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and all others similarly situated and aggrieved

ELECTRONICALLY FILED

Superior Court of California
County of Sacramento

07/03/2025

By: C. Raybould Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

AGUSTIN DOMINGUEZ, an individual, on
behalf of himself and all others similarly
situated and aggrieved,

Plaintiff,

vs.

E. J. MASONRY, INC., a California
Corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: **25CV016095**

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION COMPLAINT**

- (1) FAILURE TO PROVIDE MEAL PERIODS;**
- (2) FAILURE TO PROVIDE REST BREAKS;**
- (3) FAILURE TO PAY MINIMUM WAGES;**
- (4) FAILURE TO PAY OVERTIME WAGES;**
- (5) FAILURE TO PAY ALL WAGES UPON SEPARATION;**
- (6) FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- (7) FAILURE TO REIMBURSE ALL NECESSARY, BUSINESS-RELATED EXPENSES;**
- (8) FAILURE TO KEEP AND MAINTAIN REQUIRED RECORDS;**
- (9) VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL"), CAL. BUS. & PROF. CODE § 17200, ET SEQ.; AND**
- (10) CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE, PURSUANT TO CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT ("PAGA"), §§ 2698, ET SEQ.**

DEMAND FOR JURY TRIAL

1 **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff AGUSTIN DOMINGUEZ (“Plaintiff” or “DOMINGUEZ”), on behalf of himself and all
3 others similarly situated and aggrieved, by and through his attorneys, Abramson Labor Group, hereby
4 files this Class Action and Private Attorneys General Act of 2004 (“PAGA”) Representative Action
5 Complaint against Defendants E. J. MASONRY, INC., a California Corporation; and DOES 1 through
6 25 inclusive, (collectively, “Defendants”), and states as follows:

7 **I. INTRODUCTION**

8 1. Plaintiff brings this class and representative action on behalf of himself, on behalf of a
9 class defined as all current and former hourly non-exempt employees of E. J. MASONRY, INC. in
10 California at any time during the Class Period beginning four years prior to the filing of this Complaint
11 through the present (“Class Period”), and on behalf of all Aggrieved Persons who worked for Defendants
12 as hourly, non-exempt employees in California at any time during the period beginning one year prior to
13 the PAGA letter (defined below) through the present (“PAGA Period”).

14 2. This is also an enforcement action under the Labor Code Private Attorneys General Act
15 of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any other
16 available relief on behalf of Plaintiff, the State of California, and other current and former employees
17 who work or worked for Defendants in California as non-exempt, hourly employees and who received at
18 least one wage statement during their employment, and against whom one or more violations of any
19 provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days
20 of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set
21 forth in this complaint (“Aggrieved Employees”), at any time between one year and 65 days prior to the
22 filing of this amended complaint (i.e., April 10, 2024) until judgment (the “PAGA Period”). Plaintiff’s
23 share of civil penalties sought in this action does not exceed \$75,000.

24 3. Defendants operate in California in the construction industry, offering commercial
25 customers a broad range of masonry and construction services, including sound walls, retaining walls,
26 geowalls, entry monuments, and special features.¹

27 _____
28 ¹ <https://www.ejmasonry.com> (last accessed April 10, 2025).

1 4. Defendants' policy and practice is to deny earned wages, including premium and overtime
2 pay, to their nonexempt employees in California. Defendants do not provide their employees with legally
3 compliant meal periods and rest breaks nor premium pay in lieu thereof. Additionally, Defendants
4 require their employees to be present and to perform work uncompensated in excess of eight hours per
5 day and/or 40 hours per work week.

6 5. Defendants mandated that Plaintiff and Class Members perform various forms of
7 compensable work off-the-clock including, but not limited to the following: (1) upon arrival at E. J.
8 MASONRY but before clocking in at the start of their shifts, Plaintiff and Class Members started
9 performing compensable work at the request of E. J. MASONRY, such as loading materials and tools
10 into vehicles for transport to job sites; (2) Plaintiff and Class Members ended their shifts by performing
11 work for an extended period of time that needed to be completed that day but would have exceeded eight
12 on-the-clock hours because E. J. MASONRY discouraged overtime and instructed Plaintiff and Class
13 Members to clock out before accruing overtime hours; and (3) for auto-deductions of 30 or 60 minutes
14 for "phantom meal periods," which are defined as meal periods that Plaintiff and Class Members did not
15 actually take and for which they did not clock out, though E. J. MASONRY auto-deducted 30 or 60
16 minutes for those meal periods to avoid paying premiums and paying for those straight-time hours.
17 Defendants do not provide minimum wages and overtime pay for this off-the-clock time. These off-the-
18 clock periods exist for the sole benefit of Defendants and occurred frequently and regularly at
19 Defendants' locations throughout California. This illegal practice has been in effect by Defendants since
20 at least the start of the Class Period.

21 6. Moreover, Defendants fail to timely compensate employees for all wages earned and fail
22 to properly and accurately calculate minimum wages and overtime wages and report wages earned, hours
23 worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of himself and other
24 hourly, nonexempt employees of Defendants to recover unpaid wages, overtime compensation, penalties,
25 interest, injunctive relief, damages, and reasonable attorneys' fees and costs.

26 7. Defendants' deliberate failure to pay their hourly, nonexempt employees their earned
27 wages and overtime compensation violates the California Labor Code and California's Unfair
28 Competition Law, codified under California's Business & Professions Code.

8. Defendants failed to reimburse Plaintiff and Class Members for unreimbursed business expenses for the use of Plaintiff's and Class Members' (1) personal vehicles and (2) tools, such as neon protective vests, hammers, levelers, trowels, spatulas, and shovels, each of which was required to carry out their jobs.

9. Plaintiff brings a class action under the California Code of Civil Procedure section 382 against all Defendants on behalf of all hourly, nonexempt employees of Defendants in California for failing to provide compliant meal periods and rest breaks or premium pay in lieu thereof, for unpaid minimum wages including for work performed off the clock; unpaid overtime wages; failing to pay all wages owed upon separation; failing to provide timely, accurate wage statements; failing to reimburse all necessary, business-related expenses; failing to keep and maintain required records; and other related penalties and damages under the California Labor Code and California Business & Professions Code.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter because Defendants are licensed to do business in California, regularly conduct business in California, and committed and continue to commit the unlawful acts alleged herein in California.

11. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statute under which this action is brought does not specify any other basis for jurisdiction.

12. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, and intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a "citizen" for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiff's share of the civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

13. Venue lies properly with this Court, as it is the place where at least one defendant resides, is incorporated or has its principal place of business, or a substantial amount of the events which gave rise to this suit occurred and/or a cause of action arose. Thus, venue is proper in this Court, because Defendants employ persons in this county and employed at least one plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

14. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violating the California Labor Code.

III. PARTIES

15. Plaintiff AGUSTIN DOMINGUEZ (“Plaintiff” or “DOMINGUEZ”) is or was a resident of Rancho Cordova, California. Defendants employed Plaintiff as an hourly-paid, non-exempt employee for about four months from approximately July 1, 2024 through November 8, 2024 in the position of Builder. During his employment, Plaintiff was based out of Defendants’ location in Stockton, California located at 1226 Enterprise Street, Stockton, California 95204. Plaintiff typically worked five days per week for 10 or more hours per day and at least about forty (40) hours per week. At the time of his separation, Plaintiff was earning an hourly wage of \$32.00 per hour.

16. Defendant E. J. MASONRY, INC. (“E. J. MASONRY”) is, on information and belief, a a California Corporation with its principal place of business located at 3195 Luyung Drive, Rancho Cordova, California 95742 and at all times hereinafter mentioned, is operating in California in the construction industry, offering commercial customers a broad range of masonry and construction services, including sound walls, retaining walls, geowalls, entry monuments, and special features.²

17. Defendants created the policies and procedures described herein and, at all times during the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

18. The practices and policies complained of by way of this Complaint are enforced throughout the State of California, including in Sacramento County, California.

² <https://www.ejmasonryry.com> (last accessed April 10, 2025).

1 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
2 participation in the conduct alleged herein, of the Defendants sued as Does 1-25, inclusive, but is
3 informed and believes that said Defendants are legally responsible for the conduct alleged herein and
4 therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege
5 both the true names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and
6 believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe
7 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint
8 venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said
9 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were
10 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a
11 principal, was negligent in the selection and hiring, training, and supervision of each and every other
12 Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiff is
13 informed and believes that each Defendant acted in all respects pertinent to this action as the agent of
14 the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
15 and that the acts of each Defendant are legally attributable to each of the other Defendant.

16 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

17 20. At all times relevant herein, Defendants operate as a company offering commercial
18 customers a broad range of masonry and construction services, including sound walls, retaining walls,
19 geowalls, entry monuments, and special features.³

20 21. Upon information and belief, Defendant E. J. MASONRY is incorporated in California
21 and maintains its corporate headquarters, including Human Resources in Rancho Cordova, California.
22 Upon information and belief, Defendant E. J. MASONRY maintains a single, centralized Human
23 Resources (“HR”) department at its corporate headquarters in Rancho Cordova, California, which is
24 responsible for conducting Defendants’ recruiting and hiring of new employees, as well as
25 communicating and implementing Defendants’ company-wide policies, including timekeeping
26 policies, to employees throughout California. In particular, Plaintiff and other Class Members, on

27 _____
28 ³ <https://www.ejmasonry.com> (last accessed April 10, 2025).

1 information and belief, received the same standardized documents and/or written policies upon hire.
2 Upon information and belief, the use of standardized documents and/or written policies, including new
3 hire documents, indicate that Defendants dictated policies at the corporate-level and implemented
4 them company-wide, regardless of their employees' assigned locations or positions. On information
5 and belief, all transactions regarding hiring, terminations, promotions, and pay increases, etc., relating
6 to Defendants' California employees were submitted to and processed by Defendant E. J.

7 MASONRY'S HR department located in Rancho Cordova, California.

8 22. Upon information and belief, Defendants' corporate records, business records, data, and
9 other information related to Defendants, including, in particular, HR records pertaining to Defendants'
10 California employees, are also maintained at Defendant E. J. MASONRY'S corporate headquarters in
11 Rancho Cordova, California.

12 23. At all relevant times, Defendants have been, and continue to be, a "person" as that term
13 is defined under California Business & Professions Code section 17021 and California Labor Code
14 sections 1-29.5.

15 24. At all times relevant herein, Plaintiff was employed by Defendants as an hourly,
16 nonexempt employee in the position of Builder in California during the Class Period.

17 25. At all times relevant herein, Plaintiff and Class Members were assigned to and required
18 and permitted to work without pay while performing tasks including, but not limited to: loading
19 vehicles, including personal vehicles with materials for the day; driving to the work site; building
20 structures such as walls, fences, and columns; gluing concrete bricks together; tying metal rods; and
21 pouring cement to construct walls and concrete columns. Plaintiff and Class Members were not properly
22 compensated for some of this work.

23 26. At all times relevant herein, Plaintiff and Class Members worked a substantial amount of
24 time while off-the-clock—meaning they were not punched in for work or their hours were reduced—
25 and therefore, those working hours were not compensated. This off-the-clock time primarily occurred
26 as follows: (1) upon arrival at E. J. MASONRY but before clocking in at the start of their shifts, Plaintiff
27 and Class Members started performing compensable work at the request of E. J. MASONRY, such as
28 loading materials and tools into vehicles for transport to job sites; (2) Plaintiff and Class Members ended

1 their shifts by performing work for an extended period of time that needed to be completed that day but
2 would have exceeded eight on-the-clock hours because E. J. MASONRY discouraged overtime and
3 instructed Plaintiff and Class Members to clock out before accruing overtime hours; and (3) for auto-
4 deductions of 30 or 60 minutes for “phantom meal periods,” which are defined as meal periods that
5 Plaintiff and Class Members did not actually take and for which they did not clock out. So, in those
6 instances, Plaintiff and Class Members performed compensable work off the clock that was never
7 subsequently added and, therefore, remains uncompensated.

8 27. At all times relevant herein, Plaintiff and Class Members were required to perform work
9 during their meal periods due to Defendants’ workload expectations to complete jobs within eight hours
10 to avoid overtime for budgeting purposes, which caused Plaintiff and Class Members to miss their meal
11 periods entirely. Nonetheless, upon information and belief, when Plaintiff and Class Members did not
12 clock out for meal periods, Defendants auto-deducted 30-minutes for meal periods from Plaintiff’s and
13 Class Members’ total hours worked, ignoring the fact that Plaintiff and Class Members did not clock
14 out for a meal period and the need that those meal periods be recorded accurately and be timely—taken
15 before the end of the fifth hour. Defendants do not compensate Plaintiff and Class Members for this
16 compensable time worked off the clock nor for noncompliant meal periods.

17 28. Likewise, at all times relevant herein, Plaintiff and Class Members were required to
18 perform work during their rest breaks and missed their entire rest breaks, because of workload
19 expectations of Plaintiff and Class Members that informed Defendants’ policy and practice to not relieve
20 Plaintiff and Class Members for rest breaks. Defendants do not compensate Plaintiff and Class Members
21 for their noncompliant rest breaks.

22 29. Likewise, at all times relevant herein, Plaintiff and Class Members’ meal periods and rest
23 breaks were noncompliant because they were not off-duty because Plaintiff and Class Members missed
24 their meal periods and rest breaks entirely. These meal periods and rest breaks were noncompliant and
25 not cured by premium compensation, and the meal periods were also not compensated or if compensated,
26 not at the regular rate of pay, for purposes of Defendants’ obligation to pay minimum wages for all hours
27 worked.
28

1 30. At all times relevant herein, Plaintiff and Class Members were assigned to and required
2 to work for periods lasting in excess of five hours and were not authorized nor permitted to take full-
3 length 30-minute, uninterrupted, off-duty meal periods. Accordingly, Plaintiff's and Class Members'
4 meal periods were on-duty for which Defendants failed to compensate Plaintiff and Class Members with
5 both (1) premium pay for meal periods under 30 minutes and (2) the time worked that was on-duty
6 during these meal periods. Defendants' supervisors explicitly told Plaintiff and Class Members that
7 they could not take meal periods.

8 31. Moreover, Plaintiff and Class Members regularly worked in excess of 10 hours without
9 a second 30-minute meal period, despite not signing valid meal period waivers.

10 32. At all times relevant herein, Plaintiff and Class Members were assigned to and required
11 and permitted to work shifts lasting over four hours and were not authorized nor permitted to take full,
12 net 10-minute rest breaks during each shift or 4-hour work period.

13 33. At all times relevant herein, Defendants failed to authorize and permit Plaintiff and Class
14 Members to take full, net 10-minute rest breaks during the Class Period. At the direction of Defendants
15 and/or Defendants' knowledge and acquiescence, Plaintiff and Class Members routinely missed their
16 entire 10-minute rest breaks. Accordingly, all rest breaks were noncompliant for which Defendants
17 should have compensated Plaintiff and Class Members with premium pay for noncompliant rest breaks
18 but failed to do so.

19 34. At all times relevant herein, Plaintiff and Class Members worked in excess of eight hours
20 per workday or 40 hours per work week. Defendants failed to pay for all hours worked in excess of
21 eight hours per day, and when compensated for overtime, failed to pay the correct amount of overtime
22 by under-recording and underreporting Plaintiff's and Class Members' total hours worked. Defendants
23 failed to pay current and former hourly, nonexempt employees one and one-half times (1½) their regular
24 rate of pay for hours worked in excess of eight hours per day or 40 hours per workweek. Defendants
25 also failed to pay their employees at a rate no less than twice the regular rate of pay for work in excess
26 of 12 hours in one day or for all hours worked in excess of eight hours on the seventh consecutive day
27 of work in a workweek.
28

1 35. During the Class Period, Defendants require their hourly, nonexempt employees to
2 perform compensable work while off the clock, including performing compensable work during their
3 meal periods because Plaintiff and Class Members did not clock out for meal periods, but Defendants
4 auto-deducted 30 minutes for those meal periods anyway. So when Plaintiff and Class Members did
5 not clock out for their meal periods, upon information and belief, Defendants auto-deducted 30 minutes
6 each shift from Plaintiff's and Class Members' total hours worked, and, therefore, did not pay Plaintiff
7 and Class Members for those hours worked during meal periods that Defendants auto-deducted.
8 Likewise, Defendants did not pay Plaintiff and Class Members for those hours worked off-the-clock
9 spent loading materials and tools into vehicles before shifts and completing jobs remaining after eight-
10 hour elapsed at the end of their shifts. Accordingly, during the Class Period, Defendants did not provide
11 minimum wages and overtime pay for this time worked off-the-clock that Plaintiff and the Class endured
12 for the benefit of Defendants.

13 36. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount
14 of and rate for overtime wages. Defendants fail to record all hours as overtime by failing to record all
15 hours worked in a workday. This work, done primarily for the employer's benefit, is time that hourly,
16 nonexempt employees should be, but were not compensated for, both straight hours and overtime hours
17 worked in excess of 40 hours in a week, hours worked in excess of eight hours in a day, and for the first
18 eight hours worked on the seventh consecutive day of work in a workweek.

19 37. Supervisors employed by Defendants, including at Plaintiff's location, had knowledge of
20 and required Plaintiff to perform compensable work during meal periods and pre- and post-shift.
21 Supervisors throughout California were aware that Plaintiff and others similarly situated were
22 performing work during these times without proper wages or overtime compensation because they knew
23 that Plaintiff and Class Members were both working prior or after their scheduled shift times and
24 Plaintiff and Class Members were complying with Defendants' policy to clock in only at shift-start and
25 clock out by shift-end.

26 38. In light of Defendants' failure to record employees' off-the-clock time that employees
27 worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks,
28 Defendants failed to properly calculate the hourly, nonexempt employees' hours and therefore,

1 employees' premium pay, minimum wages, and overtime wages due. Accordingly, Defendants failed
2 to provide accurate wage statements to their hourly, nonexempt employees identifying all hours worked
3 and all rates in effect during the pay period.

4 39. At all times relevant herein, the same unlawful practices and procedures described above
5 affect hourly, nonexempt workers of Defendants employed in California.

6 40. At all times relevant herein, Defendants failed to pay Plaintiff and Class Members for all
7 hours worked. Thus, Defendants did not pay Plaintiff and Class Members minimum wages in
8 accordance with law and, because Class Members were not compensated for time worked off the clock
9 during meal periods and before and after scheduled shift times, Defendants also did not pay nonexempt
10 employees all overtime wages in accordance with law.

11 41. At all times relevant herein, Defendants willfully failed to timely pay Plaintiff's and Class
12 Members who are no longer employed by Defendants Plaintiff's and Class Members' uncompensated
13 hours, meal period premiums, rest break premiums, and any accrued paid time off upon their termination
14 or separation from employment as required by California Labor Code sections 201 and 202.

15 42. Defendants failed to reimburse Plaintiff and Class Members for necessary, business-
16 related expenses for the use of Plaintiff's and Class Members' (1) personal vehicles and (2) tools, such
17 as neon protective vests, hammers, levelers, trowels, spatulas, and shovels.

18 43. Plaintiff and Class Members were required to use their personal vehicles to drive to job
19 sites from E. J. MASONRY'S premises and transport materials and tools to those job sites. Likewise,
20 Plaintiff and Class Members were required to bring various tools to job sites that E. J. MASONRY failed
21 to provide but were required nonetheless to complete the assigned masonry jobs.

22 44. Defendants' conduct, as alleged herein, has caused Plaintiff and Class Members damages
23 including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the
24 Class for failing to pay minimum wages; failing to pay overtime wages; failing to pay all wages owed
25 every pay period; failing to keep and maintain required records; failing to pay all wages owed upon
26 separation; failing to provide timely and accurate wage statements; failing to reimburse all necessary,
27 business-related expenses; and unfair competition.

28 45. Plaintiff has complied with the procedures for bringing suit specified in California Labor

Code section 2699.3. By letter dated April 10, 2025, Plaintiff gave written notice by certified mail 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.

V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS

46. Plaintiff is a member of and seeks to be the representative for the Class of similarly situated employees who all have been exposed to, have suffered, and/or were permitted to work under Defendants’ unlawful employment practices as alleged herein.

47. Plaintiff brings his first through ninth causes of action on behalf of himself and on behalf of the following Class⁴ of persons defined as:

All current and former hourly non-exempt employees of E. J. MASONRY INC. in California at any time during the Class Period through the present.

48. This action is appropriately suited for a class action pursuant to Code of Civil Procedure section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives.

49. Numerosity and Ascertainability. The size of the Class makes a class action both necessary and efficient. On information and belief, the proposed Class includes hundreds of current and former employees at Defendants’ locations in California. Members of the Class are ascertainable through Defendants’ records but are so numerous that joinder of all individual Class Members would be impractical.

50. Predominant Common Questions of Law and Fact. Pursuant to section 382, common questions of law and fact exist as to all Class Members. These questions predominate over any individualized issues. These common questions include but are not limited to:

a. Whether Defendants’ policies and practices described in this Complaint were and are illegal;

⁴ Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description with greater particularity or further division into subclasses or limitation to particular issues.

- b. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour worked or part thereof during which they were required to perform acts at the direction and for the benefit of Defendants;
- c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California for the total hours worked during the Class Period;
- d. Whether Defendants have engaged in a common course of requiring or permitting their hourly, nonexempt employees to not report all hours worked during the Class Period;
- e. Whether Defendants have engaged in a common course of failing to maintain true and accurate time records for all hours worked by their nonexempt employees;
- f. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a pattern or practice of failing to provide timely, off-duty, 30-minute meal periods to Plaintiff and members of the Class who worked as hourly, nonexempt employees in California during the Class Period;
- g. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and Class Members who worked as hourly, nonexempt employees in California during the Class Period from taking full-length off-duty, 30-minute meal periods by imposing workload and completion expectations that did not leave time for meal periods, so Plaintiff and Class Members which required to forgo their meal periods entirely;
- h. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members of the Class who worked as hourly, nonexempt employees in California during the Class Period from taking full-length off-duty, 30-minute meal periods for their second meal periods for shifts worked in excess of 10 hours but not more than 12 hours, where these second meal periods were not waived by mutual consent;
- i. Whether Defendants engaged in a pattern or practice of failing to properly record the start and stop times that Plaintiff and Class Members began and ended their shifts;
- j. Whether Defendants engaged in a pattern or practice of failing to properly record the start and stop times that Plaintiff and Class Members took their meal periods;

- 1 k. Whether Defendants engaged in a pattern or practice of failing to properly compensate
2 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
3 California during the Class Period for missed, untimely, or on-duty meal periods as required
4 by California law;
- 5 l. Whether Defendants violated section 11 of the applicable California Industrial Welfare
6 Commission's ("IWC") Wage Order(s) by failing to provide Plaintiff and the members of the
7 Class who worked as hourly, nonexempt employees in California during the Class Period with
8 timely, off-duty, 30-minute meal periods;
- 9 m. Whether Defendants engaged in an unfair practice and violated California Business and
10 Professions Code, section 17200, *et seq.* by failing to provide Plaintiff and the members of
11 the Class who worked as hourly, nonexempt employees in California during the Class Period
12 with their statutory, off-duty, meal periods;
- 13 n. Whether Defendants maintained accurate time records of off-duty, 30-minute meal periods
14 taken by Plaintiff and members of the Class during the Class Period in accordance with section
15 7 of the applicable IWC Wage Order(s);
- 16 o. Whether Defendants engaged in a pattern or practice of failing to properly compensate
17 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
18 California during the Class Period for failing to provide full-length 10-minute rest breaks as
19 contemplated by California law for work periods in excess of four hours;
- 20 p. Whether Defendants failed to compensate, and therefore violated section 12 of the applicable
21 IWC Wage Order(s) and Labor Code section 226.7 by failing to provide 10-minute,
22 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
23 hours;
- 24 q. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
25 overtime pay to Plaintiff and the Class for hours worked in excess of eight hours in a day;
- 26 r. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
27 double time for hours worked in excess of 12 hours in a day;
- 28 s. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable

- 1 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for hours worked
2 in excess of eight hours in a day;
- 3 t. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable
4 IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for the first eight
5 hours worked in a day on the seventh consecutive day in a workweek and double time for all
6 hours worked in excess of eight hours on such days;
- 7 u. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 due to failure
8 to compensate Plaintiff and the Class for those acts Defendants required Plaintiff and
9 members of the Class to perform for the benefit of Defendants;
- 10 v. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements
11 to Plaintiffs and members of the Class that failed to accurately state the total hours worked
12 and therefore, the total gross and net wages owed, to the detriment of Plaintiffs and the Class;
- 13 w. Whether Defendants violated Labor Code sections 201, 202, and 203 by engaging in a
14 common course of failing to timely pay nonexempt employees all wages due upon separation;
- 15 x. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage
16 statements to Plaintiff and members of the Class that failed to include payments for missed,
17 untimely, and/or on-duty meal periods among wages earned throughout the Class Period;
- 18 y. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements
19 to Plaintiff and members of the Class that failed to accurately state the total hours worked and
20 therefore, the total gross and net wages owed, to the detriment of Plaintiff and the Class;
- 21 z. Whether Defendants violated California Labor Code section 2802 by failing to reimburse
22 Plaintiff and Class Members for all necessary business-related expenses they incurred;
- 23 aa. Whether Defendants have engaged in unfair competition by the above-listed conduct; and
24 bb. The nature and extent of class-wide injury and the measure of damages for the injury.

25 51. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff, like other
26 members of the Class working for Defendants in California, was subjected to Defendants' policies and
27 practices of refusing to properly and fully pay minimum wages, overtime wages, meal period and rest
28 break premiums, failing to pay all wages owed upon separation, failing to issue accurate wage statements,

1 failing to keep and maintain required records, and failing to reimburse necessary, business-related
2 expenses in violation of California wage and hour laws. Plaintiff's job duties were and are typical of
3 those of other class members who worked for Defendants in California.

4 52. Adequacy of Representation. Plaintiff will fairly and adequately represent the interests of
5 the Class because his individual interests are consistent with and not antagonistic to the interests of the
6 Class, and because Plaintiff has selected counsel who has the requisite resources and ability to prosecute
7 this case as a class action and are experienced labor and employment attorneys who have successfully
8 litigated other cases involving similar issues.

9 53. Superiority of Class Mechanism. The class action mechanism is superior to any
10 alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class
11 action would permit the large number of injured parties to prosecute their common claims in a single
12 forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial
13 resources. A class action is the only practical way to avoid the potentially inconsistent results that
14 numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means
15 by which Plaintiff can effectively litigate against a large, well-represented corporate defendant like
16 Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would
17 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.
18 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
19 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
20 over again.

21 VI. FIRST CAUSE OF ACTION

22 Failure to Provide Meal Periods

23 in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 16-2001, § 11

24 (Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

25 54. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
26 as if fully set forth herein.

27 55. California Labor Code section 226.7(a) provides, "No employer shall require any
28 employee to work during any meal or rest period mandated by an applicable order of the Industrial

1 Welfare Commission.”

2 56. IWC Wage Order No. 16-2001 (11)(A) provides, in pertinent part: “No employer shall
3 employ any person for a work period of more than five (5) hours without a meal period of not less than
4 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
5 the meal period may be waived by mutual consent of the employer and the employee.”

6 57. Section 512(k) of the California Labor Code provides, in pertinent part, that: “An
7 employer may not employ an employee for a work period of more than five hours per day without
8 providing the employee with a meal period of not less than 30 minutes, except that if the total work period
9 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of
10 both the employer and employee. An employer may not employ an employee for a work period of more
11 than 10 hours per day without providing the employee with a second meal period of not less than 30
12 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be
13 waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

14 58. Defendants did not provide Plaintiff and other Class Members with legally compliant, off-
15 duty meal periods, because Plaintiff and other Class Members were required to skip their entire meal
16 periods to continue working to complete jobs and avoid exceeding eight hours of work in a shift.

17 59. Moreover, Defendants engaged in a systematic, companywide policy to not pay meal
18 period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members
19 one additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff and other
20 Class Members at the correct rate of pay for premium wages because Defendants failed to include all
21 forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
22 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium
23 pay for missed meal periods, it did so at a lower rate than required by law. As a result, Defendants failed
24 to provide Plaintiff and other Class Members compliant meal periods and failed to pay the full meal
25 period premiums due, in accordance with California Labor Code sections 204, 210, 226.7, and 512.

26 60. By their actions in requiring their employees to work during the entirety or a portion of
27 their meal periods and/or their failure to relieve nonexempt, hourly, nonexempt employees of their duties
28 for their off-duty meal periods, Defendants have violated California Labor Code section 226.7 and section

11 of IWC Wage Order No. 16-2001 and is liable to Plaintiff and the Class.

61. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of timely, off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and section 11 of IWC Wage Order No. 16-2001, in the amount of one additional hour of pay at the employee's regular rate of pay for each work period during each day in which Defendants failed to provide their hourly, nonexempt employees with timely, statutory, off-duty meal periods.

VII. SECOND CAUSE OF ACTION

Failure to Provide Rest Breaks

in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;

IWC Wage Order No. 16-2001, § 12

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

62. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

63. California Labor Code section 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

64. IWC Wage Order No. 16-2001, section (12)(A) provides, in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work times is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

65. IWC Wage Order No. 16-2001, section (12)(B) provides, "If an employer fails to provide an employee with a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

66. As alleged herein, Defendants failed to authorize and permit compliant rest breaks during

1 the Class Period. Plaintiff and members of the Class were routinely required to work during their entire
2 rest breaks at the direction of Defendants and/or with Defendants' knowledge and acquiescence.

3 67. Furthermore, as with meal periods, Defendants' job-assignment and workload and work
4 completion policies and practices required employees to forgo their 10-minute rest breaks, entirely
5 preventing Plaintiff and Class Members from being relieved of all duty in order to take compliant rest
6 breaks; these practices forced Plaintiff and other Class Members to remain on duty for all of their rest
7 breaks, meaning they did not receive net 10-minute rest breaks. That is, Plaintiff and Class Members'
8 rest breaks were noncompliant because they were not off-duty; Plaintiff and Class Members were
9 required to continue working through their rest breaks. As a result, Plaintiff and Class Members would
10 work shifts in excess of 3.5 hours without the net 10-minute rest breaks to which they were entitled.
11 More specifically, throughout his employment, during 8-hour or longer shifts, Plaintiff and Class
12 Members regularly worked during the entirety of their 10-minute rest breaks by using that time to
13 continue performing work for Defendants.

14 68. At the same time, Defendants implemented a companywide policy to not pay rest break
15 premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members one
16 additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiff and other Class
17 Members at the correct rate of pay for premium wages because Defendants failed to include all forms of
18 compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate
19 of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium pay for
20 missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiff and other Class
21 Members were denied compliant rest breaks and Defendants failed to pay the full rest break premiums
22 due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s).

23 69. Defendants' unlawful conduct alleged herein occurred in the course of employment of
24 Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial
25 Complaint.

26 70. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the Class
27 have been deprived of full-length 10-minute rest breaks and/or were not paid for rest breaks taken during
28 the Class Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one

1 additional hour of pay at the employee's regular rate of compensation for each work period during each
2 day in which Defendants failed to provide employees with compliant and/or paid rest breaks.

3 **VIII. THIRD CAUSE OF ACTION**

4 **Failure to Pay Minimum Wages**

5 **Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,**

6 **and 1197; IWC Wage Order No. 16-2001, § 4**

7 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

8 71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
9 as if fully set forth herein.

10 72. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a
11 day's work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in
12 any one workweek and the first eight hours worked on the seventh day of work in any one workweek
13 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
14 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
15 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
16 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay
17 of an employee."

18 73. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
20 minimum so fixed is unlawful."

21 74. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages
22 for all hours worked in amounts set by state law.

