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**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN BERNARDINO  
 SAN BERNARDINO DISTRICT

**JUL 11 2022**

BY *Michelle Munguia*  
**Michelle Munguia DEPUTY**

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

CRISTIAN CHOLICO and ROBERT  
 MULDREW, individually, and on behalf of  
 other members of the general public similarly  
 situated;

Plaintiffs,

v.

VISTA METALS CORP., a California  
 corporation; and DOES 1 through 100,  
 inclusive;

Defendants.

Case No.: CIVSB2126589

**SECOND 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 Business & Professions Code §§ 17200, *et seq.*

**DEMAND FOR JURY TRIAL**

**By Fax**

COMES NOW, Plaintiffs CRISTIAN CHOLICO (“Plaintiff Cholico”) and ROBERT MULDREW (“Plaintiff Muldrew”) (collectively, “Plaintiffs”), individually, and on behalf of other members of the general public similarly situated, allege as follows:

### **JURISDICTION AND VENUE**

1. This class action is brought pursuant to the California 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 San Bernardino. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California, County of San Bernardino.

### **PARTIES**

5. Plaintiffs CRISTIAN CHOLICO and ROBERT MULDREW are individuals residing in the State of California, County of San Bernardino.

6. Defendant VISTA METALS CORP., at all times herein mentioned, was and is, upon information and belief, a California corporation, and at all times herein mentioned, was and is, an employer whose employees are engaged throughout the State of California, including the County of San Bernardino.

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1           7.       At all relevant times, Defendant VISTA METALS CORP. was the “employer”  
2 of Plaintiffs within the meaning of all applicable California laws and statutes.

3           8.       At all times herein relevant, Defendants VISTA METALS CORP. and DOES 1  
4 through 100, and each of them, were the agents, partners, joint venturers, joint employers,  
5 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each  
6 of the other, and at all times relevant hereto were acting within the course and scope of their  
7 authority as such agents, partners, joint venturers, joint employers, representatives, servants,  
8 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein  
9 were duly committed with the ratification, knowledge, permission, encouragement,  
10 authorization, and consent of each defendant designated herein.

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

19          10.      Defendants VISTA METALS CORP. and DOES 1 through 100 will hereinafter  
20 collectively be referred to as “Defendants.”

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

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**CLASS ACTION ALLEGATIONS**

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

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees of Defendants within the State of California at any time during the period from March 22, 2017<sup>1</sup> to final judgment.

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

15. 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 fifty (50) 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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<sup>1</sup> Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Accordingly, Plaintiffs' claims were tolled during that time period.

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, as demonstrated herein. Plaintiffs have  
4 no interest that is antagonistic to the other class members. Plaintiffs'  
5 attorneys, the proposed class counsel, are versed in the rules governing  
6 class action discovery, certification, and settlement. Plaintiffs have  
7 incurred, and during the pendency of this action will continue to incur,  
8 costs and attorneys' fees, that have been, are, and will be necessarily  
9 expended for the prosecution of this action for the substantial benefit of  
10 each class member.

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

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

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

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

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

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

**GENERAL ALLEGATIONS**

17. 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.

18. Defendants, jointly and severally, employed Plaintiffs as hourly-paid non-exempt employees during the relevant time period, in the State of California, County of San Bernardino.

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

20. 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 the other class members.

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

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

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

24. Plaintiffs are informed and believe, and based thereon allege, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked, missed meal periods, and missed rest breaks in violation of California law.

25. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew or should have known that Plaintiffs and the other class members were entitled to receive certain wages for overtime compensation and that Plaintiffs and the other class members were not receiving wages for overtime compensation.

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1           26.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
2 failed to provide Plaintiffs and the other class members the required rest and meal periods  
3 during the relevant time period as required under the Industrial Welfare Commission Wage  
4 Orders and thus they are entitled to any and all applicable penalties.

5           27.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
6 knew or should have known that Plaintiffs and the other class members were entitled to receive  
7 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs'  
8 and the other class members' regular rate of pay when a meal period was missed, late or  
9 interrupted, and that Plaintiffs and the other class members did not receive all timely and  
10 proper meal periods or payment of one additional hour of pay at their regular rate of pay when  
11 a meal period was missed.

12           28.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
13 knew or should have known that Plaintiffs and other class members were entitled to receive all  
14 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs'  
15 and the other class members' regular rate of pay when a rest period was missed, late or  
16 interrupted, and that Plaintiffs and the other class members did not receive all rest periods or  
17 payment of one additional hour of pay at their regular rate of pay when a rest period was  
18 missed.

