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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF PLACER**

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11 JESUS BAUTISTA, individually, and on
12 behalf of all others similarly situated,
13 Plaintiff,
14 vs. WESTERN CARE CONSTRUCTION
15 COMPANY, INC., a California corporation,
16 and DOES 1 through 20, inclusive,
17 Defendants.
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CASE NO. S-CV-0049217

FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff JESUS BAUTISTA is an individual residing in the State of California.

2. On information and belief, defendant WESTERN CARE CONSTRUCTION COMPANY, INC. is a California corporation duly licensed to conduct business in the State of California.

3. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 20 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation pertains to each defendant.

4. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendant transacts business in this district, and some of the complained of conduct occurred in this judicial district.

CLASS ACTION ALLEGATIONS

5. At all relevant times, Plaintiff worked for Defendant as a non-exempt employee until his employment terminated in and around May 2022. Plaintiff seeks to bring this action as a class action under Code of Civil Procedure section 382. The class Plaintiff seeks to represent is defined as follows: “All individuals employed by Defendant as a non-exempt employee, however titled, in the State of California during the period commencing on the date that is four years preceding the filing of this complaint.”

6. All applicable statutes of limitations were tolled from April 6 to October 1, 2020 under Emergency Order No. 9.

7. Ascertainable Class. The proposed class is ascertainable as its members can be identified and located using information in Defendant's payroll and personnel records.

8. Common Questions of Law and Fact. This lawsuit is suitable for class treatment

1 because common questions of law and fact predominate over individual issues. Common
2 questions include, but are not limited to, the following: (1) whether Defendant properly calculated
3 and paid all amounts due to the class members for wages earned, including minimum and
4 overtime wages, under California law, (2) whether Defendant violated the California Labor Code
5 and/or IWC Wage Orders by withholding wages, including minimum and overtime wages, from
6 the class members, (3) whether Defendant provided the class members with all required meal
7 periods on a fully-compliant basis, or compensation in lieu thereof; (4) whether Defendant
8 provided the class members with all required rest periods on a fully-compliant basis, or
9 compensation in lieu thereof; (5) whether Defendant provided reimbursement for reasonable and
10 necessary business expenses; (6) whether Defendant provided the class members with accurate
11 itemized wage statements containing all information required by Labor Code section 226(a); (7)
12 whether Defendant timely paid the class members all wages due upon separation of employment,
13 (8) whether Defendant's failure to timely pay all wages due upon termination of employment was
14 willful; and (9) whether Defendant violated California Business and Professions Code sections
15 17200, et seq.

16 9. Numerosity. The plaintiff class is so numerous that the individual joinder of all
17 members is impractical under the circumstances of this case. While the exact number of class
18 members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least
19 100 individuals.

20 10. Typicality. Plaintiff's claims are typical of the claims of the class members.
21 Plaintiff suffered a similar injury as the other class members as a result of Defendant's common
22 practices regarding the calculation and payment of wages, including minimum and overtime
23 wages, failure to provide all required meal and rest periods on a fully compliant basis; provision
24 of non-compliant wage statements, payment of wages due upon termination, and failure to
25 reimburse for reasonable and necessary business expenses. In addition, Plaintiff will fairly and
26 adequately protect the interests of the class members. Plaintiff has no interests adverse to the
27 interests of the other class members.

28 11. Superiority. A class action is superior to other available means for the fair and

1 efficient adjudication of this controversy since individual joinder of all members of the class is
2 impractical. Class action treatment will permit a large number of similarly situated persons to
3 prosecute their common claims in a single forum simultaneously, efficiently, and without the
4 unnecessary duplication of effort and expense that numerous individual actions would engender.
5 Furthermore, as the damages suffered by each individual member of the class may be relatively
6 small, the expenses and burden of individual litigation would make it difficult or impossible for
7 individual members of the class to redress the wrongs done to them, while an important public
8 interest will be served by addressing the matter as a class action. The cost to the court system of
9 adjudication of such individualized litigation would be substantial. Individualized litigation
10 would also present the potential for inconsistent or contradictory judgments. Finally, the
11 alternative of filing a claim with the California Labor Commissioner is not superior, given the
12 lack of discovery in such proceedings, the fact that there are fewer available remedies, and the
13 losing party has the right to a trial de novo in the Superior Court.

14 FIRST CAUSE OF ACTION

15 (Recovery of Unpaid Minimum Wages and Liquidated Damages – Labor Code §§ 1194
16 and 1194.2)

17 12. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 11.

19 13. California law provides employees in California must be paid for all hours worked,
20 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
21 Plaintiff and similarly situated individuals regularly worked hours for which they were not
22 compensated by Defendant as required by California law, including hours worked “off the clock”
23 including without limitation performing cleaning/closing duties after having timed out. Plaintiff
24 and other similarly situated individuals were required to record that their shift ended exactly at the
25 scheduled time even though they regularly worked additional time beyond the scheduled end of
26 their shift, resulting in “off the clock” work for which they were not properly compensated.
27 Plaintiff and the similarly situated individuals also had 30 minutes of time deducted from their
28 hours worked regardless of whether they received a full 30 minutes for the meal period and, as a

1 result, they performed work “off the clock” for which they were not properly compensated.
2 Accordingly, Plaintiff and the similarly situated employees were not paid for all hours worked, up
3 to 40 per week or 8 per day, at a rate no less than the mandated minimum wage.

4 14. Pursuant to Labor Code Sections 1194 and 1194.2, Plaintiff and the similarly
5 situated individuals are entitled to recover all unpaid minimum wages and liquidated damages,
6 plus attorneys’ fees and costs, in an amount to be proved at trial.

7 SECOND CAUSE OF ACTION

8 (Recovery of Unpaid Overtime – Labor Code § 1194)

9 15. Plaintiff incorporates by reference the allegations contained in paragraphs 1
10 through 14.

11 16. California law provides employees in California must be paid overtime, equal to
12 1.5 times the employee’s regular rate of pay, for all hours worked in excess of 40 per week or 8
13 per day, unless they are exempt. Plaintiff and similarly situated individuals, all of whom were
14 non-exempt, regularly worked more than 40 hours per week and/or 8 per day, but were not paid
15 all overtime wages due and owing under California law, including overtime hours worked
16 performing cleaning/closing duties after having timed out, overtime hours worked beyond the
17 scheduled end of their shift, and overtime worked as a result of Defendant’s “auto deduct” policy
18 for meal periods. Plaintiff and similarly situated individuals also received non-discretionary, non-
19 hourly pay, such as bonuses, that was not factored into the regular rate of pay used to calculate
20 the applicable overtime rate and, as a result, they were not paid all overtime wages due.
21 Accordingly, Plaintiff and the similarly situated employees were not paid at the correct overtime
22 rate for all hours worked over 40 per week or over 8 per day.

23 17. Pursuant to Labor Code Section 1194, Plaintiff and the class members are entitled
24 to recover all unpaid overtime wages, plus attorneys’ fees and costs, in an amount to be proved at
25 trial.

26 THIRD CAUSE OF ACTION

27 (Failure to Provide Meal Periods or Compensation in Lieu thereof – Labor Code § 226.7)

28 18. Plaintiff incorporates by reference the allegations contained in paragraphs 1

1 through 17.

2 19. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
3 Plaintiff and similarly situated and aggrieved employees with one 30-minute meal period free
4 from all duties for all shifts longer than 5 hours, and a second 30-minute meal period free from all
5 duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the
6 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but
7 no more than six (6) hours, the required meal period may be waived by mutual consent of the
8 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
9 but no more than twelve (12) hours, the required second meal period may be waived by mutual
10 consent of the employer and employee, but only if the first meal period was not waived.
11 Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for
12 at least one meal period for shifts over five hours (see above), and (2) to record having done so. If
13 the employer fails to properly record a valid meal period, it is presumed no meal period was
14 provided.

15 20. Plaintiff and similarly situated employees regularly worked periods of more than
16 five and ten hours in a workday without being provided mandatory thirty-minute, duty-free meal
17 periods. Upon information and belief, Defendant did not advise Plaintiff and other similarly
18 situated employees of their right to, timing, or number of meal periods. For example, Plaintiff and
19 similarly situated employees did not receive all required first meal periods, or received them on a
20 non-compliant basis as meal periods regularly were less than 30 minutes. Defendant further did
21 not provide meal periods to Plaintiff and other similarly situated employees on shifts longer than
22 10 hours. Per Defendant's illegal meal period policy/practice, Defendant further failed to pay
23 Plaintiff and similarly situated employees an additional hour of wages at their regular rates of pay
24 for each workday a meal period was not provided or was not compliant with all requirements of
25 the Labor Code and/or Wage Orders.

26 21. Defendant failed to provide Plaintiff and similarly situated employees with all
27 required meal periods on a fully compliant basis, or with compensation in lieu thereof. As a
28 result, under Labor Code section 226.7, Plaintiff and the similarly situated employees are entitled

1 to one additional hour's pay at the regular rate of compensation for each day a meal period was
2 missed, late or interrupted, all in an amount to be proved at trial.

3 FOURTH CAUSE OF ACTION

4 (Failure to Provide Rest Periods or Compensation in Lieu thereof – Labor Code § 226.7)

5 22. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 21.

7 23. California law requires an employer to authorize or permit an employee to take a
8 rest period of ten net minutes for every four hours worked, or major fraction thereof, and such rest
9 periods must be in the middle of the four-hour period insofar as practicable. If the employer fails
10 to provide any required rest periods, or fails to provide a fully compliant rest break for a net 10
11 minutes wherein the employee is fully relieved of all duties and all employer control, the
12 employer must pay the employee one hour of pay at the employee's regular rate of compensation
13 for each workday the employer did not provide a legally required and/or fully compliant rest
14 period.

15 24. Defendant failed to provide Plaintiff and similarly situated employees all required
16 and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed policies
17 and procedures that ensured Plaintiff and other similarly situated employees would not receive all
18 legally required rest periods, maintained a non-compliant written rest period policy, and
19 Defendant did not authorize and permit all required rest periods in strict accordance to, and in
20 compliance with, the timing requirements of all applicable Wage Orders. Defendant never
21 properly advised Plaintiff and other similarly situated employees of their right to, timing, or
22 amount of rest breaks. Defendant further employed policies and procedures ensuring that Plaintiff
23 and similarly situated employees did not receive premium wages to compensate them for
24 workdays they did not receive all legally required and fully compliant rest periods.

25 25. Defendant failed to provide Plaintiff and similarly situated employees with all
26 required rest periods, or with compensation in lieu thereof. As a result, under Labor Code section
27 226.7, Plaintiff and similarly situated employees are entitled to one additional hour's pay at the
28 regular rate of compensation for each day a rest break was missed, late or interrupted, all in an

1 amount to be proved at trial

2 FIFTH CAUSE OF ACTION

3 (Failure to Provide Accurate Itemized Wage Statements – Labor Code § 226)

4 26. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 25.

6 27. The California Labor Code provides that, at the time of each payment of wages,
7 the employer must provide each employee, as a detachable part of the check, draft, or voucher
8 paying the employee's wages, with an itemized statement showing, inter alia, gross wages earned,
9 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
10 employee is being paid, the employee's name and last four digits of their social security number
11 or employee ID number, the name and address of the legal entity that it is the employer, and all
12 applicable hourly rates in effect during the pay period and all hours worked at each rate.

13 28. For the reasons set forth above, Defendant knowingly and intentionally failed to
14 provide Plaintiff and similarly situated employees with proper, itemized wage statements.
15 Further, the wage statements issued by Defendant violate Section 226 on their face as they do not
16 include the name and address of the employer or the last four digits of the employee social
17 security number/employee ID number.

18 29. Accordingly, under Labor Code Section 226, Plaintiff and t similarly situated
19 employees each are entitled to penalties in the amount of \$50.00 for the initial pay period in
20 which a violation occurred, and \$100.00 for each subsequent pay period in which a violation
21 occurred, up to an aggregate penalty of \$4,000.00 per employee, plus attorney's fees and costs, all
22 in an amount to be proved at trial.

23 SIXTH CAUSE OF ACTION

24 (Waiting Time Penalties – Labor Code §§ 201, et seq.)

25 30. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 29.

27 31. The California Labor Code provides that, at the time of termination of
28 employment, the employer must pay an employee all wages due and owing within the time

frames set forth in Labor Code Sections 201, et seq. For the reasons set forth above, Defendant willfully failed to pay Plaintiff and similarly situated employees who no longer are employed with Defendant all wages due and owing within the deadlines set forth in Labor Code Sections 201, et seq.

32. Under Labor Code Section 203, Plaintiff and similarly situated employees who no longer are employed with Defendant are entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION

(Failure to Reimburse Expenses – Labor Code § 2802)

33. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 32.

34. California Labor Code section 2802 provides an employer shall fully reimburse an employee for all reasonable and necessary expenses incurred in the performance of the employee's job duties. Plaintiffs and similarly situated employees regularly incurred expenses including, inter alia, automobile mileage and cell phone expenses, in the performance of their job duties, which expenses were not fully reimbursed by Defendant.

35. Pursuant to Labor Code section 2802, Plaintiff and similarly situated employees are entitled to recover their unreimbursed business expenses, plus attorney's fees and costs, in an amount to be proved at trial.

EIGHTH CAUSE OF ACTION

(Violation of Unfair Competition Law – Bus. & Prof. Code §§ 17200, et seq.)

36. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 35.

37. Defendant's failure, inter alia, to pay all wages earned and failure to pay all overtime wages earned, failure to pay premium wages for missed/non-compliant meal and rest periods, and failure to reimburse business expenses, all in violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair or fraudulent business act or practice, in violation of Business & Professions Code Sections 17200, et seq.

38. Pursuant to Business & Professions Code Section 17203, Plaintiff and similarly situated employees are entitled to restitution of all unpaid wages, unreimbursed expenses, and other sums owed, plus attorney's fees and costs, in an amount to be proved at trial.

NINTH CAUSE OF ACTION

(Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

39. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 38.

40. During the period beginning one-year period preceding the submission of Plaintiff's notice letter, Defendant violated Labor Code Sections 201-203, 204, 210, 216, 221-224, 226, 226.7, 245, *et seq.*, 450, 510, 512, 514, 1174, 1194, 1194.2, 1197, 1198, 1199, 2441, 2802, 2810.5, and all applicable Wage Orders. These violations subject Defendant to civil penalties as set forth in the foregoing statutes as well as Labor Code Section 2699.

41. Plaintiff complied with the procedures for bringing suit specified in Labor Code Sections 2699.3 and 2699.5. By letter dated and postmarked September 6, 2022, Plaintiff gave written notice to the California Labor & Workforce Development Agency ("LWDA") via electronic submission, and via certified mail to Defendant, of the specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts and theories to support the alleged violations.

42. Under Labor Code Section 2699.3, the LWDA must give written notice by certified mail to the parties it intends to investigate the alleged violations within 65 days of the date of the complainant's written notice. As of the filing of this amended complaint, the LWDA had not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of himself and other aggrieved employees. As of the filing of this amended complaint, Defendant has not responded to Plaintiff's PAGA notice in an attempt to cure.

43. The violations alleged herein subject Defendant to civil penalties as set forth in the foregoing statutes, which Plaintiff seeks on his behalf and on behalf of other aggrieved employees. Plaintiff seeks civil penalties in the amounts set forth in each statute allegedly violated or, for all statutes that lack a specified penalty, Plaintiff seeks default penalties as

1 provided by Labor Code Section 2699.

2 44. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
3 reasonable attorney's fees and costs in connection with his claims for civil penalties.

4 PRAYER

5 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
6 as follows:

7 1. For compensatory damages, liquidated damages, and statutory penalties according
8 to proof;

9 2. For an order requiring Defendant to make restitution of all amounts wrongfully
10 withheld from Plaintiff and the class;

11 3. For civil penalties according to proof;

12 4. For pre-judgment interest as permitted by law;

13 5. For reasonable attorney's fees and costs of suit; and

14 6. For such other and further relief as the Court deems just and proper.

15 Dated: November 14, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC

17 
18 J. Kirk Donnelly
19 Attorneys for Plaintiff JESUS BAUTISTA

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21 DEMAND FOR JURY TRIAL

22 Plaintiff hereby demands a trial by jury on all claims so triable.

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25 Dated: November 14, 2022

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26 
27 J. Kirk Donnelly
28 Attorneys for Plaintiff JESUS BAUTISTA