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Attorneys for Plaintiff IGNAIN PEREZ, on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE GONZALEZ, an individual; IGNAIN PEREZ, an individual; ANTONIO SERRANO, an individual; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ROTO-ROOTER SERVICES COMPANY, an Iowa corporation; and DOES 1 to 100, inclusive,

Defendants.

) Case No. 22STCV34334

) [Assigned For All Purposes To The Hon. Stephanie Bowick, Dept. 19]

) **RESERVATION ID #898032856207**

) **DECLARATION OF AARON A. BARTZ IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

) Date: September 12, 2023

) Time: 8:30 a.m.

) Dept: 19

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DECLARATION OF AARON A. BARTZ

I, Aaron A. Bartz, declare:

1. I am an attorney licensed to practice before all courts of the State of California. I am the owner of Bartz Law Group APC, and am Class Counsel for the Plaintiffs Jose Gonzalez and Antonio Serrano and others similarly situated (“Plaintiffs”) herein. I have personal knowledge of the facts herein. If called as a witness, I could and would competently testify to those facts under oath.

2. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement.

INTRODUCTION AND SUMMARY OF LITIGATION

3. This case arises out of wage and hour violations by Defendant Roto-Rooter Services Company (“Defendant”) against its non-exempt commission employees, also known as Service Technicians.

4. Prior to filing this case, Plaintiffs filed and served notice on the Labor and Workforce and Development Agency (LWDA) of the facts and theories underlying the violations, and the specific Labor Code sections that were violated pursuant to the Private Attorneys General Act (PAGA). Attached as **Exhibit 1** hereto is a true and correct copy of Plaintiffs August 17, 2022 PAGA letter.

5. Thereafter, on October 25, 2022, Plaintiffs filed a PAGA Complaint in this Court. Attached as **Exhibit 2** hereto is a true and correct copy of Plaintiffs’ PAGA Complaint.

6. Next, this case was effectively consolidated with a related federal court action, *Ignain Perez v. Roto-Rooter Services Company*, Case No. 22-CV-01508 (“*Perez*”), and pursuant to a Stipulation between the parties, Plaintiffs filed the operative First Amended Complaint on May 17, 2023. Attached as **Exhibit 3** hereto is Plaintiffs’ operative First Amended Complaint.

7. The main thrust of this case is that Defendant failed to pay for non-productive time to its commission-based Service Technicians, and failed to separately compensate the Service Technicians for their rest periods pursuant to the holding in *Vaquero v. Stoneledge Furniture, LLC*, 9 Cal.App.5th 98, 103 (2017). Defendant believes their commission plans are fully compliant with California law, and that a later California Supreme Court case *Oman v. Delta Airlines, Inc.*, 9 Cal.5th 762 (2020) precludes Plaintiffs from recovering anything in this

1 case. Because of the uncertainty of whether *Oman* applies to the facts of this case, it was ripe for
2 a mediated settlement.

3 8. It is also significant that in the related federal court *Perez* action, Defendant filed
4 a motion to compel arbitration based on an existing arbitration agreement, which is substantially
5 similar to arbitration agreements signed by other Service Technicians based on my research and
6 investigation during this case. While the plaintiff in *Perez* managed to defeat the motion to
7 compel arbitration in the trial court, Defendant appealed that decision to the Ninth Circuit. As
8 the Supreme Court recently held in *Coinbase, Inc. v. Bielski*, 599 U.S. ____ (2023), trial courts
9 must stay trial court proceedings during the pendency of interlocutory appeals from a denial of a
10 motion to compel arbitration. Thus, *Perez* was automatically stayed based on that appeal, and if
11 the Ninth Circuit had reversed the trial court's decision on whether the case was arbitrable or not,
12 this class action settlement likely would not have been possible.

13 9. Because of the obstacles presented in this case, there is no doubt that this \$1.5
14 million settlement on behalf of approximately 907 class members is a very good result, and is a
15 tremendous benefit to all class members and aggrieved employees. No amount of the settlement
16 will revert to the Defendant, and after deducting fees, costs, administrative expenses, incentive
17 fees and allocation to the LWDA, the net settlement amount of at least \$867,500 will be shared
18 pro rata amongst all class members. This amount is, on average, over \$950 per class member, an
19 outstanding result.

20 ATTORNEY COMPETENCE IN CLASS ACTIONS

21 10. I am experienced class action counsel, including specializing in wage and hour
22 and employment claims. Some of the class action litigation on which I have served as Class
23 Counsel include:

- 24 a. *Wilkins, et al. v. Equinox Holdings, Inc.*
25 Los Angeles Superior Court, No.: BC440058
- 26 b. *TBC Retail Group Wage and Hour Cases*
27 Los Angeles Superior Court, No.: JCCP No. 4701
- 28 c. *Cassery v. Randstad US, L.P., et al.*
U.S.D.C., Central District of California, No. SACV 12-1023-DOC(ANx)
- d. *Crilly v. Micro Electronics, Inc.*

- 1 Orange County Superior Court, No.: 30-2013-00662586-CU-OE-CXC
- 2 e. *Concho, et al. v. Pipeline Carriers, Inc. et al.*
- 3 Orange County Superior Court, No.:30:2013-00649600-DU-OE-CXC
- 4 f. *Holsted et al. v. R.J. Noble Company et. al.*
- 5 Orange County Superior Court, No.:30:2010-00379770-CU-OE-CXC
- 6 g. *Piggue v. Chief Protective Services, Inc.*
- 7 Orange County Superior Court, No.:30-2013-00688107-CU-OE-CXC
- 8 h. *Walsh v. Pacific Bell Telephone Company*
- 9 Orange County Superior Court, No.:30-2011-00498062-CU-OE-CXC
- 10 i. *Woods v. JFK Memorial Hospital*
- 11 Riverside County Superior Court, No.: INC 1205209
- 12 j. *Ramirez et. al v. Titan Insurance of New Mexico*
- 13 Riverside County Superior Court, No.: RIC1211890
- 14 k. *Duran v. Big 5 Corp.*
- 15 Los Angeles Superior Court, Case No. BC557154
- 16 l. *Sheahan v. Celtic Leasing Corporation, Inc.*
- 17 Orange County Superior Court No.: 30-2016-00852151-CU-OE-CXC
- 18 m. *Panasis v. Control4 Corporation*
- 19 United States District Court, Central District of California
- 20 Case No. SACV-16-1179-DOC
- 21 n. *O&R Construction, LLC v. Dun & Bradstreet, et al.*
- 22 United States District Court, Western District of Washington
- 23 Case No. C12-2184 TSZ
- 24 o. *Matthews v. Whelan Security of California, Inc.*
- 25 Orange County Superior Court, No.: 30-2016-00833250-CU-OE-CXC
- 26 p. *Rodriguez v. R.J. Noble Company (Navarro/Kles),*
- 27 Orange County Superior Court, No.: 30-2017-00916018-CU-OE-CXC
- 28 q. *Wang v. Fountain Valley Regional Hospital*
- Orange County Superior Court, No. 30-2015-00821329-CU-OE-CXC
- r. *Roark v. Sutter Bay Hospitals*

11. I graduated from Vanderbilt University in 1992 with a Bachelor of Arts in Economics and English, and graduated from Southwestern Law School in 1998. Since becoming a lawyer in 1998, my practice has focused on complex litigation matters, and for more than a decade, complex employment law and wage and hour matters.

12. I am a member of the California State Bar, the Orange County Bar Association, Los Angeles County Bar Association, and California Employment Lawyers Association. I have an AV rating from Martindale-Hubbell, the highest possible rating for a lawyer. During my 25+ year career, I have handled many successful employment law matters both at the trial and appellate levels. I estimate that I have represented plaintiffs in over 100 different employment cases, the vast majority of which have resulted in favorable settlements, awards and/or verdicts for my clients. I have successfully prosecuted and obtained significant recoveries in many class action lawsuits and other lawsuits involving complex legal and factual issues. In 2015, I was co-lead counsel in *Walsh v. Pacific Bell*, which settled for \$16,800,000. I also served as co-class counsel in the above-referenced *Wilkins* case which settled for \$5,500,000 and the above-referenced *Casserly* case which settled for \$4,900,000. I also was co-class counsel in the above-described *Holsted v. RJ Noble*, which my firm settled on behalf of 66 class members for \$1,900,000. I have also been involved in many other million and multi-million dollar verdicts and settlements over the years.

CLASS ENHANCEMENTS AND ATTORNEYS' FEES, COSTS AND EXPENSES

13. Plaintiffs have assisted Class Counsel in their investigation by connecting Class Counsel to other individuals who were employed by Defendant, and by corresponding with Class Counsel to answer questions about their employment. Plaintiffs also spent many hours conferring with Class Counsel both prior to and after initiating this litigation, assisted Class Counsel with reviewing Defendant's informal discovery, assisted in the preparation for mediation, and have produced payroll and other employment records to assist Class Counsel in pursuing the claims in this case.

14. In addition, Plaintiffs are releasing all claims, not just wage and hour claims, as part of their releases in this case. As such, Plaintiffs' release includes a waiver of unknown claims and their rights under California Civil Code § 1542.

15. Based on the above, and the Declarations of the Class Representatives filed concurrently, the requested service payments of \$15,000 for each of the named Plaintiffs are appropriate and justified.

16. Plaintiffs also intend to request attorneys' fees not to exceed one-third of the settlement, and reimbursement of costs not to exceed \$25,000. Plaintiffs' attorneys have achieved an excellent result, and believe that the percentage requested is fair and appropriate in this case, and all of the costs requested assisted in the prosecution of this case. Plaintiffs will submit detailed declarations and attorneys' bills and costs with their motion for final approval.

17. Concurrently with the filing of this Motion, Plaintiffs have also transmitted all papers filed with this Court to the Labor Workforce and Development Agency/Department of Industrial Relations, by online submission, at its website located at <https://dir.tfaforms.net/315>.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on July 5, 2023, at Irvine, California.

//Aaron A. Bartz//

Aaron A. Bartz

EXHIBIT 1

BARTZ LAW GROUP, APC

5151 California Ave., Suite 100

Irvine, California 92617

(949) 504-4413

August 17, 2022

Notice Via Online Submission

PAGA Administrator
California Labor and Workforce Development Agency

Via Certified Mail (Return Receipt Requested)

Roto-Rooter Services Company
c/o CSC-Lawyers Incorporating Service
Agent For Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: *Amended PAGA Letter - Jose Gonzalez v. Roto-Rooter Services Company*

Dear PAGA Administrator:

Please be advised that the law firm of Bartz Law Group, APC represents Jose Gonzalez and all other similarly situated aggrieved employees ("Plaintiffs") with respect to their employment with Roto-Rooter Services Company ("Employer" or "Roto-Rooter").

The Employer has committed numerous violations of the California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 226, 226.7, 432.5, 510, 512, 1174, 1194, 1198, 1198.5, and 2802. The facts and theories to support the alleged violations are set forth herein.