23 75. Labor Code section 1194, subdivision (a) provides: "Notwithstanding any agreement to
24 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
25 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
26 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
27 attorney's fees, and costs of suit."

28 76. Labor Code section 1194.2 provides in pertinent part: "In any action under Section 1193.6

1 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
2 by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount
3 equal to the wages unlawfully unpaid and interest thereon.”

4 77. Pursuant to IWC Wage Order No. 16-2001, section (2)(H), at all times material hereto,
5 “hours worked” includes “the time during which an employee is subject to the control of an employer,
6 and includes all the time the employee is suffered or permitted to work, whether or not required to do
7 so.”

8 78. At all times relevant during the liability period, under the provisions of IWC Wage Order
9 No. 16-2001, Plaintiff and each Class Member should have received not less than the minimum wage in
10 a sum according to proof for the time worked but not compensated.

11 79. For all hours that Plaintiff and Class Members worked, they are entitled to not less than
12 the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an
13 amount equal to the unpaid minimum wages and interest thereon.

14 80. Pursuant to Labor Code section 1194, Plaintiff and Class Members are also entitled to
15 their attorneys’ fees, costs, and interest according to proof.

16 81. At all times relevant during the liability period, Defendants willfully failed and refused,
17 and continue to willfully fail and refuse, to pay Plaintiff and Class Members the amounts owed.

18 82. As described earlier, Defendants mandated that Plaintiff and Class Members perform
19 various forms of compensable work off-the-clock including, but not limited to the following: (1) upon
20 arrival at E. J. MASONRY but before clocking in at the start of their shifts, Plaintiff and Class Members
21 started performing compensable work at the request of E. J. MASONRY, such as loading materials and
22 tools into vehicles for transport to job sites; (2) Plaintiff and Class Members ended their shifts by
23 performing work for an extended period of time that needed to be completed that day but would have
24 exceeded eight on-the-clock hours because E. J. MASONRY discouraged overtime and instructed
25 Plaintiff and Class Members to clock out before accruing overtime hours; and (3) for auto-deductions of
26 30 or 60 minutes for “phantom meal periods,” which are defined as meal periods that Plaintiff and Class
27 Members did not actually take and for which they did not clock out, though E. J. MASONRY auto-
28 deducted 30 or 60 minutes for those meal periods to avoid paying premiums and paying for those straight-

1 time hours.

2 83. Defendants do not provide minimum wages and overtime pay for this off-the-clock time.
3 To the extent these off-the-clock hours d that qualified for overtime premium pay, Defendants also did
4 not pay overtime wages for those eligible hours worked off-the-clock.

5 84. These off-the-clock periods exist for the sole benefit of Defendants and occurred
6 frequently and regularly at Defendants' locations throughout California. This illegal practice has been
7 in effect by Defendants since at least the start of the Class Period.

8 85. Defendants' unlawful conduct alleged herein occurred in the course of employment of
9 Plaintiff and all other similarly situated nonexempt, hourly, nonexempt employees, and Defendants have
10 done so continuously throughout the filing of this complaint.

11 86. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and
12 1197, Plaintiff and other Class Members have suffered irreparable harm and money damages entitling
13 them to damages, injunctive relief or restitution. Plaintiff, on behalf of himself and on behalf of the Class,
14 seeks damages and all other relief allowable including all wages due while working as Defendants'
15 hourly, nonexempt employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those
16 employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections
17 200, *et seq.*

18 87. Plaintiff and Class Members are entitled to the unpaid amount of minimum wages, pre-
19 judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor
20 Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

21 **IX. FOURTH CAUSE OF ACTION**

22 **Failure to Pay Overtime Wages**

23 **in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 16-2001, § 3**

24 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

25 88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
26 as if fully set forth herein.

27 89. Pursuant to section 3 of IWC Wage Order No. 16-2001; California Code of Regulations,
28

1 Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512,
2 1194, and 1198, Defendants were required to compensate Plaintiff and members of the Class for all
3 overtime hours worked, which is calculated at one and one-half (1½) times the regular rate of pay for
4 hours worked in excess of eight hours per day and/or 40 hours per week, and for the first eight hours on
5 the seventh consecutive work day, with double time after eight hours on the seventh day of any work
6 week, or after 12 hours in any work day.

7 90. Plaintiff and members of the Class were and are nonexempt employees entitled to the
8 protections of IWC Wage Order No. 16-2001; California Code of Regulations, Title 8, section 11040,
9 section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the
10 Class Period, Plaintiff and other members of the Class consistently worked five days per week for shifts
11 of eight hours or more. During the course of Plaintiff's employment, and during the course of the
12 employment of the members of the Class, Defendants failed to compensate Plaintiff and the Class for
13 overtime hours worked as required under the aforementioned Labor Codes and Regulations.

14 91. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and members
15 of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime
16 work performed during the four years preceding the filing of this Complaint, based on appropriate
17 calculations of the "total remuneration" for each workweek.

18 92. In violation of state law, Defendants have knowingly and willfully refused to perform
19 their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a
20 direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the
21 use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking
22 to compel Defendants to fully perform their obligations under state law, all to their respective damage in
23 amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
24 Court.

25 93. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
26 and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting to malice,
27 and in conscious disregard of Plaintiff's rights and the rights of the Class. Plaintiff and the Class are thus
28 entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts

1 according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

2 94. Defendants' conduct described herein violates IWC Wage Order No. 16-2001; California
3 Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510,
4 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and
5 1194, Plaintiff and the Class are entitled to recover the unpaid balance of overtime compensation
6 Defendants owes Plaintiff and the Class, plus interest, penalties, attorneys' fees, expenses, and costs of
7 suit.

8 **X. FIFTH CAUSE OF ACTION**

9 **Failure to Pay All Wages Owed Upon Separation**

10 **in Violation of Cal. Labor Code §§ 201–203**

11 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

12 95. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
13 as if fully set forth herein.

14 96. Labor Code section 201 provides, in relevant part, “[I]f an employer discharges an
15 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

16 97. Labor Code section 202 provides, in relevant part, “[I]f an employee not having a written
17 contract for a definite period quits his or his employment, his or his wages shall become due and payable
18 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his
19 intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.”

20 98. Section 203 of the California Labor Code provides that if an employer willfully fails to
21 pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
22 employer is liable for penalties in the form of continued compensation up to 30 workdays.

23 99. At all times relevant during the liability period, Plaintiff and the other members of the
24 Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code
25 section 201, upon Plaintiff's and the Class Members' respective separation dates, Defendants were
26 required to pay Plaintiff and Class Members all wages earned. Plaintiff was terminated, but Defendants
27 did not pay Plaintiff all of his final wages immediately following his termination as required and in
28 violation of Labor Code section 201. On November 8, 2024, Defendants removed Plaintiff from the group

1 chat that assigned all employees their jobs for their next shift, thereby terminating Plaintiff's position
2 with Defendants. However, Defendants did not give Plaintiff his final check immediately on November
3 8, 2024. Rather, several days (more than three) following his termination, Defendants paid Plaintiff some
4 of his wages via paper check at the time of Defendants' regular payroll schedule. This payment was not
5 immediately upon termination as required by law, and that final check did not account for all wages owed
6 Defendants owed Plaintiff.

7 100. That is, when Defendants did pay Plaintiff, Plaintiff's final pay did not include all unpaid
8 meal period and rest break premiums, all hours worked to-date whether straight time or overtime, and all
9 paid time off accrued at the regular rate of pay.

10 101. At the time of Plaintiff's and the Class Members' respective separation dates, Plaintiff and
11 Class Members had unpaid wages. Defendants willfully failed to pay Plaintiff and other members of the
12 Class who are no longer employed by Defendants for their uncompensated hours, uncompensated
13 overtime, and missed, untimely, or on-duty meal periods and rest breaks upon their termination or
14 separation from employment with Defendants as required by California Labor Code sections 201 and
15 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiff and these Class
16 Members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but
17 in excess of the jurisdictional minimum of this Court.

18 102. Defendants' failure to pay Plaintiff and the Class their respective wages due and owed to
19 them was willful, and done with the wrongful and deliberate intention of injuring Plaintiffs and the Class
20 Members and in conscious disregard of their rights.

