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Attorneys for Plaintiff Jose Ochoa
individually, and on behalf of all other similarly situated
current and former employees of Greenstone Materials, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JOSE OCHOA, individually, and on behalf
of all other similarly situated current and
former employees of GREENSTONE
MATERIALS, INC

Plaintiff,

vs.

GREENSTONE MATERIALS INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

09/15/2016 at 12:39:14 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

CASE NO.: 30-2016-00875367-CU-OE-CXC
Judge Kim G. Dunning Dept CX104

CLASS ACTION COMPLAINT FOR:

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to pay minimum and straight time wages;
4. Failure to pay overtime compensation;
5. Failure to timely pay wages upon termination of employment;
6. Failure to provide accurate statements and maintain required payroll records;
7. Failure to permit employees to inspect or copy payroll records;
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
9. Representative Action for Civil Penalties pursuant to the Private Attorneys General Act [Cal. Lab. Code §§ 2698-2699.5]

DEMAND FOR JURY TRIAL

1 Plaintiff Jose Ochoa ("Plaintiff"), on behalf of himself and all other similarly situated
2 current and former employees of Greenstone Materials, Inc., complains and alleges as follows:

3 INTRODUCTION & GENERAL ALLEGATIONS

4 1. Plaintiff brings this action against Greenstone Materials, Inc., and DOES 1
5 through 50 (hereinafter also collectively referred to as "DEFENDANTS") for California Labor
6 Code violations stemming from DEFENDANTS' failure to provide all timely meal and rest
7 period, failure to pay for all hours worked, including minimum wage, straight time, and
8 overtime pay, failure to timely pay all wages to terminated employees, and failure to furnish
9 accurate statements and maintain required records, in accordance with California Labor Code
10 §§ 201-204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.1, 1197, and Industrial Welfare
11 Commission ("IWC") Order No. 16-2001.

12 2. Plaintiff brings the First through Eighth Causes of Action individually and as a
13 class action on behalf of himself and certain current and former employees of DEFENDANTS
14 (hereinafter collectively referred to as "PLAINTIFFS" or "the Class," and defined more fully
15 below).

16 3. Plaintiff brings the Ninth Cause of Action as a representative action under the
17 California Private Attorney General Act ("PAGA") to recover civil penalties that are owed to
18 the State of California and past and present employees of DEFENDANTS.

19 4. PLAINTIFFS or the Class are current and former non-exempt employees of
20 DEFENDANTS that worked for DEFENDANTS in the State of California, for a period of time
21 within the four (4) years preceding the filing of this action.

22 5. Plaintiff Jose Ochoa is a resident of California, At all relevant times herein,
23 Plaintiff was employed by DEFENDANTS in the State of California as a non-exempt, hourly
24 employee.

25 6. Throughout the time period involved in this case, DEFENDANTS have
26 wrongfully failed to provide Plaintiff and the Class with timely, adequate, and duty-free meal
27 periods, by way of specific classwide company policies and practices, including, but not
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1 limited to, their shift and meal period scheduling policies and practices, and the lack of express
2 meal period policies. DEFENDANTS regularly required Plaintiff and the Class to work in
3 excess of five consecutive hours a day without providing a 30-minute, continuous and
4 uninterrupted, meal period for every five hours of work, or without compensating Plaintiff and
5 the Class for meal periods that were not provided by the end of the fifth hour of work or tenth
6 hour of work. DEFENDANTS did not inform Plaintiff and the Class of their right to take a
7 meal period by the end of the fifth hour of work. DEFENDANTS did not inform Plaintiff and
8 the Class of their right to take a second meal break for shifts longer than 10 hours.
9 DEFENDANTS did not inform Plaintiff and the Class of their right, for shifts of more than 10
10 hours, to take a second meal break by the end of the 10th hour. Moreover, DEFENDANTS did
11 not have legally compliant policies or practices providing adequate and duty-free meal periods
12 for Plaintiff and the Class, nor did DEFENDANTS have legally compliant policies or practices
13 regarding the timing of meal periods. DEFENDANTS also did not have any policies or
14 practices to record whether the Plaintiff and the Class were taking their required meal periods
15 as required by IWC Wage Order No. 16-2001. Indeed, DEFENDANTS instituted a policy of
16 auto-deducting a 30 minute lunch break without providing or recording that a lunch had
17 actually been taken.

18 7. Throughout the time period involved in this case, DEFENDANTS have
19 wrongfully failed to authorize and permit Plaintiff and the Class to take timely and duty-free
20 rest periods. DEFENDANTS regularly required Plaintiff and the Class to work in excess of
21 four consecutive hours a day without DEFENDANTS authorizing and permitting them to take
22 a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major
23 fraction of four hours), or without compensating Plaintiff and the Class for rest periods that
24 were not authorized or permitted. DEFENDANTS did not properly inform Plaintiff and the
25 Class of their right to take a rest period every four hours of work (or major fraction of four
26 hours). Moreover, DEFENDANTS did not have legally compliant policies or practices
27 permitting or authorizing timely rest periods for Plaintiff and the Class. DEFENDANTS also
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1 did not have any policies or practices to verify whether Plaintiff and the Class were receiving
2 their required rest periods.