Employer provides plumbing repair, sewer and drain services, and water damage cleanup services to residential and commercial customers throughout California. Plaintiff Gonzalez has been employed as a service technician for Roto-Rooter between 2019 and March 2022. Plaintiffs worked for Roto-Rooter in California within the last year, and were subject to the same wage and hour violations as Plaintiff Gonzalez.

A. Failure to Pay All Wages

Employer has regularly failed to pay Plaintiff Gonzalez and all other aggrieved employees all wages that they are owed, including minimum wages and overtime compensation, based upon Employer's policy and practice of not paying for all hours worked. For example, Employer requires Plaintiff to call in and report for work, but then fails to compensate Plaintiffs for reporting time pay

as required under the California Labor Code and Wage Orders. Specifically, Plaintiffs should have been paid between 2-4 hours for reporting time pay whenever Plaintiffs call in to report for jobs. Roto-Rooter fails to pay any compensation for such reporting time, resulting in unpaid compensation, including but not limited to minimum wage and overtime compensation pursuant to Labor Code §§ 510 and 1194.

Roto-Rooter further fails to pay Plaintiffs all compensation owed because Plaintiffs are subject to commission plans, but Employer fails to pay for all non-productive time, including but not limited to travel between jobs and maintaining Plaintiffs' vehicles. Moreover, Roto-Rooter requires, among other things, that Plaintiffs use their own tools and/or such tools are necessary for the performance of Plaintiffs' job, and as such, Plaintiffs must be paid at least twice the minimum wage. Roto-Rooter, however, under its commission compensation plans, regularly pays Plaintiffs far less than that amount.

Labor Code § 204(a) provides in pertinent part that "[a]ll wages, other than those mentioned in [Labor Code] Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

Pursuant to Labor Code § 204(b)(1), moreover, "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." Here, Employer did not pay Plaintiffs' all wages owed in a timely manner, based on the allegations above, thereby violating Labor Code § 204.

B. Meal Breaks

Employer adopted, implemented and enforced uniform meal period policies that are not lawful under California law. Employer is required to provide a first meal period no later than the end of the 5th hour of work, and a second meal period no later than the end of the 10th hour of work. Because of the nature of jobs assigned to Plaintiffs, their meal periods often were late, missed, or short, because Plaintiffs were required to complete their jobs before taking their required meal period. Moreover, Plaintiffs frequently have to work through their meal periods, and even when getting their meal period, Plaintiffs are often interrupted and/or otherwise meal periods are taken while Plaintiffs are still attending to a job, and as such, the meal periods are not duty-free.

Employer has also failed to pay Plaintiffs one hour of pay at their regular rate of pay for each workday that a compliant meal period was not provided. As such, Employer has violated Labor Code §§ 226.7 and 512.

C. Rest Breaks

Employer failed to adopt, implement, or enforce a rest break policy that complied with California law. Plaintiff Gonzalez and all other aggrieved employees are subject to commission plans, but such commission plans do not separately compensate Plaintiffs for their rest periods. As such, Roto-Rooter fails to account for such rest periods, which are effectively uncompensated. Thus, Roto-Rooter's compensation system runs afoul of California law, including but not limited to the holdings in *Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864, 871-872 (2013) and *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98, 110-111 (2017). Employer therefore failed to authorize and permit Plaintiffs to take duty-free rest periods of 10 minutes for every four hours worked or major fraction thereof, failed to provide a second duty-free rest period of 10 minutes for shifts between 6-10 hours and failed to provide a third duty-free rest period of 10 minutes for shifts

in excess of 10 hours. As a result of Employer's lack of a rest break policy that complies with California law, Employer has violated Labor Code section 226.7.

Employer also failed to pay Plaintiff Gonzalez or the other aggrieved employees' one hour of pay at their regular rate of pay for each workday that a compliant rest period was not authorized or permitted. As such, Employer has violated Labor Code §§ 226.7 and 512.

D. Failure to Reimburse Expenses

Employer also failed to reimburse Plaintiff Gonzalez and the Plaintiffs for all of their necessary and reasonable expenses incurred on behalf of Employer. For example and without limitation, Plaintiffs incurred expenses for using their own equipment for work business, Plaintiffs were required to use their personal cell phones for company business, but Employer fails and refuses to reimburse Plaintiffs for the costs to maintain and service such equipment and/or fails to reimburse Plaintiffs for the usage of their personal cell phones while attending to work matters.

E. Wage Statement Violations

In conjunction with the above-referenced violations, Employer willfully failed to provide properly itemized wage statements to Plaintiffs pursuant to Labor Code section 226. Violations include, but are not limited to: an inaccurate showing of wages due and owing, failing to include gross wages earned as a result of not showing meal and rest period premium payments on Plaintiffs' paystubs, failing to show all hourly rates in effect and the corresponding number of hours at each hourly rate, failing to identify the name of the legal entity that is the employer, failing to show the inclusive dates of the period for which the employee is paid, and failing to maintain accurate payroll and itemized wage statements. The failure to provide accurate itemized wage statements violates Labor Code § 226 and 1174.

F. Waiting Time Penalties

Employer willfully failed and refused to timely pay all compensation due and owing to Plaintiffs whose employment was terminated during the relevant time period, by failing to pay overtime, straight time and minimum wages for all hours worked, failing to pay Plaintiffs for time worked during meal and rest periods, and failing to pay Plaintiffs for an extra hour at the regular rate of pay because Employer failed to provide compliant meal and rest periods. As such, Employer is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§ 201, 202, and 203.

G. Illegal Non-Compete Agreement

Employer required Plaintiff Gonzalez and all other aggrieved employees to sign a Non-Compete Agreement restricting Plaintiffs' ability to work one year after their employment terminates. Business and Professions Code section 16600 voids any such agreements, but Plaintiffs have been subject to these illegal agreements, thus affecting their employment mobility and their ability to earn a fair wage. Employer knew such agreements were prohibited under California law, yet required Plaintiffs to sign them anyway, in violation of California law, including but not limited to Labor Code section 432.5.

CONCLUSION

Pursuant to Labor Code Section 2699.3, the undersigned, on behalf of Plaintiff Jose Gonzalez and other aggrieved employees, is providing written notice of the alleged Labor Code violations. Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Plaintiffs intend to pursue their claims under PAGA in a representative action lawsuit. Please also

consider this letter as providing notice on behalf of other similarly aggrieved employees working for Employer, that were subject to the same Labor Code violations described above.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned.

Very truly yours,

BARTZ LAW GROUP, APC

/s/ Aaron A. Bartz
Aaron A. Bartz

EXHIBIT 2

Aaron A. Bartz (SBN 198722)
 BARTZ LAW GROUP, APC
 5151 California Ave., Suite 100
 Irvine, California 92617
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Attorneys for Plaintiff JOSE GONZALEZ, on behalf of himself and other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE GONZALEZ, on behalf of
 himself and other aggrieved employees,

Plaintiffs,

vs.

ROTO-ROOTER SERVICES
 COMPANY, an Iowa corporation; and
 DOES 1 through 100, inclusive,

Defendants.

CASE NO. 22STCV34334

**COMPLAINT FOR CIVIL PENALTIES
 UNDER THE PRIVATE ATTORNEYS
 GENERAL ACT ("PAGA") [California
 Labor Code §§2698, et seq.]**

DEMAND FOR JURY TRIAL

Plaintiff JOSE GONZALEZ ("Gonzalez"), on behalf of himself and all other aggrieved employees (hereinafter collectively "Plaintiffs"), and as private attorneys general, hereby assert representative claims against Defendant ROTO-ROOTER SERVICES COMPANY ("Roto-Rooter"), and DOES 1 through 100 (hereinafter collectively "Defendants"), and hereby complain and allege as follows:

I. INTRODUCTION

1. This lawsuit is directed at Defendants' California state law violations of wage and hour laws -- it is a representative action seeking recovery of civil penalties under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") §§2698, et seq. PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on

1 behalf of themselves and other aggrieved current and former employees to recover civil penalties
2 for Defendant's violations of the Labor Code, including, but not limited to Labor Code §§201,
3 202, 203, 204, 226, 226.7, 432.5, 510, 512, 1174, 1194, 1198, 1198.5, 2699, 2802, and all
4 applicable Industrial Welfare Commission ("IWC") Orders.

5 2. This action is brought as a representative action on behalf of all current and
6 former aggrieved employees who were employed by Defendants in California and who work or
7 worked as non-exempt hourly employees during the applicable time period and who were subject
8 to Defendants' meal period policy, rest period policy, compensation policy, overtime policy,
9 final payment of wages policy, and related wage and hour policies and/or practices.

10 3. As set forth in detail below, Defendants consistently implemented, maintained
11 and enforced unlawful policies and practices regarding Plaintiffs in violation of California's
12 wage and hour laws, which led to Defendants' violations of Labor Code §§ 201-204, 226, 226.7,
13 432.5, 510, 512, 1174, 1194, 1198, 2698, et seq. and IWC Wage Orders to Defendants': (1)
14 failure to pay all wages, including minimum wages, straight time wages, and overtime
15 compensation; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods
16 or provide compensation in lieu thereof; (4) failure to timely pay all wages owed; (5) failure to
17 properly maintain and submit accurate itemized wage statements; (6) failure to reimburse
18 expenses; (7) waiting time penalties; (8) illegal non-compete agreements. Such policies and
19 practices, and illegal agreements, as described herein, violate the Labor Code, and trigger civil
20 penalties under Labor Code §2699. Therefore, Plaintiffs, on behalf of themselves and all
21 aggrieved employees, bring this representative PAGA action pursuant to the provisions of the
22 Labor Code as referenced herein. Plaintiffs seek recovery of civil penalties, reasonable
23 attorney's fees and costs, and other relief as deemed proper.

24 4. The acts complained of herein occurred, occur and will occur, at least in part,
25 within the statute of limitations under the PAGA statute, or within the statute of limitations of
26 any other Complaint or other filing which has tolled the claims asserted herein, up to and through
27 the time of trial for this matter.
28

II. THE PARTIES

5. Plaintiff Gonzalez is, and was at all relevant times mentioned herein, an individual residing within the State of California. Plaintiff Gonzalez worked for Defendants as a service technician between 2019 and 2022.

6. Defendant Roto-Rooter is and has been, at all relevant times herein, a corporation organized and existing under the laws of the State of Iowa, and doing business within the County of Los Angeles, in the State of California.

7. Defendants DOES 1 through 100, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend their complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe, and based thereon allege that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged and that Plaintiffs' damages as herein alleged were proximately caused by those Defendants.

8. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuit of a joint venture, partnership and common enterprise.

10. Each reference in this complaint to "Defendant," "Defendants," or a specifically named Defendant refers also to all Defendants sued under fictitious names.

11. Plaintiffs are informed and believe, and thereon allege that at all relevant times herein, Defendants maintained offices, employed persons, conducted business in, and/or engaged in illegal employment practices and policies in the State of California, County of Los Angeles.

