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SUPERIOR COURT
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BRANDON E. RILEY, CLERK
BY
NATALIE BASHAW

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

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

Plaintiff,

v.

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

Defendants.

CASE NO: STK-CV-UOE-2022-10482

Assigned to the Honorable

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES DUE (LABOR
CODE §§ 510, 1194, AND 1194.2)**
- 2. FAILURE TO PAY REPORTING TIME
WAGES (LABOR CODE §§ 510, 1194, AND
1194.2; IWC WAGE ORDER 16-2001)**
- 3. FAILURE TO PROVIDE REST PERIODS
OR COMPENSATION IN LIEU THEREOF
(LABOR CODE § 226.7; IWC WAGE
ORDER 16-2001)**
- 4. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 510,
512, 1174, 1174.5, 1194, AND 1198; IWC
WAGE ORDER 16-2001)**
- 5. FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE § 2802)**
- 6. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT
PROVISIONS (LABOR CODE § 226(a), (e))**

1 **7. FAILURE TO TIMELY PAY WAGES**
2 **DUE AT SEPARATION OF**
3 **EMPLOYMENT (LABOR CODE §§ 201-**
4 **203)**

5 **8. VIOLATION OF BUSINESS AND**
6 **PROFESSIONS CODE § 17200**

7 **9. PENALTIES PURSUANT TO LABOR**
8 **CODE § 2699(f) FOR VIOLATIONS OF**
9 **LABOR CODE §§ 201, 202, 226(a), 226.7,**
10 **510, 512, 1174, 1174.5, 1194, 1198, AND 2802**
11 **AND PURSUANT TO LABOR CODE §**
12 **2699(a) FOR VIOLATIONS OF LABOR**
13 **CODE §§ 226.3 AND 558**

14 **DEMAND FOR JURY TRIAL**

15 *Complaint Filed: November 15, 2022*

16 Plaintiff RICARDO LOERA (“Plaintiff”), on behalf of himself and on behalf of all similarly
17 situated individuals (the “Class” or “Plaintiff” Class”), on behalf of the general public, and under the
18 Labor Code Private Attorneys General Act of 2004, complains of VC1 CONCRETE
19 CONSTRUCTION, LLC, a California limited liability company, and any subsidiaries or affiliated
20 companies (hereinafter collectively referred to as “Defendants”) as follows:

21 **I.**

22 **INTRODUCTION AND FACTUAL BACKGROUND**

23 1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure
24 § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other employees who work or
25 formerly worked for Defendants within the State of California.

26 2. For at least four (4) years prior to the filing of this action and continuing to the present
27 (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum and
28 overtime wages due to Class I Members (as defined below); pay all reporting time wages due to Class
I Members; provide legally compliant rest and meal periods or compensation in lieu thereof to Class
I Members; maintain accurate employment records for Class I Members; reimburse Class I Members
for all necessary business expenses; provide accurately itemized wage statements to Class I and II
Members; and timely pay certain Class I Members all wage due at the separation of their employment.

3. Plaintiff, on behalf of himself and members of each Class, brings this action pursuant to Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1198, and 2802 seeking compensation for all unpaid wages, liquidated damages, unreimbursed expenses, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of himself and Class I Members, and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages and expense reimbursement due.

5. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §§ 2698 *et seq.*, seek penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members throughout the State of California, including San Joaquin County.

II.

PARTIES

A. Plaintiff

7. Plaintiff RICARDO LOERA was employed by Defendants in San Joaquin County, California as a non-exempt employee from February 2022 through July 2022.

8. During his work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages due, including all minimum and overtime wages due;
- b. Willfully denied the payment of all wages due, including reporting time wages due;
- c. Willfully denied rest and meal periods or compensation in lieu thereof;
- d. Willfully denied reimbursement of all necessary business expenses;
- e. Willfully denied accurately itemized wage statements; and
- f. Willfully denied the timely payment of all wages upon separation of employment.

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B. Defendants

9. Defendant VC1 CONCRETE CONSTRUCTION, LLC, is a California limited liability company that employed Plaintiff and Class Members throughout the State of California, including in San Joaquin County, California.