3 8. Throughout the time period involved in this case, DEFENDANTS maintained a
4 policy and practice of requiring Plaintiff and the Class to perform work "off-the-clock" that
5 was not compensated. This "off-the-clock" work regularly occurred, among other things, as a
6 result of DEFENDANTS unlawful rounding policies and practices that rounded employees'
7 recorded hours worked in a way that mostly, if not exclusively, favored DEFENDANTS.
8 DEFENDANTS did not pay Plaintiff and the Class for this work time, and some of this time
9 should have been paid at the overtime rate of pay because Plaintiff and the Class worked shifts
10 longer than 8 hours in a day.

11 9. DEFENDANTS willfully failed and refused to timely pay Plaintiff and the Class
12 at the conclusion of their employment for the aforementioned "off-the-clock" work. As a
13 result, DEFENDANTS violated California Labor Code §§ 201-203.

14 10. DEFENDANTS, as a matter of practice and policy, did not furnish Plaintiff and
15 the Class with accurate itemized wage statement that accurately show total hours worked by
16 Plaintiff and the Class, gross wages earned, net wages earned, and other information required
17 by Labor Code § 226(a). DEFENDANTS knowingly and intentionally failed to do so because,
18 among other things, the wages statements did not accurately state the total hours worked, the
19 overtime rates, the gross wages earned, and the net wages earned. As a result of these
20 violations of Section 226(a), the Plaintiff and the Class suffered injury because, among other
21 things: (a) the violations led them to believe that they were not entitled to be paid daily
22 minimum wages, overtime wages, meal period premium wages, and rest period premium
23 wages, even though they were entitled; (b) the violations led them to believe that they had been
24 paid the minimum, overtime, meal period premium, and rest period premium wages to which
25 they were entitled, even though they had not been; (c) the violations led them to believe they
26 were not entitled to be paid minimum, overtime, meal period premium, and rest period
27 premium wages at the correct California rate even though they were; (d) the violations led
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1 them to believe they had been paid minimum, overtime, meal period premium, and rest period
2 premium wages at the correct California rate even though they had not been; (e) the violations
3 hindered them from determining the amounts of minimum, overtime, meal period premium,
4 and rest period premium wages owed to them; (f) in connection with their employment before
5 and during this action, and in connection with prosecuting this action, the violations caused
6 them to have to perform mathematical computations to determine the amounts of wages owed
7 to them, computations they would not have to make if the wage statements contained the
8 required accurate information; (g) by understating the wages truly due them, the violations
9 caused them to lose entitlement and/or accrual of the full amount of Social Security, disability,
10 unemployment, and other governmental benefits; (h) the wage statements inaccurately
11 understated the wages, hours, and wages rates to which Plaintiff and the Class were entitled,
12 and Plaintiffs and the Class were paid less than the wages and wage rates to which they were
13 entitled. Thus, Plaintiff and the Class are owed the amounts provided for in Labor Code §
14 226(e).

15 THE PARTIES TO EACH CAUSE OF ACTION

16 A. Plaintiff

17 11. On or about November 4, 2013, Plaintiff commenced employment with
18 DEFENDANTS at their San Juan Capistrano location, located at 31507 Ortega Hwy, San Juan
19 Capistrano, California 92675. Plaintiff was initially employed as a laborer for six months
20 before being promoted to machine operator for remainder of his employment. Plaintiff was
21 employed as a non-exempt, non-supervisory, hourly employee of DEFENDANTS.

22 12. Plaintiff reserves the right to seek leave to amend this complaint to add new
23 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
24 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

25 B. Defendants

26 13. Plaintiff is informed and believes, and based upon that information and belief
27 alleges, that DEFENDANTS are all corporations authorized to conduct business, and actually
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1 conducting business, in the State of California, County of Orange. DEFENDANTS were the
2 employers of Plaintiff and the current and/or former employer of the putative Class.

3 14. Plaintiff does not know the true names or capacities of the persons or entities
4 sued herein as DOES 1-50, inclusive, and therefore sues said DEFENDANTS by such
5 fictitious names. Each of the DOE Defendants was in some manner legally responsible for the
6 damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this
7 complaint to set forth the true names and capacities of these Defendants when they have been
8 ascertained, together with appropriate charging allegations, as may be necessary.

9 15. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive,
10 and each of them, were residents of, doing business in, availed themselves of the jurisdiction
11 of, and/or injured a significant number of the Plaintiffs and the Class in the State of California.

12 16. Plaintiff is informed and believes and thereon alleges that at all relevant times
13 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff
14 and the other employees described in the class definitions below, and exercised control over
15 their wages, hours, and working conditions. Plaintiff is informed and believes and thereon
16 alleges that each Defendant acted pursuant to and within the scope of the relationships alleged
17 above, that each Defendant knew or should have known about, and authorized, ratified,
18 adopted, approved, controlled, or aided and abetted the conduct of all other Defendants.