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13. The California Superior Court also has jurisdiction in this matter because both the relief sought herein exceeds the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

15. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiffs herein were all California citizens and Defendants have owned and operated offices within California. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

16. Venue in Los Angeles County is proper in this matter as Defendants' liabilities and obligations arose in Los Angeles County, including Defendants' statutory obligations to pay Plaintiffs wages for all hours worked, overtime wages, straight time wages, minimum wages, timely wages upon termination and/or resignation, provide legally compliant meal and rest periods, maintain and submit accurate wage statements, and other obligations as described herein.

17. Defendants own and operate plumbing repair, sewer and drain services, and water damage cleanup services to residential and commercial customers in California, including in the City and County of Los Angeles. This case arises out of Defendants' failure to comply with California's wage and hour laws.

19. During Plaintiffs' employment, Defendants have failed to pay Plaintiffs and other

1 aggrieved employees the proper amount of straight time and overtime wages. Defendants have
2 violated various sections of the Labor Code, including §§510 and 1194, by failing to provide
3 Plaintiffs overtime compensation for work over 8 hours in a day and/or 40 hours in a week,
4 because, among other things, Plaintiffs must call in and report for work, but Defendants fail to
5 pay Plaintiffs for such on-call and reporting time. Moreover, Defendants fail to pay for all of
6 Plaintiffs' non-productive time, including but not limited to travel between jobs and maintaining
7 Plaintiffs' vehicles. Defendants further require Plaintiffs to use their own tools and/or such tools
8 are necessary for the performance of Plaintiffs' job duties, and as such, Plaintiffs must be paid at
9 least twice the minimum wage, but Defendants often pay far less than that amount.

10 20. Defendants also fail to provide Plaintiffs with meal and rest periods under
11 California law. Defendants failed to adopt, implement, and enforce a uniform meal period policy
12 that complied with California law. For example, Defendants required Plaintiffs to take meal
13 periods after they worked for more than five hours, and Defendants failed to provide Plaintiffs
14 with their full 30 minute duty-free meal period based on numerous factors, including but not
15 limited to the fact that the amount of work required of Plaintiffs by Defendants necessitated that
16 Plaintiffs take their meal periods late, return early from their meal periods, and/or interrupt their
17 meal periods. Moreover, as a matter of policy and/or practice, Defendants failed to pay Plaintiffs
18 one hour of pay at their regular rate of pay for each workday that a 30 minute duty-free meal
19 period was not provided. Defendants also failed to keep accurate records of meal breaks taken by
20 Plaintiffs in violation of Labor Code §1174 and the applicable IWC Wage Orders.

21 21. Defendants also failed to adopt, implement, and enforce a uniform rest period
22 policy that complied with California law. Defendants failed to authorize and permit Plaintiffs to
23 take duty free rest periods of 10 minutes for every four hours worked or major fraction thereof,
24 by requiring Plaintiffs to regularly work through their rest periods to complete their duties, and
25 failing and refusing to provide a rest period for any hours in excess of 10 per day. Moreover,
26 Defendants fail to account for any rest periods under their purported commission plans, thus
27 running afoul of the holdings in *Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864, 871-872 (2013)
28 and *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98, 110-111 (2017). As a result of

1 Defendants' lack of any meal or rest break policy that complies with California law, Defendants
2 have violated Labor Code §§512 and 226.7 and the applicable IWC Wage Orders, among other
3 things.

4 22. Defendants also, as a condition of employment, require Plaintiffs to sign illegal
5 non-compete agreements in violation of Labor Code § 432.5 and Business and Professions Code
6 § 16600.

7 23. Defendants also willfully failed to provide properly itemized wage statements to
8 Plaintiffs pursuant to Labor Code §226. Defendants, for example, fail to identify the correct
9 hours and rates of pay for hours worked for Defendants, including but not limited to violations of
10 Labor Code § 226(a)(9) by not setting forth “all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate.” Defendants also
12 violate Labor Code §§ 226(a)(1) and 226(a)(5) by failing to correctly state the total net and gross
13 wages earned by failing to itemize meal and rest period premium payments, among other things.
14 Defendants also violate Labor Code § 226(a)(4) by failing to itemize all deductions on the wage
15 statement, and Labor Code § 226(a)(8) by failing to state the name and address of the legal entity
16 of Plaintiffs’ employer. The failure to provide accurate itemized wage statements violates Labor
17 Code §§226, 2699, et seq., and IWC Wage Orders.

18 24. Defendants willfully failed and refused to timely pay all compensation due and
19 owing to Plaintiffs whose employment was terminated during the relevant time period, by failing
20 to pay all of Plaintiff’s compensation due upon termination by failing and refusing to pay
21 overtime and straight time wages, failing to pay Plaintiffs for time worked during meal and rest
22 periods, failing to pay Plaintiffs for an extra hour because Defendants failed to provide compliant
23 meal and rest periods and/or to pay for such meal and rest period premiums at the regular rate of
24 pay, and by Defendants’ other unlawful actions as described herein. As such, Defendants are
25 liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code
26 §§201, 202, and 203.

27 **VI. PRIVATE ATTORNEYS GENERAL ACT CLAIM**

28 25. On or about August 17, 2022, Plaintiffs provided written notice via certified mail

1 to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
2 provisions of the Labor Code alleged to have been violated, including the facts and theories to
3 support the alleged violations.

4 26. The LWDA failed to respond to Plaintiffs’ counsel’s correspondence dated
5 August 17, 2022 and failed to notify Plaintiffs’ counsel as to whether it would investigate the
6 allegations contained therein, within 65 calendar days of the postmark date of Plaintiff
7 correspondence as required under Labor Code §2699.3. Plaintiffs have fully complied with the
8 notice requirements set forth in Labor Code §2699.3 in order to commence a civil action against
9 an employer pursuant to Labor Code §2699.

10 27. Defendants’ failure to pay Plaintiffs for all hours worked, minimum wages,
11 overtime compensation, failure to provide meal periods, failure to authorize and permit rest
12 periods, failure to pay all wages upon termination or resignation, unlawful deductions, and
13 failure to provide accurate itemized wage statements, will subject Defendants to civil penalties
14 pursuant to, without limitation, Labor Code §§ 210, 226.3, 256, 558, 1174.5, 1197.1, 1198, 2699
15 and the IWC Wage Orders.

16 28. Plaintiffs are aggrieved employees as defined in Labor Code §§2699(a) and (c),
17 and related Labor Code provisions. Plaintiffs bring the causes of action below on behalf of
18 themselves, as private attorneys general, and in a representative capacity on behalf of other
19 aggrieved employees, affected by the labor law violations alleged herein.

20 **A. FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION**

21 29. Labor Code §1194 states that any employee receiving less than the legal
22 minimum wage or the legal overtime compensation applicable to the employee is entitled to
23 recover the unpaid balance of the full amount of this minimum wage or overtime compensation,
24 including interest thereon, reasonable attorney’s fees, and costs of suit.

25 30. Labor Code §1197 states that the minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
27 than the minimum so fixed is unlawful.

28 31. Labor Code §510(a) and IWC Wage Orders regulating payment of wages in the

1 state of California, provide that eight (8) hours of labor constitutes a day's work and any work in
2 excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any
3 one workweek shall be compensated at the rate of no less than one and one-half times the regular
4 rate of pay for each employee and any work in excess of twelve (12) hours in any one workday
5 shall be compensated at the rate of no less than twice the regular rate of pay for each employee.

6 32. At all relevant times, Defendants required Plaintiffs to perform work without
7 compensation in violation of the IWC Wage Orders and the Labor Code. Specifically, Plaintiffs
8 were not paid for all of their hours worked, in that Defendants failed to pay non-exempt hourly
9 workers such as Plaintiffs for all of their hours worked by, among other things, not paying for
10 on-call time, reporting time, non-productive time, and/or double the minimum wage for Plaintiffs
11 who used their own tools for their jobs. Defendants are therefore in violation of Labor Code
12 §§510 and 1194, and the IWC Wage Orders.

13 33. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiffs seek recovery of
14 pre-judgment interest on all amounts recovered herein. Plaintiffs further request that this Court
15 award reasonable attorneys' fees and costs incurred in this action pursuant to Labor Code
16 §§1194(a) and/or 2699.

17 34. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
18 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
19 limited to Labor Code §§558, 1197.1, and 2699(f). Plaintiffs seek only to recover the civil
20 penalties provided for in §§558(a) and 1197.1 for the violations alleged herein, and do not seek
21 to recover underpaid wages.

22 **B. MEAL PERIODS (Labor Code §§226.7 and 512)**

23 35. Labor Code §512 and applicable IWC Wage Orders state that an employer may
24 not employ an employee for a work period of more than five (5) hours per day without providing
25 the employee a meal period of not less than 30 minutes, and an employer may not employ an
26 employee for a work period of more than 10 hours per day without providing the employee with
27 a second meal period of not less than 30 minutes. The applicable Wage Orders state that unless
28 the employee is relieved of all duty during a 30-minute meal period, the meal period shall be

1 considered an “on duty” meal period and counted as time worked. Labor Code §226.7(a) further
2 states that no employer shall require any employee to work during any meal or rest period
3 mandated by an applicable order of the IWC. Moreover, an employer is prohibited from exerting
4 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
5 skipping of legally protected breaks.

6 36. Plaintiffs were not provided with nor given the opportunity to take the requisite
7 meal periods before the end of the first 5 hours of work, nor were they provided with or given the
8 opportunity to take a proper second meal period during the days when they worked more than 10
9 hours in a day.

10 37. Pursuant to Labor Code §226.7(b) and the IWC Wage Orders, if an employer fails
11 to provide an employee a meal period in accordance with the applicable provisions of IWC
12 Wage Orders, the employer shall pay the employee one (1) hour of pay at the employee’s regular
13 rate of compensation for each workday that the meal period is not provided. As such, Plaintiffs
14 are entitled to an additional one hour’s pay for each day in which Plaintiffs were not provided a
15 proper meal break under the above-described authorities.

16 38. Labor Code §558 and the IWC Wage Orders state, in pertinent part, that any
17 employer or other person acting on behalf of an employer who violates, or causes to be violated,
18 a section of any provision regulating hours and days of work in any order of the IWC shall be
19 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
20 underpaid employee for each pay period for which the employee was underpaid in addition to an
21 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
22 dollars (\$100) for each underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid wages. Plaintiffs seek only to
24 recover the civil penalty provided for in §558(a) for the violations alleged herein, and do not
25 seek to recover underpaid wages.

26 39. Plaintiffs request that the Court award interest on all unpaid wages at the legal
27 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
28 pursuant to Labor Code §218.6.

1 40. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
2 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
3 limited to Labor Code §§558 and 2699(f).