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

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

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

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following Class composed of and defined as follows:

CLASS I

All persons employed as non-exempt employees by Defendants in California at any time since the date four years preceding the filing of this Action, plus any additional time tolled by the California State

Judicial Council pursuant to Emergency Rule 9 in response to the COVID-19 pandemic and continuing through the present.

CLASS II

All persons employed by Defendants in California at any time since the date one year preceding the filing of this Action and continuing to the present.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify these class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

15. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

A. Numerosity

16. The potential members of each Class as defined are so numerous that joinder of all Class Members is impracticable. While the precise number of members of each Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently employ, and during the relevant time periods employed, over 50 persons in the State of California who fall within each Class definition.

17. Accounting for employee turnover during the relevant period necessarily increases this number. Plaintiff alleges Defendants' employment records would provide information as to the number and location of members of each Class. Joinder of members of each Class is not practicable.

B. Commonality

18. There are questions of law and fact common to each Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants fail to pay all wages due to Plaintiff and Class I Members, in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 16-2001;

- b. Whether Defendants fail to pay all reporting time wages due to Plaintiff and Class I Members, in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 16-2001;
- c. Whether Defendants failed to properly provide rest periods or compensation in lieu thereof to Plaintiff and Class I Members, in violation of Labor Code § 226.7 and IWC Wage Order 16-2001;
- d. Whether Defendants failed to properly provide meal periods or compensation in lieu thereof to Plaintiff and Class I Members, in violation of Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1198 and IWC Wage Order 16-2001;
- e. Whether Defendants failed to reimburse Plaintiff and Class I Members for all necessary business expenses, in violation of Labor Code § 2802;
- f. Whether Defendants failed to provide Plaintiff and Class I and II Members with accurately itemized wage statements, in accordance with Labor Code § 226(a) and (e);
- g. Whether Defendants failed to timely pay Plaintiff and Class I Members all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203; and
- h. Whether Plaintiff and Class I Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

19. The claims of the named Plaintiff are typical of the claims of members of each Class. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

20. Plaintiff will fairly and adequately represent and protect the interests of members of each Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

21. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of each Class is not practicable, and questions of law and fact common to the proposed Classes predominate over any questions affecting only individual members of the proposed Classes. Each member of the proposed Classes has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

22. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES DUE

(LABOR CODE §§ 510, 1194, AND 1194.2)

23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set forth herein.

24. Defendants failed to pay Plaintiff and Class I Members all minimum and overtime wages earned, in violation of Labor Code §§ 510 and 1194. Defendants require Plaintiff and Class I Members to always list a specified number of hours on their timesheets, even if they work longer than the hours written. This practice deprives Plaintiff and Class I Members of significant hours worked and minimum and overtime wages due and constitutes a violation of Labor Code §§ 510, 1194, and 1194.2.

25. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due, Plaintiff and Class I Members have been deprived of wages in amounts to be determined at trial and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code § 1194, and liquidated damages, pursuant to Labor Code § 1194.2.

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO PAY REPORTING TIME WAGES

(LABOR CODE §§ 510, 1194, AND 1194.2; IWC WAGE ORDER 16-2001)

26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set forth herein.

27. Defendants failed to pay Plaintiff and Class I Members all reporting time wages due, in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 16-2001. Plaintiff and Class I Members routinely report to work only to be told they are no longer needed and are sent home within two hours of reporting to work. Defendants, however, fail to pay the required “half the usual or scheduled day’s work, but in no event . . . less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” This violates Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 16-2001

28. As a result of the unlawful acts of Defendants in willfully failing to pay all reporting time wages due, Plaintiff and members of Class I have been deprived of wages in amounts to be determined at trial and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys’ fees, and costs, pursuant to Labor Code § 1194, and liquidated damages, pursuant to Labor Code § 1194.2.

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE § 226.7 AND IWC WAGE ORDER 16-2001)

6 29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as though fully set
7 forth herein.

8 30. Plaintiff and Class I Members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
10 IWC Wage Order 16-2001.

11 31. Defendants failed to pay proper premium wages to Plaintiff and Class I Members who
12 were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001.
13 Plaintiff and Class I Members were routinely unable to take a 10-minute rest period for every four (4)
14 hours of work or major fraction thereof, but were not paid premium wages of one hour's pay at the
15 correct rate for each missed rest period. When they were able to take a rest period, they were
16 oftentimes late, cut short or on-duty, in violation of Labor Code § 226.7 and IWC Wage Order No.
17 16-2001.

18 32. Pursuant to Labor Code § 226.7 and IWC Wage Order 16-2001, Plaintiff seeks the
19 payment of all rest period compensation that they and Class I Members are owed, according to proof.

20 Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

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VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7, 510, 512, 1174, 1174.5, 1194, AND 1198

AND IWC WAGE ORDER 16-2001)

33. Plaintiff incorporates paragraphs 1 through 32 of this Complaint as though fully set forth herein.

34. Plaintiff and Class I Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001.

35. Defendants failed to pay proper premium wages to Plaintiff and Class I Members who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001. Plaintiff and Class I Members were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay at the correct rate for each missed first or second meal period. When they are able to take a meal period, they are oftentimes late, cut short, or on-duty. Defendants also fail to maintain records indicating the start and end time of each meal period. This violates Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1198 and IWC Wage Order 16-2001.

36. Pursuant to Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1198 and IWC Wage Order 16-2001, Plaintiff seek the payment of all meal period compensation and unpaid wages that Class I Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

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VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(LABOR CODE § 2802)

37. Plaintiff incorporates paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and Class I Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

39. Defendants required Plaintiff and Class I Members to use their personal cellular phones, personal vehicles (including, but not limited to, mileage, gas, and depreciation), and their tools required to perform their job without reimbursement for these expenses. Plaintiff and Class I Members must be reimbursed for these expenses pursuant to Labor Code § 2802.

40. As a proximate result of the aforementioned violations, Plaintiff and Class I Members have been damaged in an amount according to proof at the time of trial.

41. Pursuant to Labor Code § 2802, Plaintiff and Class I Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND CLASSES I AND II AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e))

42. Plaintiff incorporates paragraphs 1 through 41 of this Complaint as though fully set forth herein.

43. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

44. Defendants failed to issue Plaintiff and Class I and II Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As Plaintiff and Class I Members were not paid all wages due, as stated above, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

45. Separately, Defendants issued wage statements to Plaintiff and Class II Members that failed to set forth the last four digits of their social security number or an employee identification number, in violation of Labor Code §§ 226(a)(7) and 226.3. The entry is omitted entirely.

46. As a consequence of Defendants' willful conduct in failing to provide Class I and II Members with accurate itemized wage statements, Plaintiff and members of each Class have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements himself. Plaintiff and Class I and II Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

47. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as though fully set forth herein.

48. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

49. Defendants paid Plaintiff and Class I Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class

1 I Members were not paid all wages due and owing throughout the course of their employment, as
2 detailed above. Consequently, at the time of their separation from employment with Defendants, they
3 were not paid all final wages due and owing for the entirety of their employment. This violates Labor
4 Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Class I Members no longer employed
5 by Defendants.

6 50. More than 30 days have passed since Plaintiff and Class I Members have left
7 Defendants' employ.

8 51. As a consequence of Defendants' willful conduct in not paying wages owed timely
9 upon separation of employment, Plaintiff and Class I Members are entitled to up to 30 days' wages
10 as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation
11 of employment.

12 Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

13 **XI.**

14 **EIGHTH CAUSE OF ACTION**

15 **PLAINTIFF AND CLASS I AGAINST ALL DEFENDANTS**

16 **UNFAIR COMPETITION PURSUANT TO**

17 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

18 52. Plaintiff incorporates paragraphs 1 through 51 of this Complaint as though fully set
19 forth herein.

20 53. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and
21 on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant
22 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
23 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
24 and Class I Members. Plaintiff seeks to enforce important rights affecting the public interest within
25 the meaning of Code of Civil Procedure § 1021.5.

26 54. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
27 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
28 appropriate equitable relief.

1 55. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
2 practices.

3 56. Wage and hour laws express fundamental public policies. Properly providing
4 employees with all wages and expense reimbursement due is a fundamental public policy of this State
5 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
6 vigorously minimum labor standards, to ensure that employees are not required or permitted to work
7 under substandard and unlawful conditions, and to protect law-abiding employers and its employees
8 from competitors who lower their costs by failing to comply with minimum labor standards.

9 57. Defendants have violated statutes and public policies. Through the conduct alleged
10 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
11 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
12 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
13 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
14 guaranteed to all employees under law.

15 58. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
16 §17200 *et seq.* of the Business & Professions Code.

17 59. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
18 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
19 17200 *et seq.* of the Business & Professions Code.

20 60. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
21 similarly situated have been damaged in a sum as may be proven.

22 61. Unless restrained by this Court, Defendants will continue to engage in the unlawful
23 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
24 should make such orders or judgments, including the appointment of a receiver, as may be necessary
25 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
26 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
27 to, disgorgement of profits which may be necessary to restore Plaintiff and Class I Members to the
28 money Defendants have unlawfully failed to pay.

XII.

NINTH 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**

62. Plaintiff incorporates paragraphs 1 through 61 of this Complaint as though fully set forth herein.

63. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.* on behalf of himself and other California employees who currently work or formerly worked for Defendants during the one year period prior to the filing of this Complaint and continuing through the present (“Aggrieved Employees”).

64. 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(a), the penalties as authorized by Labor Code §§ 226.3 and 558.

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

66. 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)

1 calendar days of September 7, 2022. Plaintiff may therefore commence this action to seek civil
2 penalties pursuant to Labor Code § 2698 *et seq.*

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

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiff prays for the following relief:

7 1. For compensatory damages pursuant to Labor Code § 1194, in the amount of all unpaid
8 wages due to Plaintiff and Class I Members;

9 2. For liquidated damages pursuant to Labor Code § 1194.2, in the amount of all unpaid
10 minimum wages due to Plaintiff and Class I Members;

11 3. For compensatory damages in the amount of one hour of wages for each day on which
12 a meal and/or rest period was not properly provided to Plaintiff and Class I Members pursuant to
13 Labor Code §§ 226.7 and 512;

14 4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class I and II Members;

15 5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class I Members;

16 6. For reimbursement of all expenses incurred by Plaintiff and Class I Members pursuant
17 to Labor Code § 2802;

18 7. For restitution for unfair competition pursuant to Business & Professions Code §
19 17200 *et seq.* for Plaintiff and Class I Members;

20 8. An award of prejudgment and post-judgment interest;

21 9. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
22 Aggrieved Employees;

23 10. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),
24 1194, 2699(g)(1), 2802, and other applicable law;

25 11. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1),
26 2802, and other applicable law; and

27 12. Such other and further relief as this Court may deem just and proper.

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1 Dated: June 5, 2023

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

4 By: Daniel F. Gaines
5 DANIEL F. GAINES
6 EVAN S. GAINES
7 Attorneys for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

10 Dated: June 5, 2023

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: Daniel F. Gaines
14 DANIEL F. GAINES
15 EVAN S. GAINES
16 Attorneys for Plaintiff
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1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of VENTURA, State of California. I am over the age of 18 and not a party to the
3 within action; my business address is 4550 East Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On June 5, 2023, I served the foregoing document described as **FIRST AMENDED CLASS AND**
6 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof
enclosed in sealed envelopes addressed as follows:

7 **Maryam Maleki, Esq. - mmaleki@duanemorris.com**
8 **DUANE MORRIS LLP**

9 **Spear Tower**
10 **One Market Plaza, Suite 2200**
11 **San Francisco, CA 94105**

12 **Attorneys for VC1 Concrete Construction, LLC, a California limited liability company**

13 X (BY x U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
14 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
15 and processing correspondence for mailing. It is deposited with United States postal service on that same
16 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
17 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for
18 mailing in affidavit.

19 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
20 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an
21 authorized carrier or driver authorized by the express carrier to receive documents.

22 _____ (BY FACSIMILE TRANSMISSION) On _____, at _____ a.m./p.m., at Calabasas, California, I served
23 the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule
24 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was
25 (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) ____-____. A
26 transmission report was properly issued by the sending facsimile machine, and the transmission was
27 reported as complete and without error. Copies of the facsimile transmission cover sheet and the
28 transmission report are attached to this proof of service.

_____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

_____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

_____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic
transmission on the counsel of record listed above.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 5, 2023, at Westlake Village, California.

Katherine Soriano
KATHERINE SORIANO