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7 Attorneys for Plaintiff Ricardo Loera, on behalf of himself and all "aggrieved employees" pursuant
8 to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN JOAQUIN**

STK-CV-00E-2022-10482

11 RICARDO LOERA, on behalf of himself and
12 all "aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*,

13 Plaintiff,

14 v.

15 VC1 CONCRETE CONSTRUCTION, LLC, a
16 California limited liability company, and
DOES 1 through 10, inclusive,

17 Defendants.
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CASE NO:

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 510, 512, 1174,
1174.5, 1194, 1198, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

FILED
SUPERIOR COURT-STOCKTON
2022 NOV 15 PM 2:45
BRANDON E. RILEY, CLERK
B. PATRICIA SOTELO
DEPUTY

1 Plaintiff RICARDO LOERA (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§
3 2698 *et seq.*, complains of VC1 CONCRETE CONSTRUCTION, LLC, a California limited liability
4 company, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”),
5 as follows:

6 **I.**

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
9 Plaintiff and other California employees who currently work or formerly worked for Defendants
10 (“Aggrieved Employees”).

11 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
12 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
13 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
14 consistent policies of:

15 a. Failing to pay Plaintiff and non-exempt Aggrieved Employees all minimum
16 and overtime wages earned during the course of employment, in violation of Labor Code §§ 510, 558,
17 1194. Defendants require Plaintiff and other non-exempt Aggrieved Employees to always write a
18 certain number of hours on their timesheets, even if they work longer than the hours written. This
19 practice deprives Plaintiff and other non-exempt Aggrieved Employees of significant hours worked
20 and minimum and overtime wages due and constitutes a violation of Labor Code §§ 510, 558, and
21 1194;

22 b. Failing to pay all reporting time wages earned during the course of employment
23 to Plaintiff and other non-exempt Aggrieved Employees, in violation of Labor Code §§ 510, 558,
24 1194 and IWC Wage Order 16-2001. Plaintiff and other non-exempt Aggrieved Employees routinely
25 report to work only to be told they are no longer needed and are sent home within two hours of
26 reporting to work. Defendants, however, fail to pay the required “half the usual or scheduled day’s
27 work, but in no event . . . less than two (2) hours nor more than four (4) hours, at the employee’s
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1 regular rate of pay, which shall not be less than the minimum wage.” This violates Labor Code §§
2 510, 558, and 1194 and IWC Wage Order 16-2001;

3 c. Failing to pay premium wages to Plaintiff and other non-exempt Aggrieved
4 Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 510, 512, 558,
5 and 1194 and IWC Wage Order 16-2001. Plaintiff and other non-exempt Aggrieved Employees are
6 routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period
7 for every shift worked that exceeds five hours, or a second proper, timely, uninterrupted, 30-minute
8 meal period for every shift worked that exceeds ten hours, but are not paid premium wages of one
9 hour’s pay for each missed first or second meal period. When they are able to take a meal period, they
10 are oftentimes late, cut short, or on-duty. Defendants also fail to maintain records indicating the start
11 and end time of each meal period. This violates Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5,
12 1194, and 1198 and IWC Wage Order 16-2001;

13 d. Failing to pay premium wages to Plaintiff and other non-exempt Aggrieved
14 Employees who are denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage
15 Order No. 16-2001. Plaintiff and non-exempt Aggrieved Employees are routinely unable to take a
16 10-minute rest period for every four (4) hours of work or major fraction thereof, but are not paid
17 premium wages of one hour’s pay for each missed rest period. When they are able to take a rest
18 period, they are oftentimes late, cut short. or on-duty, in violation of Labor Code §§ 226.7 and 558
19 and IWC Wage Order No. 16-2001;

20 e. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
21 business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor
22 Code § 2802, including, but not limited to, the use of their personal cellular phones, personal vehicles
23 (including, but not limited to, mileage, gas, and depreciation), and their tools required to perform their
24 job. Labor Code § 2802 states that an employer must indemnify its employees for all necessary
25 expenditures or losses incurred by the employee in direct consequence of the discharge of their duties,
26 and Defendants’ failure to do so has violated this section;

27 f. Failing to provide Plaintiff and Aggrieved Employees with wage statements
28 that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and

1 other non-exempt Aggrieved Employees are not paid all wages due, as stated above. As such, the
2 wage statements provided by Defendants fail to accurately state all gross wages earned, in violation
3 of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2)
4 and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
5 hourly rates in effect during the pay period and the corresponding numbers of hours worked at each
6 rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Separately, the wage statements issued to
7 Plaintiff and all Aggrieved Employees fail to set forth the last four digits of their social security
8 number or an employee identification number, in violation of Labor Code §§ 226(a)(7) and 226.3.
9 The entry is omitted entirely; and

10 g. Failing to pay certain non-exempt Aggrieved Employees all wages due at the
11 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
12 stated above, certain non-exempt Aggrieved Employees are not paid all wages due during the course
13 of their employment and, as a result of this failure, they are not timely paid all wages due at the
14 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of non-
15 exempt Aggrieved Employees who have left their employment with Defendants.

16 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
17 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

18 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
19 The Labor Code violations alleged against Defendants herein arose throughout California, including
20 in San Joaquin County.

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1 II.

2 **PARTIES**

3 **A. Plaintiff**

4 5. Plaintiff RICARDO LOERA has been employed by Defendants in San Joaquin
5 County, California as a non-exempt employee since February 2022.

6 **B. Defendant**

7 6. VC1 CONCRETE CONSTRUCTION, LLC, is a California limited liability company
8 that employed Plaintiff and Aggrieved Employees throughout the state of California, including San
9 Joaquin County.

10 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
11 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
12 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
13 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
14 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
15 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
16 designated hereinafter as DOES when such identities become known.

17 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
18 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
19 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
20 attributable to the other Defendants.

21 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
22 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
23 provisions of the California Labor Code as alleged herein.

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1174, 1174.5, 1194, 1198, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1174, 1174.5, 1194, 1198, and 2802; and
- b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On September 7, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of September 7, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: November 9, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff