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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SISKIYOU**

9
10 LAPREAL VINCENT, on behalf of the State of
California, as a private attorney general,

11
12 Plaintiff,

13 vs.

14 WESTERN BUYERS LLC, a Limited Liability
15 Company; US LBM HOLDINGS, LLC, a
16 Limited Liability Company; ACS - US LBM,
17 LLC, a Limited Liability Company;
18 AMERICAN CONSTRUCTION SOURCE -
19 US LBM, INC., a Corporation; AMERICAN
20 CONSTRUCTION SOURCE LLC, a Limited
21 Liability Company; CALIFORNIA BUILDING
SUPPLY - US LBM, LLC, a Limited Liability
Company; DESERT LUMBER - US LBM,
LLC, a Limited Liability Company; PARKER's
BUILDING SUPPLY - US LBM, LLC, a
Limited Liability Company; and DOES 1
through 50, inclusive,

22 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU

FEB -3 2023

BY: M. Chandler
DEPUTY CLERK

Case No. 23CV01024

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

1 Plaintiff Lapreal Vincent (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendants Western Buyers LLC, US LBM
8 Holdings, LLC, ACS - US LBM, LLC, American Construction Source - US LBM, Inc.,
9 American Construction Source LLC, California Building Supply - US LBM, LLC, Desert
10 Lumber - US LBM, LLC, Parker’s Building Supply - US LBM, LLC (referred to as
11 “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of
12 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
13 **not seek to recover anything other than penalties as permitted by California Labor Code**
14 **§ 2699.** To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
15 does not seek underlying general and/or special damages for those violations, but simply the
16 civil penalties permitted by California Labor Code § 2699.

17 2. California has enacted the PAGA to permit an individual to bring an action on
18 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
19 nature of this action.

20 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
21 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
22 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
23 complaint should be construed as attempting to obtain any relief that would not be available in
24 a PAGA-only action.

25 THE PARTIES

26 4. Defendant Western Buyers LLC is a limited liability company that at all relevant
27 times mentioned herein conducted and continues to conduct substantial business in the state of
28

1 California.

2 5. Defendant US LBM Holdings, LLC is a limited liability company that at all
3 relevant times mentioned herein conducted and continues to conduct substantial business in the
4 state of California.

5 6. Defendant ACS - US LBM, LLC is a limited liability company that at all relevant
6 times mentioned herein conducted and continues to conduct substantial business in the state of
7 California.

8 7. Defendant American Construction Source - US LBM, Inc. is a corporation that
9 at all relevant times mentioned herein conducted and continues to conduct substantial business
10 in the state of California.

11 8. Defendant American Construction Source LLC is a limited liability company that
12 at all relevant times mentioned herein conducted and continues to conduct substantial business
13 in the state of California.

14 9. Defendant California Building Supply - US LBM, LLC is a limited liability
15 company that at all relevant times mentioned herein conducted and continues to conduct
16 substantial business in the state of California.

17 10. Defendant Desert Lumber - US LBM, LLC is a limited liability company that at
18 all relevant times mentioned herein conducted and continues to conduct substantial business in
19 the state of California.

20 11. Defendant Parker's Building Supply - US LBM, LLC is a limited liability
21 company that at all relevant times mentioned herein conducted and continues to conduct
22 substantial business in the state of California.

23 12. PLAINTIFF alleges there has existed a unity of interest and ownership between
24 Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or
25 American Construction Source - US LBM, Inc. and/or American Construction Source LLC
26 and/or California Building Supply - US LBM, LLC and/or Desert Lumber - US LBM, LLC
27 and/or Parker's Building Supply - US LBM, LLC such that any individuality and separateness
28 between the entities has ceased and all Defendants are referred to herein as "DEFENDANT."

1 13. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
2 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
3 and ownership between DEFENDANT such that any individuality and separateness between
4 the entities has ceased. Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US
5 LBM, LLC and/or American Construction Source - US LBM, Inc. and/or American
6 Construction Source LLC and/or California Building Supply - US LBM, LLC and/or Desert
7 Lumber - US LBM, LLC and/or Parker's Building Supply - US LBM, LLC and DOES 1-50
8 are therefore alter egos of each other. Adherence to the fiction of the separate existence of
9 DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice
10 by protecting DEFENDANT from liability for the wrongful acts committed by them.

11 14. PLAINTIFF further alleges that Defendants are the alter egos of each other for
12 the following reasons:

13 (A) On the California Secretary of State's website
14 (https://businesssearch.sos.ca.gov/) Western Buyers LLC and/or US LBM
15 Holdings, LLC and/or ACS - US LBM, LLC and/or American
16 Construction Source - US LBM, Inc. and/or American Construction
17 Source LLC California Building Supply - US LBM, LLC and/or Desert
18 Lumber - US LBM, LLC and/or Parker's Building Supply - US LBM,
19 LLC have the same entity address and/or mailing address and/or Agent
20 for Service of Process; and,

21 (B) On information and belief Western Buyers LLC and/or US LBM
22 Holdings, LLC and/or ACS - US LBM, LLC and/or American
23 Construction Source - US LBM, Inc. and/or American Construction
24 Source LLC California Building Supply - US LBM, LLC and/or Desert
25 Lumber - US LBM, LLC and/or Parker's Building Supply - US LBM,
26 LLC utilize the same standardized employment forms and issue the same
27 employment policies.

28 15. DEFENDANT is a full-line distributor of specialty building materials.

1 16. PLAINTIFF was employed by DEFENDANT in California from May of 2022 to
2 September 22, 2022 and was at all times classified by DEFENDANT as a non-exempt
3 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
4 payment of minimum and overtime wages due for all time worked.

5 17. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by Western Buyers LLC and/or US
9 LBM Holdings, LLC and/or ACS - US LBM, LLC and/or American Construction Source - US
10 LBM, Inc. and/or American Construction Source LLC and/or California Building Supply - US
11 LBM, LLC and/or Desert Lumber - US LBM, LLC and/or Parker's Building Supply - US
12 LBM, LLC in California, including any employees staffed with Western Buyers LLC and/or
13 US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or American Construction Source -
14 US LBM, Inc. and/or American Construction Source LLC and/or California Building Supply -
15 US LBM, LLC and/or Desert Lumber - US LBM, LLC and/or Parker's Building Supply - US
16 LBM, LLC by a third party, and classified as non-exempt employees ("AGGRIEVED
17 EMPLOYEES") during the time period of October 26, 2021 until a date as determined by the
18 Court (the "PAGA PERIOD").

19 18. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES
20 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
21 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
22 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
23 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
24 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
25 applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED
26 EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*
27
28

19. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

20. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

21. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal

1 break. DEFENDANT, as a matter of established company policy and procedure,
2 administers a uniform practice of rounding the actual time worked and recorded by
3 PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
4 so that during the course of their employment, PLAINTIFF and the AGGRIEVED
5 EMPLOYEES are paid less than they would have been paid had they been paid for actual
6 recorded time rather than “rounded” time. Additionally, DEFENDANT engages in the
7 practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off
8 the clock in that DEFENDANT, as a condition of employment, required these employees to
9 submit to mandatory temperature checks and symptom questionnaires for COVID-19
10 screening prior to clocking into DEFENDANT’s timekeeping system for the workday. As a
11 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
12 wage compensation, and off-duty meal breaks by working without their time being correctly
13 recorded and without compensation at the applicable rates. DEFENDANT’s policy and
14 practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is
15 evidenced by DEFENDANT’s business records.

16 22. State law provides that employees must be paid overtime and meal and rest
17 break premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the
18 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is
19 tied to specific elements of an employee’s performance.

20 23. The second component of PLAINTIFF’s and the AGGRIEVED
21 EMPLOYEES’ compensation is DEFENDANT’s non-discretionary incentive program that
22 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
23 performance for DEFENDANT. The non-discretionary incentive program provided all
24 employees paid on an hourly basis with incentive compensation when the employees met the
25 various performance goals set by DEFENDANT. However, when calculating the regular
26 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
27 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
28 compensation as part of the employees’ “regular rate of pay” for purposes of calculating

1 overtime pay and meal and rest break premium pay. Management and supervisors described
2 the incentive program to potential and new employees as part of the compensation package.
3 As a matter of law, the incentive compensation received by PLAINTIFF and the
4 AGGRIEVED EMPLOYEES must be included in the “regular rate of pay.” The failure to
5 do so has resulted in a underpayment of overtime compensation and meal and rest break
6 premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

7 24. As a result of their rigorous work schedules, PLAINTIFF and the
8 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
9 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
10 and the AGGRIEVED EMPLOYEES were required from time to time to perform work as
11 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
12 a meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFF and
13 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
14 which these employees were required by DEFENDANT to work ten (10) hours of work.
15 DEFENDANT also engaged in the practice of rounding the meal period times to avoid
16 paying penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the
17 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
18 and in accordance with DEFENDANT’s corporate policy and practice.

