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DEPUTY

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on behalf of himself and others similarly situated

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN JOAQUIN

11
12 ADAM MITCHELL, an individual, on behalf
of himself and others similarly situated,

13 Plaintiffs,

14 vs.

15 NUSHAKE, INC. a California corporation;
16 and DOES 1 through 50, inclusive,

17 Defendants.

Case No. 39-2013-00304145-CU-OE-STK

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wage
2. Failure to Pay Wages and Overtime
Under Labor Code § 510
3. Meal-Period Liability Under Labor
Code § 226.7
4. Rest-Break Liability Under Labor Code
§ 226.7
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 203
7. Violation of Labor Code § 2802
8. Violation of California Business &
Professions Code § 17200 et seq.
9. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff ADAM MITCHELL (hereinafter "Plaintiff") on behalf of himself and all others
2 similarly situated (collectively, "Employees"; individually, "Employee") complains of
3 Defendants, and each of them, as follows:

4 **GENERAL ALLEGATIONS**

5 1. At all times mentioned herein, NUSHAKE, INC. ("Defendant") was and is a
6 business involved in the roofing industry. At all times mentioned herein, Defendant was and is
7 doing business in the State of California, County of San Joaquin.

8 2. Venue as to Defendant is proper in this judicial district pursuant to Code of Civil
9 Procedure § 395.5 because the obligations giving rise to liability occurred in part in the County of
10 San Joaquin, State of California.

11 3. Plaintiff is a resident of California and, during the time period relevant to this
12 Complaint, was employed by Defendant as a non-exempt hourly employee within the State of
13 California.

14 4. Plaintiff brings this action on behalf of himself and all current and former
15 employees within the State of California who, at any time four (4) years prior to the filing of this
16 lawsuit, are or were employed as non-exempt hourly employees by Defendant NUSHAKE, INC.,
17 a California corporation, and DOES 1 through 50, inclusive (all defendants being collectively
18 referred to herein as "Defendants"). Plaintiff alleges that Defendants, and each of them, violated
19 various provisions of the California Labor Code, the California Government Code, relevant orders
20 of the Industrial Welfare Commission (IWC), and California Business & Professions Code, and
21 seeks redress therefore.

22 5. Plaintiff is unaware of the true names and capacities of the defendants sued herein
23 as DOES 1 through 50, inclusive, and for that reason sues these defendants by such fictitious
24 names under Code of Civil Procedure § 474. Plaintiff will file and serve an amendment to this
25 Complaint alleging the true names and capacities of these fictitiously named defendants when
26 such true names and capacities become known to Plaintiff.

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6. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named defendants is responsible in some manner for, and proximately caused, the harm and damages alleged herein below.

7. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants named herein acted as the employee, agent, spouse, partner, alter-ego, and/or joint-venturer, of each of the other defendants named herein and, in doing the acts and in carrying out the wrongful conduct alleged herein, each of the defendants acted within the scope of his or her relationship with and with the permission, consent, and ratification of each of the other defendants named herein.

8. Hereinafter in this Complaint, unless otherwise specified, reference to a defendant or defendants shall refer to all defendants, and each of them. All defendants shall hereinafter be collectively referred to as “Defendants.”

FACTUAL BACKGROUND

9. Employees, including Plaintiff, are nonexempt employees pursuant to the applicable IWC Wage Order(s).

10. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees for all hours worked.

11. From at least (4) years prior to the filing of this lawsuit and continuing to the present, Employees regularly worked in excess of eight (8) hours a day and/or forty (40) hours a week. However, Defendants have had a consistent policy or practice of failing to pay Employees (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek.

12. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Employees to work shifts in excess of five (5) hours

1 without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and
2 shifts in excess of ten (10) hours without providing them with second meal periods of the same
3 duration; nor did Defendants pay Employees “premium pay,” i.e. one hour of wages at each
4 Employee’s effective hourly rate of pay, for each meal period that Defendants failed to provide or
5 deficiently provided.

6 13. From at least four (4) years prior to the filing of this lawsuit and continuing to the
7 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
8 than ten (10) minutes per four (4) hours of work or major fraction thereof; nor did Defendants pay
9 Employees premium pay for each day on which requisite rest breaks were not provided or were
10 deficiently provided.

11 14. From at least four (4) years prior to the filing of this lawsuit and continuing to the
12 present, Defendants have consistently failed to provide Employees with timely, accurate, and
13 itemized wage statements in writing, as required by California wage-and-hour laws.

14 15. From at least (4) years prior to the filing of this lawsuit and continuing to the
15 present, Defendants have had a consistent policy of failing to pay all wages due and owing to
16 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
17 required by California wage-and-hour laws.

18 16. From at least (4) years prior to the filing of this lawsuit and continuing to the
19 present, Defendants have had a consistent policy of failing to pay double minimum wage for all
20 time worked, as required by California wage-and-hour laws and applicable IWC Wage Order(s).

21 17. From at least (4) years prior to the filing of this lawsuit and continuing to the
22 present, Defendants have had a consistent policy of failing to reimburse Employees for expenses
23 necessarily incurred in the performance of their job duties for Defendants, namely for various
24 tools, including nail guns, air compressors, saws, blades, hand tools, and costs related to the use of
25 Employees’ cellular phones and personal automobiles.

26 18. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
27 Code §§ 201, 202, 203, 226, 510, 512, 1182.12, 1185, 1194, 1194.2, 1197, 2699, and 2802.

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1 19. Furthermore, pursuant to Business & Professions Code §§ 17200-17208,
2 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
3 enjoyed from their violations of the Labor Code.

4 **CLASS ACTION ALLEGATIONS**

5 20. Plaintiff brings this action on behalf of himself and Employees as a class action
6 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class composed of and
7 defined as follows: All persons who are or have been employed by Defendant as nonexempt
8 employees in the State of California at any time from four (4) years prior to the filing of the
9 Complaint and continuing to the present.

10 21. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
11 modify the class description with greater particularity or further division into subclasses or
12 limitation to particular issues.

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

16 **A. Numerosity**

17 23. The potential members of the class as defined are so numerous that joinder of all
18 members of the class is impracticable. While the precise number of Employees has not been
19 determined at this time, Plaintiff is informed and believes that Defendants employ or have
20 employed more than 50 Employees in the State of California during the relevant time period.

21 24. Accounting for employee turnover during the relevant period increases this number
22 substantially. Plaintiff alleges that Defendants' employment records will provide information as to
23 the number and location of all Employees.

24 **B. Commonality**

25 25. There are questions of law and fact common to the class that predominate any
26 questions affecting only individual Employees. These common questions of law and fact include:

- 27 a. Whether Defendants failed to pay Employees all wages for hours worked;
28 b. Whether Defendants failed to compensate Employees at least minimum wage for

- 1 all hours worked;
- 2 c. Whether Defendants failed to pay Employees overtime as required under Labor
- 3 Code § 510;
- 4 d. Whether Defendants failed to pay Employees at least double the minimum wage;
- 5 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
- 6 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
- 7 premium pay in lieu thereof;
- 8 f. Whether Defendants violated Labor Code § 226.7 and the applicable IWC Wage
- 9 Orders, by failing to provide Employees with requisite rest breaks or premium pay
- 10 in lieu thereof;
- 11 g. Whether Defendants violated Labor Code § 226(a);
- 12 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 13 wages and compensation due and owing at the time of termination of employment;
- 14 i. Whether Defendants required Employees to provide and maintain tools and/or
- 15 equipment necessary to the performance of the jobs performed;
- 16 j. Whether Defendants violated Labor Code § 2802 by failing to reimburse
- 17 Employees for all expenses incurred in the discharge of their duties for Defendants;
- 18 k. Whether Defendants failed to maintain accurate records of Employees' earned
- 19 wages and work period, itemize in wage statements all hours worked and wages
- 20 earned, and accurately maintain records pertaining to Plaintiff and Employees;
- 21 l. Whether Defendants violated Business & Professions Code § 17200 et seq.; and
- 22 m. Whether Employees are entitled to equitable relief pursuant to Business &
- 23 Professions Code § 17200 et seq.

24 **C. Typicality**

25 26. Plaintiff's claims are typical of the claims of the class. Plaintiff, like all Employees,

26 sustained injuries and damages arising out of and caused by Defendants' common course of

27 conduct in violation of statutes, as well as regulations that have the force and effect of law, as

28 alleged herein.