19           29.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
20 knew or should have known that Plaintiffs and the other class members were entitled to receive  
21 at least minimum wages for compensation and that Plaintiffs and the other class members were  
22 not receiving at least minimum wages for all hours worked.

23           30.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
24 knew or should have known that Plaintiffs and the other class members were entitled to receive  
25 the wages owed to them upon discharge or resignation, including overtime and minimum  
26 wages and meal and rest period premiums, and that Plaintiffs and the other class members did  
27 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

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1           31.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
2 knew or should have known that Plaintiffs and the other class members were entitled to receive  
3 complete and accurate wage statements in accordance with California law, but, in fact,  
4 Plaintiffs and the other class members did not receive complete and accurate wage statements  
5 from Defendants. The deficiencies included, inter alia, the failure to include the total number  
6 of hours worked by Plaintiffs and the other class members.

7           32.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
8 knew or should have known that Plaintiffs and the other class members were entitled to  
9 reimbursement for necessary business-related expenses.

10          33.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
11 knew or should have known that Defendants had to keep complete and accurate payroll records  
12 for Plaintiffs and the other class members in accordance with California law, but, in fact, did  
13 not keep complete and accurate payroll records for Plaintiffs and the other class members.

14          34.     Plaintiffs are informed and believe, and based thereon allege, that Defendants  
15 knew or should have known that they had a duty to compensate Plaintiffs and the other class  
16 members pursuant to California law, and that Defendants had the financial ability to pay such  
17 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely  
18 represented to Plaintiffs and the other class members that they were properly denied wages, all  
19 in order to increase Defendants' profits.

20          35.     During the relevant time period set forth herein, Defendants failed to pay  
21 overtime wages to Plaintiffs and the other class members for all hours worked. Plaintiffs and  
22 other class members were required to work more than eight (8) hours per day and/or forty (40)  
23 hours per week without overtime compensation.

24          36.     During the relevant time period set forth herein, Defendants failed to provide the  
25 requisite uninterrupted and timely meal and rest periods to Plaintiffs and the other class  
26 members.

27          37.     During the relevant time period set forth herein, Defendants failed to pay  
28 Plaintiffs and the other class members at least minimum wages for all hours worked.

38. During the relevant time period set forth herein, Defendants failed to pay Plaintiffs and the other class members the wages owed to them upon discharge or resignation.

39. During the relevant time period set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiffs and the other class members.

40. During the relevant time period set forth herein, Defendants failed to keep complete or accurate payroll records for Plaintiffs and the other class members.

41. During the relevant time period set forth herein, Defendants failed to properly compensate Plaintiffs and the other class members pursuant to California law in order to increase Defendants' profits.

42. California Labor Code section 218 states that 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)**

(By ROBERT MULDREW Against VISTA METALS CORP. and DOES 1 through 100)

43. Plaintiff Muldrew incorporates by reference the allegations contained in Paragraphs 1 through 42, and each and every part thereof with the same force and effect as though fully set forth herein.

44. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that 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.

45. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff Muldrew and the 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.

46. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff Muldrew and the 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.

47. California 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.

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

49. During the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff Muldrew and the other class members.

50. Defendants' failure to pay Plaintiff Muldrew and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

51. Pursuant to California Labor Code section 1194, Plaintiff Muldrew and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

## SECOND CAUSE OF ACTION

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

(By ROBERT MULDREW Against VISTA METALS CORP. and DOES 1 through 100)

52. Plaintiff Muldrew incorporates 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.

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1           53.     During the relevant time period set forth herein, the IWC Order and California  
2 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff Muldrew's and the other  
3 class members' employment by Defendants.

4           54.     During the relevant time period set forth herein, California Labor Code section  
5 226.7 provides that no employer shall require an employee to work during any meal or rest  
6 period mandated by an applicable order of the California IWC.

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

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

20           57.     During the relevant time period set forth herein, Plaintiff Muldrew and the other  
21 class members who were scheduled to work for a period of time no longer than six (6) hours,  
22 and who did not waive their legally-mandated meal periods by mutual consent, were required  
23 to work for periods longer than five (5) hours without an uninterrupted meal period of not less  
24 than thirty (30) minutes and/or without a rest period.