19 25. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
20 EMPLOYEES were also required from time to time to work in excess of four (4) hours
21 without being provided ten (10) minute rest periods. Further, these employees were denied
22 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
23 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
24 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
25 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
26 hours or more from time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were
27 also not provided with one hour wages in lieu thereof. Additionally, the applicable
28 California Wage Order requires employers to provide employees with off-duty rest periods,

1 which the California Supreme Court defined as time during which an employee is relieved
2 from all work related duties and free from employer control. In so doing, the Court held that
3 the requirement under California law that employers authorize and permit all employees to
4 take rest period means that employers must relieve employees of all duties and relinquish
5 control over how employees spend their time which includes control over the locations
6 where employees may take their rest period. Employers cannot impose controls that prohibit
7 an employee from taking a brief walk - five minutes out, five minutes back. Here,
8 DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED EMPLOYEES from
9 unconstrained walks and is unlawful based on DEFENDANT's rule which states
10 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
11 their rest period.

12 26. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
13 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
14 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
15 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for
16 all time worked, meaning the time during which an employee was subject to the control of
17 an employer, including all the time the employee was permitted or suffered to permit this
18 work. DEFENDANT required these employees to work off the clock without paying them
19 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
20 should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under
21 compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
22 EMPLOYEES forfeited time worked by working without their time being accurately
23 recorded and without compensation at the applicable minimum wage and overtime wage
24 rates. To the extent that the time worked off the clock does not qualify for overtime
25 premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-
26 clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

27 27. From time to time, DEFENDANT also fails to provide PLAINTIFF and the
28 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to

1 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
2 provides that every employer shall furnish each of his or her employees with an accurate
3 itemized wage statement in writing showing, among other things, gross wages earned and all
4 applicable hourly rates in effect during the pay period and the corresponding amount of time
5 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
6 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
7 during the pay period and the total hours worked, and the applicable pay period in which the
8 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
9 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
10 identify such information. More specifically, the wage statements failed to identify the
11 accurate total hours worked each pay period. When the hours shown on the wage statements
12 were added up, they did not equal the actual total hours worked during the pay period in
13 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this
14 paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists
15 all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
16 from time to time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage
17 statements which violated Cal. Lab. Code § 226.

18 28. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
19 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
20 the wages are paid not more than seven (7) calendar days following the close of the payroll
21 period. Cal. Lab. Code § 210 provides:

22 in [I]n addition to, and entirely independent and apart from, any other penalty provided
23 this article, every person who fails to pay the wages of each employee as provided in
24 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
25 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
26 each subsequent violation, or any willful or intentional violation, two hundred dollars
27 (\$200) for each failure to pay each employee, plus 25 percent of the amount
28 unlawfully withheld.

29. DEFENDANT from time to time fails to pay PLAINTIFF and the
AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in

1 accordance with Cal. Lab. Code § 204(d), including but limited to for the “Hourly” regular
2 wage payments.

3 30. DEFENDANT underpaid sick pay wages to PLAINTIFF and the
4 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in
5 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
6 employees earn non-discretionary remuneration, including, but not limited to, incentives,
7 shift differential pay, and bonuses. Rather than pay sick pay at the regular rate of pay,
8 DEFENDANT underpays sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at
9 their base rates of pay.

10 31. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
11 employees be calculated by dividing the employee’s total wages, not including overtime
12 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
13 days of employment.

14 32. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
15 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
16 earned non-discretionary incentive wages which increased their regular rate of pay.
17 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
18 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
19 required under Cal. Lab. Code Section 246.

20 33. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
21 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
22 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
23 believes and based thereon alleges that such failure to pay sick pay at regular rate was
24 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
25 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

26 34. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
27 to collect or receive from an employee any part of wages theretofore paid by said employer
28 to said employee.” DEFENDANT fails to pay all compensation due to PLAINTIFF and the

1 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
2 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
3 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
4 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable
5 pay period and upon termination.

6 35. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
7 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred
8 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
9 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
10 2802, employers are required to indemnify employees for all expenses incurred in the course
11 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
12 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
13 employee in direct consequence of the discharge of his or her duties, or of his or her
14 obedience to the directions of the employer, even though unlawful, unless the employee, at
15 the time of obeying the directions, believed them to be unlawful."

16 36. In the course of their employment PLAINTIFF and the AGGRIEVED
17 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
18 personal cellular phones as a result of and in furtherance of their job duties as employees for
19 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
20 associated with the use of their personal cellular phones for DEFENDANT's benefit.
21 Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were required by
22 DEFENDANT to use their personal cellular phones. As a result, in the course of their
23 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES
24 incurred unreimbursed business expenses which included, but were not limited to, costs
25 related to the use of their personal cellular phones all on behalf of and for the benefit of
26 DEFENDANT.

27 37. All of the conduct and violations alleged herein occurred during the PAGA
28

1 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
2 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
3 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
4 2018 AJDAR 12157 (Certified for Publication 12/19/18).

5 **JURISDICTION AND VENUE**

6 38. This Court has jurisdiction over this Action pursuant to California Code of
7 Civil Procedure, Section 410.10.

8 39. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
10 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
11 facilities in this County and/or conducts substantial business in this County, and (ii)
12 committed the wrongful conduct herein alleged in this County against PLAINTIFF and other
13 AGGRIEVED EMPLOYEES.

14 **FIRST CAUSE OF ACTION**

15 **For Violation of the Private Attorneys General Act**

16 **[Cal. Lab. Code §§ 2698, *et seq.*]**

17 **(By PLAINTIFF and Against All Defendants)**

18 40. PLAINTIFF realleges and incorporates by this reference, as though fully set
19 forth herein, the prior paragraphs of this Complaint.

20 41. PAGA is a mechanism by which the State of California itself can enforce state
21 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
22 the state's labor law enforcement agencies. An action to recover civil penalties under
23 PAGA is fundamentally a law enforcement action designed to protect the public and not to
24 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
25 but to create a means of "deputizing" citizens as private attorneys general to enforce the
26 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
27 public interest to allow aggrieved employees, acting as private attorneys general to recover
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1 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

3 42. PLAINTIFF, and such persons that may be added from time to time who
4 satisfy the requirements and exhaust the administrative procedures under the Private
5 Attorney General Act, brings this Representative Action on behalf of the State of California
6 with respect to herself and all individuals who are or previously were employed by Western
7 Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC and/or American
8 Construction Source - US LBM, Inc. and/or American Construction Source LLC and/or
9 California Building Supply - US LBM, LLC and/or Desert Lumber - US LBM, LLC and/or
10 Parker's Building Supply - US LBM, LLC in California, including any employees staffed
11 with Western Buyers LLC and/or US LBM Holdings, LLC and/or ACS - US LBM, LLC
12 and/or American Construction Source - US LBM, Inc. and/or American Construction Source
13 LLC and/or California Building Supply - US LBM, LLC and/or Desert Lumber - US LBM,
14 LLC and/or Parker's Building Supply - US LBM, LLC by a third party, and classified as
15 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of October
16 26, 2021 until a date as determined by the Court (the "PAGA PERIOD").

17 43. On October 26, 2022, PLAINTIFF gave written notice by electronic mail to
18 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
19 employer of the specific provisions of this code alleged to have been violated as required by
20 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
21 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
22 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
23 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

24 44. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
26 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
27 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
28 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for

1 required expenses, and (f) failed to provide wages when due, all in violation of the
2 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218,
3 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
4 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
5 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
6 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
7 Labor Code Private Attorney General Act of 2004 as the representative of the State of
8 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
9 EMPLOYEES.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the State of California and with respect to all AGGRIEVED
15 EMPLOYEES:

16 A) Recovery of civil penalties as prescribed by the Labor Code Private
17 Attorneys General Act of 2004; and,

18 B) An award of attorneys' fees and cost of suit, as allowable under the
19 law, including, but not limited to, pursuant to Labor Code §2699.

20 Dated: February 1, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
21 LLP

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23 By: 
24 Norman B. Blumenthal
25 Nicholas J. De Blouw
26 Attorneys for Plaintiff

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).