19 17. Defendant Greenstone Materials, Inc. and DOES 1-50 are collectively referred
20 to herein as "DEFENDANTS."

21 CLASS ACTION ALLEGATIONS

22 18. Plaintiff brings this action individually, as well as on behalf of each and all
23 other persons similarly situated, and thus, seeks class certification under California Code of
24 Civil Procedure § 382.

25 19. All claims alleged herein arise under California law for which PLAINTIFFS
26 seek relief authorized by California law.

27 20. The proposed Class consists of and is defined as:
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1 All persons employed by Defendants to work in any hourly paid job position for
2 Greenstone Materials, Inc. as either a temporary or permanent employee, in
3 California at any time during the period beginning four years before the filing of
4 the initial complaint in this action. For purposes of this definition, "Defendants"
5 means Greenstone Materials, Inc. and any of the fictitiously named defendants
6 (Does 1 through 50).

7 21. Plaintiff reserves the right to establish other sub-classes as appropriate.

8 22. At all material times, Plaintiff was a member of the Class.

9 23. Plaintiff undertakes this action for the benefit of all Class members.

10 24. There is a well-defined community of interest in the litigation and the Class is
11 readily ascertainable:

12 (a) Numerosity: The members of the Class (and each subclass, if any) are so
13 numerous that joinder of all members would be unfeasible and
14 impractical. The membership of the entire Class is unknown to Plaintiff
15 at this time, however, the Class is estimated to be greater than 100
16 individuals and the identity of such membership is readily ascertainable
17 by inspection of Defendants' records.

18 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
19 protect the interests of each Class member with whom there is a shared,
20 well-defined community of interest, and Plaintiff's claims (or defenses,
21 if any) are typical of all Class members' claims as demonstrated herein.

22 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
23 protect the interests of each Class member with whom there is a shared,
24 well-defined community of interest and typicality of claims, as
25 demonstrated herein. Plaintiff has no conflicts with or interests
26 antagonistic to any Class member. Plaintiff's attorneys, the proposed
27 class counsel, are versed in the rules governing class action discovery,
28 certification, and settlement. Plaintiff has incurred, and throughout the

1 duration of this action, will continue to incur costs and attorneys' fees
2 that have been, are, and will be necessarily expended for the prosecution
3 of this action for the substantial benefit of each class member.

4 (d) Superiority: A Class Action is superior to other available methods for
5 the fair and efficient adjudication of the controversy, including
6 consideration of:

- 7 1) The interests of the members of the Class in individually
8 controlling the prosecution or defense of separate actions;
- 9 2) The extent and nature of any litigation concerning the
10 controversy already commenced by or against members of the
11 Class;
- 12 3) The desirability or undesirability of concentrating the litigation of
13 the claims in the particular forum; and
- 14 4) The difficulties likely to be encountered in the management of a
15 class action.

16 (e) Public Policy Considerations: Employers in the State of California
17 violate employment and labor laws every day. Current employees are
18 often afraid to assert their rights out of fear of direct or indirect
19 retaliation. Former employees are fearful of bringing actions because
20 they believe their former employers might damage their future endeavors
21 through negative references and/or other means. Class actions provide
22 the class members who are not named in the complaint with a type of
23 anonymity that allows for the vindication of their rights at the same time
24 as their privacy is protected.

25 25. There are common questions of law and fact as to the Class (and each subclass,
26 if any) that predominate over questions affecting only individual members, including without
27 limitation, whether, as alleged herein, DEFENDANTS have:

- (a) Failed to provide meal periods and pay meal period premium wages to Class members;
- (b) Failed to authorize and permit rest periods and pay rest period premium wages to Class members;
- (c) Failed to pay Class members for all hours worked, including minimum wages, straight time wages, and overtime wages;
- (d) Failed to promptly pay all wages due to Class members upon their discharge or resignation;
- (e) Failed to provide Class members with accurate wages statements;

26. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which DEFENDANTS are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

- 1 1) Inconsistent or varying adjudications with respect to individual
2 members of the Class which would establish incompatible
3 standards of conduct for DEFENDANTS; and/or
4 2) Adjudications with respect to the individual members which
5 would, as a practical matter, be dispositive of the interests of
6 other members not parties to the adjudications, or would
7 substantially impair or impede their ability to protect their
8 interests, including but not limited to the potential for exhausting
9 the funds available from those parties who are, or may be,
10 responsible DEFENDANTS; and,
11 (g) DEFENDANTS have acted or refused to act on grounds generally
12 applicable to the Class, thereby making final injunctive relief appropriate
13 with respect to the class as a whole.

14 27. Plaintiff contemplates the eventual issuance of notice to the proposed members
15 of the Class that would set forth the subject and nature of the instant action. The
16 DEFENDANTS' own business records may be utilized for assistance in the preparation and
17 issuance of the contemplated notices. To the extent that any further notices may be required,
18 Plaintiff would contemplate the use of additional techniques and forms commonly used in class
19 actions, such as published notice, e-mail notice, website notice, first-class mail, or
20 combinations thereof, or by other methods suitable to the Class and deemed necessary and/or
21 appropriate by the Court.

22 **FIRST CAUSE OF ACTION**

23 (Against All Defendants for Failure to Provide Meal Periods)
24 [Cal. Lab. Code §§ 226.7, 512, and IWC Wage Order No. 16-2001]

25 28. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
26 material allegations set out in this Complaint.

27 29. Under California law, DEFENDANTS have an affirmative obligation to relieve
28 the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than

1 fifth hour of work in a workday, and to take their second meal periods no later than the tenth
2 hour of work in the workday.

3 30. Despite these legal requirements, DEFENDANTS regularly failed to provide
4 Plaintiff and the Class with both meal periods as required by California law.

5 31. Under California law, Plaintiff and the Class are entitled to be paid one hour of
6 additional wages for each instance he or she was not provided with all required meal period(s).

7 32. DEFENDANTS regularly failed to pay Plaintiff and the Class the additional
8 wages to which they were entitled for meal periods and that were not provided.

9 33. As a result, DEFENDANTS are liable to Plaintiff and the Class for one hour of
10 additional wages for each work day for a meal period that was not provided.

11 34. By failing to keep adequate time records required by Labor Code § 1174(d),
12 DEFENDANTS have made it difficult to calculate the full extent of meal period premium
13 wage compensation due to Plaintiff and the Class Members.

14 35. California Labor Code section 204 requires employers to provide employees
15 with all wages due and payable twice a month. Throughout the statute of limitations period
16 applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month
17 at rates required by law, including meal period premium wages for each meal period that was
18 not provided. However, during all such times, DEFENDANTS systematically failed and
19 refused to pay Plaintiff and the Class all such wages due, and failed to pay those wages twice a
20 month.

21 36. DEFENDANTS are also liable to Plaintiff and the Class for the civil penalties
22 provided for in Labor Code § 558 because of the violations alleged in this cause of action.

23 **SECOND CAUSE OF ACTION**

24 **(Against All Defendants for Failure to Provide Rest Periods)**
25 **[Cal. Lab. Code §§ 226.7, and IWC Wage Order No. 16-2001]**

26 37. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
27 material allegations set out in this Complaint.
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1 38. DEFENDANTS are required by California law to authorize and permit breaks of
2 an uninterrupted, net 10-minutes for each four hours of work or major fraction of four hours
3 (i.e. more than two hours). That is, the required number of rest breaks is equal to the number
4 of work hours divided by four, and if the work time is not evenly divided by four, if the
5 remaining fractional part is two hours or less it is rounded down, and if it is more than two
6 hours, it is rounded up. Thus, for example, if an employee's work time is 6 hours and ten
7 minutes, the employee is entitled to two rest breaks. If the work time is nine hours, the
8 employee is still entitled to only two rest breaks. Each failure to authorize rest breaks as so
9 required is itself a violation of California's rest break laws.

10 39. Despite these legal requirements, DEFENDANTS failed to authorize Plaintiff
11 and the Class to take all timely, net, 10-minute rest breaks owed to them, regardless of whether
12 employees worked more than 4 hours in a workday.

13 40. Under California law, Plaintiff and the Class are entitled to be paid one hour of
14 premium wages rate for each instance he or she was not provided with all required rest
15 break(s).

16 41. DEFENDANTS regularly failed to pay Plaintiff and the Class the additional
17 wages to which they were entitled for rest breaks DEFENDANTS failed authorize and permit.
18 As a result, DEFENDANTS are liable to Plaintiff and the Class for one hour of additional
19 wages for each work day when they did not receive a rest break.

20 42. California Labor Code section 204 requires employers to provide employees
21 with all wages due and payable twice a month. Throughout the statute of limitations period
22 applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month
23 at rates required by law, including rest break premium wages for each rest break that was not
24 authorized and permitted. However, during all such times, DEFENDANTS systematically
25 failed and refused to pay Plaintiff and the Class all such wages due, and failed to pay those
26 wages twice a month.

1 43. DEFENDANTS are also liable to Plaintiff and the Class for the civil penalties
2 provided for in Labor Code § 558 because of the violations alleged in this cause of action.

3 **THIRD CAUSE OF ACTION**

4 **(Against all Defendants for Failure to Pay Minimum Wage and Straight Time Wages)**
5 **[Cal. Lab. Code §§204 and 1194, and IWC Wage Order No. 16-2001]**

6 44. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
7 material allegations set out in this Complaint.

8 45. “Hours worked” is the time during which an employee is subject to the control
9 of an employer, and includes all the time the employee is suffered or permitted to work,
10 whether or not required to do so.

11 46. At all relevant times herein mentioned, DEFENDANTS knowingly failed to pay
12 to Plaintiff and the other members of the Class compensation for all hours they worked.

13 47. Accordingly, Plaintiff and the other members of the Class are entitled to recover
14 straight time wages for all non-overtime hours worked for DEFENDANTS.

15 48. By and through the conduct described above, the Plaintiff and the other
16 members of the Class, have been deprived of their rights to be paid wages earned by virtue of
17 their employment with DEFENDANTS.

18 49. By virtue of the DEFENDANTS’ unlawful failure to pay additional
19 compensation to the Class for their non-overtime hours worked without pay, the Class has
20 suffered, and will continue to suffer, damages in amounts which are presently unknown to the
21 Class, but which exceed the jurisdictional minimum of this Court, and which will be
22 ascertained according to proof at trial.

23 50. By failing to keep adequate time records required by Labor Code § 1174(d),
24 DEFENDANTS have made it difficult to calculate the full extent of compensation due Plaintiff
25 and the Class Members.

26 51. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are
27 entitled to recover liquidated damages (double damages) for DEFENDANTS’ failure to pay
28 minimum wages.

1 52. California Labor Code section 204 requires employers to provide employees
2 with all wages due and payable twice a month. Throughout the statute of limitations period
3 applicable to this cause of action, Plaintiff and the Class members were entitled to be paid
4 twice a month at rates required by law, including minimum wages and straight time wages.
5 However, during all such times, DEFENDANTS systematically failed and refused to pay
6 Plaintiff and the Class members all such wages due, and failed to pay those wages twice a
7 month.

8 53. Plaintiff and the Class are also entitled to seek recovery of all unpaid wages,
9 interest, and reasonable attorneys' fees and costs pursuant to Cal. Labor Code §§ 218.5 and
10 218.6.

11 54. DEFENDANTS are also liable to the Class for the civil penalties provided for in
12 Labor Code § 558, because of the violations alleged in this cause of action.

13 **FOURTH CAUSE OF ACTION**

14 **(Against all Defendants for Failure to Pay Overtime Wages)**
15 **[Cal. Lab. Code §§ 510, 1194 and 1198 and IWC Wage Order No. 16-2001]**

16 55. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
17 material allegations set out in this Complaint.

18 56. California Labor Code § 510 provides that employees in California shall not be
19 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
20 they receive additional compensation beyond their regular wages in amounts specified by law.

21 57. California Labor Code §§ 1194 and 1198 provide that employees in California
22 shall not be employed more than eight hours in any workday unless they receive additional
23 compensation beyond their regular wages in amounts specified by law. Additionally,
24 California Labor Code § 1198 states that the employment of an employee for longer hours than
25 those fixed by the Industrial Welfare Commission is unlawful.

26 58. At all times relevant hereto, Plaintiff and the members of the Class have worked
27 more than eight, and at times more than twelve hours in a workday, as employees of
28 DEFENDANTS. Further, at all times relevant hereto, Plaintiff and the members of the Class

1 have been paid on an hourly basis.

2 59. At all times relevant hereto, DEFENDANTS failed to pay the Plaintiff and the
3 other members of the Class overtime compensation for the hours they have worked in excess
4 of the maximum hours permissible by law as required by California Labor Code § 510 and
5 1198. Plaintiffs and the other members of the Class are regularly required to work overtime
6 hours.

7 60. By virtue of DEFENDANTS' unlawful failure to pay additional, premium rate
8 compensation to the Plaintiffs and the other members of the Class for their overtime hours
9 worked, the Plaintiffs and the other members of the Class have suffered, and will continue to
10 suffer, damages in amounts which are presently unknown to them but which exceed the
11 jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

12 61. By failing to keep adequate time records required by Labor Code § 1174(d),
13 DEFENDANTS have made it difficult to calculate the full extent of overtime compensation
14 due Plaintiffs and the Class Members.

15 62. California Labor Code section 204 requires employers to provide employees
16 with all wages due and payable twice a month. Throughout the statute of limitations period
17 applicable to this cause of action, Plaintiff and the Class members were entitled to be paid
18 twice a month at rates required by law, including overtime wages. However, during all such
19 times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class
20 members all such wages due, and failed to pay those wages twice a month.

21 63. Plaintiff and the other members of the Class also request recovery of overtime
22 compensation according to proof, interest, attorneys' fees and costs pursuant to California
23 Labor Code §§ 218.5 and 1194(a), as well as the assessment of any statutory penalties against
24 DEFENDANTS, in a sum as provided by the California Labor Code and/or other statutes.
25 Further, Plaintiff and the other members of the Class, are entitled to seek and recover
26 reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5 and 1194.

1 **FIFTH CAUSE OF ACTION**

2 **(Against all Defendants for Failure to Pay All Wages Due to Discharged or Terminated**
3 **Employees)**

4 **[Cal. Lab. Code §§ 201 – 204; and IWC Wage Order No. 16-2001]**

5 64. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
6 material allegations set out in this Complaint.

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

14 66. Within the applicable statute of limitations, the employment of Plaintiff and
15 many other members of the Class ended, i.e. was terminated by quitting or discharge, and the
16 employment of others will be. However, during the relevant time period, DEFENDANTS
17 failed, and continue to fail to pay Plaintiffs and terminated Class members, without abatement,
18 all wages required to be paid by California Labor Code sections 201 and 202 either at the time
19 of discharge, or within seventy-two (72) hours of their leaving DEFENDANTS' employ.

20 67. DEFENDANTS' failure to pay Plaintiff and those Class members who are no
21 longer employed by DEFENDANTS their wages earned and unpaid at the time of discharge, or
22 within seventy-two (72) hours of their leaving DEFENDANTS' employ, is in violation of
23 California Labor Code §§ 201 and 202.

24 68. California Labor Code § 203 provides that if an employer willfully fails to pay
25 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
26 continue as a penalty wage from the due date, and at the same rate until paid or until an action
27 is commenced; but the wages shall not continue for more than thirty (30) days. Plaintiff and
28 the Class members are entitled to recover from DEFENDANTS their additionally accruing

1 wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
2 maximum pursuant to California Labor Code § 203.

3 **SIXTH CAUSE OF ACTION**

4 **(Against all Defendants for Failure to Provide Accurate Statements and Maintain
Required Records)**

5 **[Cal. Lab. Code § 226 and IWC Wage Order No. 16-2001]**

6 69. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
7 material allegations set out in this Complaint.

8 70. At all material times set forth herein, California Labor Code § 226(a) provides
9 that every employer shall furnish each of his or her employees an accurate itemized wage
10 statement in writing showing nine pieces of information, including: (1) gross wages earned, (2)
11 total hours worked by the employee, (3) the number of piece-rate units earned and any
12 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
13 that all deductions made on written orders of the employee may be aggregated and shown as
14 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
15 paid, (7) the name of the employee and the last four digits of his or her social security number
16 or an employee identification number other than a social security number, (8) the name and
17 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours worked at each hourly rate by the
19 employee.

20 71. DEFENDANTS have intentionally and willfully failed to provide employees
21 with complete and accurate wage statements. The deficiencies include, among other things,
22 the failure to correctly identify the gross wages earned by Plaintiffs and the members of the
23 Class, the failure to list the true "total hours worked by the employee," the failure to list the
24 true net wages earned, and the failure to list the name and address of the legal entity(s) that
25 employ Plaintiffs and the Class.

26 72. As a result of DEFENDANTS' violation of California Labor Code § 226(a),
27 Plaintiff and the members of the Class have suffered injury and damage to their statutorily-
28 protected rights.

73. Specifically, Plaintiff and the members of the Class have been injured by DEFENDANTS' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

74. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following DEFENDANTS' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

75. Plaintiff and Class members are entitled to recover from DEFENDANTS the greater of their actual damages caused by DEFENDANTS' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

76. Plaintiff and the members of the Class are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g).

SEVENTH CAUSE OF ACTION

(Against all Defendants for Failure to Permit Employees to Inspect or Copy Personnel and Payroll Records)

[Cal. Lab. Code § 226 and IWC Wage Order 16-2001)

77. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

78. California Labor Code section 226 requires employers to permit current or former employees or their representative access to their payroll records and to allow them to inspect or copy them within twenty-one (21) calendar days that the request is made. However, during all relevant times, DEFENDANTS systematically failed and refused to provide Plaintiff and the Class said records requested or within the required time from the time of request.

79. DEFENDANTS are liable to Plaintiff and the Class for the civil penalties provided for in Labor Code § 226(f) because of the violations alleged in this cause of action.

1 **EIGHTH CAUSE OF ACTION**
2 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200,**
3 **et seq.)**

4 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
5 material allegations and Causes of Action set out in this Complaint.

6 81. DEFENDANTS, and each of them, are “persons” as defined under Business &
7 Professions Code § 17201.

8 82. DEFENDANTS’ conduct, as alleged herein, has been, and continues to be,
9 unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public.
10 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
11 Code of Civil Procedure § 1021.5.

12 83. DEFENDANTS’ activities, as alleged herein, are violations of California law,
13 and constitute unlawful business acts and practices in violation of California Business &
14 Professions Code § 17200, et seq.

15 84. A violation of California Business & Professions Code §§ 17200, et seq. may be
16 predicated on the violation of any state or federal law. All of the acts described herein as
17 violations of, among other things, the California Labor Code, are unlawful and in violation of
18 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
19 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
20 California Business and Professions Code §§ 17200, et seq.

21 **Failing to Pay Minimum and Straight Time Wages**

22 85. DEFENDANTS’ failure to pay minimum and straight time wages constitutes
23 unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

24 **Failing to Provide Meal Periods**

25 86. DEFENDANTS’ failure to provide meal periods as required under Cal. Lab. Code
26 §§ 226.7, 512, and IWC Wage Order No. 16-2001 constitutes unlawful and/or unfair activity
27 prohibited by Business and Professions Code § 17200, et seq.

28 87. DEFENDANTS’ failure to pay premiums for missed, late or short meal periods

1 as required under Cal. Lab. Code §§ 226.7, 512, and IWC Wage Order No. 16-2001 constitutes
2 unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq.
3 *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

4 88. DEFENDANTS' failure to provide the required compensation guarantee and
5 enhanced enforcement constitutes unlawful and/or unfair activity prohibited by Business and
6 Professions Code § 17200, et seq. *Safeway, Inc. v. Superior Court of Los Angeles County*
7 (2015) 238 Cal.App.45th 1138.

8 89. DEFENDANTS' failure to provide required statutory protections constitutes
9 unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq.
10 *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

11 **Failing to Provide Rest Periods**

12 90. DEFENDANTS' failure to provide rest periods as required under Cal. Lab.
13 Code §§ 226.7 and IWC Wage Order No. 16-2001 constitutes unlawful and/or unfair activity
14 prohibited by Business and Professions Code § 17200, et seq.

15 91. DEFENDANTS' failure to pay premiums for missed, late or short rest periods
16 as required under Cal. Lab. Code §§ 226.7 and IWC Wage Order No. 16-2001 constitutes
17 unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq.
18 *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

19 92. DEFENDANTS' failure to provide the required compensation guarantee and
20 enhanced enforcement § 226.7 and IWC Wage Order No. 16-2001 constitutes unlawful and/or
21 unfair activity prohibited by Business and Professions Code § 17200, et seq. *Safeway, Inc. v.*
22 *Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

23 93. DEFENDANTS' failure to provide required statutory protections constitutes
24 unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq.
25 *Safeway, Inc. v. Superior Court of Los Angeles County* (2015) 238 Cal.App.45th 1138.

26 **Failing to Pay Overtime**

27 94. DEFENDANTS' failure to pay overtime compensation and other benefits in
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1 violation of Cal. Labor Code §§ 510, 1197, 1198, Penal Code §§ 484 and 532 (obtaining labor
2 through false pretenses), constitutes unlawful and/or unfair activity prohibited by Business and
3 Professions Code § 17200, et seq.

4 **Failing to Provide Accurate Statements and Maintain Required Records**

5 95. DEFENDANTS' failure to provide accurate itemized wage statements in
6 accordance with Labor Code § 226, as alleged above, constitutes unlawful and/or unfair
7 activity prohibited by Business and Professions Code §§ 17200, et seq.

8 **Failing to Permit Employees to Inspect or Copy Personnel and Payroll Records**

9 96. Defendants' failure to permit current or former employees or their
10 representatives access to their payroll records and to allow them to inspect or copy them, as
11 alleged above, constitutes unlawful and/or unfair activity prohibited by Business and
12 Professions Code §§ 17200, et seq.

13 97. By and through their unfair, unlawful and/or fraudulent business practices
14 described herein, the DEFENDANTS, have obtained valuable property, money and services
15 from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons
16 similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

17 98. Plaintiff and the other Class members suffered monetary injury as a direct result
18 of DEFENDANTS' wrongful conduct.

19 99. The Plaintiff, individually, and on behalf of members of the putative Class, is
20 entitled to, and does, seek such relief as may be necessary to disgorge money and/or property
21 which the DEFENDANTS have wrongfully acquired, or of which Plaintiffs have been
22 deprived, by means of the above-described unfair, unlawful and/or fraudulent business
23 practices. Plaintiff and the members of the putative Class are not obligated to establish
24 individual knowledge of the wrongful practices of DEFENDANTS in order to recover
25 restitution.

26 100. The Plaintiff, individually, and on behalf of members of the putative class, is
27 further entitled to and does seek a declaration that the above described business practices are
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1 unfair, unlawful and/or fraudulent, and injunctive relief restraining the DEFENDANTS, and
2 each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent
3 business practices in the future.

4 101. The Plaintiff, individually, and on behalf of members of the putative class, has
5 no plain, speedy, and/or adequate remedy at law to redress the injuries, which the Class
6 members suffered as a consequence of the DEFENDANTS' unfair, unlawful and/or fraudulent
7 business practices. As a result of the unfair, unlawful and/or fraudulent business practices
8 described above, the Plaintiff, individually, and on behalf of members of the putative Class,
9 has suffered and will continue to suffer irreparable harm unless the DEFENDANTS, and each
10 of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent
11 business practices.

12 102. The Plaintiff also alleges that if DEFENDANTS are not enjoined from the
13 conduct set forth herein above, they will continue to avoid paying the appropriate taxes,
14 insurance and other withholdings.

15 103. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff
16 and the putative Class members are entitled to restitution of the wages withheld and retained
17 by DEFENDANTS during a period that commences four years prior to the filing of this
18 complaint; a permanent injunction requiring DEFENDANTS to pay all outstanding wages due
19 to Plaintiff and the Class members; an award of attorneys' fees pursuant to California Code of
20 Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

21 **NINTH CAUSE OF ACTION**

22 **(Representative Action Against all Defendants pursuant to the Private Attorneys General
Act, Cal. Lab. Code §§ 2698, et seq.)**

23 92. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
24 material allegations and Causes of Action set out in this Complaint. Labor Code § 2699(a)
25 specifically provides for a private right of action to recover penalties for violations of the
26 Labor Code: "Notwithstanding any other provision of law, any provision of this code that
27 provides for a civil penalty to be assessed and collected by the Labor and Workforce
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1 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
2 employees, for a violation of this code, may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of himself or herself and other current and
4 former employees."

5 93. This action is appropriately suited for a Representative Action because:

6 A. The individuals that Plaintiffs seek to represent are a significant number.
7 Joinder of all current and former employees individually would be impractical.

8 B. This action involves common questions of law and fact to the potential
9 representative group because the action focuses on the DEFENDANTS' systematic course of
10 illegal payroll practices and policies, which were applied to all hourly employees in violation of
11 the California Labor Code, and the California Business and Professions Code which prohibits
12 unfair business practices arising from such violations.

13 C. The claims of the Plaintiff are typical of the representative group because
14 DEFENDANTS subjected all of their hourly employees to the identical violations of the
15 California Labor Code and California Business and Professions Code.

16 D. The Plaintiff is able to fairly and adequately protect the interests of all
17 members of the representative group because it is in the Plaintiff's best interest to prosecute the
18 claims alleged herein to collect civil penalties due to Plaintiff arising from DEFENDANTS'
19 illegal wage and hour violations.

20 94. Plaintiff has complied with the requirements set forth in California Labor Code
21 §2699.3.

22 95. Pursuant to California Labor Code §§ 2698-2699.5, the Class is entitled to
23 collect civil penalties from DEFENDANTS in a representative action for the California Labor
24 Code violations set forth above.

25 PRAYER FOR RELIEF

26 Plaintiff, individually, and on behalf of all others similarly situated, pray for relief and
27 judgment against DEFENDANTS, jointly and severally, as follows:
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- For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
- For liquidated damages;
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and Class members;
- For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
- For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
- For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other terminated class members;
- For all actual, consequential and incidental losses and damages, according to proof;
- For statutory wage penalties pursuant to California Labor Code § 203 for Plaintiff and all other class members who have left DEFENDANTS' employ;
- For pre-judgment interest on any unpaid wages from the date such amounts were due;
- For reasonable attorneys' fees and for costs of suit incurred herein; and

- For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized wage statements thereto;
- For all actual, consequential and incidental losses and damages, according to proof;
- For statutory penalties pursuant to California Labor Code § 226(e);
- For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g);
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated the record keeping provisions of California Labor Code § 226(b) and applicable IWC Wage Orders as to Plaintiff and class members, and willfully failed to permit employees to inspect or copy payroll records thereto;
- For all actual, consequential and incidental losses and damages, according to proof;
- For statutory penalties pursuant to California Labor Code § 226(f);
- For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Business and Professions Code §§ 17200, et seq. by failing to provide Plaintiff and class members with meal periods, failing to authorize and permit required rest

1 periods, failing to provide all compensation due to them, failing to provide accurate
2 itemized wage statements, and failing to pay Plaintiff's and class members' wages
3 timely as required by California Labor Code §§ 201, 202 and 203;

- 4 • For the DEFENDANTS' policy of never paying premium payments for missed or
5 late meal periods;
 - 6 • For restitution of unpaid wages to Plaintiff and all class members and prejudgment
7 interest from the day such amounts were due and payable;
 - 8 • For restitution of all class members' loss of statutory protections under California
9 Labor Codes § 226.7, 512 and IWC Wage Order No. 16-2001 which provides
10 "compensation guarantee and enhanced enforcement" of employee's rights for
11 premium payments for missed or late meal periods, *Safeway, Inc. v. Superior Court*
12 *of Los Angeles County* (2015) 238 Cal.App.4th 1138;
 - 13 • For restitution of all class members' loss of statutory protections under California
14 Labor Codes § 226.7 and IWC Wage Order No. 16-2001 which provides
15 "compensation guarantee and enhanced enforcement" of employee's rights for
16 premium payments for missed or late break periods, *Safeway, Inc. v. Superior Court*
17 *of Los Angeles County* (2015) 238 Cal.App.4th 1138;
 - 18 • For the appointment of a receiver to receive, manage and distribute any and all
19 funds disgorged from DEFENDANTS and determined to have been wrongfully
20 acquired by DEFENDANTS as a result of violations of California Business &
21 Professions Code §§ 17200 et seq.;
 - 22 • For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Code of Civil Procedure § 1021.5;
 - 24 • For injunctive relief to ensure compliance with this section, pursuant to California
25 Business & Professions Code § 17200, et seq.; and,
 - 26 • For such other and further relief as the Court may deem equitable and appropriate.
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As to all Causes of Action

- For any additional relief that the Court deems just and proper.

Dated: September 14, 2016

Respectfully submitted,

RASTEGAR LAW GROUP, APC

By: 

Farzad Rastegar
Attorneys for Plaintiff Jose Ochoa
individually, and on behalf of all other similarly
situated current and former employees of
Greenstone Materials, Inc.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: September 14, 2016

Respectfully submitted,

RASTEGAR LAW GROUP, APC

By: 

Farzad Rastegar
Attorneys for Plaintiff Jose Ochoa
individually, and on behalf of all other similarly
situated current and former employees of
Greenstone Materials, Inc.