1 **D. Adequacy of Representation**

2 27. Plaintiff will fairly and adequately represent and protect the interests of the class.
3 Counsel who represent Plaintiff and Employees are experienced and competent in litigating
4 employment class actions.

5 **E. Superiority of Class Action**

6 28. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of Employees is not practicable, and questions
8 of law and fact common to Employees predominate over any questions affecting only individual
9 Employees. Each Employee has been damaged and is entitled to recovery by reason of
10 Defendants' illegal policies or practices of failing to compensate Employees properly.

11 29. Class action treatment will allow those persons similarly situated to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGE**

16 **(Brought by Plaintiff on behalf of Employees Against All Defendants)**

17 30. Plaintiff incorporates paragraphs 1 through 29 as though fully set forth herein.

18 31. The minimum wage for employees fixed by the commission is the minimum wage
19 to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

20 32. The applicable minimum wage during the relevant period is found in the Wage
21 Orders. The applicable minimum wages fixed by the commission for work during the years 2008
22 to the present is \$8.00 per hour.

23 33. Employees were required by Defendants to provide thousands of dollars of their
24 own tools necessary to complete the work assigned. Pursuant to the Wage Orders, Employees are
25 thus entitled to at least double the minimum wage during the relevant period.

26 34. The minimum wage provisions of California Labor Code are enforceable by private
27 civil action pursuant to California Labor Code § 1194(a), which states:

28 Notwithstanding any agreement to work for a lesser wage, any
 employee receiving less than the legal minimum wage or the legal

1 overtime compensation applicable to the employee is entitled to
2 recover in a civil action the unpaid balance of the full amount of this
3 minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

4 35. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
5 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

6 36. California Labor Code § 1194.2 also provides for the following remedies:

7 In any action under Section 1194 . . . to recover wages because of the
8 payment of a wage less than the minimum wages fixed by an order
9 of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

10 37. Defendants have the ability to pay minimum wages for all time worked and have
11 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
12 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

13 38. Wherefore, Employees are entitled to recover the unpaid minimum wages
14 (including double minimum wages), liquidated damages in an amount equal to the minimum
15 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
16 to California Labor Code § 1194(a).

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

19 **(Brought by Plaintiff on behalf of Employees Against All Defendants)**

20 39. Plaintiff incorporates paragraphs 1 through 38 as though fully set forth herein.

21 40. Defendants had a consistent policy or practice of not paying Employees wages for
22 all hours worked and for compensating Employees at rates below the required overtime rate.

23 41. By their conduct, as set forth herein, Defendants violated California Labor Code
24 § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay
25 Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight
26 (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8)
27 hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of
28 pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in

1 excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent
2 policy of not paying Employees wages for all hours worked. Indeed, Defendants violated
3 California Labor Code §§ 551 and 552, which prohibit employers from causing their employees
4 to work more than six (6) days in seven (7), by requiring Employees to work in excess of six (6)
5 consecutive days.

6 42. Defendants' failure to pay compensation in a timely fashion also constituted a
7 violation of California Labor Code § 204, which requires that all wages shall be paid
8 semimonthly. From four (4) years prior to the filing of this lawsuit and to the present, in direct
9 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
10 and overtime compensation earned by Employees. Each such failure to make a timely payment of
11 compensation to Employees constitutes a separate violation of California Labor Code § 204.

12 43. Employees have been damaged by Defendants' violations of California Labor Code
13 §§ 204 and 510 and the relevant orders of the IWC, as alleged herein.

14 44. Consequently, pursuant to California Labor Code §§ 204, 510, 551, 552, and 1194
15 (and the relevant orders of the Industrial Welfare Commission), Defendants are liable to
16 Employees for the full amount of all their unpaid wages and overtime compensation, with
17 interest, plus their reasonable attorneys' fees and costs.

18 **THIRD CAUSE OF ACTION**

19 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

20 **(Brought by Plaintiff on behalf of Employees Against All Defendants)**

21 45. Plaintiff incorporates paragraphs 1 through 44 as though fully set forth herein.

22 46. Employees regularly worked shifts greater than five (5) hours and greater than ten
23 (10) hours. Pursuant to Labor Code § 512, an employer may not employ someone for a shift of
24 more than five (5) hours without providing him or her with a meal period of not less than thirty
25 (30) minutes or for more than ten (10) hours without providing him or her with a second meal
26 period of not less than thirty (30) minutes.

27 47. Defendants failed to provide Employees with meal periods as required under the
28 Labor Code. Employees were regularly required to work through their meal periods and/or were

1 not provided with full, uninterrupted thirty (30) minute meal periods as required by law.

2 48. Moreover, Defendants failed to compensate Employees for each meal period that
3 was not provided or that was deficiently provided, as required under Labor Code § 226.7.

4 49. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
5 an amount equal to one (1) hour of wages at the applicable hourly rate of pay for each meal period
6 that was not provided or that was deficiently provided, a sum to be proven at trial.

7 **FOURTH CAUSE OF ACTION**

8 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

9 **(Brought by Plaintiff on behalf of Employees Against All Defendants)**

10 50. Plaintiff incorporates paragraphs 1 through 49 as though fully set forth herein.

11 51. Employees consistently worked shifts of four (4) consecutive hours or major
12 fraction thereof. Pursuant to the Labor Code and the applicable IWC Wage Order, Employees
13 were entitled to paid rest breaks of not less than ten (10) minutes for each work period of four (4)
14 consecutive hours or major fraction thereof.

15 52. Defendants failed to provide Employees with timely rest breaks of not less than ten
16 (10) minutes per four (4) consecutive hours or major fraction thereof.

17 53. Moreover, Defendants did not compensate Employees with an additional hour of
18 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
19 with adequate rest breaks, as required under Labor Code § 226.7.

20 54. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
21 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
22 worked without the required rest breaks, a sum to be proven at trial.

23 **FIFTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 226(a)**

25 **(Brought by Plaintiff on behalf of Employees Against All Defendants)**

26 55. Plaintiff incorporates paragraphs 1 through 54 as though fully set forth herein.

27 56. California Labor Code § 226(a) requires an employer to furnish each of his or her
28 employees with an accurate, itemized statement in writing showing the gross and net earnings,

1 total hours worked, and the corresponding number of hours worked at each hourly rate; these
2 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
3 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
4 statements may be given to the employee separately from the payment of wages; in either case the
5 employer must give the employee these statements twice a month or each time wages are paid.

6 57. Defendants failed to provide Employees with accurate itemized wage statements in
7 writing, as required by the Labor Code.

8 58. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
9 Employees suffered injuries, including not being paid their wages, confusion over whether they
10 received all wages owed them, the difficulty and expense involved in reconstructing pay records,
11 and forcing them to make mathematical computations to analyze whether the wages paid in fact
12 compensated them for all hours worked.

13 59. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
14 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
15 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
16 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
17 award of costs and reasonable attorneys' fees.

18 SIXTH CAUSE OF ACTION

19 VIOLATION OF LABOR CODE § 203

20 **(Brought by Plaintiff on behalf of Employees Against All Defendants)**

21 60. Plaintiff incorporates paragraphs 1 through 59 as though fully set forth herein.

22 61. California Labor Code Section 201(a) states:

23 If an employer discharges an employee, the wages earned and unpaid
24 at the time of discharge are due and payable immediately. . . .

25 62. California Labor Code Section 202(a) states:

26 If an employee not having a written contract for a definite period
27 quits his or her employment, his or her wages shall become due and
28 payable not later than 72 hours thereafter, unless the employee has
given 72 hours previous notice of his or her intention to quit, in
which case the employee is entitled to his or her wages at the time of
quitting. Notwithstanding any other provision of law, an employee

1 who quits without providing a 72-hour notice shall be entitled to
2 receive payment by mail if he or she so requests and designates a
3 mailing address. The date of the mailing shall constitute the date of
payment for purposes of the requirement to provide payment within
72 hours of the notice of quitting.

4 63. Defendants willfully failed to timely pay a large portion of Employees all of their
5 wages due for work performed and this failure continued through the time in which many
6 Employees quit or were discharged from their employment with Defendants. As a result,
7 Defendants violated California Labor Code §§ 201 and 202.

8 64. California Labor Code § 203 states:

9 If an employer willfully fails to pay, without abatement or reduction,
10 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
of an employee who is discharged or who quits, the wages of the
11 employee shall continue as a penalty from the due date thereof at the
same rate until paid or until an action therefore is commenced; but
12 the wages shall not continue for more than 30 days... Suit may be
filed for these penalties at any time before the expiration of the
13 statute of limitations on any action for the wages from which the
penalties arose.

14 65. Defendants violated California Labor Code §§ 201 and 202 by failing to pay
15 nonexempt hourly employees who quit, were involuntarily terminated, released after a specific job
16 assignment or time duration, or were otherwise discharged all of the wages due pursuant to the
17 timelines provided in those sections. Defendants willfully failed to pay all wages due as the failure
18 to pay was not inadvertent or accidental.

19 66. Employees are entitled to compensation for all forms of wages earned, including,
20 but not limited to, compensation for all work done and other claims described in this complaint,
21 but have not received such compensation, therefore entitling them to penalties under Labor Code
22 § 203.

23 67. Wherefore, Employees are entitled to California Labor Code § 203 penalties in
24 amounts to be determined at trial.

25 **SEVENTH CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 2802**

27 **(Brought by Plaintiff on behalf of Employees Against All Defendants)**

28 68. Plaintiff incorporates paragraphs 1 through 67 as though fully set forth herein.

1 69. Under Labor Code § 2802(a), an employer must indemnify its employees for all
2 necessary expenditures or losses that they incur in direct consequence of the discharge of their
3 duties, or of their obedience to the directions of their employer.

4 70. Employees incurred necessary expenditures in the performance of their job duties
5 for Defendants, including but not limited to costs related to tools, including nail guns, air
6 compressors, saws, blades, hand tools, and costs related to the use of Employees' cellular phones
7 and personal automobiles. During the liability period, Defendants consistently failed to reimburse
8 Employees for these necessarily incurred business expenses.

9 71. As a result of the unlawful acts of Defendants, Employees have been deprived of
10 reimbursements in an amount to be determined at trial; they are entitled to recover these amounts,
11 plus interest and penalties thereon, attorneys' fees, and costs.

12 **EIGHTH CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

14 **(Brought by Plaintiff on behalf of Employees Against All Defendants)**

15 72. Plaintiff incorporates paragraphs 1 through 71 as though fully set forth herein.

16 73. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
17 pursuant to Business & Professions Code § 17200 et seq. Defendants' conduct as alleged in this
18 Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
19 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of Code of Civil Procedure § 1021.5.

21 74. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
22 has suffered injury, and therefore has standing to bring this cause of action for injunctive relief,
23 restitution, and other appropriate equitable relief.

24 75. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair
25 business practices.

26 76. Wage-and-hour laws express fundamental public policies. Paying employees their
27 wages, providing them with rest breaks, etc., are fundamental public policies of California. Labor
28 Code § 90.5(a) articulates the public policies of this State vigorously to enforce minimum labor

standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower costs to themselves by failing to comply with minimum labor standards.

77. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges guaranteed to all employees under the law.

78. Defendants' conduct, as alleged above, constitutes unfair competition in violation of the Business & Professions Code § 17200 et seq.

79. Defendants, by engaging in the conduct herein alleged, by failing to pay wages, failing to provide rest breaks, etc., either knew or in the exercise of reasonable care should have known that their conduct was unlawful; therefore their conduct violates the Business & Professions Code § 17200 et. seq.

80. As a proximate result of the above-mentioned acts of Defendants, Employees have been damaged, in a sum to be proven at trial. Unless restrained by this Court, Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

NINTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2699

(Brought by Plaintiff on behalf of Employees Against All Defendants)

81. Plaintiff incorporates paragraphs 1 through 80 as though fully set forth herein.

82. Plaintiff is an aggrieved employee as defined under Labor Code § 2699(c) in that

1 he suffered the violations alleged in this Complaint and was employed by the alleged violators,
2 Defendants.

3 83. Plaintiff seeks wages and penalties under Labor Code §§ 2698 and 2699 for
4 Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 that are
5 based on the allegations of this Complaint. The penalties shall be allocated as follows: 75% to the
6 Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

7 84. Plaintiff sent a certified letter to the LWDA and Defendants postmarked on or
8 around November 14, 2013. The LWDA has not provided notice of its intent to investigate the
9 alleged violations within 33 calendar days of the postmark date of the letter.

10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiff prays for judgment as follows:

- 12 1. For general damages;
- 13 2. For all unpaid wages and overtime owed to Employees from four (4) years prior to
14 the filing of this action to the present, as may be proven;
- 15 3. For compensatory damages in the amount of the unpaid minimum wage for work
16 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
17 the filing of this action, as may be proven at trial;
- 18 4. For liquidated damages in the amount equal to the unpaid minimum wage and
19 overtime, and interest thereon, as may be proven at trial;
- 20 5. For compensatory damages in the amount of the effective hourly wage made by
21 Employees for meal periods not provided or deficiently provided where premium pay for
22 noncompliance was not provided from at least four (4) years prior to the filing of this action to the
23 present, as may be proven;
- 24 6. For compensatory damages in the amount of the effective hourly wage made by
25 Employees for each day rest breaks were not provided or were deficiently provided where
26 premium pay for noncompliance was not provided from at least four (4) years prior to the filing of
27 this action to the present, as may be proven;
- 28 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

1 8. For penalties pursuant to Labor Code § 203 for Employees who quit or were fired,
2 in an amount equal to their effective daily wage times thirty (30) days, as may be proven;

3 9. For restitution for unfair competition pursuant to Business & Professions Code
4 § 17200 et seq., including disgorgement or profits, as may be proven;

5 10. For penalties pursuant to Labor Code § 2699, as may be proven;

6 11. For an order enjoining Defendants and their agents, servants, and employees, and
7 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
8 duties adumbrated in this Complaint;

9 12. For an award of pre-judgment and post-judgment interest;

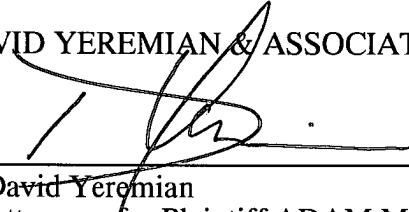
10 13. For an award providing for the payment of the costs of this suit;

11 14. For an award of attorneys' fees; and

12 15. For such other relief as this Court may deem proper and just.

13
14 DATED: December 17, 2013

DAVID YEREMIAN & ASSOCIATES, INC.

15
16 By 

David Yeremian
Attorneys for Plaintiff ADAM MITCHELL
and the putative class

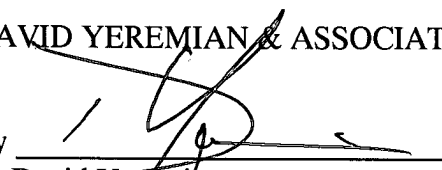
DEMAND FOR JURY TRIAL

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

DATED: December 17, 2013

DAVID YEREMIAN & ASSOCIATES, INC.

By


David Yeremian

Attorneys for Plaintiff ADAM MITCHELL
and the putative class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

On December 17, 2013, I served the foregoing: **FIRST AMENDED COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Nushake, Inc.
c/o Agent for Service of Process
708 Industrial Park Dr.
Manteca, CA 95337

Nushake Roofing, Inc.
319 S. Parallel Ave.
Ripon, CA 95366

☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Encino, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

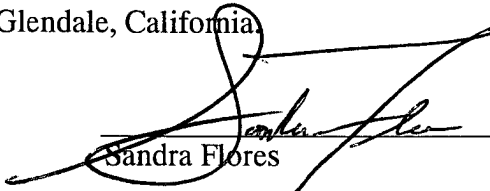
☐ **(BY PERSONAL SERVICE)** I personally delivered said envelope to the office of the person and address identified on the attached service list.

☐ **(BY FACSIMILE)** On _____ before 5:00 p.m., I transmitted such documents from our facsimile machine number (818) 205-1212 to the person(s) at the facsimile numbers listed on the attached service list. Said transmission was reported as complete and without error. A copy of the transmission report which was properly issued by the transmitting facsimile machine is attached hereto.

☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ **(FEDERAL)** I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 17, 2013, at Glendale, California,


Sandra Flores