21 103. Defendants' willful failure to pay former employee Plaintiff and the Class all of the wages
22 due and owing them constitutes violations of Labor Code sections 201 and 203, which provide that an
23 employee's wages will continue as a penalty up to 30 days from the time the wages were due. Therefore,
24 Plaintiff and the Class Members are each entitled to penalties pursuant to Labor Code section 203.

25 ///

26 ///

27 ///

28 ///

1 **XI. SIXTH CAUSE OF ACTION**

2 **Failure to Furnish Timely and Accurate Wage Statements**

3 **Upon Payment of Wages in Violation of Cal. Labor Code § 226**

4 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

5 104. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
6 as if fully set forth herein.

7 105. Labor Code section 226(a) sets forth reporting requirements for employers when they pay
8 wages, as follows: “Every employer shall . . . at the time of each payment of wages, furnish his or her
9 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked
10 by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the
11 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
12 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
13 dates of the period for which the employee is paid, (7) the name of the employee and only the last four
14 digits of their social security number or an employee identification number other than a social security
15 number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly
17 rate by the employee

18 106. Labor Code section 226(e) provides: “An employee suffering injury as a result of a
19 knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover
20 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
21 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
22 an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and
23 reasonable attorney’s fees.”

24 107. Defendants failed to accurately record and display the correct total hours and overtime
25 hours worked by Plaintiff and Class Members on Plaintiff’s and Class Members’ wage statements, in
26 violation of Labor Code section 226(a)(2).

27 108. Defendants failed to display the correct amounts for meal period premiums and rest break
28 premiums owed to Plaintiff and Class Members on Plaintiff’s and Class Members’ wage statements, in

violation of Labor Code section 226(a)(1) and (a)(9).

109. Consequently, because Defendants failed to (1) accurately record and display the correct total hours and overtime hours worked and (2) display the correct amounts for meal period premiums and rest break premiums owed, Defendants also failed to accurately display the gross and net wages earned, in violation of Labor Code section 226 subsections (a)(1) and (a)(5).

110. Plaintiff and Class Members were damaged by these failures because, among other things, the failures hindered Plaintiff and the Class from determining the amounts of wages actually owed to them.

111. Plaintiff and Class Members request recovery of Labor Code section 226(e) penalties according to proof, as well as interest, attorneys' fees and costs pursuant to Labor Code section 226(e), in a sum as provided by the Labor Code and/or other statutes.

XII. SEVENTH CAUSE OF ACTION

Failure to Reimburse All Necessary, Business-Related Expenses

in Violation of Cal. Labor Code § 2802

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

112. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

113. California Labor Code section 2802 provides that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful unless the employee, at the time of obeying the directions, believed them to be unlawful."

114. During the applicable statutory period, Plaintiff and Class Members incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of Defendants, Defendants did not reimburse Plaintiff and Class Members for these expenditures or losses. Such expenses include, but are not limited to, expenses for (1) personal vehicle use and (2) tools, such as neon protective vests, hammers, levelers, trowels, spatulas, and shovels.

115. Plaintiff and Class Members were required to use their personal vehicles to drive to job sites from E. J. MASONRY'S premises and transport materials and tools to those job sites. Likewise,

1 Plaintiff and Class Members were required to bring various tools to job sites that E. J. MASONRY failed
2 to provide but were required nonetheless to complete the assigned masonry jobs.

3 116. Thus, E. J. MASONRY’S failure to provide these tools and reimburse for mileage or else
4 provide company vehicles violated Labor Code section 2802.

5 117. Defendants have failed to fully reimburse Plaintiff and Class Members for necessary
6 business-related expenses and losses.

7 118. Plaintiff and Class Members are entitled to recover their necessary unreimbursed
8 business-related expenses and losses incurred during the course and scope of their employment, plus
9 interest accrued from the date on which the employee incurred the necessary expenditures at the same
10 rate as judgments in civil actions in the State of California, pursuant to California Labor Code section
11 2802.

12 **XIII. EIGHTH CAUSE OF ACTION**

13 **Failure to Keep and Maintain Required Records**

14 **in Violation of Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 16-2001, § 7**

15 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

16 119. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
17 as if fully set forth herein.

18 120. California Labor Code section 1174(d) provides that “[e]very person employing labor in
19 this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the
20 ages of all minors” and “[keep, at a central location in the state or at the plants or establishments at which
21 employees are employed, payroll records showing the hours worked daily by and the wages paid to, and
22 the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
23 the respective plants or establishments”

24 121. During the relevant time period, and in violation of Labor Code sections 1198 and
25 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Class Members
26 showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-
27 the-clock hours that they worked—that is, the accurate records of work period start and stop times.

28 122. Because Defendants violated Labor Code section 1174(d), Plaintiff and Class Members

are entitled to recover damages and penalties under Labor Code sections 1174.5 and 226(e).

123. During the Class Period, as part of Defendants' illegal payroll policies and practices to deprive Plaintiff and Class Members of all wages earned and due, Defendants knowingly and intentionally failed to maintain records as required under California Labor Code sections 226 and 1174, and IWC Wage Order No. 16-2001, section 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements. Namely, Defendants did not record Plaintiff and Class Members' actual start and stop times for all work periods to capture the accurate total number of hours worked nor did Defendants establish a mechanism by which Class Members could report unrecorded time. Plaintiff's time records as shown on his wage statements appear to be synthetic time records, starting and ending at the precise hour and exactly the same hours every day.

124. Labor Code section 1174.5 provides in pertinent part that "[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty of five hundred dollars (\$500)."

125. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and Class Members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class Members are entitled to all available civil and statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code section 1174.5, as well as other available remedies.

XIV. NINTH CAUSE OF ACTION

Violations of California's Unfair Competition Law ("UCL"),

California Business and Professions Code §§ 17200, *et seq.*

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

126. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

127. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any

unlawful, unfair, or fraudulent business practices.

128. Through their actions alleged herein, Defendants have engaged in unfair competition within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

129. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure to pay Class Members wages and compensation they earned through labor provided, and failing to otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or misleading information about the time the Class Members worked and the amount of wages or compensation due.

130. Defendants' violations of California wage and hour laws and illegal payroll practices or payment policies constitute a business practice because they were done repeatedly over a significant period of time, and in a systematic manner to the detriment of Plaintiff and Class Members.

131. Plaintiff has standing to assert this claim because he has suffered injury in fact and has lost money as a result of Defendants' conduct.

132. For the four years preceding the filing of this action, Plaintiff and Class Members have suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged from Defendants in an amount according to proof at the time of trial and an injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

XV. TENTH CAUSE OF ACTION

For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),

§§ 2698, *et seq.*, for Violations of California Labor Code Sections

(Brought by Plaintiff on Behalf of Himself and the General Public Against All Defendants)

133. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

134. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order(s) that provides for a civil penalty to be assessed and collected by California's Labor and Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable

1 IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought
2 on behalf of themselves and other current or former employees pursuant to procedures outlined in
3 California Labor Code section 2699.3.

4 135. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person
5 who was employed by the alleged violator and against whom one or more of the alleged violations was
6 committed.”

7 136. Plaintiff and other current and former employees of Defendants are “aggrieved
8 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former
9 employees and one or more of the alleged violations were committed against them.

10 137. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including
11 Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in
12 section 2699.5, after the following requirements have been met:

- 13 a. The aggrieved employee shall give written notice (“Employee’s Notice”) by online filing
14 to the LWDA and by certified mail to the employer of the specific provisions of the
15 California Labor Code alleged to have been violated, including the facts and theories to
16 support the alleged violations;
- 17 b. The Employee’s Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- 18 c. The LWDA shall provide notice (“LWDA Notice”) to the employer and the aggrieved
19 employee by certified mail that it does not intend to investigate the alleged violation within
20 60 calendar days of the postmark date of the Employee’s Notice. Upon receipt of the
21 LWDA Notice, or if the LWDA Notice is not provided within 65 calendar days of the
22 postmark date of the Employee’s Notice, the aggrieved employee may commence a civil
23 action pursuant to California Labor Code section 2699 to recover civil penalties in
24 addition to any other penalties to which the employee may be entitled.

25 138. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including
26 Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those
27 listed in section 2699.5 after the following requirements have been met:

- 28 a. The aggrieved employee shall give written notice by online filing (“Employee’s Notice”)

1 to the LWDA and by certified mail to the employer of the specific provisions of the
2 California Labor Code alleged to have been violated, including the facts and theories to
3 support the alleged violations;

4 b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and

5 c. The employer may cure the alleged violation within 33 calendar days of the postmark date
6 of the Employee's Notice. The employer shall give written notice by certified mail within
7 that period of time to the aggrieved employee or representative and the agency if the
8 alleged violation is cured, including a description of actions taken, and no civil action
9 pursuant to Section 2699 may commence. If the alleged violation is not cured within the
10 33-day period, the employee may commence a civil action pursuant to Section 2699.

11 139. On April 10, 2025, Plaintiff provided written notice by online filing to the LWDA and by
12 certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been
13 violated, including facts and theories to support the alleged violations, in accordance with California
14 Labor Code section 2699.3. Plaintiff's notice to the LWDA was accompanied by the \$75 filing fee. A
15 true and correct copy of Plaintiff's written notice to the LWDA; E. J. MASONRY, INC. dated April 10,
16 2025 is attached hereto as "**Exhibit 1.**" Exhibit 1 is incorporated into this Complaint by reference.

17 140. As of the filing date of the initial complaint, over 65 days have passed since Plaintiff sent
18 the LWDA Notice described above, and the LWDA has not responded that it intends to investigate
19 Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations set forth in
20 this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code
21 section 2699.3(a) and (c) to recover civil penalties against all defendants, in addition to other remedies,
22 for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d),
23 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

24 141. Labor Code section 558(a) provides that "[a]ny employer or other person acting on behalf
25 of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
26 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
27 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
28 pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid

1 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
2 each pay period for which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages.” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this
4 section are in addition to any other civil or criminal penalty provided by law.”

5 142. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
6 employer(s) who violated Plaintiff’s and other non-party aggrieved employees’ rights by violating
7 various sections of the California Labor Code as set forth above.

8 143. As set forth below, Defendants have violated numerous provisions of both the Labor Code
9 sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

- 10 a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
11 Order(s) for Defendants’ failure to provide Plaintiff and other Class Members with
12 compliant meal periods and/or rest breaks, as set forth above;
- 13 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
14 IWC Wage Order(s) for Defendants’ failure to compensate Plaintiff and other Class
15 Members with at least minimum wages for all hours worked as set forth above;
- 16 c. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for
17 Defendants’ failure to compensate Plaintiff and other Class Members with overtime wages
18 for all hours worked in excess of eight in one day or 40 in one week and double time for
19 all hours worked in excess of 12 hours, as set forth above;
- 20 d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s)
21 for failure to provide accurate and complete wage statements to Plaintiff and other Class
22 Members as set forth above;
- 23 e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s)
24 for failure to maintain payroll records. California Labor Code section 1198 provides that
25 the maximum hours of work and the standard conditions of labor shall be those fixed by
26 the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). Section
27 1198 further provides that “[t]he employment of any employees for longer hours than
28 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Pursuant to the applicable IWC Wage Order(s), employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a companywide basis, to keep records of meal period start and stop times for Plaintiff and other non-party aggrieved employees in violation of section 1198. California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” During the relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party aggrieved employees showing the daily hours they actually worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked;

- f. Violations of Labor Code section 204 for failure to pay all earned wages during employment as set forth above;
- g. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth above;
- h. Violations of Labor Code section 2802 for failure to reimburse employees for all necessary, business-related expenses incurred during employment as set forth above;
- i. Plaintiff and other non-party aggrieved employees are therefore entitled to recover penalties, attorneys’ fees, costs, and interest thereupon, pursuant to Labor Code section 2699(f)-(g); and
- j. Any and all additional applicable civil penalties and sums as provided by the California Labor Code and/or other relevant statutes.

144. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of

civil penalties for himself, all other non-party aggrieved employees, and the State of California against all Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

145. In addition, Plaintiff seeks and is entitled to sixty-five percent (65%) of all penalties obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the California Labor Code, and thirty-five percent (35%) to all aggrieved employees.

146. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

XVI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on behalf of the general public, respectfully requests that this Court find against all defendants as follows:

1. An order that this action may proceed and may be maintained as a class action;
2. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claims;
3. All unpaid overtime wages due to Plaintiff and each Class Member;
4. One hour of wages due to Plaintiff and each Class Member for each work period of more than four hours when they did not receive an uninterrupted 10-minute rest break;
5. One hour of wages due to Plaintiff and each Class Member for each work period of more than five hours when they did not receive an uninterrupted 30-minute meal period;
6. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claim;
7. For restitution of all monies due to Plaintiff and members of the Class and disgorged profits from the unlawful business practices of Defendants;
8. For waiting time penalties pursuant to Labor Code section 203;
9. Statutory penalties under Labor Code section 226(e);
10. For reimbursement of business expenses under California Labor Code section 2802;
11. For penalties pursuant to violations of Labor Code sections 201, 202, 203, 204, 206, 210,

225.5, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;

12. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;

13. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;

14. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;

15. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and Code of Civil Procedure section 1021.5;

17. Accounting of Defendants' records for the liability period;

18. General, special, and consequential damages, to the extent allowed by law; and

19. All such other and further relief that the Court may deem just and proper.

Dated: July 3, 2025

ABRAMSON LABOR GROUP

By:


Cheryl A. Kenner

Attorneys for Plaintiff AGUSTIN DOMINGUEZ
and all others similarly situated and aggrieved

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff AGUSTIN DOMINGUEZ, on behalf of himself and all others similarly situated and
3 aggrieved, hereby demands a jury trial with respect to all issues triable of right by jury.

4 Dated: July 3, 2025

5 **ABRAMSON LABOR GROUP**

6 By: 
7 Cheryl A. Kenner

8 Attorneys for Plaintiff AGUSTIN DOMINGUEZ
9 and all others similarly situated and aggrieved

EXHIBIT 1



1700 W Burbank Blvd.
Burbank, California 91506
t | 213.493.6300
Cheryl.K@abramsonlabor.com
www.AbramsonLaborGroup.com

April 10, 2025

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

E. J. Masonry, Inc.
Attn: Legal Department
3195 Luyung Drive
Rancho Cordova, CA 95742

CC: VIA EMAIL

Kaleb Berhe
kberhe@foley.com
Foley & Lardner LLP
555 South Flower Street, Suite 3300
Los Angeles, CA 90071

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE
SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; E. J. Masonry, LLC

From: Agustin Dominguez, on behalf of himself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Agustin Dominguez ("Mr. Dominguez") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Dominguez, "Claimants") who have been injured by E. J. Masonry, Inc.'s ("E. J. Masonry") violations of the California Labor Code. Mr. Dominguez, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of E. J. Masonry, intends to seek civil penalties, attorneys' fees, costs, and other available relief

for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

E. J. Masonry is operating through California as a company offering commercial customers a broad range of masonry and construction services, including sound walls, retaining walls, geowalls, entry monuments, and special features.¹

Claimant Mr. Dominguez worked for E. J. Masonry as an hourly, nonexempt employee in the position of Builder, earning \$32.00 per hour from approximately July 1, 2024 through November 8, 2024. Mr. Dominguez, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in providing masonry and construction services. As part of their employment with E. J. Masonry, Claimant and other hourly, nonexempt employees, collectively, “hourly nonexempt employees,” are or were assigned to and required to suffer and permitted to work, some with and some without pay, while performing tasks collectively including, but not limited to, loading vehicles, including personal vehicles with materials for the day; driving to the work site; building structures such as walls, fences, and columns; gluing concrete bricks together; tying metal rods; and pouring cement to construct walls and concrete columns.

