

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Dorota A. James (State Bar No. 309933)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com
dorota@ferrarovega.com

Attorneys for Plaintiff Dario Salazar

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County of San Diego

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Clerk of the Superior Court
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DARIO SALAZAR, on behalf of other similarly
situated and the State of California under the
Private Attorneys General Act,

Plaintiffs,

vs.

APEX CONTRACTING AND RESTORATION,
INC. and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU025286C

Hon. Mark T. Cumba
Dept. 65

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages Owed
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Unpaid Vacation Wages
7. Untimely Payment of Wages
8. Wage Statement Violations
9. Waiting Time Penalties
10. Failure to Reimburse Business Expenses
11. Failure to Provide Records
12. Unfair Competition
13. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: May 16, 2025

1 Plaintiff DARIO SALAZAR, on behalf of all other similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST AMENDED
3 CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants APEX
4 CONTRACTING AND RESTORATION, INC., and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings the instant class action on behalf of himself and similarly situated
8 current and former employees of Defendants for a series of systemic violations of the California Labor
9 Code and IWC Wage Orders.

10 2. Defendants failed to pay Plaintiff and the Class Members all minimum and overtime
11 wages due to unlawful policies and practices of requiring off-the-clock work.

12 3. Defendants maintained an unlawful policy and practice of failing to pay all accrued and
13 unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture
14 of vested vacation time and wages.

15 4. Defendants failed to provide, authorize, and/or permit Plaintiff and the Class Members
16 to take compliant meal and rest periods to which they were entitled.

17 5. Defendants failed to properly reimburse Plaintiff and the Class Members for using their
18 personal cellphones and vehicles for work-related purposes.

19 6. Defendants’ employment policies, practices, and payroll administration systems
20 enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

21 **JURISDICTION & VENUE**

22 7. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
23 California Constitution as the causes of action are premised upon violations of California law.

24 8. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
25 the Superior Court.

26 9. This Court has jurisdiction over Defendants because, upon information and belief,
27 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
28

1 themselves to the California economy so as to render the exercise of jurisdiction over them by the
2 California courts consistent with traditional notions of fair play and substantial justice.

3 10. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
4 and/or 395.5 because, upon information and belief, Defendants conducted business and committed
5 some of the alleged violations in this County.

6 **PARTIES**

7 **A. Plaintiff Dario Salazar**

8 11. Plaintiff Salazar is an individual over 18 years of age who worked for Defendants in
9 California as a non-exempt employee from about September 2012 to December 2024. During his
10 employment with Defendant, Plaintiff worked as a Foreman and was paid an hourly rate of \$35.

11 12. The State of California, via the Labor and Workforce Development Agency
12 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9
13 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party
14 in interest.”]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting,*
15 *Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd.* (Feb. 26, 2025,
16 D083400) ___ Cal.Rptr.3d ___ [2025 WL 615064], the PAGA claim is brought exclusively as a
17 representative action and does not include arbitrable claims.

18 **B. Defendants**

19 13. Defendant Apex Contracting and Restoration, Inc., is a California corporation that
20 maintains operations and conducts business throughout the State of California, including in this
21 county.

22 14. The true names and capacities, whether individual, corporate, or otherwise, of the
23 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
24 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
25 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
26 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their
27 true names and capacities once ascertained.
28

15. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

16. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

17. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

18. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

19. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

20. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.
- d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.
- e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

21. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

22. Plaintiff and class members worked for Defendant as non-exempt employees and were compensated on an hourly basis.

23. Defendants failed to pay Plaintiff and the class members at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

24. Plaintiff and other class members often suffered non-compliant meal periods where they worked through part or all of their uncompensated meals.

25. Due to the demands of Plaintiff's position and pressures from Defendants, at times, Plaintiff and other class members were forced to continue working through their unpaid meal periods to finalize the projects assigned to them.

26. Plaintiff was often required to record compliant meal breaks despite not being able to take them because of the flow of construction work. However, as discussed in more detail below, Defendants failed to adequately pay Plaintiff and the class members for their time spent working off-the-clock during their meal periods.

27. In addition, Defendants had an unlawful practice of rounding Plaintiff and other class members' time up or down, including the nearest quarter-hour to the disadvantage of the employees. Plaintiff and, on information and belief, other class members were deprived of regular, and overtime wages each time Defendants engaged in this unlawful policy and practice of requiring off-the-clock work and rounding.

28. Defendants failed to pay Plaintiff and the class members overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

29. As described above, at times, Defendants compelled Plaintiff and other class members to work off-the-clock during unpaid meal periods. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

30. Defendants failed to comply with California's paid sick leave laws with respect to the class members.

31. Defendants failed to provide Plaintiff and the class members with all sick leave accrued. To the extent that Defendants provided paid sick leave, they did not pay all sick leave wages at the proper rate of pay because they failed to incorporate the hours that Plaintiff and the class members worked off-the-clock.

1 32. Additionally, each time Plaintiff and the class members worked off-the-clock that
2 resulted in unpaid overtime, the overtime hours were not accounted for when calculating an
3 employee's accrued paid sick leave. Therefore, Plaintiff and other class members were not awarded
4 the total accrued sick leave time they had earned.

5 33. Defendants maintained an unlawful policy and practice of failing to pay all accrued and
6 unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture
7 of vested vacation time and wages.

8 34. As described above, Defendants failed to record all of the time that Plaintiff and other
9 class members worked for Defendants and undercounted their hours worked. Consequently,
10 Defendants failed to credit the class members with all vacation time they had actually accrued.
11 Therefore, vacation wages were not paid out at the lawful rate of pay inclusive of all earnings.

12 35. Plaintiff and other class members routinely experienced missed, late, short, and
13 interrupted meal periods due to pressures to keep up with high demands of the job and understaffing.

14 36. For example, Plaintiff and the class members were required to continue stucco and
15 wallboard installation as well as carpentry work into what should have been their lunch break. Plaintiff
16 and the class members would record as if they had taken a compliant break despite being forced to
17 continue working off-the-clock.

18 37. Additionally, Plaintiff alleges on information and belief that Defendant failed to pay
19 all meal break penalties that he and the class members were owed. An illustrative example of this
20 violation is shown in Plaintiff's timesheet and wage statement for the pay period of 12/09/2024 to
21 12/15/2024 showing a meal taken after the 5th hour on Monday 12/09/2024.

22 38. On Monday 12/09/2024 on a shift that lasted 8.25 hours, Plaintiff took a meal break 5
23 hours and 15 minutes into his shift. His corresponding wage statement shows no statutorily required
24 penalty payment. Furthermore, over the course of Plaintiff's employment with Defendants he was
25 never paid a penalty for any rest or meal break violation. On information and belief, Defendants
26 committed meal period premium violations against Plaintiff and the other class members as a matter
27 of common payroll administration and company policy in a matter susceptible to common proof.
28

1 39. Defendants failed to provide all rest periods to which employees were entitled and
2 failed to pay all rest period premiums to Plaintiff and other class members.

3 40. As stated above, due to the job's high demands, lack of proper staffing, and the
4 profession's nature, Plaintiff and the class members were rarely, if at all, authorized or permitted to
5 take all their rest periods.

6 41. Defendants required Plaintiff and the other class members to effectively waive or
7 otherwise forego their rest periods contrary to the law. For example, Plaintiff and the class members
8 were unable to take their first or second rest periods during their shifts due to high demands and
9 understaffing. Plaintiff alleges that during particularly busy periods he could not take a break once
10 during a whole week of work because of the amount of construction tasks he and the other class
11 members were required to do.

12 42. Defendants required Plaintiff and the class members to incur costs for work-related
13 purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the class
14 members unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of
15 policy and practice.

16 43. Defendants required Plaintiff and the class members to utilize their personal cell phones
17 to complete necessary work tasks, such as taking photographs of job sites, when their company phones
18 would be damaged. Plaintiff and the class members were not reimbursed for the expenses associated
19 with cell phone usage. Instead, Plaintiff and the class members bore the cost of these requirements,
20 without reimbursement.

21 44. Moreover, Plaintiff was required to use his own vehicle for necessary work tasks, such
22 as carrying equipment and tools from job site to job site. However, Plaintiff was only intermittently
23 reimbursed for the mileage and use of his personal vehicle.

24 45. Additionally, Plaintiff was required to use his own necessary tools, for example a
25 Chipping Hammer, wireless drill, batteries for his drill. Plaintiff was reimbursed for \$2.31 per
26 paycheck beginning on 07/07/2023. However, this reimbursement failed to properly compensate
27 Plaintiff and the class members for the use of their own tools and vehicles. Instead, Plaintiff and the
28 class members bore the cost of these requirements, without proper reimbursement.

1 46. Defendants failed to provide all records upon Plaintiff's request. Defendants have
2 failed to provide time records for Plaintiff for any of the over decade of his employment, excluding
3 timecards for a few days, 12/09/24 through 12/11/24. At the time of filing this notice the records have
4 not been provided to Plaintiff.

5 47. These violations create derivative liability for failure to timely pay all wages owed each
6 payday or upon separation of employment

7 48. Defendants called and terminated Plaintiff's employment on Thursday 12/12/24 but
8 did not pay Plaintiff's final paycheck until the following day, Friday 12/13/24, when a representative
9 came, picked up his company phone, and delivered his final check.

10 49. Defendants failed to provide accurate itemized wage statements to the class members
11 each pay period as a result of the policies and practices set forth in this notice. Defendants violated
12 Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages
13 earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate
14 reflection, and recording of "gross wages earned" on those wage statements.

15 50. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
16 employee wage statements each pay period the applicable hourly rates in effect and the number of
17 hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees.
18 The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the
19 pay stub.

20 51. Defendants violated Labor Code section 226(a)(2) by failing to accurately list
21 employees' "total hours worked," as the wage statements did not accurately include the
22 uncompensated time plaintiff and other class members worked due to Defendants' policy and practice
23 of requiring off-the-clock work.

24 52. Plaintiff and other class members cannot promptly and easily determine from the wage
25 statement alone the wages paid or earned without reference to other documents or information. Indeed,
26 these wage statement violations are significant because they sow confusion among Plaintiff and other
27 class members with respect to what amounts were owed and paid, at what rates, the number of hours
28

1 worked, and how those amounts were or should be calculated. The wage statements reflect a false
2 statement of earnings and concealed the underlying problems and underpayments of employee wages.

3 53. Because of these policies and practices set forth above, Defendants failed to accurately
4 maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES OWED**

7 **Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197**

8 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

9 54. All outside paragraphs of this Complaint are incorporated into this section.

10 55. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
11 §§ 200, 218, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours
12 and Days of Work” and “Minimum Wages” sections of the applicable orders), which require non-
13 exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of
14 work, and further provide a private right of action for an employer’s failure to pay all minimum wages
15 (plus liquidated damages). In addition to minimum wages, Labor Code § 200 states that “‘wages’
16 includes all amounts for labor performed by employees of every description, whether the amount is
17 fixed or ascertained by the standard of time, task, piece, commission basis, or other method of
18 calculation.”

19 56. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
20 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
21 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
22 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
23 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
24 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
25 Code § 1194.2.

26 57. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
27 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
28 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an

1 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys'
2 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2,
3 218.6 and any other applicable statutes.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **Violation of Labor Code §§ 510 and 1194**

7 58. All outside paragraphs of this Complaint are incorporated into this section.

8 59. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
9 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
10 wages all overtime hours worked, and which further provide a private right of action for an employer's
11 failure to pay all overtime compensation for overtime hours worked.

12 60. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
13 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
14 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
15 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
16 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
17 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
18 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

19 61. Plaintiff and class members are entitled to recover the full amount of the unpaid
20 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
21 extent permitted by law.

22 **THIRD CAUSE OF ACTION**

23 **MEAL PERIOD VIOLATIONS**

24 **Violation of Labor Code §§ 226.7 and 512**

25 62. All outside paragraphs of this Complaint are incorporated into this section.

26 63. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
27 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
28 meal period premiums in lieu thereof), and which further provide a private right of action for an

1 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
2 regular rate of compensation.

3 64. Defendants willfully failed in their affirmative obligation to consistently provide
4 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
5 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
6 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
7 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
8 sections of the applicable orders).

9 65. Further, Defendants willfully failed in their affirmative obligation to consistently pay
10 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
11 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
12 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
13 applicable orders).

14 66. Plaintiff and class members are entitled to recover the full amount of the meal period
15 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
16 the extent permitted by law.

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **Violation of Labor Code §§ 226.7 and 516**

20 67. All outside paragraphs of this Complaint are incorporated into this section.

21 68. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
22 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
23 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
24 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
25 regular rate of compensation.

26 69. Defendants willfully failed in their affirmative obligation to consistently authorize and
27 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten
28 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

1 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
2 applicable orders).

3 70. Further, Defendants willfully failed in their affirmative obligation to consistently pay
4 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
5 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
6 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

9 **Violation of Labor Code §§ 200, 218, 246 *et seq.***

10 71. All outside paragraphs of this Complaint are incorporated into this section.

11 72. Defendants knowingly and intentionally failed in their affirmative obligation to pay
12 sick leave wages to Plaintiff and a paid sick leave subclass in violation of Labor Code section 246
13 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law.
14 (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized
15 that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her
16 compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

17 73. Labor Code section 246(l), in conjunction with Labor Code section 248 *et seq.*, 248.1,
18 248.2, and 248.6, in addition to the applicable County sick pay ordinances in locales worked by class
19 members, govern how Defendants were required to calculate paid sick leave.

20 74. Defendants failed to pay Plaintiff and class members their paid sick leave wages at one
21 of the lawful rates set forth in the statute or ordinance because Defendants failed to include in their
22 sick leave calculation the additional remuneration received by Plaintiff and class members (i.e., at the
23 regular rate of pay and/or calculated based on total wages earned).

24 75. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick
25 leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19
26 Supplemental Sick Leave wages to class members at the correct accrual rate or hourly pay rate in
27 violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

1 76. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class
2 members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

3 **SIXTH CAUSE OF ACTION**

4 **UNPAID VACATION WAGES**

5 **Violation of Labor Code §§ 201, 202, 203, and 227.3 and 1194, and 1198**

6 77. All outside paragraphs of this Complaint are incorporated into this section.

7 78. This cause of action is brought by an unpaid vacation wages subclass pursuant to Labor
8 Code §§ 200, 201, 202, 203, and 227.3 and 1194, and 1198, which require non-exempt employees be
9 timely paid all vested vacation wages at their final rate of pay upon separation of employment, and
10 which further provide a private right of action for an employer's timely failure to pay all vacation
11 compensation upon termination.

12 79. Defendant offered Plaintiff and class members an employment contract or policy
13 providing for the accrual of vacation and/or paid time off. Plaintiff and class members accrued
14 vacation and/or PTO pursuant to the contract or policy.

15 80. Upon separation of Plaintiff and class members, Defendants willfully failed in their
16 affirmative obligation to timely pay Plaintiff and class members all accrued but unused vacation at
17 their final rate during their employment with Defendants, in violation of Labor Code sections 201(a),
18 202(a), and 227.3.

19 81. Plaintiff and class members are entitled to recover the full amount of the accrued
20 vacation wages owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and
21 costs to the extent permitted by law.

22 **SEVENTH CAUSE OF ACTION**

23 **UNTIMELY PAYMENT OF WAGES**

24 **Violation of Labor Code §§ 204, 210, 218**

25 82. All outside paragraphs of this Complaint are incorporated into this section.

26 83. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
27 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
28 period, and which further provide a private right of action for an employer's failure to comply with

1 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
2 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

3 84. Defendants willfully failed in their affirmative obligation to timely pay all wages,
4 including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice
5 during each calendar month on days designated in advance by the employer as regular paydays (for
6 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly
7 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
8 "Minimum Wages" sections of the applicable orders).

9 85. Plaintiff and class members are entitled to recover the full amount of the unpaid wages,
10 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
11 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
12 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
13 in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

14 **EIGHTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **Violation of Labor Code § 226**

17 86. All outside paragraphs of this Complaint are incorporated into this section.

18 87. This cause of action is brought by a wage statement subclass pursuant to Labor Code
19 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
20 pay period, and which further provide a private right of action for an employer's failure to comply
21 with this obligation.

22 88. Defendants knowingly and intentionally failed in their affirmative obligation to provide
23 accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and
24 class members. Specifically, the wage statements issued to Plaintiff and class members did not
25 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

26 89. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
27 accurate itemized wage statements, causing confusion and concealing wage and premium
28 underpayments.

90. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

NINTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq.*

91. All outside paragraphs of this Complaint are incorporated into this section.

92. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

93. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

94. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

95. All outside paragraphs of this Complaint are incorporated into this section.

96. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

1 97. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
2 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class
3 members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in
4 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
5 Code section 2802.

6 **ELEVENTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE RECORDS**

8 **Violation of Labor Code §§ 226, 432, and 1198.5**

9 98. All outside paragraphs of this Complaint are incorporated into this section.

10 99. Plaintiff brings this cause of action exclusively *in an individual capacity*.

11 100. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating to
12 the obtaining or holding of employment, he shall be given a copy of the instrument upon request."

13 101. Labor Code section 226(b) grants employees the right to inspect or receive "a copy of
14 records pertaining to their employment." Labor Code section 226(f) authorizes a penalty of \$750 for
15 an employer's failure to comply with a request for records made under section 226.

16 102. Labor Code section 1198.5 requires employers to provide an employee's "personnel
17 records" within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750 for
18 an employer's failure to provide a copy of or permit inspection of personnel records. Section 1198.5(l)
19 allows an employee to seek injunctive relief to obtain an employer's compliance with this section and
20 authorizes the recovery of attorneys' fees and costs.

21 103. Section 7 (Records) of the IWC Wage Orders, which may be enforced through Labor
22 Code section 1198, requires that employers maintain time records of when an employee begins and
23 ends each work period and when the employee takes meal periods, among other required employment
24 and payroll records. Section 7(C) states that "[a]n employee's records shall be made available for
25 inspection by the employee upon reasonable request."

26 104. Plaintiff requested from Defendants all records due under the IWC Wage Orders
27 (including the Records sections) and Labor Code sections 226, 432, and 1198.5. Defendants failed to
28 provide all records upon Plaintiff's request. Defendants have failed to provide time records for Plaintiff

1 for any of the over decade of his employment, excluding timecards for a few days, 12/09/24 through
2 12/11/24. At the time of filing this complaint the records have not been provided to Plaintiff.

3 105. Defendants' unlawful acts and omissions deprived Plaintiff of the ability review the
4 documents they received during their employment and to inspect and reconcile their actual time
5 worked with the ultimate pay they received on their wage statements. Plaintiff is entitled to recover
6 the penalties and injunctive relief, in addition to interest, attorneys' fees, and costs to the extent
7 permitted by law, including under Code of Civil Procedure section 1021.5, and Labor Code sections
8 226 and 1198.5.

9 **TWELFTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **Violation of Business and Professions Code §§ 17200 *et seq.***

12 106. All outside paragraphs of this Complaint are incorporated into this section.

13 107. Defendants have engaged and continue to engage in unfair and/or unlawful business
14 practices in the State of California in violation of California Business and Professions Code § 17200
15 by committing the foregoing wage and hour violations alleged throughout this Complaint.

16 108. Defendants' dependence on these unfair and/or unlawful business practices deprived
17 Plaintiff and continue to deprive other class members of compensation to which they are legally
18 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
19 Defendants over competitors who have been and/or are currently employing workers in compliance
20 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
21 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

22 109. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
23 Complaint, and Plaintiff, as an individual and on behalf of other similarly situated, seeks full restitution
24 of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or
25 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

26 110. Plaintiff does not have an adequate remedy at law for past or future violations, to the
27 extent the statute of limitations on each of the alleged causes of action do not extend to the four year
28

1 limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order
2 violations do not provide a private right of action.

3 111. Plaintiff and class members are entitled to injunctive relief against Defendants,
4 restitution, and other equitable relief to return all funds over which Plaintiff and class members have
5 an ownership interest and to prevent future damage and the public interest under Business and
6 Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest,
7 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
8 § 1021.5.

9 **THIRTEENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

11 **Violation of Labor Code §§ 2698 *et seq.***

12 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

13 112. All outside paragraphs of this Complaint are incorporated into this section.

14 113. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
15 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
16 codified as Labor Code section 2698 *et seq.*:

- 17 a. All current and former non-exempt employees who worked for Defendants in
18 California at any time from one year prior to the postmark date of the initial
19 PAGA notice through date of trial.

20 114. Plaintiff reserves the right to amend, supplement, or add to this description of the
21 aggrieved employees, according to proof.

22 115. The State of California, via the Labor and Workforce Development Agency
23 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
24 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
25 files suit is always the real party in interest.”])

26 116. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
27 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of the employee and other current or former
3 employees against whom a violation of the same provision was committed pursuant to the procedures
4 specified in Section 2699.3. “

5 117. Any allegations regarding violations of the IWC Wage Orders are enforceable as
6 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
7 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

8 118. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
9 penalties under the PAGA.

10 119. On or about **April 9, 2025**, Plaintiff paid the requisite PAGA filing fee and provided
11 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
12 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
13 violations.

14 120. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
15 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
16 forth herein (the “PAGA notice”).

17 121. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
18 written PAGA notice from the LWDA.

19 122. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
20 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
21 providing a description of any actions taken to cure the alleged violations.

22 123. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
23 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
24 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
25 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

26 124. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
27 Complaint, Defendants committed the following violations and are liable for all corresponding civil
28 penalties:

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.
- e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- k. ***Failure to Provide Employee Records.*** Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders.
- l. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

125. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

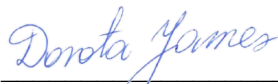
Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;

- 1 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 2 d. For division of class members into appropriate classes and/or subclasses according to
- 3 proof;
- 4 e. For recovery of all statutory penalties and liquidated damages;
- 5 f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;
- 6 g. For restitution and injunctive relief;
- 7 h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by
- 8 law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and
- 9 Code of Civil Procedure § 1021.5.;
- 10 i. For recovery of damages in amount according to proof;
- 11 j. For all recoverable pre- and post-judgment interest;
- 12 k. For this action to be maintained as a representative action under the PAGA;
- 13 l. For Plaintiff and counsel of record to be provided with all enforcement capability as if
- 14 the action were brought by the State of California or the California Division of Labor
- 15 Enforcement;
- 16 m. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 17 n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 18 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
- 19 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- 20 o. For such other relief the Court deems just and proper.

21
22 Dated: June 17, 2025

Ferraro Vega Employment Lawyers, Inc.

23
24 

25 Dorota A. James

Nicholas J. Ferraro

Attorneys for Plaintiff Dario Salazar

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com
Dorota A. James
dorota@ferrarovega.com

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

April 9, 2025

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

**Apex Contracting and Restoration,
Inc.**
5183 Mercury PT
San Diego, California 92111

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **DARIO SALAZAR** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

APEX CONTRACTING AND RESTORATION, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(s). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Foreman from about September 2012 to December 2024. During his employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage **Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.3d 314, 324.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Plaintiff and other aggrieved employees often suffered non-compliant meal periods where they worked through part or all of their uncompensated meals. Due to the demands of Plaintiff’s position and pressures from Defendants, Plaintiff and other aggrieved employees were forced to continue working through their unpaid meal periods to finalize the projects assigned to them. Plaintiff was often required to record compliant meal breaks despite not being able to take them because of the flow of construction work. However, as discussed in more detail in the meal periods section below, Defendants failed to adequately pay Plaintiff and the aggrieved employees for their time spent working off-the-clock during their meal periods. In addition, Defendant had an unlawful practice of rounding Plaintiff and other employees’ time up or down, including the nearest quarter-hour to the disadvantage of the employees. Plaintiff and, on information and belief, other aggrieved employees were deprived of regular, and overtime wages each time Defendants engaged in this unlawful policy and practice of requiring off-the-clock work and rounding.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime **Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. As described above, Defendants compelled Plaintiff and other aggrieved employees to work off-the-clock during unpaid meal periods. Each time this practice resulted in unpaid work over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 40 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for

exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Defendants failed to provide Plaintiff and the aggrieved employees with all sick leave accrued. To the extent that Defendants provided paid sick leave, they did not pay all sick leave wages at the proper rate of pay because they failed to incorporate the hours that Plaintiff and the aggrieved employees worked off-the-clock.

Additionally, each time Plaintiff and the aggrieved employees worked off-the-clock that resulted in unpaid overtime, the overtime hours were not accounted for when calculating an employee’s accrued paid sick leave. Therefore, Plaintiff and other aggrieved employees were not awarded the total accrued sick leave time they had earned.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Vacation Wages **Violation of Labor Code § 227.3**

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.”

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages. As described above, Defendants failed to record all of the time that Plaintiff and other aggrieved employees worked for Defendants and undercounted their hours worked. Consequently, Defendants failed to credit the aggrieved employees with all vacation time they had actually accrued. Therefore, vacation wages were not paid out at the lawful rate of pay inclusive of all earnings.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal.5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.5th 444, 459.

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods due to pressures to keep up with high demands of the job and understaffing. For example, Plaintiff and the aggrieved employees were required to continue stucco and wallboard installation as well as carpentry work into what should have been their lunch break. Plaintiff and the aggrieved employees would record as if they had taken a compliant break despite being forced to continue working off-the-clock.

Additionally, Plaintiff alleges on information and belief that Defendant failed to pay all meal break penalties that he and the aggrieved employees were owed. An illustrative example of this violation is shown below:



NAME:

Dario Salazar

Non-Exempt Employee Timesheet

WEEK ENDING 12/15/2024

Workers Comp Codes: 01 - Drywall | 02 - Paint | 03 - Plumbing | 04 - Electrical | 05 - Carpentry | 06 - Excavate

	Date	Job #	W/C Code	In	Lunch Out	Lunch In	W/C Code	Out	HRS	Regular Hours	O/T Hours	D/T Hours	Total Hours for Day
Monday	12/09/24	Job # 240838	7	6:45:00 AM	12:00:00 PM	12:30:00 PM		3:30:00 PM	8:15	8.00	0.25		8.25
		Job #							0:00				
		Job #							0:00				
		Job #							0:00				
Tuesday	12/10/24	Job # 240838	7	7:00:00 AM	12:00:00 PM	12:30:00 PM		3:30:00 PM	8:00	8.00			8.00
		Job #							0:00				
		Job #							0:00				
		Job #							0:00				
Wednesday	12/11/24	Job # 240838	7	7:00:00 AM	12:00:00 PM	12:30:00 PM		3:30:00 PM	8:00	8.00			8.00
		Job #							0:00				
		Job #							0:00				
		Job #							0:00				
Thursday	12/12/24	Job # SHOP	1						0:00	8.00			8.00
		Job #							0:00				
		Job #							0:00				
		Job #							0:00				
Friday	12/13/24	Job # SHOP	1						0:00	8.00			8.00
		Job #							0:00				
		Job #							0:00				
		Job #							0:00				

Extract of Plaintiff's timesheet for pay period 12/09/24 – 12/13/24 showing a meal taken after the 5th hour on Monday 12/09/24

DARIO SALAZAR

Employee Pay Stub		Check number: 20509		Pay Period: 12/09/2024 - 12/15/2024		Pay Date: 12/20/2024			
Employee				SSN					
DARIO SALAZAR, 3685 46TH ST, SAN DIEGO, CA 92105				***-**-3369					
Earnings and Hours		Qty	Rate	Current	YTD Amount	Vacation	Accrued	Used	Available
5484- STUCCO		24.00	35.00	840.00	27,321.35	Current	0.77		32.06
5484- O/T STUCCO		0.25	52.50	13.13	591.21	YTD		72.06	
8227- CONSTRUCTION YA...		16.00	35.00	560.00	665.00				
5403- CARPENTRY COMM					280.00				
5446- WALLBOARD					10,673.95				
5482- PAINTING					840.00				
5403- O/T CARPENTRY CO...					2.63				
5446- O/T WALLBOARD					63.54				
9008- LABORER MITIGATION					2,467.50				
9008- O/T LABORER MITIG...					176.93				
VACATION PAY - SALES					1,400.00				
SICK PAY - FIELD					1,400.00				
		40.25		1,413.13	45,882.11				
Deductions From Gross				Current	YTD Amount				
401(k) Employee Deduction				-42.39	-1,376.46				
Taxes				Current	YTD Amount				
Medicare Employee Addl Tax				0.00	0.00				
Federal Withholding				-145.00	-4,062.00				
Social Security Employee				-87.61	-2,844.69				
Medicare Employee				-20.49	-665.29				
CA - Withholding				-53.45	-1,338.27				
CA - Disability Employee				-15.54	-504.70				
				-322.09	-9,414.95				
Adjustments to Net Pay				Current	YTD Amount				
UNIFORMS, TOOLS, BOOTS				2.31	97.02				
Net Pay				1,050.96	35,187.72				

Extract of Plaintiff's wage statement for pay period 12/09/24 – 12/15/24 showing no penalty payment

Here, on Monday 12/09/24 on a shift that lasted 8.25 hours, Plaintiff took a meal break 5 hours and 15 minutes into his shift. His corresponding wage statement shows no statutorily required penalty payment. Furthermore, over the course of Plaintiff's employment with Defendants he was never paid a penalty for any rest or meal break violation. On information and belief, Defendants committed meal period premium violations against Plaintiff and the other aggrieved employees as a matter of common payroll administration and company policy in a matter susceptible to common proof.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Defendants failed to provide all rest periods to which employees were entitled and failed to pay all rest period premiums to Plaintiff and other aggrieved employees. As stated above in the "Unpaid Meal Period Premium" section, due to the job's high demands, lack of proper staffing, and the profession's nature, Plaintiff and the aggrieved employees were rarely, if at all, authorized or permitted to take all their rest periods. Defendants required Plaintiff and the other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law. For example, Plaintiff and the aggrieved employees were unable to take their first or second rest periods during their shifts due to high demands and understaffing. Plaintiff alleges that during particularly busy periods he could not take a break once during a whole week of work because of the amount of construction tasks he and the other aggrieved employees were required to do.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not

more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendant failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203, 256**

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

Defendants called and terminated Plaintiff’s employment on Thursday 12/12/24 but did not pay Plaintiff’s final paycheck until the following day, Friday 12/13/24, when a representative came, picked up his company phone, and delivered his final check.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Defendants violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time plaintiff and other aggrieved employees worked due to Defendants’ policy and practice of requiring off-the-clock work.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses
Violation of Labor Code §§ 2802, 2804

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “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.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Defendants required Plaintiff and the aggrieved employees to utilize their personal cell phones to complete necessary work tasks, such as taking photographs of job sites, when their company phones would be damaged. Plaintiff and the aggrieved employees were not reimbursed for the expenses associated with cell phone usage. Instead, Plaintiff and the aggrieved employees bore the cost of these requirements, without reimbursement.

Moreover, Plaintiff was required to use his own vehicle for necessary work tasks, such as carrying equipment and tools from job site to job site. However, Plaintiff was only intermittently reimbursed for the mileage and use of his personal vehicle. Additionally, Plaintiff was required to use his own necessary tools, for example a Chipping Hammer, wireless drill, batteries for his drill. Plaintiff was reimbursed for \$2.31 per paycheck beginning on 07/07/2023. However, this reimbursement failed to properly compensate Plaintiff and the aggrieved employees for the use of their own tools and vehicles. Instead, Plaintiff and the aggrieved employees bore the cost of these requirements, without proper reimbursement.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Provide Employee Records
Violation of Labor Code §§ 226, 432, 1174, 1198.5; IWC Wage Orders

Defendants violated Labor Code sections 226, 432, 1198.5, and 1174 with respect to the aggrieved employees.

Labor Code section 226(b) requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code section 432 states that “[i]f an employee ... signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” Labor Code section 1198.5 grants “[e]very current and former employee, or his or her representative, ... the right to inspect and receive a copy of the personnel files that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Section 7(A) (Records) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates that employers maintain and make available “time records showing when the employee begins and ends each work period” as well as time records showing “[m]eal periods, split shift intervals, and daily hours worked[.]” Labor Code section 1174(d) requires these and other records be maintained for at least three years.

Defendants failed to provide all records upon Plaintiff’s request. Defendants have failed to provide time records for Plaintiff for any of the over decade of his employment, excluding timecards for a few days, 12/09/24 through 12/11/24. At the time of filing this notice the records have not been provided to Plaintiff.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys’ Fees and Costs
Labor Code § 2699(k)(1)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(k)(1).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants’ written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in black ink that reads "Dorota James". The script is cursive and elegant, with the first letters of each name being capitalized and prominent.

Dorota A. James

Cc Plaintiff Dario Salazar
Defendant HR representative:
Monique Reyes - Mreyes@apex411.com