4 **C. REST PERIODS (Labor Code §226.7)**

5 41. The IWC Wage Orders provide that every employer shall authorize and permit all
6 employees to take rest periods. The authorized rest period time shall be based on the total hours
7 worked daily at the rate of ten (10) minutes net rest time per four hours of work, or major
8 fraction thereof. An employer must provide employees with 10 minutes rest for shifts from three
9 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours,
10 30 minutes for shifts of more than 10 hours up to 14 hours, and so on. Furthermore, Labor Code
11 §1198 provides, in pertinent part: . . . The employment of any employee for longer hours than
12 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

13 42. Plaintiffs were not permitted to take proper rest periods and/or were required to
14 work during any “rest periods” in contravention of California law. Further, Plaintiffs and other
15 aggrieved employees were required to waive the taking of their rest breaks because of the
16 business of Defendants’ operations, and/or were coerced not to take legally mandated rest
17 periods by Defendants’ criticizing, disciplining and/or reprimanding Plaintiffs and other
18 aggrieved employees who attempted to take legally required rest periods; failed to schedule rest
19 periods; and pressured Plaintiffs to remain available during the workday.

20 43. Defendants further adopted and implemented commission and other pay policies
21 that failed to separately compensate Plaintiffs for their rest periods pursuant to *Vaquero v.*
22 *Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017), and Defendants failed to pay Plaintiffs a
23 missed rest period premium payment for each rest period that was not authorized or permitted,
24 and/or failed to pay such rest period premium at Plaintiffs’ regular rate of pay.

25 44. Pursuant to Labor Code §226.7(b) and IWC Wage Orders, if an employer fails to
26 provide an employee a rest period in accordance with the applicable provisions of the IWC Wage
27 Orders, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate
28 of compensation for each workday that the rest period is not provided.

1 45. As such, Plaintiffs are entitled to an additional one hour of pay for each day in
2 which they were not provided a proper rest period under the above-described authorities.

3 46. Plaintiffs request that the Court award interest on all unpaid wages at the legal
4 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
5 pursuant to Labor Code §218.6.

6 47. Labor Code §558 and IWC Wage Orders state, in pertinent part, that any
7 employer or other person acting on behalf of an employer who violates, or causes to be violated,
8 a section of any provision regulating hours and days of work in any order of the IWC shall be
9 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
10 underpaid employee for each pay period for which the employee was underpaid in addition to an
11 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred
12 dollars (\$100) for each underpaid employee for each pay period for which the employee was
13 underpaid in addition to an amount sufficient to recover underpaid wages. Pursuant to Labor
14 Code §§558, 1198 and 2699, and/or IWC Wage Orders, Plaintiffs are entitled to civil penalties
15 for each pay period in which Defendants underpaid their wages as set forth herein. Plaintiffs
16 seek only to recover the civil penalty provided for in §558(a) for the violations alleged herein,
17 and do not seek to recover underpaid wages.

18 48. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
19 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
20 limited to Labor Code §§558, 2699(f), and applicable IWC Wage Orders.

21 **E. FAILURE TO REIMBURSE EXPENSES**

22 49. Labor Code § 2802(a) states, in pertinent part: “An employer shall indemnify his
23 or her employee for all necessary expenditures or losses incurred by the employee in direct
24 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
25 the employer. . .”

26 50. Defendants required Plaintiffs to maintain and use their own tools to perform their
27 job duties, and failed and refused to reimburse Plaintiffs for using their cell phones for company
28 business.

1 51. Defendants' failure to reimburse and/or indemnify Plaintiffs for these necessary
2 expenditures constitutes a violation of California law.

3 52. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
4 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
5 limited to Labor Code § 2699(f).

6 **F. FAILURE TO PROPERLY MAINTAIN AND SUBMIT ACCURATE**
7 **ITEMIZED WAGE STATEMENTS (Labor Code §226)**

8 53. Labor Code §§226, 1174, and/or the applicable IWC Wage Orders require
9 employers to maintain and provide employees accurate time and employment records, as well as
10 itemized wage statements showing, among other things, gross wages earned, the total hours
11 worked by the employee, all deductions, net wages earned, all applicable hourly rates in effect
12 during the pay period and the corresponding number of hours worked at each hourly rate by the
13 employee. Furthermore, the applicable Wage Orders and Labor Code §226 requires every
14 employer to keep accurate information with respect to each employee, including: (1) the
15 employee's full name, home address, occupation, social security number, employee's date of
16 birth, and time records showing when the employee begins and ends each work period; (2) an
17 employee's meal periods; (3) total wages paid each payroll period; and (4) total hours worked
18 during the payroll period and applicable rates of pay.

19 54. Defendants failed to properly maintain itemized wage statements in that, among
20 other things, the wage statements provided do not set forth the accurate number of hours worked,
21 correct rates of pay, all overtime compensation, meal periods, premium pay, proper deductions,
22 and other related information required by California law. In addition, in implementing their
23 illegal rest period policies and practices regarding Plaintiffs, Defendants failed to record wages
24 for rest period and meal period premiums and other wages that should have been paid to
25 Plaintiffs as required by California law. Defendants have failed to record all items delineated in
26 Labor Code §226 and the applicable IWC Wage Orders, and required under Labor Code §1174.
27 Plaintiffs are informed and believe that these failures were knowing and intentional by
28 Defendants as Defendants sought to deprive Plaintiffs of their legitimate right to unpaid wages,

1 and otherwise deprive them of their proper compensation. As a result of Defendants' intentional
2 and knowing failure to maintain adequate itemized statements, Plaintiffs could not ascertain the
3 actual amount of compensation they earned and/or were entitled to, and thereby are presumed to
4 have suffered cognizable injury in the form of the accrual of unpaid wages, overtime, and
5 interest pursuant to Labor Code §226(e)(2).

6 55. Pursuant to Labor Code §226(e), an employee who suffers injury as a
7 result of an employer's knowing and intentional failure to comply with subdivision (a), is
8 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
9 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
10 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
11 is entitled to an award of costs and reasonable attorney's fees.

12 56. Pursuant to Labor Code §226.3, "[a]ny employer who violates subdivision (a) of
13 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
14 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
15 for each violation in a subsequent citation. . ."

16 57. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved
17 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
18 limited to Labor Code §§226.3, 1174.5 and 2699(f), as well as reasonable attorneys' fees and
19 costs.

20 **G. ILLEGAL NON-COMPETE AGREEMENTS**

21 58. Labor Code § 432.5 provides: "No employer, or agent, manager, superintendent,
22 or officer thereof, shall require any employee or applicant for employment to agree, in writing, to
23 any term or condition which is known by such employer, or agent, manager, superintendent, or
24 officer thereof to be prohibited by law."

25 59. Defendants required Plaintiffs to sign illegal non-compete agreements, prohibiting
26 Plaintiffs from competing with Defendants for one year after termination, in violation of
27 Business and Professions Code § 16600.

28 60. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved

employees, entitled to recover civil penalties pursuant to the Labor Code, including but not limited to Labor Code § 2699(f).

H. WAITING TIME PENALTIES (Labor Code §§201-203)

61. Labor Code §201 states that an employer is required to provide an employee who is terminated all unpaid wages immediately upon termination.

62. Plaintiffs are informed and believe and thereon allege that Defendants failed to pay Plaintiffs all wages due and owing immediately upon termination, thereby violating Labor Code §201.

63. Labor Code §202 states, in pertinent part, that an employer is required to provide an employee who quits his or her employment all wages due and owing not later than 72 hours thereafter.

64. Plaintiffs are informed and believe and thereon allege that Defendants failed to pay Plaintiffs all wages due and owing upon voluntary resignation, thereby violating Labor Code §202.

65. Labor Code §203 states that if an employer willfully fails to pay an employee wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to a maximum of 30 days.

66. Defendants willfully withheld paying Plaintiffs wages thereby violating Labor Code §203, as further set forth herein. As such, Defendants are required to pay Plaintiffs a 30-day wage penalty in addition to all unpaid wages as described herein.

67. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiffs are aggrieved employees, entitled to recover civil penalties pursuant to the Labor Code, including but not limited to Labor Code §§256 and 2699(f).

H. ALL CLAIMS

68. Pursuant to Labor Code §2699, Plaintiffs seek to recover civil penalties, as otherwise provided by statute and wage order, for which Defendants are liable as a result of their violations of the Labor Code and applicable Wage Order(s) in an amount to be proven at trial. These penalties include, but are not limited to, those provided by Labor Code §§210, 225.5,

1 226.3, 256, 558, 1174.5, 1197.1, and 2699. Plaintiffs further seek an award of reasonable
2 attorneys' fees and costs pursuant to the Labor Code §2699(g)(1) and any other applicable
3 statute.

4 **WHEREFORE**, Plaintiffs pray:

- 5 a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
6 independent and apart from other penalties in the Labor Code and for Labor Code
7 violations without a specific civil penalty, in the amount of \$100 for each
8 aggrieved employee per pay period for each violation, and \$200 for each
9 aggrieved employee per pay period for each subsequent violation;
- 10 b. For civil penalties pursuant to Labor Code §558, as follows:
- 11 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
12 employee for each pay period for which the employee was underpaid;
- 13 ii. For each subsequent violation, one hundred dollars (\$100) for each
14 aggrieved underpaid employee for each pay period for which the
15 employee was underpaid;
- 16 c. For civil penalties pursuant to Labor Code §1197.1, as follows:
- 17 i. For any initial violation that is intentionally committed, one hundred
18 dollars (\$100) for each underpaid employee for each pay period for which
19 the employee is underpaid;
- 20 ii. For each subsequent violation for the same offense, two hundred fifty
21 dollars (\$250) for each aggrieved underpaid employee for each pay period
22 for which the employee was underpaid regardless of whether the initial
23 violation is intentionally committed;
- 24 d. For civil penalties per Labor Code §226.3 in the amount of \$250 for each
25 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee
26 per pay period for each subsequent violation;
- 27 e. For civil penalties per Labor Code §1174.5 in the amount of \$500 for each willful
28 failure to maintain records as required by Labor Code §1174(c);

- 1 e. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
2 same rate, for each day that an aggrieved employee was paid late, at the time of
3 termination, until payment was/is made, up to a maximum of thirty (30) days;
4 f. For civil penalties per Labor Code §210 in the amount of \$100 for each failure to
5 pay each employee, and for each subsequent violation, or any willful or
6 intentional violation, \$200 for each failure to pay each employee;
7 g. For reasonable attorneys' fees and costs incurred; and
8 h. For such relief as this Court may deem just and proper.

9
10 Dated: October 25, 2022

BARTZ LAW GROUP APC

11
12 By: /s/ Aaron A. Bartz
13 AARON A. BARTZ
14 Attorneys for Plaintiff JOSE GONZALEZ, on
15 behalf of himself and all other aggrieved employees
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Dated: October 25, 2022

By: /s/ Aaron A. Bartz
AARON A. BARTZ
Attorneys for Plaintiff JOSE GONZALEZ, on
behalf of himself and all other aggrieved employees

EXHIBIT 3

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FILED
Superior Court of California
County of Los Angeles

05/17/2023

David W. Slayton, Executive Officer / Clerk of Court

By: C. Lam Deputy

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Attorneys for Plaintiff IGNAIN PEREZ, on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE GONZALEZ, an individual;
IGNAIN PEREZ, an individual;
ANTONIO SERRANO, an individual;
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

ROTO-ROOTER SERVICES
COMPANY, an Iowa corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO. 22STCV34334

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

- 1) Violation of California Labor Code § 2751;
- 2) Violation of California Business & Professions Code § 17200;
- 3) Failure to Authorize or Permit Rest Periods (California Labor Code § 226.7);
- 4) Failure to Pay All Wages (California Labor Code §§ 510, 1194 and 1197);
- 5) Failure to Provide Accurate Wage Statements (California Labor Code § 226);
- 6) Failure to Provide Meal Periods (California Labor Code § 512);
- 7) Waiting Time Penalties and Failure to Timely Pay Wages (California Labor Code §§ 200 et seq.);
- 8) Failure to Reimburse Expenses (California Labor Code § 2802);
- 9) Unlawful Solicit and Non-Compete Agreement (California Labor Code § 432.5 and Business & Professions Code § 16600 et seq.);
- 10) Violation of Labor Code §§2698-2699 (PAGA).

1 _____
2 Plaintiffs JOSE GONZALEZ (“Gonzalez”), IGNAIN PEREZ (“Perez”), and ANTONIO
3 SERRANO (“Serrano”), on behalf of themselves and all others similarly situated and as private
4 attorneys general (hereinafter collectively “Plaintiffs”), hereby assert class and representative
5 claims against Defendant ROTO-ROOTER SERVICES COMPANY (“Roto-Rooter”), and
6 DOES 1 through 100 (hereinafter collectively “Defendants”), and hereby complain and allege as
7 follows:

8 **JURISDICTION AND VENUE**

9 1. This action is brought pursuant to California Code of Civil Procedure § 382. The
10 penalties and other remedies sought by Plaintiffs exceed the minimal jurisdiction limits of the
11 Superior Court and will be established according to proof at trial.

12 2. This Court has jurisdiction over this action and the matters alleged herein pursuant
13 to the grant of original jurisdiction set forth in Article VI, Section 10 of the California
14 Constitution. The statutes under which this action is brought do not specify any other basis for
15 jurisdiction.

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

21 4. Venue is proper in this Court, because, upon information and belief, the named
22 Defendants reside, transact business, or have offices in this county, and the acts or omissions
23 alleged herein took place in this county.

24 **THE PARTIES**

25 5. At all times relevant herein, Plaintiff Gonzalez was, and is, an individual residing
26 in the City of Whittier, State of California.

27 6. At all times relevant herein, Plaintiff Perez was, and is, an individual residing in
28 the City of Buena Park, State of California.

1 7. At all times relevant herein, Plaintiff Serrano was, and is, an individual residing in
2 the City of La Puente, State of California.

3 8. Plaintiffs are informed and believe, and based thereon allege, that at all times
4 relevant herein, Defendant Roto-Rooter was, and is, an Iowa corporation doing business in the
5 County of Los Angeles, State of California. Plaintiffs are informed and believe that Roto-Rooter
6 also has California subsidiaries.

7 9. Plaintiffs are unaware of the true names and capacities of Defendants named herein
8 as DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names.
9 Plaintiffs will amend this Complaint to allege such names and capacities when the same has been
10 ascertained. Plaintiffs are informed and believe, and based thereon allege, that each of the
11 fictitiously named Defendants stated herein bears a legal responsibility to Plaintiffs similar to that
12 of the named Defendant herein.

13 10. At all times mentioned herein, Defendants DOES 1 through 100, inclusive, were
14 the agents, servants, and employees of their Co-Defendants, and in doing the things herein alleged
15 were acting in the scope of their authority as such agents, servants, and employees, and with the
16 permission and consent of their Co-Defendants.

17 11. Plaintiffs hereby demand a trial by jury.

18 **FACTS COMMON TO ALL CAUSES OF ACTION**

19 12. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
20 in the business of plumbing services.

21 13. Plaintiffs worked for Defendants during the relevant time period as non-exempt
22 employees, including as service technicians. Similar to all other service technicians employed by
23 Defendants, Plaintiffs' job responsibilities generally encompassed a litany of specific and general
24 plumbing contracting duties including pipe maintenance and replacement, service of general
25 water lines, service of general water heating and cooling systems, preventative bathroom
26 maintenance, and other duties.

27 14. During all times relevant to this action, Defendants maintained uniform
28 timekeeping, scheduling, and payroll processes and procedures for Plaintiffs and other non-

1 exempt employees, Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 also maintained uniform work rules and procedures for all of its non-exempt employees.

3 15. At all times relevant to this action, Plaintiffs were classified as non-exempt,
4 commission-only employees. Plaintiffs and many Class Members were generally paid on a
5 commissions-only or piece-rate compensation basis, although some Class Members were also
6 paid on an hourly basis. However, Defendants failed to provide Plaintiffs and Class Members
7 with a written commission agreement which shall set forth the method by which the commissions
8 were computed and paid and was signed by the employee.

9 16. For the duration of the class period, Plaintiffs and all Class Members and
10 Aggrieved Employees were not permitted to take uninterrupted rest periods of at least 10 minutes
11 in length. Rest periods were frequently missed, late, interrupted, or short (less than 10 minutes).
12 When Plaintiffs and Class Members did take a rest period, these rest periods were not separately
13 compensated for those who were paid on a commissions-only or piece-rate compensation basis.
14 Plaintiffs and Class Members' other non-productive time was also uncompensated, and was thus
15 paid at a rate less than the applicable minimum wage.

16 17. Defendants also failed to provide duty-free meal periods to Plaintiffs and the Class
17 Members within their first five hours of work, within their first ten hours of work for those shifts
18 over ten hours, and/or scheduled work such that Plaintiffs were unable to take their duty-free meal
19 periods timely. As a result, meal periods (including first or second meal periods) were frequently
20 missed, late, interrupted, or short (less than 30 minutes).

21 18. Plaintiffs and the Class members were not provided accurate wage statements, in
22 that their wage statements lacked, among other things, Plaintiffs' and Class Members' non-
23 productive time which prevented them from being able to calculate their additional owed wages,
24 piece-rate units and rates, meal and rest period premium payments, among other things. Plaintiff's
25 wage statements also failed to reflect all hours worked, rates of pay, and payments owed, inclusive
26 dates of pay, and Defendants failed to accurately maintain required records of such time and
27 payments.

28 ///

1 19. Defendants further failed and refused to reimburse Plaintiffs' and Class Members'
2 reasonable and necessary expenses, including but not limited to cell phone/data expenses,
3 expenses for tools, equipment, mileage, and other business expenses.

4 20. Defendants further required Plaintiffs and Class Members to sign illicit non-
5 compete and non-solicitation agreements as a condition of employment.

6 21. Defendants further failed to pay Plaintiffs and Class Members for all hours
7 worked, including but not limited to the minimum, straight time, or overtime as a result of failing
8 to separately compensate them for their rest periods, other non-productive time, and on-call time.
9 Defendants failed to capture all hours worked on their timekeeping system, required Plaintiffs
10 and Class Members to work off-the-clock (including on-call or standby time), and failed to
11 properly pay all overtime at the regular rate of pay based on its payroll and compensation systems,
12 including failing to account for commissions and incentives in the regular rate of pay for purposes
13 of overtime, meal and rest period premium payments, and other payments that are to be paid at
14 the regular rate of pay.

15 22. Defendants further failed to timely pay all wages owed during employment, and
16 did not pay all wages due upon separation of employment.

17 23. At all times relevant to this action, Defendants failed to properly compile, account
18 for, and pay Plaintiffs for the hours he worked due to the following uniform practices:

19 (a) **Failure to Provide a Written Signed Commission Agreement:**
20 Defendants compensated Plaintiffs and many Class Members on a commissions-only or piece-
21 rate compensation basis. However, Defendants did not provide Plaintiffs or Class Members with
22 a written, signed agreement that listed, among other things, the terms of the compensation
23 agreements by which Plaintiffs and the Class Members' wages would be calculated;

24 (b) **Failure to Authorize or Permit Rest Periods:** Defendants did not
25 authorize or permit Plaintiffs or Class Members to take duty-free rest periods. Rest periods were
26 frequently missed, late, interrupted, or short (less than 10 minutes). Plaintiffs are informed and
27 believe, and based thereon allege, that Defendants did not pay hourly and/or non-exempt
28 employees one (1) hour of premium pay at the regular rate of pay for every rest period that was

1 not authorized or permitted by Defendants;

2 (c) **Failure to Provide Meal Periods:** Defendants did not provide Plaintiffs
3 or Class Members with duty-free meal periods before the end of the first 5 hours of work, nor
4 were they provided with or given the opportunity to take a proper second meal period during the
5 days when they worked more than 10 hours in a day. As a result, meal periods (including first or
6 second meal periods) were frequently missed, late, interrupted, or short (less than 30 minutes).
7 Plaintiffs are informed and believe, and based thereon allege, that Defendants did not pay hourly
8 and/or non-exempt employees one (1) hour of premium pay at the regular rate of pay for every
9 meal period that was not provided by Defendants;

10 (d) **Failure to Pay All Wages (Including Minimum Wages and Overtime):**
11 Defendants did not pay Plaintiffs or Class Members all wages due, including but not limited to
12 the minimum, straight time, or overtime as a result of failing to separately compensate them for
13 their rest periods, other non-productive time, and on-call time. Defendants further failed to pay
14 Plaintiffs and Class Members for all hours worked, failed to capture all hours worked on their
15 timekeeping system, required Plaintiffs and Class Members to work off-the-clock (including on-
16 call or standby time), and failed to properly pay all overtime at the regular rate of pay based on
17 its payroll and compensation systems, including failing to account for commissions and incentives
18 in the regular rate of pay for purposes of overtime, meal and rest period premium payments, and
19 other payments that are to be paid at the regular rate of pay.

20 (e) **Failure to Timely Pay All Wages and to Timely Pay Wages Upon**
21 **Termination of Employment:** Defendants failed to timely pay all wages owed during
22 employment, and did not pay all wages due upon separation of employment

23 (f) **Failure to Provide Accurate Wage Statements:** Defendants failed to
24 provide Plaintiffs and Class Members with complete and accurate wage statements and to
25 maintain records reflecting, among other things, the correct non-productive hours, piece-rate units
26 and rates, total hours and rates of pay, meal and rest premium payments, inclusive dates of pay,
27 and wages earned by Plaintiffs and Class Members.

28 ///

1 (g) **Failure to Reimburse Expenses:** Defendants required Plaintiffs to
2 maintain and use their own tools and equipment to perform their job duties as well as their
3 personal cell phones and data, and failed and refused to reimburse Plaintiffs for using those tools,
4 equipment, or their cell phones or data for company business.