Claimant Mr. Dominguez regularly worked five (5) days per week for 10 hours or more hours per day. During the entire course of his employment, E. J. Masonry failed to provide Mr. Dominguez and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. E. J. Masonry has also failed to pay minimum wages to Mr. Dominguez and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 16-2001. As a consequence, E. J. Masonry has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission (“IWC”) Wage Orders, including but not limited to, IWC Wage Order No. 16-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, E. J. Masonry has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

E. J. Masonry has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, E. J. Masonry has failed and continues to fail to keep accurate time records of Claimants’ time worked and has failed to provide timely, accurate wage statements to Mr. Dominguez and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by E. J. Masonry, including Mr. Dominguez, E. J. Masonry has violated Labor Code section 203 by failing to pay all wages due upon separation. E. J. Masonry has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for (1) mileage expenses for personal vehicle use to drive to job sites and transport materials from E. J. Masonry premises and (2) tools, such as neon protective vests, hammers, levelers, trowels, spatulas, and shovels, which were not provided but were required to complete the assigned masonry jobs. E. J. Masonry’s failure to provide these tools and reimburse for mileage or else provide company vehicles violated Labor Code section 2802. Mr. Dominguez is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Dominguez intends to bring an action

¹ <https://www.ejmasonry.com> (last accessed April 10, 2025).

against E. J. Masonry under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.²

Theories of Labor Code Violations and Remedies:

Claimant Mr. Dominguez was employed by E. J. Masonry from approximately July 1, 2024 through November 8, 2024 as a Builder. For a period of at least four (4) years prior to April 2025, but for our purposes here, one (1) year prior, E. J. Masonry has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. E. J. Masonry has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 16-2001. First, Claimants worked a substantial amount of time while off-the-clock—meaning they are not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because Claimants regularly (1) upon arrival at E. J. Masonry but before clocking in at the start of their shifts, started performing compensable work at the request of E. J. Masonry, such as loading materials and tools into vehicles for transport to job sites; (2) ended their shifts by performing work for an extended period of time that needed to be completed that day but would have exceeded 8 on-the-clock hours because E. J. Masonry discouraged overtime and instructed Claimants to clock out before accruing overtime hours; and (3) for auto-deductions of 30 or 60 minutes for “phantom meal periods” (described in the next paragraph). Claimants’ off-the-clock time was never subsequently added and, therefore, remains uncompensated as do the 30- or 60-minute phantom meal period time deductions. Accordingly, Claimants were not paid for that time spent working off the clock. Second, E. J. Masonry enforces practices that effectively require Claimants to perform work during their meal periods and rest breaks, the effects of which E. J. Masonry could have mitigated by increasing staff to provide coverage so Claimants can take meal periods and rest breaks truly off-duty. However, E. J. Masonry instead chose to preserve smaller-than-optimum staffing levels, which forced meal periods and rest breaks into noncompliance. With that, E. J. Masonry’s corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes E. J. Masonry’s failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. E. J. Masonry’s failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover

² Without limitation, Mr. Dominguez, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 16-2001.

Under Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 16-2001, Claimants were at all times entitled to unpaid, timely, off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, E. J. Masonry failed to authorize and permit timely, full-length meal periods for Mr. Dominguez and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 16-2001. Mr. Dominguez and Claimants' meal periods were noncompliant because they regularly missed their entire meal periods because of the need to timely complete the day's workload. Even though they missed their meal periods Mr. Dominguez and Claimants were still required to clock out for "phantom meal periods," as Mr. Dominguez and Claimants were instructed to report on the timekeeping system that they received a meal period or else they would be disciplined. The reason they would have been disciplined was because the failure to report no meal period taken would potentially trigger a meal period premium. As a result, upon information and belief, E. J. Masonry auto-deducted 30 or 60 minutes from Claimants' total hours worked for "phantom meal periods." Nonetheless, E. J. Masonry did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since E. J. Masonry required Mr. Dominguez and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 16-2001, and 2699(f).

Pursuant to Labor Code sections 226.7 and section 12 of IWC Wage Order No. 16-2001, Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, E. J. Masonry likewise failed to authorize and permit Mr. Dominguez and all other similarly aggrieved employees to take full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 16-2001. Claimants were not able to take their requisite number of 10-minutes rest breaks based on their shift duration. More specifically, Mr. Dominguez and Claimants' rest breaks were noncompliant because they were required to completely forego both of their rest breaks each shift because of the need to timely complete the day's workload. Nonetheless, E. J. Masonry did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 16-2001. Furthermore, since E. J. Masonry required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, E. J. Masonry was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Mr. Dominguez and Claimants regularly worked overtime hours. E. J. Masonry has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, E. J. Masonry failed to provide Mr. Dominguez and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order No. 16-2001, section 3.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from E. J. Masonry, including Mr. Dominguez, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours

(resignation without notice). Claimants, including Mr. Dominguez, did not receive his final pay of all wages immediately upon being terminated nor did he receive the wages E. J. Masonry did pay based on E. J. Masonry's prior failings to pay all wages owed every pay period, including but not limited to minimum wage, overtime, and meal and rest premiums owed and for all hours worked, as explained above. E. J. Masonry never ultimately paid Mr. Dominguez his final wages, including any accrued paid time off/vacation time.

Pursuant to IWC Wage Order No. 16-2001, employers are required to keep **accurate time records** showing when employees begin and end each work period, including meal periods. During the relevant time period, E. J. Masonry had a company-wide policy and engaged in a companywide practice of failing to record actual hours worked by failing to require Claimants to record their actual workday start and stop times on the timekeeping system since Claimants were not permitted to clock in earlier than the time shown on their schedules, however, E. J. Masonry required Claimants to arrive earlier and begin working before the scheduled start times. Upon information and belief, E. J. Masonry auto-deducted 30 or 60 minutes for "phantom meal periods"—meal periods that Claimants did not actually take and for which they did not clock out and then in. Therefore, E. J. Masonry failed to keep accurate records of work period start and stop times for Claimants, in violation of section 1198. More specifically, in the instances Mr. Dominguez and Claimants did not record their meal periods—neither the duration nor the start and stop times—E. J. Masonry auto-deducted 30 or 60 minutes for meal periods from their total time worked. Because E. J. Masonry failed to provide the actual hours worked and, therefore, the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on Claimants' wage statements, Claimants have been prevented from verifying—solely from information on the wage statements themselves—that they were paid correctly and in full. Instead, Claimants have had to refer to other sources beyond their wage statements and reconstruct time records to determine whether in fact they were paid correctly and the extent to which they were underpaid, thereby causing them injury. E. J. Masonry's decision to fail to record this time was knowing and intentional because it was in the sole position to set forth and implement and enforce these companywide practices. Accordingly, Claimants are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)–(g).

Claimants were at all times entitled to be provided timely and accurate **wage statements** from E. J. Masonry pursuant to Labor Code section 226. First, Mr. Dominguez's wage statements do not reflect the correct legal name of Defendant—E. J. Masonry, Inc.—his paystubs are missing the space between the E and the J. This error made it quite difficult to ultimately find the entity on the California Secretary of State website. Second, because E. J. Masonry failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts, for all overtime wages due, and for all meal period and rest break premiums, Claimants' wage statements were inaccurate in reflecting overtime hours worked and straight time worked, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate corresponding amounts of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by E. J. Masonry for all necessary, **business-related expenses** they incurred in executing their duties for E. J. Masonry. California Labor Code section 2802 provides that "An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." E. J. Masonry, however, has failed to fully reimburse Mr. Dominguez and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, mileage expenses for (1) personal vehicle use and (2) tools, such as neon protective vests, hammers, levelers, trowels, spatulas, and shovels. Claimants, including Mr. Dominguez, were required to use their personal vehicles to drive to job sites from E. J. Masonry premises and transport materials and tools to those job sites. Likewise, Claimants, including Mr. Dominguez, were required to bring various tools to job sites that E. J. Masonry failed to provide but were required nonetheless to complete

the assigned masonry jobs. E. J. Masonry's failure to provide these tools and reimburse for mileage or else provide company vehicles violated Labor Code section 2802. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

E. J. Masonry's uniform failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to keep accurate time records, failure to furnish timely and accurate wage statements, and failure to reimburse all necessary, business-related expenses violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Dominguez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against E. J. Masonry for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in black ink that reads "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner