (5) hours without an uninterrupted
18 meal period of not less than thirty (30) minutes and/or without a rest period.

19 68. As a pattern and practice, during the relevant time period set forth herein,
20 Plaintiffs and other class members who were scheduled to work for a period of time in excess
21 of six (6) hours were required to work for periods longer than five (5) hours without an
22 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

23 69. As a pattern and practice, during the relevant time period set forth herein,
24 Plaintiffs and other class members who were scheduled to work for a period of time no longer
25 than twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual
26 consent, were required to work for periods longer than ten (10) hours without an uninterrupted
27 meal period of not less than thirty (30) minutes and/or without a rest period.

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70. As a pattern and practice, during the relevant time period set forth herein, Plaintiffs and other class members who were scheduled to work for a period of time in excess of twelve (12) hours were required to work for periods longer than ten (10) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

71. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiffs and other class members to work during meal periods and failed to compensate Plaintiffs and the other class members the full meal period premium for work performed during meal periods.

72. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and other class members the full meal period premium due pursuant to Labor Code section 226.7.

73. Defendants' conduct violates applicable IWC Wage Order and Labor Code sections 226.7 and 512(a).

74. Pursuant to the applicable IWC Wage Order and Labor Code section 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against SPATES FABRICATORS, INC. and DOES 1 through 100)

75. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 74, and each and every part thereof with the same force and effect as though fully set forth herein.

76. During the relevant time period set forth herein, the applicable IWC Wage Order and Labor Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by Defendants.

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77. During the relevant time period set forth herein, Labor Code section 226.7 provides no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC.

78. During the relevant time period set forth herein, the applicable IWC Wage Order provides “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

79. As a pattern and practice, during the relevant time period set forth herein, Defendants required Plaintiffs and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

80. As a pattern and practice, during the relevant time period set forth herein, Defendants willfully required Plaintiffs and the other class members to work during rest periods and failed to pay Plaintiffs and the other class members the full rest period premium for work performed during rest periods pursuant to Labor Code section 226.7.

81. Defendants' conduct violates applicable IWC Wage Orders and Labor Code section 226.7.

82. Pursuant to the applicable IWC Wage Orders and Labor Code section 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each workday the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

(Against SPATES FABRICATORS, INC. and DOES 1 through 100)

83. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 82 and each and every part thereof with the same force and effect as though fully set forth herein.

84. During the relevant time period set forth herein, Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

85. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiffs and other class members as required, pursuant to Labor Code sections 1194, 1197, and 1197.1.

86. Defendants' failure to pay Plaintiffs and other class members the minimum wage as required violates Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

87. Pursuant to Labor Code section 1194.2, Plaintiffs and other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against SPATES FABRICATORS, INC. and DOES 1 through 100)

88. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 87, and each and every part thereof with the same force and effect as though fully set forth herein.

89. During the relevant time period set forth herein, Labor Code sections 201 and 202 provide if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of intention to quit, in which case the employee is entitled to wages at the time of quitting.

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90. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiffs and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

91. Defendants' pattern and practice of failing to pay Plaintiffs and other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of Labor Code sections 201 and 202.

92. Labor Code section 203 provides if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

93. Plaintiffs and other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against SPATES FABRICATORS, INC. and DOES 1 through 100)

94. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 93, and each and every part thereof with the same force and effect as though fully set forth herein.

95. During the relevant time period set forth herein, Labor Code section 226(a) provides every employer shall furnish each of his or her employees an accurate itemized statement in writing showing: (a) gross wages earned; (b) total hours worked by the employee; (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (d) all deductions, provided all deductions made on written orders of the employee may be aggregated and shown as one item; (e) net wages earned; (f) inclusive dates of the period for which the employee is paid, (g) name of the employee and his or her social

1 security number; (h) name and address of the legal entity that is the employer; and (i) all
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate. The deductions made from payments of wages shall be recorded in
4 ink or other indelible form, properly dated, showing the month, day, and year, and a copy of
5 the statement or a record of the deductions shall be kept on file by the employer for at least
6 three years at the place of employment or at a central location within California.

7 96. As a pattern and practice, Defendants intentionally and willfully failed to
8 provide Plaintiffs and other class members with complete and accurate wage statements. The
9 deficiencies include, but are not limited to: (a) failure to include the total number of hours
10 worked; (b) gross wages earned; and (c) net wages earned.

11 97. As a result of Defendants' violation of Labor Code section 226(a), Plaintiffs and
12 other class members have suffered injury and damage to their statutorily protected rights.

13 98. Plaintiffs and other class members have been injured by Defendants' intentional
14 and willful violation of Labor Code section 226(a) because they were denied both their legal
15 right to receive, and their protected interest in receiving, accurate and itemized wage
16 statements pursuant to Labor Code section 226(a).

17 99. Plaintiffs and other class members are entitled to recover from Defendants the
18 greater of their actual damages caused by Defendants' failure to comply with Labor Code
19 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

20 100. Plaintiffs and other class members are also entitled to injunctive relief to ensure
21 compliance with this section, pursuant to Labor Code section 226(g).

22 **SEVENTH CAUSE OF ACTION**

23 **(Violation of California Labor Code §§ 2800 and 2802)**

24 **(Against SPATES FABRICATORS, INC. and DOES 1 through 100)**

25 101. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
26 through 100, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

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102. Pursuant to Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

103. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other class members for all necessary business-related expenses and costs. Plaintiffs and other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHT CAUSE OF ACTION

(Violation of Labor Code Section 2698, et seq. (“PAGA”))

(Against SPATES FABRICATORS, INC. and DOES 1 through 100)

104. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 103, and each and every part thereof with the same force and effect as though fully set forth herein.

105. PAGA establishes any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

106. On June 10, 2022, Plaintiff Vargas timely provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. Plaintiff Vargas believes on or about August 15, 2022, the 65-day notice period will expire, and the LWDA will not take any action to investigate or prosecute this matter. Therefore, Plaintiff Vargas will have exhausted the statutory time period to bring this action. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the June 10, 2022 written notice to the LWDA.

1 107. Plaintiff Vargas and the other non-exempt employees are “aggrieved employees”
2 as defined by Labor Code section 2699(c) in that they are all current and former hourly-paid or
3 non-exempt employees employed by Defendants within the State of California at any time
4 between June 10, 2021 through June 9, 2022, and one or more of the alleged violations was
5 committed against them.

6 **Failure to Pay Minimum and Overtime Wages**

7 108. At all times relevant herein, Defendants were required to compensate their
8 nonexempt employees minimum wages for all hours worked and overtime wages for all hours
9 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
10 mandate of Labor Code sections 510, 1194, 1197, 1197.1, 1198, and 1199.

11 109. As a pattern and practice, Defendants failed to compensate Plaintiff Vargas and
12 other aggrieved current and former employees for all hours worked, resulting in a failure to pay
13 all minimum wages and overtime wages, where applicable.

14 **Failure to Provide Meal Periods and Rest Breaks**

15 110. In accordance with the mandates of Labor Code sections 226.7 and 512,
16 Defendants were required to authorize and permit their non-exempt employees to take a 10-
17 minute rest break for every four (4) hours worked or major fraction thereof and were further
18 required to provide their non-exempt employees with a 30-minute meal period for every five (5)
19 hours worked.

20 111. As a pattern and practice, Defendants failed to provide Plaintiff Vargas and other
21 aggrieved current and former employees with legally-mandated meal periods and rest breaks and
22 failed to pay proper compensation for this failure.

23 **Failure to Timely Pay Wages During Employment**

24 112. At all times relevant herein, Defendants were required to pay their employees
25 within a specified time period pursuant to the mandate of Labor Code section 204.

26 113. As a pattern and practice, Defendants failed to pay Plaintiff Vargas and other
27 aggrieved current and former employees all wages due and owing them within the required time
28 period.

1 **Failure to Timely Pay Wages Upon Termination**

2 114. At all times relevant herein, Defendants were required to pay their employees all
3 wages owed in a timely fashion at the end of employment pursuant to Labor Code sections 201
4 to 204.

5 115. As a result of Defendants' Labor Code violations alleged above, Defendants
6 failed to pay Plaintiff Vargas and the other aggrieved former employees their final wages
7 pursuant to Labor Code sections 201 to 204 and accordingly owe waiting time penalties pursuant
8 to Labor Code section 203.

9 **Failure to Provide Complete and Accurate Wage Statements**

10 116. At all times relevant herein, Defendants were required to keep accurate records
11 regarding their employees pursuant to the mandate of Labor Code sections 226, 226.3, and
12 1174(d).

13 117. As a result of Defendants' various Labor Code violations, Defendants failed to
14 keep accurate records regarding Plaintiff Vargas and other aggrieved current and former
15 employees. For example, Defendants failed in their affirmative obligation to keep accurate
16 records regarding Plaintiff Vargas' and other aggrieved current and former employees' gross
17 wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly
18 rates and the number of hours worked at each hourly rate. Defendants also failed to provide
19 Plaintiff Vargas and other aggrieved current and former employees complete and accurate wage
20 statements in violation of Labor Code section 226(a). The deficiencies include, but are not
21 limited to, the failure to include the total number of hours worked by Plaintiff Vargas and other
22 aggrieved employees.