5 (h) **Unlawful Non-Compete / Non-Solicit Agreement:** Defendants further
6 required Plaintiffs and Class Members to sign illicit non-compete and non-solicitation agreements
7 as a condition of employment.

8 24. Plaintiffs are informed and believe, and based thereon allege, that at all times
9 relevant to this action, Defendants implemented a series of willful, systematic, and deliberate
10 policies and practices that suppressed operating costs at the expense of employee rights set forth
11 under the California Labor Code and the Industrial Welfare Commission (hereinafter "IWC")
12 Wage Orders.

13 25. Plaintiffs are informed and believe, and based thereon allege, that during the
14 relevant period, Defendants' conduct resulted in systematic and class-wide violations of
15 California Labor Code sections 201-204, 210, 226, 226.7, 432.5, 510, 512(a), 1174, 1194, 1197,
16 2698-2699, 2751, 2802, and Business and Professions Code 16600 and 17200, among others
17 stated herein.

18 **CLASS ALLEGATIONS**

19 26. Plaintiffs brings this on behalf of each and all persons similarly situated, and thus,
20 seeks class certification under California Code of Civil Procedure §382.

21 27. All claims alleged herein arise under California law for which Plaintiffs seek relief
22 authorized under California law.

23 28. **Class:** Plaintiffs seek to represent a class of all of Defendants' current and former
24 non-exempt employees, who fall into any of the following sub-classes composed of and defined
25 as follows:

- 26 a) **Labor Code § 2751 Sub-Class:** All current and former non-exempt employees who
27 worked for Defendants in the State of California at any time during the period
28 commencing May 10, 2018 until the date Notice of Class Certification is mailed and were

not provided legally compliant written signed commission agreements;

b) **Meal and Rest Period Sub-Class:** All current and former non-exempt employees who worked for Defendants in the State of California at any time during the period commencing May 10, 2018 until the date Notice of Class Certification is mailed and were not provided legally compliant meal and rest periods or properly paid a premium at the regular rate of pay;

c) **Minimum Wage and Overtime Sub-Class:** All current and former non-exempt employees who worked for Defendants in the State of California at any time during the period commencing May 10, 2018 until the date Notice of Class Certification is mailed and were not paid all wages owed for all hours worked, including but not limited to non-productive hours which they worked but were not paid any wages for, minimum wages, or overtime;

d) **Wage Statement Sub-Class:** All current and former non-exempt employees who worked for Defendants during the period commencing May 10, 2021 until the date Notice of Class Certification is mailed and were not furnished an accurate, itemized wage statement as required by California Labor Code section 226(a);

e) **Waiting Time Sub-Class:** All current and former non-exempt employees who worked for Defendants in the State of California at any time during the period commencing May 10, 2019 until the date Notice of Class Certification is mailed and were not timely paid all wages required under California Labor Sections 201, 202, 203, and 204;

f) **UCL Sub-Class:** All current and former non-exempt employees, who worked for Defendants in the State of California at any time during the period commencing May 10, 2018 until the date Notice of Class Certification is mailed and are entitled to restitution for Defendants' unlawful business practices;

g) **Reimbursement Sub-Class:** All current and former non-exempt employees, who worked for Defendants in the State of California at any time during the period commencing May 10, 2018 until the date Notice of Class Certification is mailed and are entitled to reimbursement for their reasonable expenses on behalf of Defendants.

1 h) **Non-Compete / Non-Solicit Sub-Class:** All current and former non-exempt employees
2 who worked for Defendants in the State of California at any time during the period
3 commencing May 10, 2018 until the date Notice of Class Certification is mailed and were
4 provided non-compete and/or non-solicit agreements.

5 29. The members of the proposed Class and Sub-classes, and each of them, are so
6 numerous that joinder of all members would be unfeasible and not practicable. The membership
7 of the entire Class is unknown to Plaintiffs at this time; however, the Class is estimated to be
8 greater than one hundred (100) individuals and the identity of the Class Members is readily
9 ascertainable by inspection of Defendants' payroll and personnel records.

10 30. Plaintiffs have been, at all material times, members of the Class and each Sub-
11 Class. Plaintiffs are qualified to, and will, fairly and adequately represent the interests of each
12 Class Member with whom there is a shared, well-defined, community of interests. Plaintiffs'
13 claims are typical of all Class Members' claims as they arise out of the same course of conduct
14 and are predicated on the same violations of law.

15 31. There are questions of law and fact as to the Class and Sub-Classes which
16 predominate over questions affecting only individual members including, without limitation:

17 (a) Whether Defendants failed to provide Class Members with written, signed
18 commission agreements as required by California Labor Code § 2751;

19 (b) Whether Defendants' conduct was willful or reckless;

20 (c) Whether Defendants engaged in unfair business practices in violation of
21 California Business and Professions Code section 17200, et seq.;

22 (d) The appropriate amount of damages, restitution, and/or monetary penalties
23 resulting from Defendants' violations of California law.

24 32. The Court should permit this action to be maintained as a class action pursuant to
25 California Code of Civil Procedure section 382, because:

26 (a) Questions of law and fact common to the Class predominate over any
27 questions affecting individual members;

28 ///

1 (b) The Class Action mechanism is superior to any other available method for
2 the fair and efficient adjudication of the claims of the members of the Class;

3 (c) The members of the Class are so numerous that it is impractical to bring
4 all members of the Class before the Court;

5 (d) Plaintiffs and the other members of the Class, will not be able to obtain
6 effective and economic legal redress unless the action is maintained as a class action;

7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the statutory violations, and in obtaining adequate compensation for the
9 damages and injuries for which Defendants are responsible in an amount sufficient to adequately
10 compensate the members of the Class for the injuries sustained;

11 (f) Without Class Certification, the prosecution of separate actions by
12 individual members of the Class would create a risk of:

13 (i) Inconsistent or varying adjudications with respect to individual
14 members of the Class which would establish incompatible standards of conduct for Defendants;
15 and/or

16 (ii) Adjudications with respect to the individual members which
17 would, as a practical matter, be dispositive of the interests of other members not parties to the
18 adjudications, or would substantially impair or impede their ability to protect their interests,
19 including, but not limited to, the potential for exhausting the funds available from those parties
20 who are, or may be, responsible for Defendants; and

21 (iii) Defendants have acted or refused to act on grounds generally
22 applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class
23 and each Sub-class as a whole.

24 **FIRST CAUSE OF ACTION**

25 **(Violation of California Labor Code § 2751 – Failure to Provide Written and Signed**
26 **Commission Agreements - Plaintiffs and the Class against All Defendants)**

27 33. Plaintiffs refer to and incorporate herein by reference the above paragraphs as
28 though fully set forth herein.

34. California Labor Code section 2751 requires employers to furnish its commissioned employees with a signed written contract setting forth the terms by which the commission shall be calculated.

36. Defendants' acts constitute an ongoing unlawful activity prohibited by the California Labor Code.

SECOND CAUSE OF ACTION

38. Plaintiffs refer to and incorporate herein by reference the above paragraphs as though fully set forth herein.

40. Within the four (4) years preceding the filing of this action, Defendants have engaged in unlawful, unfair, and/or fraudulent business acts and/or practices by engaging in the conduct set forth above. These business acts and practices violated numerous provisions of the law, including, but not limited to, the California Labor Code, California Wage Orders, and California public policy. Plaintiffs reserve the right to identify additional violations of law as further investigation warrants.

1 et seq.

2 42. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful
3 conduct, as alleged herein, Defendants have violated California Business and Professions Code
4 section 17200, et seq., by consummating an unlawful, unfair, and fraudulent business practice
5 designed to deprive Plaintiffs, the members of the Class, and members of the general public of
6 their legal rights.

7 43. Such conduct is ongoing and continues to this date.

8 44. By reason of the foregoing, Plaintiffs, the Class, and members of the general public
9 have suffered, and continue to suffer, damages, and are therefore entitled to the relief available
10 under California Business and Professions Code section 17200, et seq., including, but not limited
11 to, restitution, disgorgement, and injunctive relief.

12 45. As such, Plaintiffs, on behalf of themselves, the Class, and the general public, seek
13 a temporary, preliminary, and/or permanent order from this Court prohibiting Defendants from
14 continuing to engage in the unlawful, unfair, and/or fraudulent business acts or practices set forth
15 in this Complaint, in addition to disgorgement and restitution by Defendants to all persons with a
16 vested interest therein who have been adversely affected by the practices at issue.

17 **THIRD CAUSE OF ACTION**

18 **(Violation of California Labor Code § 226 et seq.**

19 **Failure to Provide Rest Breaks - Plaintiffs and the Class against All Defendants)**

20 46. Plaintiffs refer to and incorporate herein by reference the above paragraphs as
21 though fully set forth herein.

22 47. At all times relevant herein, the applicable IWC Wage Order and California Labor
23 Code § 226.7 was applicable to Plaintiffs and the Class Members.

24 48. At all times set forth herein, California Labor Code § 226.7 provided and provides
25 that employers may not require their employees to work during a legally mandated rest period.

26 49. At all times set forth herein, the applicable IWC Wage Order required and requires
27 every employer subject to the Wage Orders to authorize and permit rest periods at the rate of ten
28 (10) minutes net rest time per four (4) hours or major fraction thereof.

1 50. California Labor Code section 226.7 further provides that if an employer fails to
2 provide an employee with a legally mandated rest period, the employer shall pay the employee
3 one (1) additional hour of pay at the employee's regular rate of compensation for each workday
4 that the rest period is not provided.

5 51. At all times relevant herein, Plaintiffs and the Class Members regularly worked
6 shifts of a length of four (4) hours or a major fraction thereof or longer.

7 52. Defendants failed to authorize and permit Plaintiffs to take duty-free rest periods
8 as required by law. Rest periods were frequently missed, late, interrupted, or short (less than 10
9 minutes).

10 53. During the relevant time period, Defendants failed to pay Plaintiffs and the Class
11 Members the full rest period premium at the regular rate of pay due pursuant to California Labor
12 Code §226.7.

13 54. Defendants' conduct violates California Labor Code §226.7.

14 55. Pursuant to California Labor Code §226.7, Plaintiffs are entitled to recover from
15 Defendants one (1) additional hour of pay at the employees' regular hourly rate of compensation
16 for each workday that a rest period was not provided.

17 56. As a proximate cause of the aforementioned violations, Plaintiffs and the Class
18 Members have been damaged in an amount to be determined at trial, but in an amount in excess
19 of the jurisdiction of this Court. Plaintiffs are entitled to recover the unpaid balance of wages
20 owed, penalties, including penalties available pursuant to California Labor Code §§226.7 and
21 558, plus interest.

22 **FOURTH CAUSE OF ACTION**

23 **(Violation of California Labor Code Sections 510, 1194 and 1197**

24 **Failure to Pay All Wages – Plaintiffs and the Class against All Defendants)**

25 57. Labor Code §1194 states that any employee receiving less than the legal minimum
26 wage or the legal overtime compensation applicable to the employee is entitled to recover the
27 unpaid balance of the full amount of this minimum wage or overtime compensation, including
28 interest thereon, reasonable attorney's fees, and costs of suit.

1 58. Labor Code §1197 states that the minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
3 the minimum so fixed is unlawful.

4 59. Labor Code §510(a) and IWC Wage Orders regulating payment of wages in the
5 state of California, provide that eight (8) hours of labor constitutes a day's work and any work in
6 excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any
7 one workweek shall be compensated at the rate of no less than one and one-half times the regular
8 rate of pay for each employee and any work in excess of twelve (12) hours in any one workday
9 shall be compensated at the rate of no less than twice the regular rate of pay for each employee.

10
11 60. At all relevant times, Defendants required Plaintiffs to perform work without
12 compensation in violation of the IWC Wage Orders and the Labor Code. Specifically, Plaintiffs
13 were not paid for all of their hours worked, in that Defendants failed to pay non-exempt hourly
14 workers such as Plaintiffs for all of their hours worked by, among other things, not paying for on-
15 call time, reporting time, non-productive time, and/or double the minimum wage for Plaintiffs
16 who used their own tools for their jobs. Defendants failed to capture all hours worked on their
17 timekeeping system, required Plaintiffs and Class Members to work off-the-clock (including on-
18 call or standby time), and failed to properly pay all overtime at the regular rate of pay based on
19 its payroll and compensation systems, including failing to account for commissions and incentives
20 in the regular rate of pay for purposes of overtime, meal and rest period premium payments, and
21 other payments that are to be paid at the regular rate of pay. Defendants are therefore in violation
22 of Labor Code §§510 and 1194, and the IWC Wage Orders.

23 61. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiffs seek recovery of
24 pre-judgment interest on all amounts recovered herein. Plaintiffs further request that this Court
25 award reasonable attorneys' fees and costs incurred in this action pursuant to Labor Code
26 §§1194(a) and/or 2699.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violation of California Labor Code Section 226**

3 **Failure to Provide Accurate Wage Statements - Plaintiffs and the Class against All**
4 **Defendants)**

5 62. Plaintiffs refer to and incorporate herein by reference the above paragraphs as
6 though fully set forth herein.

7 63. Plaintiffs are informed and believe and based thereon allege that California Labor
8 Code § 226 was in full force and effect, and binding upon Defendants throughout the course of
9 their employment.

10 64. At all times relevant to this action, Plaintiffs and the Class Members were entitled
11 to receive at the time of each payment of wages, an accurate, itemized statement showing: gross
12 wages earned, net wages earned, all applicable hourly rates in effect during the pay period, the
13 corresponding number of hours worked at each hourly rate by the employee, the inclusive dates
14 of pay, all applicable deductions, all applicable piece-rate units and rates, the name of the
15 employee and only the last four digits of the employee's social security number or identification
16 number, and the legal name and address of the employer. In particular, Plaintiffs and Class
17 Members wage statements excluded their non-productive hours, piece-rate compensation and
18 units, total hours worked and hourly rate, did not include all compensation owed, and did not list
19 inclusive dates of pay.

20 65. Pursuant to California Labor Code § 226(a), an employee is deemed to suffer
21 injury if the employer fails to provide a wage statement, or fails to provide accurate and complete
22 information.

23 66. As alleged herein, Defendants failed to maintain and provide accurate wage
24 statements in violation of California Labor Code § 226(a).

25 67. As a result of being provided inaccurate wage statements by Defendants, Plaintiffs
26 and the Class Members have suffered injury.

27 68. Defendants acted intentionally, oppressively, and maliciously toward Plaintiffs
28 and the Class Members, with a conscious disregard of their rights, or the consequences to them,

1 with the intent of depriving them of property and legal rights and otherwise causing them injury.

2 69. As a proximate cause of the aforementioned violations, Plaintiffs and the Class
3 Members are entitled to recover the greater of actual damages, or penalties of fifty dollar (\$50.00)
4 for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one
5 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
6 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
7 also entitled to an award of costs and reasonable attorneys' fees.

8 **SIXTH CAUSE OF ACTION**

9 **(Violation of Labor Code §§ 226.7 and 512**

10 **Failure to Provide Meal Periods – Plaintiffs and the Class against All Defendants)**

11 70. Plaintiffs refer to and incorporate herein by reference the above paragraphs as though
12 fully set forth herein.

13 71. California Labor Code § 512 and IWC Wage Orders state that an employer may
14 not employ an employee for a work period of more than five (5) hours per day without providing
15 the employee a meal period of not less than 30 minutes, and an employer may not employ an
16 employee for a work period of more than 10 hours per day without providing the employee with
17 a second meal period of not less than 30 minutes. Unless the employee is relieved of all duty
18 during a 30-minute meal period, the meal period shall be considered an “on duty” meal period
19 and counted as time worked. California Labor Code § 226.7(a) further states that no employer
20 shall require any employee to work during any meal or rest period mandated by an applicable
21 order of the IWC.

22 72. Employers are prohibited from exerting coercion against the taking of, creating
23 incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

24 73. Plaintiffs and members of the Class were not provided with or given the
25 opportunity to take the requisite duty-free meal periods before the end of the first 5 hours of work,
26 nor were they provided with or given the opportunity to take a proper second meal period during
27 the days when they worked more than 10 hours in a day. Defendants coerced Plaintiffs and the
28 members of the Class to forego meal periods by disciplining and/or threatening disciplinary action

1 against them if they attempted to take meal periods, created incentives to forego meal breaks, and
2 encouraged the skipping of meal periods by scheduling work to coincide with the meal periods,
3 among other things. In addition, Defendants placed unnecessarily tight timelines on Plaintiffs’
4 work, forcing them to miss their meal periods in order to complete their jobs. As a result,
5 Plaintiffs and members of the Class were required to work and/or were not relieved of all duties
6 during any meal period taken, and thus were considered “on duty;” however, Defendants failed
7 to count as time worked any “on duty” meal period taken by Plaintiffs and the members of the
8 Class. Meal periods (including first or second meal periods) were frequently missed, late,
9 interrupted, or short (less than 30 minutes).

10 74. During the relevant time period, Defendants failed to pay Plaintiffs and the Class
11 Members the full meal period premium at the regular rate of pay

12 75. Pursuant to California Labor Code § 226.7(c) and IWC Wage Orders, if an
13 employer fails to provide an employee a meal period in accordance with the applicable provisions
14 of the IWC Wage Orders, the employer shall pay the employee one (1) hour of pay at the
15 employee’s regular rate of pay for each workday that the meal period is not provided. As such,
16 Plaintiffs and members of the Class are entitled to an additional one hour’s pay for each day in
17 which Plaintiffs and members of the Class were not provided a proper meal break under the
18 above-described authorities.

19 76. Plaintiffs and the members of the Class request that the Court award interest on all
20 unpaid wages at the legal rate specified by California Civil Code § 3289(b), accruing from the
21 date the wages were due and payable pursuant to Labor Code § 218.6.

22 **SEVENTH CAUSE OF ACTION**

23 **(Violation of Labor Code §§ 200, et. seq.**

24 **Waiting Time Penalties and Failure to Timely Pay Wages During Employment – Plaintiffs**
25 **and the Class against All Defendants)**

26 77. Plaintiffs refer to and incorporate herein by reference the above paragraphs as
27 though fully set forth herein.

28 ///

1 78. Labor Code §§ 200, et. seq., provides that an employer is required to pay an
2 employee all wages (including accrued vacation) immediately upon an employee's involuntary
3 separation from employment; immediately upon her voluntary separation if the employee gave at
4 least seventy-two (72) hours' notice, and within seventy two (72) hours, if the employee
5 voluntarily separated, but did not give at least seventy two (72) hours' notice.

6 79. Plaintiffs and other former employees of Defendants employed in the State of
7 California separated from employment with Defendants, and did not timely receive a final
8 paycheck with all of their wages due from Defendants in violation of Labor Code §§ 200, et seq.
9 Plaintiffs are informed and believe and thereon allege that Defendants also violated the mandates
10 of Labor Code §§ 200, et seq., as to other employees whose employment ended during the period
11 of time covered by this action.

12 80. Plaintiff and other former employees of Defendants employed in the State of
13 California also were not timely paid all wages during employment, as required Under Labor Code
14 §§ 204 and 210.

15 81. Pursuant to Labor Code §§ 200, et. seq., each member of the class that no longer
16 works for Defendants, and who was not timely paid all of his or her wages due is entitled to one
17 (1) day of pay in penalties for each day that he or she was paid late, until payment was made, up
18 to a maximum of thirty (30) days, and statutory penalties or damages as provided by law.

19 **EIGHTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE EXPENSES**

21 **(Violation of Labor Code § 2802**

22 **Failure to Reimburse Expenses - Plaintiffs and the Class against All Defendants)**

23 82. Plaintiffs refer to and incorporate herein by reference the above paragraphs as
24 though fully set forth herein.

25 83. California Labor Code § 2802 provides that "[a]n employer shall indemnify his or
26 her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties."

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1 84. Plaintiffs are informed and believe, and based thereon allege, that at all relevant
2 times Plaintiffs and the class members incurred certain expenses for their jobs with Defendants,
3 including but not limited to using their own tools, equipment, and personal cell phones and data
4 expenses for their work. Despite this, Defendants failed and refused to indemnify Plaintiffs and
5 the class for all of their expenditures in carrying out their duties for Defendants.

6 85. As a result of Defendants' failure to indemnify Plaintiffs and the class members,
7 they have suffered losses according to proof, including prejudgment interest, costs, and attorneys'
8 fees in prosecuting this case.

9 **NINTH CAUSE OF ACTION**

10 **UNLAWFUL NON-SOLICIT AND NON-COMPETE AGREEMENTS**

11 **(Violation of Cal. B&P Code § 16600 and Lab. Code § 432.5 –**

12 **Plaintiffs and the Class against All Defendants)**

13 86. Plaintiffs refer to and incorporate herein by reference the above paragraphs as
14 though fully set forth herein.

15 87. California Business and Professions Code section 16600 states: "Every contract
16 by which anyone interested is restrained from engaging in a lawful profession, trade or business
17 of any kind is to that extent void." California Labor Code section 432.5 states: "No employer...
18 shall require any employee or applicant for employment to agree, in writing, to any term or
19 condition which is known by such employer... thereof to be prohibited by law."

20 88. The California Supreme Court has specifically recognized that California Business
21 and Professions Code section 16600 "represents a strong public policy of the state." *Edwards v.*
22 *Arthur Anderson LLP* (2008) 44 Cal.4th 937, 950. This fundamental public policy against non-
23 compete provisions is so strong that California law prohibits even narrow restraints on an
24 employee's ability to practice his or her profession. *Id.*, at pp. 949-950.

