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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JAN 23 2023

BY: 
Jasmine Segura, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

FRANCISCO RAMIREZ ORDAZ,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

BURLINGAME INDUSTRIES, INC., a
California corporation, d/b/a Eagle Roofing
Products; and DOES 1 through 10, inclusive,
Defendants.

CASE NO.: CIV SB 230316

COMPLAINT

CLASS ACTION

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay All Wages Due to Discharged and Quitting Employees
5. Failure to Pay Timely Wages
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Statements
8. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

9. Penalties Under the Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 Plaintiff Francisco Ramirez Ordaz ("Plaintiff") brings this class and representative action,
3 on behalf of himself and all other similarly situated individuals, against his former employer
4 Burlingame Industries, Inc. ("Burlingame" or "Defendant"), in order to hold Burlingame
5 accountable for its wage theft and other violations of California wage-and-hour laws. Plaintiff
6 makes the following allegations on information and belief, except as to allegations pertaining to
7 Plaintiff individually, which are based on his personal knowledge.

8 1. Burlingame earns significant profits in large part due to stealing wages and other
9 compensation from its non-exempt employees, who are unaware of their full rights under
10 California wage-and-hour laws, and who are otherwise susceptible to such exploitation.

11 2. In order to minimize labor costs, Burlingame has willfully failed to implement
12 adequate policies to comply with the California Labor Code and applicable IWC Wage order(s),
13 causing harm to Plaintiff and the other employees he seeks to represent. Accordingly, Plaintiff
14 seeks declaratory, compensatory and other statutorily available relief for himself and a Class of
15 other employees, defined *infra* at paragraph 10, to compensate these workers for the wages
16 Burlingame has stolen from them and to protect current and future workers from being subjected
17 to similar wage theft and unlawful working conditions perpetrated by Burlingame. Plaintiff also
18 seeks civil penalties on behalf of other employees, defined *infra* at paragraph 58, pursuant to the
19 Private Attorneys' General Act.

20 **JURISDICTION AND VENUE**

21 3. The Superior Court of the State of California has jurisdiction in this matter because
22 Burlingame is a California corporation that is qualified to do business in California and regularly
23 conducts business in California. No federal question is at issue because Plaintiff's claims are based
24 solely on California law.

25 4. Venue is proper in this judicial district and the County of San Bernardino because
26 Plaintiff, and other similarly situated employees, performed work for Burlingame in the County of
27 San Bernardino, Burlingame's corporate headquarters are located in Rialto, California (a city
28 located in the County of San Bernardino), and Burlingame's unlawful employment policies and

1 practices, which are the subject of this action were applied, at least in part, to Plaintiff, and other
2 similarly situated employees, in the County of San Bernardino.

3 THE PARTIES

4 5. Plaintiff worked as a maintenance, a non-exempt position, for Burlingame at its
5 warehouse in Rialto, California from approximately July 2022 through August 2022.

6 6. Burlingame is, and at all times relevant herein was, a corporation organized and
7 existing under the laws of the State of California. On information and belief, Burlingame is
8 authorized to conduct business in the State of California, and does conduct business in the State of
9 California, as Eagle Roofing Products. Burlingame manufactures roof tile at its warehouse located
10 in Rialto, California.

11 7. The true names and capacities of Does 1 through 10, inclusive, are unknown to
12 Plaintiff at this time, and Plaintiff therefore sues such Doe defendants under fictitious names.
13 Upon information and belief, each Defendant designated as a Doe is in some manner highly
14 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
15 damages, as alleged herein, were proximately caused by the conduct of such Doe defendants.
16 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
17 capacities of such Doe defendants when ascertained.

18 8. As a direct and proximate result of the unlawful actions of Burlingame, Plaintiff
19 and Class members have suffered, and continue to suffer, from loss of earnings in amounts as yet
20 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

21 CLASS ACTION ALLEGATIONS

22 9. Plaintiff brings this action on behalf of himself and the following similarly situated
23 Class of individuals ("Class members"):

24 All non-exempt employees of Burlingame who performed work for Burlingame in the
25 State of California during the statute of limitations period.

26 10. Plaintiff reserves the right to name additional Class representatives as may be
27 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the
28

1 proposed Class and/or add subclasses before the Court determines whether certification is
2 appropriate.

3 11. This action is appropriately suited for a class action because:

4 A. The proposed Class is a significant number. Plaintiff is informed and believes that
5 the proposed Class consists of at least 50 non-exempt employees. Joinder of all current and former
6 non-exempt employees individually would be impractical.

7 B. This action involves common questions of law and fact to the proposed Class
8 because the action focuses on the Burlingame's systematic course of illegal payroll practices and
9 policies, which was applied to all non-exempt employees in uniform violation of the California
10 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
11 prohibits unfair business practices arising from such violations. Common questions of law and fact
12 that will drive resolution of this action include but are not limited to the following:

- 13 1. Whether Burlingame failed to provide its non-exempt employees with legally
14 compliant meal periods and rest breaks;
- 15 2. Whether Burlingame properly paid premium pay to its non-exempt employees
16 as a result of missed and non-compliant meal periods and rest breaks;
- 17 3. Whether Burlingame failed to properly calculate and pay overtime
18 compensation to its non-exempt employees;
- 19 4. Whether Burlingame failed to properly pay minimum wages to its non-exempt
20 employees;
- 21 5. Whether Burlingame unfairly, unnecessarily, and unlawfully rounded the time
22 worked by its non-exempt employees;
- 23 6. Whether Burlingame implemented an unlawful alternative workweek schedule;
- 24 7. Whether Burlingame failed to timely pay wages to its non-exempt employees;
- 25 8. Whether Burlingame failed to maintain required records and accurate wage
26 statements for its non-exempt employees; and
- 27 9. Whether Burlingame engaged in unfair and/or unlawful business practices.

1 C. Plaintiff's claims are typical of the proposed Class because Burlingame subjected
2 all of its non-exempt employees to the similar and overlapping violations of the California Labor
3 Code, the applicable IWC wage order, and the California Business and Professions Code.

4 D. Plaintiff is able to fairly and adequately protect the interests of all members of the
5 proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain
6 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff
7 has also retained counsel that is experienced in wage-and-hour class and representative action
8 litigation.

9 **FIRST CAUSE OF ACTION**

10 **Failure to Provide Required Meal Periods**

11 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 1-2001, § 11]**

12 ***(On Behalf of Plaintiff and the Class against All Defendants)***

13 12. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in paragraphs 1 through 11.

15 13. During the statute of limitations period, as part of Burlingame's unlawful policies
16 and practices to deprive its non-exempt employees of all wages earned and due, Burlingame
17 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
18 their meal periods, to skip their meal periods, to take late and short meal periods, and Burlingame
19 has otherwise failed to provide the required meal periods to Plaintiff and Class members as
20 required under California Labor Code §§ 226.7, 512, and § 11 of IWC Wage Order No. 1-2001.

21 14. Burlingame has implemented several common policies and practices that have
22 caused Plaintiff and Class members to systematically miss or otherwise take non-compliant meal
23 periods.

24 15. Burlingame did not have a compliant meal period policy and did not properly
25 notify Plaintiff and Class members of their rights under California law to take full, timely,
26 uninterrupted meal periods. For example, Burlingame did not provide proper training, and did not
27 implement adequate schedules regarding meal periods, resulting in systemic missed and non-
28 compliant meal periods. As a direct result of Burlingame's practice to conceal their legal rights,

1 Plaintiff and Class members missed meal periods altogether, and also took late and short meal
2 periods.

3 16. To the extent Burlingame had any meal period policy, it fostered a culture in which
4 taking a meal period came second to completing an unreasonable amount of work within the
5 scheduled shift. Burlingame consistently denied Plaintiff and Class members compliant meal
6 periods by requiring them to complete so much work within their shifts, and requiring them to first
7 receive permission from a supervisor and secure coverage, before taking meal periods. This
8 caused Plaintiff and Class members to skip their meal periods, to take them after working longer
9 than five (5) hours, to perform work during their meal periods, or return to work after taking less
10 than a thirty (30) minute meal period.

11 17. Burlingame has also violated California Labor Code §§ 226.7 and 512, § 11 of
12 IWC Wage Order No. 1-2001, and the California Unfair Competition Law, Cal. Bus. & Prof. Code
13 § 17200, *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized
14 and permitted to take a timely, uninterrupted meal period, in accordance with the applicable wage
15 order, one additional hour of compensation at the proper regular rate of pay for each workday that
16 such a meal period was not authorized or permitted.

17 18. Burlingame has further violated California Labor Code §§ 226.7, 510, 1194, 1197
18 by failing to compensate Plaintiff and Class Members for all hours worked during their meal
19 periods.

20 19. As a proximate result of the aforementioned violations, Plaintiff and Class
21 members have been damaged in an amount according to proof at trial, and seek all wages earned
22 and due, interest, penalties, expenses, and costs of suit.

23 **SECOND CAUSE OF ACTION**

24 **Failure to Provide Required Rest Breaks**

25 **[Cal. Lab. Code §§ 226.2, 226.7, 512; IWC Wage Order No. 1-2001, § 12]**

26 ***(On Behalf of Plaintiff and the Class against All Defendants)***

27 20. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 19.

1 21. At all times relevant herein, as part of Burlingame's illegal payroll policies and
2 practices to deprive their non-exempt employees of all wages earned and due, Burlingame failed
3 to permit Plaintiff and Class members to take rest breaks as required under California Labor Code
4 §§ 226.2, 226.7 and 512, and § 12 of IWC Wage Order No. 1-2001.

5 22. During the statute of limitations period Burlingame failed to implement policies or
6 procedures to provide rest breaks, and Plaintiff and Class members did not take rest breaks when
7 they were entitled to because they were not adequately informed of their rights to do so under
8 California law. As alleged herein, Burlingame did not have an adequate rest break policy and it did
9 not adequately inform Plaintiff and Class members of their rights to take rest breaks. In addition,
10 Burlingame did not provide adequate training regarding their legal obligations to provide rest
11 breaks and did not implement an adequate schedule regarding rest breaks for non-exempt
12 employees. These common policies and practices have caused systematic violations of California
13 Labor Code §§ 226.2, 226.7 and 512, and § 12 of IWC Wage Order No. 1-2001.

14 23. To the extent Burlingame maintained any rest break policy, its policy was to
15 actively discourage Plaintiff and Class members from taking their rest breaks by, among other
16 things, giving them unreasonable amounts of work that had to be completed within their shift such
17 that rest breaks simply could not be taken, and requiring them to first receive permission from a
18 supervisor before taking rest breaks. Burlingame fostered a culture in which taking a rest break
19 came second to completing all of one's job duties within the scheduled shift. Additionally,
20 Burlingame implemented a common policy and practice of failing to permit Plaintiffs and Class
21 members from taking third rest breaks during shifts of 10 hours or longer, which employees
22 regularly work pursuant to Burlingame's alternative workweek schedule ("AWS").

23 24. Burlingame further violated California Labor Code § 226.7, § 12 of IWC Wage
24 Order No. 1-2001, and the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200,
25 *et. seq.*, by failing to pay Plaintiff and Class members who were not provided with a rest break, in
26 accordance with the applicable wage order, one additional hour of compensation at the proper
27 regular rate of pay for each workday that a rest break was not provided.

1 25. As a proximate result of the aforementioned violations, Plaintiff and Class
2 members have been damaged in an amount according to proof at trial, and seek all wages earned
3 and due, interest, penalties, expenses, and costs of suit.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 511, 1194, 1198; IWC Wage Order No. 1-2001, § 3]**

7 ***(On Behalf of Plaintiff and the Class against All Defendants)***

8 26. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 25.

10 27. Pursuant to California Labor Code §§ 510, 1194, and § 3 of IWC Wage Order No.
11 1-2001, Burlingame is required to compensate Plaintiff and Class members for all overtime, which
12 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess
13 of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
14 seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
15 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
16 consecutive day of work in any workweek.

17 28. During the statute of limitations period, Burlingame failed to compensate Plaintiff
18 and Class members for all overtime hours worked as required under the foregoing provisions of
19 the California Labor Code and IWC Wage Order by, among other methods: failing to pay
20 overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California
21 Labor Code §§ 510, 1194 and IWC Wage Order No. 1-2001, § 3, requiring, permitting or
22 suffering Plaintiff and Class members to work off-the-clock, and to work through meal and rest
23 breaks, but not compensating them for this time, and unlawfully rounding the time worked by
24 Plaintiff and Class members down in a one-sided manner in Burlingame's favor.

25 29. Burlingame has also failed to properly calculate Plaintiff's and Class members'
26 regular rates of pay for the purposes of determining their overtime rates by, among other things,
27 failing to include meal period and rest break premium pay, and other forms of remuneration, in
28 calculating the regular rate of pay.

1 30. Burlingame has also failed to pay required overtime wages based on its
2 implementation of a procedurally and substantively unlawful AWS. Under the AWS, Plaintiff and
3 Class members are obligated to work four 10-hour shifts per week (i.e., a “4/10 schedule”).
4 However, Burlingame violated its own AWS policy by mixing and matching a standard work
5 schedule with the 4/10 schedule at its own convenience, for its benefit, and at the expense of
6 Plaintiff and Class members. For example, Plaintiff and other Class members were routinely
7 obligated to work 5-6 shifts per week, entirely defeating the purpose of an AWS, and thus
8 demonstrating that Burlingame’s AWS is a sham designed to permit avoidance of overtime wages
9 under the pre-text of the law.

10 31. Burlingame has also failed to pay required overtime wages based on its
11 implementation of an unlawful rounding practice wherein it rounds the time worked by non-
12 exempt employees to the nearest quarter hour. This practice is unlawful because Burlingame
13 records the *actual* time worked by Plaintiff and Class members—i.e., there is no justifiable reason
14 to round time, and therefore, fail to pay employees for the actual time that they worked. *See Camp*
15 *v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 660 (“[i]f an employer, as in this case, can
16 capture and has captured the exact amount of time an employee has worked during a shift, the
17 employer must pay the employee for ‘all the time’ worked.”) (citations omitted). This unlawful
18 rounding practice has resulted in the systematic underpayment of overtime wages to Plaintiff and
19 Class members.

20 32. In violation of California law, Burlingame has knowingly and willfully refused to
21 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
22 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
23 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
24 of such wages, lost interest on such wages, and expenses and attorneys’ fees in seeking to compel
25 Burlingame to fully perform their obligations under state law, all to their respective damages in
26 amounts according to proof at time of trial, and within the jurisdiction of this Court.

27 33. Burlingame’s conduct described herein violates California Labor Code §§ 510,
28 1194, 1198 and IWC Wage Order No. 1-2001, § 3. Therefore, pursuant to California Labor Code

1 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
2 Code and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid
3 balance of wages owed to them by Burlingame, plus interest, penalties, attorneys' fees, expenses,
4 and costs of suit.

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

7 **[Cal. Lab. Code §§ 201, 202, 203]**

8 ***(On Behalf of Plaintiff and the Class against All Defendants)***

9 34. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 33.

11 35. Pursuant to California Labor Code §§ 201, 202, and 203, Burlingame is required to
12 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
13 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
14 at the time of discharge are due and payable immediately.

15 36. Furthermore, pursuant to California Labor Code § 202, Burlingame is required to
16 pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee
17 quits his or her employment, unless the employee provided seventy-two (72) hours previous notice
18 of his or her intention to quit, in which case the employee is entitled to his or wages at the time of
19 quitting.

20 37. California Labor Code § 203 provides that if an employer willfully fails to pay, in
21 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
22 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
23 compensation to the employee at the same rate for up to thirty (30) workdays.

24 38. During the statute of limitations period, Burlingame has willfully failed to pay
25 accrued wages and other compensation to Plaintiff and Class members in accordance with
26 California Labor Code §§ 201 and 202. Because Burlingame has failed and continues to fail to
27 properly compensate Plaintiff and Class members for all hours worked when due, overtime wages,
28 and compensation for non-compliant meal and rest breaks, Burlingame has also willfully failed

1 and continues to fail to pay accrued wages and other compensation to Plaintiff and Class members
2 in accordance with California Labor Code §§ 201 and 202.

3 39. As a result, Plaintiff and Class members are entitled to all available statutory
4 penalties, including the waiting time penalties provided in California Labor Code § 203, together
5 with interest thereon, as well as other available remedies.

6 40. As a proximate result of Burlingame's unlawful actions and omissions, Plaintiff
7 and Class members have been deprived of compensation in an amount according to proof at the
8 time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such
9 amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code §
10 1194.

11 **FIFTH CAUSE OF ACTION**

12 **Failure to Pay Timely Wages**

13 **[Cal. Lab. Code §§ 204, 210]**

14 ***(On Behalf of Plaintiff and the Class against All Defendants)***

15 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 40.

17 42. California Labor Code § 204 provides that all wages earned by any person in any
18 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
19 wages due upon termination of an employee, are due and payable between the 16th and 26th day
20 of the month during which the labor was performed. California Labor Code § 204 further provides
21 that all wages earned by any person in any employment between the 16th and the last day,
22 inclusive, of any calendar month, other than those wages due upon termination of an employee,
23 are due and payable between the 1st and the 10th day of the following month. California Labor
24 Code § 204 further provides that all wages eared for labor in excess of the normal work period
25 shall be paid no later than the payday for the next regular payroll period.

26 43. During the statute of limitations period, Burlingame, among other things, willfully
27 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
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1 limited to, meal and rest break premiums, overtime payments, and payment for work performed
2 off-the-clock, within any time period permissible under California Labor Code § 204.

3 44. As a proximate result of Burlingame's unlawful actions and omissions, Plaintiff
4 and Class members are entitled to all available statutory penalties, including but not limited to,
5 civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and
6 other applicable provisions under the California Labor Code and IWC Wage Orders, and an award
7 of costs, expenses, and reasonable attorneys' fees.

8 **SIXTH CAUSE OF ACTION**

9 **Failure to Maintain Required Records**

10 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 1-2001, § 6]**

11 ***(On Behalf of Plaintiff and the Class against All Defendants)***

12 45. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 44.

14 46. During the statute of limitations period, as part of Burlingame's illegal payroll
15 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
16 Burlingame knowingly and intentionally failed to maintain records as required under California
17 Labor Code §§ 226, 1174, and § 6 of the applicable wage order, including but not limited to, the
18 following records: total daily hours worked by each non-exempt employee; applicable rates of
19 pay; all deductions; meal periods; time records showing when each non-exempt employee begins
20 and ends each workday; and accurate itemized wage statements.

21 47. As a proximate result of Burlingame's unlawful actions and omissions, Plaintiff
22 and Class members have been damaged in an amount according to proof at trial, and are entitled to
23 all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
24 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to
25 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
26 reasonable attorneys' fees, including but not limited to those provided in California Labor Code §
27 226(e), as well as other available remedies.

1 **SEVENTH CAUSE OF ACTION**

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Lab. Code §§ 226, 226.2; IWC Wage Order No. 1-2001, § 6]**

4 ***(On Behalf of Plaintiff and the Class against All Defendants)***

5 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 47.

7 49. During the statute of limitations period, Burlingame routinely failed to provide
8 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
9 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
10 earned, and all applicable hourly rates in effect during each pay period and the corresponding
11 number of hours worked at each hourly rate.

12 50. Burlingame's wage statements violate California Labor Code § 226 because
13 Burlingame was not providing Plaintiff and Class members with proper meal and rest periods but
14 has failed to include in their wage statements one (1) additional hour of compensation at their
15 regular rates of pay for each non-compliant meal or rest period. *See Naranjo v. Spectrum Sec.*
16 *Servs., Inc.* (2022) 13 Cal.5th 93, 972 ("failure to report premium pay for missed breaks can
17 support monetary liability under section 226 for failure to supply an accurate itemized statement
18 reflecting an employee's gross wages earned, net wages earned, and credited hours worked."). In
19 addition, Burlingame Plaintiff's and Class members' wage statements are inaccurate because they
20 list rounded times when Burlingame maintains records of actual time worked by them. This also
21 results in accurate records of regular and overtime wages owed and due to Plaintiff's and Class
22 members. Further, Burlingame's wage statements failed to list the total hours available to Plaintiff
23 and the other Class members of their available hours of COVID 19 supplemental sick leave and all
24 corresponding applicable rates of pay for any COVID 19 supplemental sick leave taken and/or
25 separate listing of COVID 19 supplemental paid sick leave that is different than sick leave or
26 personal time off, all in violation of California Labor Code § 226, 246, 248.1, 248.2, 248.3 and
27 IWC Wage Order No. 1-2001, § 7. Finally, Burlingame provided Plaintiff and other Class
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1 members with non-discretionary bonuses which should be factored into their rate of pay but was
2 not reflected on Employer's wage statements.

3 51. As a proximate result of Burlingame's unlawful actions and omissions, Plaintiff
4 and Class members have been damaged in an amount according to proof at trial, and seek all
5 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled
6 to all available penalties, including but not limited to penalties pursuant to California Labor Code
7 §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
8 including but not limited to those provided in California Labor Code § 226(e), as well as other
9 available remedies.

10 **EIGHTH CAUSE OF ACTION**

11 **Unfair and Unlawful Business Practices**

12 **[Cal. Bus. & Prof. Code § 17200, *et. seq.*]**

13 ***(On Behalf of Plaintiff and the Class against All Defendants)***

14 52. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 51.

16 53. Each and every one of Burlingame's acts and omissions in violation of the
17 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not
18 limited to, Burlingame's failure to provide required meal periods and rest breaks, failure to pay
19 proper overtime compensation, unlawful time rounding, failure to pay all wages due to discharged
20 or quitting employees or to pay timely wages, and failure to furnish accurate itemized wage
21 statements or to maintain required records, constitute an unfair and unlawful business practice
22 under California Business and Professions Code § 17200, *et seq.*

23 54. Burlingame's violations of California wage-and-hour laws constitute a business
24 practice because the aforementioned acts and omissions were done repeatedly over a significant
25 period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

26 55. Burlingame has avoided payment of wages, overtime wages, the provision of meal
27 and rest breaks, and other benefits as required by the California Labor Code, the California Code
28 of Regulations, and the applicable IWC Wage Order. Further, Burlingame has failed to record,

1 report, and pay the correct sums of assessment to the state authorities under the California Labor
2 Code and other applicable regulations.

3 56. As a result of these unfair and unlawful business practices, Burlingame has reaped
4 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members,
5 and members of the public. Burlingame should be made to disgorge its ill-gotten gains and to
6 restore them to Plaintiff and Class members.

7 57. Burlingame's unfair and unlawful business practices entitle Plaintiff and Class
8 members to seek preliminary and permanent injunctive relief, including but not limited to orders
9 that Burlingame account for, disgorge, and restore to Plaintiff and Class members the wages and
10 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
11 restitution of all monies to be disgorged from Burlingame in an amount according to proof at the
12 time of trial.

13 **NINTH CAUSE OF ACTION**

14 **Representative Action for Civil Penalties**

15 **[Cal. Lab. Code §§ 2698- 2699.5]**

16 ***(On Behalf of Plaintiff and Other Aggrieved Employees against All Defendants)***

17 58. Plaintiff incorporates herein by specific reference as though fully set forth the
18 allegations in paragraphs 1 through 57, with exception of the allegations in paragraphs 9 through
19 11.

20 59. Pursuant to California Labor Code § 2699.3, on September 23, 2022, Plaintiff gave
21 written notice by certified mail to the California Labor and Workforce Development Agency
22 ("LWDA") and Burlingame of the specific provisions of the California Labor Code and applicable
23 IWC Wage Orders alleged to have been violated, including the facts and theories to support the
24 alleged violations. Within sixty-five (65) calendar days of the postmark date of Plaintiff's notice
25 letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged
26 violations. Therefore, Plaintiff has complied with all of the requirements set forth in California
27 Labor Code § 2699.3 to commence a representative action under PAGA.

60. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of himself, and other non-exempt employees of Burlingame in the State of California during the applicable statute of limitations period, pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff is employed by Burlingame and at least one of the alleged violations of the California Labor Code were committed against Plaintiff. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been employed by the violator and affected by ‘one or more’ of the alleged violations.” (Sec. 2699, subds. (a), (c).)).

61. Pursuant to California Labor Code § 2699, Plaintiff seeks to recover civil penalties under PAGA, for Burlingame's violations of the provisions of the California Labor Code alleged herein, with exception of violations predicated on Burlingame's unlawful AWS. On January 20, 2022, Plaintiff provided supplemental notice to the LWDA and Burlingame of Burlingame's unlawful AWS, and Plaintiff will file an amended complaint that includes allegations requesting penalties under the PAGA predicated on Burlingame's AWS policy, as may be appropriate.

62. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees

63. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Burlingame and Does 1 through 10, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Burlingame;

- 1 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
2 and IWC Wage Order No. 1-2001 and any other applicable IWC Wage Order;
- 3 4. For waiting time penalties pursuant to California Labor Code § 203;
- 4 5. For statutory and civil penalties according to proof, including but not limited to all
5 penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 1174.5, and 2699;
- 6 6. For interest on the unpaid wages at 10 percent per annum pursuant to California
7 Labor Code §§ 218.6, 1194, California Civil Code §§ 3287, 3288, and/or any other applicable
8 provision providing for pre-judgment interest;
- 9 7. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
10 218.5, 226, 1194, and 2699, California Civil Code §§ 1021.5, and/or any other applicable
11 provisions providing for attorneys' fees and costs;
- 12 8. For declaratory relief;
- 13 9. For an order requiring and certifying the First through Eighth Causes of Action as a
14 class action;
- 15 10. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
16 Class counsel; and
- 17 11. For such further relief that the Court may deem just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
20 with respect to all issues triable of right by jury.

21 DATED: January 20, 2023

LAW OFFICE OF SCOTT ERNEST WHEELER

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23 By 
24

Scott Ernest Wheeler

25 THE WAND LAW FIRM, P.C.

26 Aubry Wand

27 *Attorneys for Plaintiff and the Putative Class*
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