23 **Failure to Reimburse Business Expenses**

24 118. At all times relevant herein, Defendants were required to reimburse their
25 employees for any and all necessary expenditures or losses incurred by the employees in direct
26 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
27 sections 2800 and 2802.

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1 119. As a pattern and practice, Defendants failed to pay Plaintiff Vargas and other
2 aggrieved current and former employees all business expenses incurred and owing them within
3 the required time period.

4 **Failure to Properly Calculate and Pay Sick Leave**

5 120. At all times relevant herein, Defendants were required to calculate and pay sick
6 leave pay pursuant to the methods outlined in Labor Code section 246(l).

7 121. As a pattern and practice, Defendants failed to calculate and pay sick leave to
8 Plaintiff Vargas and other aggrieved current and former employees using the methods outlined in
9 Labor Code section 246(l).

10 **Penalties**

11 122. Pursuant to Labor Code section 2699, Plaintiff Vargas, individually, and on behalf
12 of other current and former aggrieved employees, requests and is entitled to recover from
13 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well
14 as all statutory penalties against Defendants, and each of them, including but not limited to:

- 15 a. Penalties under Labor Code section 2699 in the amount of a hundred
16 dollars (\$100) for each aggrieved employee per pay period for the initial
17 violation, and two hundred dollars (\$200) for each aggrieved employee
18 per pay period for each subsequent violation;
- 19 b. Penalties under Code of Regulations Title 8 section 11040 in the amount
20 of fifty dollars (\$50) for each aggrieved employee per pay period for the
21 initial violation, and one hundred dollars (\$100) for each aggrieved
22 employee per pay period for each subsequent violation;
- 23 c. Penalties under Labor Code section 210 in addition to, and entirely
24 independent and apart from, any other penalty provided in the Labor
25 Code in the amount of a hundred dollars (\$100) for each aggrieved
26 employee per pay period for the initial violation, and two hundred dollars
27 (\$200) for each aggrieved employee per pay period for each subsequent
28 violation;

- 1 d. Penalties under Labor Code section 1197.1 in the amount of a hundred
2 dollars (\$100) for each aggrieved employee per pay period for the initial
3 violation, and two hundred fifty dollars (\$250) for each aggrieved
4 employee per pay period for each subsequent violation;
- 5 e. Any and all additional penalties as provided by the Labor Code and/or
6 other statutes; and
- 7 f. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194,
8 and 2699, and any other applicable statute.

9 **NINTH CAUSE OF ACTION**

10 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

11 **(Against SPATES FABRICATORS, INC. and DOES 1 through 100)**

12 123. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
13 through 122, and each and every part thereof with the same force and effect as though fully set
14 forth herein.

15 124. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
16 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
17 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public
18 interest within the meaning of Code of Civil Procedure section 1021.5.

19 125. Defendants' activities as alleged herein are violations of California law, and
20 constitute unlawful business acts and practices in violation of Business & Professions Code
21 section 17200, *et seq.*

22 126. A violation of Business & Professions Code section 17200, *et seq.* may be
23 predicated on the violation of any state or federal law. In this instant case, Defendants' pattern
24 and practice of requiring Plaintiffs and other class members work overtime hours without
25 paying them proper compensation violate Labor Code sections 510 and 1198. Additionally,
26 Defendants' pattern and practice of requiring Plaintiffs and other class members, to work
27 through their meal and rest periods without paying them proper compensation violate Labor
28 Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of failing to

1 timely pay wages to Plaintiffs and other class members violate Labor Code sections 201 and
2 202. Defendants also violated Labor Code sections 226(a), 1194, 1197, 2800, and 2802.

3 127. As a result of the herein described violations of California law, Defendants
4 unlawfully gained an unfair advantage over other businesses.

5 128. Plaintiffs and other class members have been personally injured by Defendants'
6 unlawful business acts and practices as alleged herein, including but not necessarily limited to
7 the loss of money and/or property.

8 129. Pursuant to Business & Professions Code section 17200, *et seq.*, Plaintiffs and
9 other class members are entitled to restitution of the wages withheld and retained by
10 Defendants during a period that commences four years prior to the filing of this Complaint; an
11 award of attorneys' fees pursuant to Code of Civil procedure section 1021.5 and other
12 applicable laws; and an award of costs.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs, individually, and on behalf of other members of the general public similarly
15 situated, request a trial by jury.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs, individually and on behalf of all other members of the
18 general public similarly situated, pray for relief and judgment against Defendants, jointly and
19 severally, as follows:

20 **Class Certification**

- 21 1. That this action be certified as a class action;
22 2. That Plaintiffs be appointed as representatives of the Class;
23 3. That counsel for Plaintiffs be appointed as Class Counsel; and
24 4. That Defendants provide to Class Counsel immediately the names and most
25 current contact information (address, email, and telephone numbers) of all class members.

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1 **As to the First Cause of Action**

2 5. That the Court declare, adjudge, and decree Defendants violated Labor Code
3 sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
4 overtime wages due to Plaintiffs and the other class members;

5 6. For general unpaid wages at overtime wage rates and such general and special
6 damages as may be appropriate;

7 7. For pre-judgment interest on any unpaid overtime compensation commencing
8 from the date such amounts were due;

9 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 Labor Code section 1194; and

11 9. For such other and further relief as the court may deem just and proper.

12 **As to the Second Cause of Action**

13 10. That the Court declare, adjudge, and decree Defendants violated Labor Code
14 sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all
15 meal periods (including second meal periods) to Plaintiffs and the other class members;

16 11. That the Court make an award to Plaintiffs and the other class members of one
17 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
18 period was not provided;

19 12. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 13. For premium wages pursuant to Labor Code section 226.7(b);

22 14. For pre-judgment interest on any unpaid wages from the date such amounts
23 were due;

24 15. For reasonable attorneys' fees and costs of suit incurred herein; and

25 16. For such other and further relief as the court may deem just and proper.

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As to the Third Cause of Action

17. That the Court declare, adjudge, and decree Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and the other class members;

18. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge, and decree Defendants violated Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Labor Code section 1194(a);

27. For liquidated damages pursuant to Labor Code section 1194.2; and

28. For such other and further relief as the court may deem just and proper.

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1 **As to the Fifth Cause of Action**

2 29. That the Court declare, adjudge, and decree Defendants violated Labor Code
3 sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
4 termination of the employment of the other class members no longer employed by Defendants;

5 30. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 31. For statutory wage penalties pursuant to Labor Code section 203 for the other
8 class members who have left Defendants' employ;

9 32. For pre-judgment interest on any unpaid compensation from the date such
10 amounts were due; and

11 33. For such other and further relief as the court may deem just and proper.

12 **As to the Sixth Cause of Action**

13 34. That the Court declare, adjudge, and decree that Defendants violated the record
14 keeping provisions of Labor Code section 226(a) and applicable IWC Wage Orders as to
15 Plaintiffs and other class members, and willfully failed to provide accurate itemized wage
16 statements thereto;

17 35. For actual, consequential, and incidental losses and damages, according to
18 proof;

19 36. For injunctive relief to ensure compliance with this section, pursuant to Labor
20 Code section 226(g); and

21 37. For such other and further relief as the court may deem just and proper.

22 **As to the Seventh Cause of Action**

23 38. That the Court declare, adjudge, and decree Defendants violated Labor Code
24 sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class members for
25 all necessary business-related expenses as required by Labor Code sections 2800 and 2802;

26 39. For actual, consequential, and incidental losses and damages, according to
27 proof;

28 40. For the imposition of statutory penalties;

- 1 41. For punitive damages and/or exemplary damages according to proof at trial;
2 42. For reasonable attorneys' fees and costs of suit incurred herein; and
3 43. For such other and further relief as the court may deem just and proper.

4 **As to the Eight Cause of Action**

5 44. For civil penalties pursuant to statute as set forth in Labor Code sections 2698,
6 *et seq.*, for Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 218.5,
7 226(a), 226.2, 226.3, 226.7, 246(l), 510, 512(a), 558, 1174, 1194, 1197, 1197.1, 1198, 1199,
8 2800 and 2802;

9 45. For costs and attorneys' fees pursuant to Labor Code Sections 210, 1194, and
10 2699, and any other applicable statute; and

11 46. For such other and further relief as the Court may deem just and proper.

12 **As to the Ninth Cause of Action**

13 47. That the Court declare, adjudge, and decree Defendants violated Business and
14 Professions Code section 17200, *et seq.* by failing to provide Plaintiffs and other class
15 members all overtime compensation due to them, failing to provide all meal and rest periods to
16 Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and
17 the other class members, failing to pay Plaintiffs' and other class members' wages timely as
18 required by Labor Code section 201 and 202.

19 48. For restitution of unpaid wages to Plaintiffs and other class members and all
20 pre-judgment interest from the day such amounts were due and payable;

21 49. For the appointment of a receiver to receive, manage, and distribute any and all
22 funds disgorged from Defendants and determined to have been wrongfully acquired by
23 Defendants as a result of violation of Business and Professions Code section 17200, *et seq.*;

24 50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Code
25 of Civil Procedure section 1021.5;

26 51. For injunctive relief to ensure compliance with this section, pursuant to
27 Business and Professions Code section 17200, *et seq.*; and

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52. For such other and further relief as the court may deem just and proper.

Dated: July 25, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Haig Hogdanian
Attorneys for Plaintiffs

EXHIBIT 1

June 10, 2022

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: SPATES FABRICATORS, INC.

Dear Representative:

We have been retained to represent Ana Vargas against Spates Fabricators, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "SPATES FABRICATORS").

Ms. Vargas is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Vargas may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Spates Fabricators, Inc. is a California corporation located at 85-435 B Middleton St. Thermal, CA 92274.

SPATES FABRICATORS employed Ms. Vargas as an hourly-paid non-exempt employee during the relevant time period in the State of California. SPATES FABRICATORS directly controlled the wages, hours and/or working conditions of Ms. Vargas and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Vargas may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of SPATES FABRICATORS within the State of California.

¹ Ms. Vargas does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Vargas will amend this notice when the true names and capacities are known. Ms. Vargas is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Vargas and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

SPATES FABRICATORS failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Vargas has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at SPATES FABRICATORS, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

SPATES FABRICATORS has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 246(l), 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Vargas and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. SPATES FABRICATORS failed to compensate Ms. Vargas and other aggrieved employees for all hours worked and performing off-the-clock work. Such off-the-clock work consisted of, but was not limited to: (1) pre-shift work including preparing the workstation; (2) waiting in line to clock in due to an inadequate number of timeclocks on the premises; (3) post-shift work including close-out tasks, e.g., cleaning up work areas; and (4) working during meal breaks.

SPATES FABRICATORS also failed to include non-discretionary bonuses and incentives (e.g., productivity and performance incentives) in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Ms. Vargas and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated

by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, SPATES FABRICATORS failed to pay Ms. Vargas and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, SPATES FABRICATORS routinely required Ms. Vargas and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with SPATES FABRICATORS's policies and expectations, and meet production quotas. SPATES FABRICATORS failed to provide coverage to Ms. Vargas and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Additionally, by failing to maintain an adequate number of timeclocks, SPATES FABRICATORS forced aggrieved employees to cut their meal breaks short to stand in line at the timeclock, clock-in, and immediately return to work before the end of their breaks. Lastly, SPATES FABRICATORS also failed to authorize and permit Ms. Vargas and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, SPATES FABRICATORS failed to compensate Ms. Vargas and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Ms. Vargas and other aggrieved employees' regular rate of pay.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, SPATES FABRICATORS failed to pay Ms. Vargas and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period

specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, SPATES FABRICATORS failed to pay Ms. Vargas and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, SPATES FABRICATORS did not provide Ms. Vargas and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from SPATES FABRICATORS were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Vargas and other aggrieved employees, (2) total hours worked by Ms. Vargas and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Vargas and other aggrieved employees (4) all deductions for Ms. Vargas and other aggrieved employees, (5) net wages earned by Ms. Vargas and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Vargas and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Vargas and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover

underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Vargas and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, SPATES FABRICATORS failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Vargas and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, SPATES FABRICATORS did not provide Ms. Vargas and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, donning and doffing uniforms, undergoing security procedures, waiting in line to clock-in, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Vargas and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by SPATES FABRICATORS, including for purchasing equipment they were required to wear while working (e.g., steel-toed boots), and using their personal cellular phones to communicate with coworkers, supervisors, and customers on a daily basis.

We believe that Ms. Vargas and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 246(l), 510, 512(a), 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

LWDA
June 10, 2022
Page 6 of 6

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Vargas will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of SPATES FABRICATORS within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Email Only):

Jennifer Komsky
jkomsky@laklawyers.com
Counsel for Spates Fabricators, Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mluna@justicelawcorp.com

On July 27, 2022, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Vargas v. Spates Fabricators, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-888665-22**
Court Case No.: CVRI2100462
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

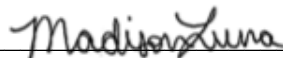
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[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 July 27, 2022, at Pasadena, California.



Madison Luna