25 89. Defendants' above-described conduct including, without limitation, subjecting its
26 California-based employees, including Plaintiffs and the Class, to unlawful non-compete and non-
27 solicitation constitute clear violations of the Business & Professions Code. The aforementioned
28 non-compete and non-solicitation, are facially invalid, unlawful, void and unenforceable under

California law.

90. Defendants' aforementioned unlawful non-compete and non-solicitation provisions inhibit competition and employee mobility because the average worker would likely honor the unlawful provisions without consulting counsel or challenging the provisions in court.

91. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves, the Class, and the general public, seek a temporary, preliminary, and/or permanent order from this Court prohibiting Defendants from continuing to engage in the unlawful, unfair, and/or fraudulent business acts or practices set forth in this Complaint.

TENTH CAUSE OF ACTION

(Violation of Labor Code §§ 2698 and 2699

PAGA - Plaintiffs and the Class against All Defendants)

92. Plaintiffs refer to and incorporate herein by reference the above paragraphs as though fully set forth herein.

93. On or about August 17, 2022, Plaintiff Gonzalez provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. On or about May 10, 2022, Plaintiff Perez provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

94. The LWDA failed to respond to Plaintiffs' counsel's correspondence and failed to notify Plaintiffs' counsel as to whether it would investigate the allegations contained therein, within the time period requirements of the Private Attorneys General Act (PAGA), under Labor Code §2699.3. Plaintiffs have fully complied with the notice requirements set forth in Labor Code §2699.3 in order to commence a civil action against an employer pursuant to Labor Code §2699.

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1 95. Defendants' failure to pay Plaintiffs for all hours worked, minimum wages,
2 overtime compensation, failure to provide meal periods, failure to authorize and permit rest
3 periods, failure to pay all wages upon termination or resignation, and failure to provide accurate
4 itemized wage statements, and failure to reimburse expenses, will subject Defendants to civil
5 penalties pursuant to, without limitation, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7,
6 432.5, 510, 512, 551, 552, 1174, 1194, 1198, 2751, 2802 and IWC Wage Orders.

7 96. Plaintiffs are aggrieved employees as defined in Labor Code §§2699(a) and (c),
8 and related Labor Code provisions. Plaintiffs bring this cause of action on behalf of themselves,
9 as private attorneys general, and in a representative capacity on behalf of other aggrieved
10 employees, affected by the labor law violations alleged herein.

11 97. Defendants committed numerous violations of the California Labor Code and
12 IWC Wage Orders against the Plaintiffs, and on information and belief, against members of the
13 Class and other current and former employees while they were employed by Defendants,
14 including but not limited to:

15 a. Defendants violated Labor Code §§ 510, 511, 1194 and/or IWC Wage Orders by
16 failing to pay Plaintiffs and the members of the Class, and on information and belief, other current
17 and former employees of Defendants, all minimum, straight time and overtime wages owed in
18 compliance with California law;

19 b. Defendants violated Labor Code §§ 226.7, 510, 1194, 1197 and/or IWC Wage
20 Orders by failing to pay Plaintiffs and the members of the Class by failing to pay for a missed
21 meal or rest period at the regular rate of pay;

22 c. Defendants violated Labor Code §§ 1194, 1197 and/or IWC Wage Orders by
23 failing to pay Plaintiffs and the members of the Class, and on information and belief, other current
24 and former employees of Defendants, all minimum wages owed in compliance with California
25 law;

26 d. Defendants violated Labor Code §§ 1194, 204, 510, 511 and/or IWC Wage Orders
27 by failing to pay Plaintiffs and the members of the Class, and on information and belief, other
28 current and former employees of Defendants, all wages owed in a timely manner during

1 employment and upon termination in compliance with California law;

2 e. Defendants violated Labor Code § 226.7, 512, and /or IWC Wage Orders by
3 failing to provide Plaintiffs and the members of the Class, and on information and belief, other
4 current and former employees of Defendants, the opportunity to take the requisite meal periods
5 in compliance with California law;

6 f. Defendants violated Labor Code § 226.7 and/or IWC Wage Orders by
7 failing to authorize and permit Plaintiffs and the members of the Class, and on information and
8 belief, other current and former employees of Defendants, the opportunity to take the requisite
9 rest periods in compliance with California law;

10 g. Defendants violated Labor Code §§ 226, 1174 and/or IWC Wage Orders by
11 failing to properly maintain accurate employment time and records, maintain and/or submit
12 accurate itemized wage statements on behalf of Plaintiffs, members of the Class, and on
13 information and belief, on behalf of other current and former employees of Defendants as
14 described herein; and

15 h. Defendants violated Labor Code §§ 201, 202, 203, 204, and/or IWC Wage Orders
16 by failing to timely pay Plaintiffs, the Class, and on information and belief,
17 other current and former employees of Defendants as described herein;

18 i. Defendants violated Labor Code § 432.5 by requiring Plaintiffs and members of
19 the Class with illicit non-compete or non-solicit agreements as a condition of employment;

20 j. Defendants violated Labor Code § 2802 by failing to indemnify Plaintiffs and
21 members of the Class and on information and belief, other current and former employees of
22 Defendants as described herein;

23 k. Defendants violated Labor Code § 2751 with a written commission agreement
24 which shall set forth the method by which the commissions were computed and paid and was
25 signed by the employee.

26 98. Pursuant to Labor Code § 2699, Plaintiffs, members of the Class, and all other
27 aggrieved current and former employees seek to recover civil penalties, as otherwise provided by
28 statute and wage order, for which Defendants are liable as a result of their violations of the

California Labor Code and applicable wage order(s) in an amount to be proven at trial. These penalties include, but are not limited to, those provided by Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1194, 1197, 2699, 2802 and IWC Wage Orders. Plaintiffs and aggrieved current and former employees further seek and award of reasonable attorneys' fees and costs pursuant to Labor Code § 2698 and 2699.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiffs, and each of them, pray for judgment against Defendants, and DOES 1 through 100, inclusive, and each of them, jointly and severally, as follows:

ON THE FIRST CAUSE OF ACTION (LABOR CODE § 2751):

1. For Plaintiffs and the Class Members' actual damages;
2. Injunctive Relief; and
3. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE SECOND CAUSE OF ACTION (UNFAIR BUSINESS PRACTICES):

1. For restitution of all profits and gains resulting from Defendants' unfair, unlawful, and/or fraudulent business acts and/or practices to Plaintiffs and Class Members and all persons with a vested interest therein who have been adversely affected by the practices at issue;
2. For an injunction permanently enjoining Defendants from continuing to engage in any further acts of unfair, unlawful, and/or fraudulent business acts and/or practices; and
3. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE THIRD CAUSE OF ACTION (FAILURE TO AUTHORIZE

OR PERMIT REST BREAKS):

1. That the Court declare, adjudge, and decree that Defendants violated California Labor Code § 226.7 and applicable IWC Wage Orders by willfully failing to authorize and permit all rest periods (including second rest periods) to Plaintiffs and Class Members;
2. That the Court make an award to Plaintiffs of one (1) hour of pay at each

employee's regular rate of compensation for each workday that a rest period was not provided;

3. For all actual, consequential, and incidental losses and damages, according to proof, but in an amount exceeding \$250,000;
4. For premiums pursuant to California Labor Code § 226.7(c);
5. For pre-judgment interest on any unpaid wages from the date such amounts were due; and
6. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE FOURTH CAUSE OF ACTION (FAILURE TO PAY ALL WAGES):

1. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510, 1194(a) and 1197;
2. For unpaid minimum wages and such general and special damages as may be appropriate;
3. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due until paid in full;
4. For liquidated damages in an amount equal to the minimum wages unlawfully withheld pursuant to California Labor Code section 1194.2(a);
5. For civil penalties pursuant to California Labor Code section 1197.1(a)(1-2);
6. For civil penalties pursuant to California Labor Code section 558; and
7. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE FIFTH CAUSE OF ACTION (WAGE STATEMENTS):

1. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 226 and applicable IWC Wage Orders by willfully failing to provide accurate wage statements to Plaintiffs and Class Members;
2. That the Court make an award to Plaintiffs and each of the Class Members the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four

thousand dollars (\$4,000);

3. For reasonable attorneys' fees and for costs of suit incurred herein.

ON THE SIXTH CAUSE OF ACTION (FAILURE TO PROVIDE MEAL PERIODS):

1. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a meal period was not provided, impeded, discouraged and/or dissuaded;
2. For an order imposing all civil and statutory penalties provided by law.

**ON THE SEVENTH CAUSE OF ACTION (WAITING TIME PENALTIES AND
FAILURE TO TIMELY PAY WAGES):**

1. For waiting time penalties for all former employees not timely paid their last pay check, including vacation pay;
2. Failure penalties and damages as provided by statute and Labor Code section 210;
3. For reasonable attorneys' fees and costs;
4. For an order imposing all civil and statutory penalties provided by law.

ON THE EIGHTH CAUSE OF ACTION (FAILURE TO REIMBURSE EXPENSES):

1. For recovery of all necessary expenditures or losses incurred by Plaintiffs and the class members, according to proof;
2. For pre-judgment interest as allowed by Labor Code §§ 218.6, 1194(a), and Civil Code § 3287;
3. For an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2802(c).

**ON THE NINTH CAUSE OF ACTION (UNLAWFUL NON-SOLICIT AND NON-
COMPETE AGREEMENTS)**

1. For an injunction permanently enjoining Defendants from continuing to engage in any further acts of unfair, unlawful, and/or fraudulent business acts and/or practices; and
2. For reasonable attorneys' fees and for costs of suit incurred herein.

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ON THE TENTH CAUSE OF ACTION (PAGA):

1. That the Court declare, adjudge and decree that Defendants violated California Private Attorneys General Act, Labor Code § 2698 and 2699;
2. For an order imposing all civil and statutory penalties provided by law;
3. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 2699(g).

ON ALL CAUSES OF ACTION:

1. For reasonable costs incurred;
2. For such other and further relief as this Court may deem just and proper.

Dated: May 17, 2023

BARKHORDARIAN LAW FIRM, PC

By: /s/ John F. Litwin
JOHN F. LITWIN

Attorneys for Plaintiff IGNAIN PEREZ, on behalf
of himself and all others similarly situated

Dated: May 17, 2023

BARTZ LAW GROUP APC

By: /s/ Aaron A. Bartz
AARON A. BARTZ

Attorneys for Plaintiffs JOSE GONZALEZ and
ANTONIO SERRANO, on behalf of themselves
and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues triable to a jury.

Dated: May 17, 2023

BARKHORDARIAN LAW FIRM, PC

By: /s/ John F. Litwin

JOHN F. LITWIN

Attorneys for Plaintiff IGNAIN PEREZ, on behalf
of himself and all others similarly situated

Dated: May 17, 2023

BARTZ LAW GROUP APC

By: /s/ Aaron A. Bartz

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Attorneys for Plaintiffs JOSE GONZALEZ and
ANTONIO SERRANO, on behalf of themselves
and all others similarly situated