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1           58.     During the relevant time period set forth herein, Plaintiff Muldrew and the other  
2 class members who were scheduled to work for a period of time no longer than twelve (12)  
3 hours, and who did not waive their legally-mandated meal periods by mutual consent, were  
4 required to work for periods longer than ten (10) hours without an uninterrupted meal period of  
5 not less than thirty (30) minutes and/or without a rest period.

6           59.     During the relevant time period set forth herein, Plaintiff Muldrew and the other  
7 class members who were scheduled to work for a period of time in excess of six (6) hours were  
8 required to work for periods longer than five (5) hours without an uninterrupted meal period of  
9 not less than thirty (30) minutes and/or without a rest period.

10          60.     During the relevant time period set forth herein, Plaintiff Muldrew and the other  
11 class members who were scheduled to work for a period of time in excess of twelve (12) hours  
12 were required to work for periods longer than ten (10) hours without an uninterrupted meal  
13 period of not less than thirty (30) minutes and/or without a rest period.

14          61.     During the relevant time period set forth herein, Defendants intentionally and  
15 willfully required Plaintiff Muldrew and the other class members to work during meal periods  
16 and failed to compensate Plaintiff Muldrew and the other class members the full meal period  
17 premium for work performed during meal periods.

18          62.     During the relevant time period set forth herein, Defendants failed to pay  
19 Plaintiff Muldrew and the other class members the full meal period premium due pursuant to  
20 California Labor Code section 226.7.

21          63.     Defendants' conduct violates applicable IWC Wage Order and California Labor  
22 Code sections 226.7 and 512(a).

23          64.     Pursuant to the applicable IWC Wage Order and California Labor Code section  
24 226.7(b), Plaintiff Muldrew and the other class members are entitled to recover from  
25 Defendants one additional hour of pay at the employee's regular rate of compensation for each  
26 workday that the meal or rest period is not provided.

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1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.7)**

3 **(By ROBERT MULDREW Against VISTA METALS CORP. and DOES 1 through 100)**

4 65. Plaintiff Muldrew incorporates by reference the allegations contained in  
5 paragraphs 1 through 64, and each and every part thereof with the same force and effect as  
6 though fully set forth herein.

7 66. During the relevant time period set forth herein, the applicable IWC Wage  
8 Order and California Labor Code section 226.7 were applicable to Plaintiff Muldrew's and the  
9 other class members' employment by Defendants.

10 67. During the relevant time period set forth herein, California Labor Code section  
11 226.7 provides that no employer shall require an employee to work during any rest period  
12 mandated by an applicable order of the California IWC.

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

19 69. During the relevant time period set forth herein, Defendants required Plaintiff  
20 Muldrew and the other class members to work four (4) or more hours without authorizing or  
21 permitting a ten (10) minute rest period per each four (4) hour period worked.

22 70. During the relevant time period set forth herein, Defendants willfully required  
23 Plaintiff Muldrew and the other class members to work during rest periods and failed to pay  
24 Plaintiff Muldrew and the other class members the full rest period premium for work  
25 performed during rest periods.

26 71. During the relevant time period set forth herein, Defendants failed to pay  
27 Plaintiff Muldrew and the other class members the full rest period premium due pursuant to  
28 California Labor Code section 226.7.

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

73. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff Muldrew 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 that the rest period was not provided.

#### **FOURTH CAUSE OF ACTION**

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

**(By ROBERT MULDREW Against VISTA METALS CORP. and DOES 1 through 100)**

74. Plaintiff Muldrew incorporates by reference the allegations contained in paragraphs 1 through 73 and each and every part thereof with the same force and effect as though fully set forth herein.

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

76. During the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff Muldrew and the other class members as required, pursuant to California Labor Code sections 1194 and 1197.

77. Defendants' failure to pay Plaintiff Muldrew and the other class members the minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiff Muldrew 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.

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

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1 **FIFTH CAUSE OF ACTION**

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

3 **(By ROBERT MULDREW Against VISTA METALS CORP. and DOES 1 through 100)**

4 79. Plaintiff Muldrew incorporates by reference the allegations contained in  
5 paragraphs 1 through 78, and each and every part thereof with the same force and effect as  
6 though fully set forth herein.

7 80. During the relevant time period set forth herein, California Labor Code sections  
8 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid  
9 at the time of discharge are due and payable immediately, and if an employee quits his or her  
10 employment, his or her wages shall become due and payable not later than seventy-two (72)  
11 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her  
12 intention to quit, in which case the employee is entitled to his or her wages at the time of  
13 quitting.

14 81. During the relevant time period set forth herein, Defendants intentionally and  
15 willfully failed to pay Plaintiff Muldrew and the other class members who are no longer  
16 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of  
17 their leaving Defendants' employ.

18 82. Defendants' failure to pay Plaintiff Muldrew and the other class members who  
19 are no longer employed by Defendants their wages, earned and unpaid, within seventy-two  
20 (72) hours of their leaving Defendants' employ, is in violation of California Labor Code  
21 sections 201 and 202.

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

26 84. Plaintiff Muldrew and the other class members are entitled to recover from  
27 Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30)  
28 day maximum as provided by Labor Code section 203.



1 **SIXTH CAUSE OF ACTION**

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

3 **(By ROBERT MULDREW Against VISTA METALS CORP. and DOES 1 through 100)**

4 85. Plaintiff Muldrew incorporates by reference the allegations contained in  
5 paragraphs 1 through 84, and each and every part thereof with the same force and effect as  
6 though fully set forth herein.

7 86. During the relevant time period set forth herein, California Labor Code section  
8 226(a) provides that every employer shall furnish each of his or her employees an accurate  
9 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the  
10 employee, (3) the number of piece-rate units earned and any applicable piece rate if the  
11 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on  
12 written orders of the employee may be aggregated and shown as one item, (5) net wages  
13 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the  
14 employee and his or her social security number, (8) the name and address of the legal entity  
15 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the  
16 corresponding number of hours worked at each hourly rate by the employee. The deductions  
17 made from payments of wages shall be recorded in ink or other indelible form, properly dated,  
18 showing the month, day, and year, and a copy of the statement or a record of the deductions  
19 shall be kept on file by the employer for at least three years at the place of employment or at a  
20 central location within the State of California.

21 87. Defendants have intentionally and willfully failed to provide Plaintiff Muldrew  
22 and the other class members with complete and accurate wage statements. The deficiencies  
23 include but are not limited to: the failure to include the total number of hours worked by  
24 Plaintiff Muldrew and other class members.

25 88. As a result of Defendants' violation of California Labor Code section 226(a),  
26 Plaintiff Muldrew and the other class members have suffered injury and damage to their  
27 statutorily protected rights.

28 ///

1 89. More specifically, Plaintiff Muldrew and the other class members have been  
2 injured by Defendants' intentional and willful violation of California Labor Code section  
3 226(a) because they were denied both their legal right to receive, and their protected interest in  
4 receiving, accurate and itemized wage statements pursuant to California Labor Code section  
5 226(a).

6 90. Plaintiff Muldrew and the other class members are entitled to recover from  
7 Defendants the greater of their actual damages caused by Defendants' failure to comply with  
8 California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand  
9 dollars per employee.

10 91. Plaintiff Muldrew and the other class members are also entitled to injunctive  
11 relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

12 **SEVENTH CAUSE OF ACTION**

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

14 **(By ROBERT MULDREW Against VISTA METALS CORP. and DOES 1 through 100)**

15 92. Plaintiff Muldrew incorporates by reference the allegations contained in  
16 paragraphs 1 through 91, and each and every part thereof with the same force and effect as  
17 though fully set forth herein.

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

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

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1 **EIGHTH CAUSE OF ACTION**

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

3 **(By CRISTIAN CHOLICO Against VISTA METALS CORP. and DOES 1 through 100)**

4 95. Plaintiff Cholico incorporates by reference the allegations contained in  
5 paragraphs 1 through 94, and each and every part thereof with the same force and effect as  
6 though fully set forth herein.

7 96. Defendants' conduct, as alleged herein, has been, and continues to be unfair,  
8 unlawful and harmful to Plaintiff Cholico, other class members, to the general public, and  
9 Defendants' competitors. Accordingly, Plaintiff Cholico seeks to enforce important rights  
10 affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

11 97. Defendants' activities as alleged herein are violations of California law, and  
12 constitute unlawful business acts and practices in violation of California Business &  
13 Professions Code section 17200, *et seq.*

14 98. A violation of California Business & Professions Code section 17200, *et seq.*  
15 may be predicated on the violation of any state or federal law. In this instant case, Defendants'  
16 policy and practice of requiring Plaintiff Cholico and the other class members work overtime  
17 hours without paying them proper compensation violate California Labor Code sections 510  
18 and 1198. Additionally, Defendants' policy and practice of requiring Plaintiff Cholico and the  
19 other class members, to work through their meal and rest periods without paying them proper  
20 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'  
21 policy and practice of failing to timely pay wages to Plaintiff Cholico and the other class  
22 members violate California Labor Code sections 201 and 202. Defendants also violated  
23 California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

24 99. As a result of the herein described violations of California law, Defendants  
25 unlawfully gained an unfair advantage over other businesses.

26 100. Plaintiff Cholico and the other class members have been personally injured by  
27 Defendants' unlawful business acts and practices as alleged herein, including but not  
28 necessarily limited to the loss of money and/or property.

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

**DEMAND FOR JURY TRIAL**

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

**PRAYER FOR RELIEF**

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

**Class Certification**

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

**As to the First Cause of Action**

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

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

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

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

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

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

3           10.       That the Court declare, adjudge and decree that Defendants violated California  
4 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to  
5 provide all meal periods (including second meal periods) to Plaintiff Muldrew and the other  
6 class members;

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

10          12.       For all actual, consequential, and incidental losses and damages, according to  
11 proof;

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

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

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

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

17                               **As to the Third Cause of Action**

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

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

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

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

27          21.       For pre-judgment interest on any unpaid wages from the date such amounts  
28 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 that Defendants violated California Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff Muldrew 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 California Labor Code section 1194(a);

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

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

**As to the Fifth Cause of Action**

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

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

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

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

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

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

2           34.     That the Court declare, adjudge and decree that Defendants violated the record  
3 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders  
4 as to Plaintiff Muldrew and the other class members, and willfully failed to provide accurate  
5 itemized wage statements thereto;

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

7           36.     For statutory penalties pursuant to California Labor Code section 226(e);

8           37.     For injunctive relief to ensure compliance with this section, pursuant to  
9 California Labor Code section 226(g); and

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

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

12          39.     That the Court declare, adjudge and decree that Defendants violated California  
13 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff Muldrew and the  
14 other class members for all necessary business-related expenses as required by California  
15 Labor Code sections 2800 and 2802;

16          40.     For actual, consequential and incidental losses and damages, according to proof;

17          41.     For the imposition of civil penalties and/or statutory penalties;

18          42.     For punitive damages and/or exemplary damages according to proof at trial;

19          43.     For reasonable attorneys' fees and costs of suit incurred herein; and

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

21                                   **As to the Eighth Cause of Action**

22          45.     That the Court declare, adjudge and decree that Defendants violated California  
23 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff Cholicco  
24 and the other class members all overtime compensation due to them, failing to provide all meal  
25 and rest periods to Plaintiff Cholicco and the other class members, failing to pay at least  
26 minimum wages to Plaintiff Cholicco and the other class members, failing to pay Plaintiff  
27 Cholicco and the other class members' wages timely as required by California Labor Code  
28 section 201, 202.

1           46.     For restitution of unpaid wages to Plaintiff Cholico and the other class members  
2 and all pre-judgment interest from the day such amounts were due and payable;

3           47.     For the appointment of a receiver to receive, manage and distribute any and all  
4 funds disgorged from Defendants and determined to have been wrongfully acquired by  
5 Defendants as a result of violation of California Business and Professions Code sections  
6 17200, *et seq.*;

7           48.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
8 California Code of Civil Procedure section 1021.5;

9           49.     For injunctive relief to ensure compliance with this section, pursuant to  
10 California Business and Professions Code sections 17200, *et seq.*; and

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

12  
13 Dated: July 11, 2022

**JUSTICE LAW CORPORATION**

14  
15  
16 By: 

Douglas Han  
Shunt Tatavos-Gharajeh  
Talía E. Lux  
*Attorneys for Plaintiffs*



**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 jtorrez@justicelawcorp.com

On November 26, 2025, I served the foregoing document described as

**SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES**

for the following case: **Cholico, et al. v. Vista Metals Corp.**  
LWDA/Court Case No.: **LWDA Case No.: CM-894732-22**  
**Court Case No.: CIVSB2126589**  
**San Bernardino 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

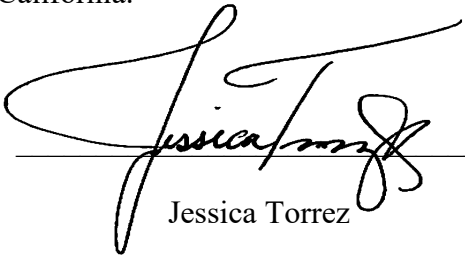
**[X] BY ELECTRONIC SUBMISSION**

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 November 26, 2025, at Pasadena, California.

  
Jessica Torrez