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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RAFAEL SOTO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

UNITED SCAFFOLD, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 37-2022-00042002-CU-OE-CTL

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

- (1) FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR CODE §§ 204, 510, 558,
1194, 1198)**
- (2) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1182.12, 1194, 1194.2, 1197);**
- (3) UNLAWFUL DEDUCTIONS FROM
EARNED WAGES (LABOR CODE §
221);**
- (4) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (5) FAILURE TO AUTHORIZE AND
PERMIT ALL REST PERIODS
(LABOR CODE §§ 226.7, 516, 558);**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/27/2022 at 05:11:00 PM

Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

- 1 (6) **FAILURE TO PROVIDE**
2 **ACCURATE, ITEMIZED WAGE**
3 **STATEMENTS (LABOR CODE §**
4 **226 *et seq.*);**
- 5 (7) **FAILURE TO PAY ALL WAGES**
6 **OWED UPON TERMINATION**
7 **(LABOR CODE §§ 201-203);**
- 8 (8) **UNFAIR COMPETITION (BUS &**
9 **PROF CODE § 17200 *et seq.*; and**
- 10 (9) **CIVIL PENALTIES UNDER THE**
11 **PRIVATE ATTORNEYS GENERAL**
12 **ACT (LABOR CODE § 2698 *et seq.*)**

13 **DEMAND FOR JURY TRIAL**
14 **UNLIMITED CIVIL CASE**

1 Plaintiff Rafael Soto (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 United Scaffold, Inc., a California corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 FAC for recovery of unpaid wages, interest, and penalties under California Business &
8 Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 218 *et seq.*, 221, 226 *et seq.*, 226.7,
9 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare
10 Commission Wage Order 16 (“Wage Order 16”), in addition to seeking declaratory relief and
11 restitution. This FAC is brought pursuant to California Code of Civil Procedure § 382. This Court
12 has jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of San Diego. Defendants own, maintain offices, transact business, have agent(s) within
18 the County of San Diego, and/or otherwise are found within the County of San Diego, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the FAC in this action and within the statute of limitations periods applicable to each
24 cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee.
25 Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost
26 money and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-
27 204, 218 *et seq.*, 221, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
28 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* (“Unfair Competition

Law”); and Wage Order 16, which sets employment standards for the construction occupations, which includes the industry in which Plaintiff worked for Defendants.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the FAC and continuing to the present, Defendants did (and continue to do) business by providing scaffolding services to its clients. Defendants employed Plaintiff and other, similarly-situated non-exempt employees within, among other counties, San Diego County and the state of California and, therefore, were (and are) doing business in San Diego County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants provide scaffolding services to their clients during the time period
5 relevant to this action in California, including, but not limited to, the city of San Diego. Plaintiff
6 was employed by Defendants as a non-exempt employee from approximately April 2021 through
7 approximately August 25, 2022. Plaintiff was a non-exempt Supervisor and his job duties
8 included without limitation, providing scaffolding services, driving to and from projects and
9 communicating with Defendants' customers on a daily basis.

10 10. During his employment with Defendants, Plaintiff was not paid for time worked
11 at the yard during the workday. For example, Plaintiff often was required to arrive at Defendants'
12 yard to collect his work truck with materials and supplies. Despite this compensable work at the
13 yard and the compensable traveling time to the worksite, Defendants only paid Plaintiff starting
14 from the time he arrived at the job worksite (*i.e.* 6:30 a.m.). Similarly, Plaintiff was never paid
15 for compensable time worked traveling from the job worksite to the yard and/or time worked at
16 the yard when Plaintiff was required to return to the yard at the end of the work day to turn in the
17 daily reports for him and his crew.

18 11. During his employment with Defendants, Plaintiff often worked over 8 hours in a
19 shift and/or 40 hours in a week. Defendants had a policy and/or practice of keeping track of
20 Plaintiff's travel time separately and always paid it at the base rate of pay. Therefore, Defendants
21 failed to pay all overtime wages when he worked over 8 hours in a shift and/or 40 hours in a week.
22 Additionally, Plaintiff would consistently work on weekends but was only paid at his base rate of
23 pay. Accordingly, Defendants failed to pay Plaintiff all of his overtime wages on weekend shifts
24 where he worked over 8 hours in a day and/or 40 hours in week.

25 12. Throughout Plaintiff's employment with Defendants, Defendants would keep
26 track of Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round
27 Plaintiff's work time such that Plaintiff would not be fully paid for all time worked. Specifically,
28 Defendants directed Plaintiff to only record rounded hours and not his actual start and stop times.

1 This time shaving/rounding practice utilized by Defendants was not-even handed over time and
2 would round and shave in Defendants' favor such that Plaintiff was routinely underpaid for his
3 time worked. Further, during Plaintiff's employment with Defendants, he often worked in excess
4 of 8 hours per workday and/or 40 hours per work week, and therefore, had Plaintiff been properly
5 paid for all of the time that he actually worked, he would have been paid additional minimum
6 and/or overtime wages. This practice by Defendants resulted in Defendants not properly tracking
7 the time worked by Plaintiff, and also resulted in Defendants paying Plaintiff less than he was
8 owed for the work he performed, including failing to pay him all required minimum and overtime
9 wages.

10 13. Additionally, Defendants had a policy or practice of deducting at least one hour of
11 work time from Plaintiff's earned wages. Specifically, Defendants had a policy and/or practice
12 of deducting one hour of work time from Plaintiff and the other non-exempt employees if the
13 work trucks were not clean. Plaintiff is informed and believes, and thereon alleges, that
14 Defendants consistently deducted for unclean trucks from his earned wages. Further, Plaintiff
15 did not authorize Defendants to deduct such expenses from his earned wages. As a result,
16 Defendants failed to pay Plaintiff and other non-exempt employees all of their minimum and
17 overtime wages owed.

18 14. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided
19 all required meal periods due to Defendants' meal period policies and practices, which fail to
20 provide 30-minute first meal periods before the end of the fifth hour of work. Specifically, as a
21 result of Defendants' failure to consider the compensable time worked before arriving at the job
22 worksite as time worked for purposes of providing a meal period before the end of the fifth hour
23 of work, the meal periods were untimely or otherwise unlawful. Further, Defendants' meal period
24 policies and practices fail to provide Plaintiff and the other non-exempt employees a second meal
25 period for shifts over 10.0 hours. As a result, when Plaintiff worked in excess of 10.0 hours, he
26 was not provided with a second 30-minute meal period in violation of California law.

27 15. Although Plaintiff was not provided with all legally-compliant meal periods to
28 which he was entitled, Defendants failed to compensate Plaintiff with the required meal period

premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7.

16. Plaintiff was also not authorized and permitted to take all required rest periods due to Defendants' rest period policies and practices. Defendants' rest period policies and practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, Defendants had a policy and/or practice of combining rest periods and meal periods. Further, when Plaintiff worked in excess of 10.0 hours, he was not authorized and permitted to take a third 10-minute rest period in violation of California law.

17. On those occasions when Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7.

18. As a result of Defendants' failure to pay all overtime and/or minimum wages owed, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff. Further, Defendants face independent liability for issuing wage statement to Plaintiff that inaccurately listed drive time as overtime. Accordingly, the wage statements were inaccurate as they did not list the proper overtime rates or otherwise listed incorrect items.

19. As a further result of Defendants' failure to pay all overtime and/or minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to provide pay Plaintiff all wages owed upon his separation of employment with Defendants.

CLASS ACTION ALLEGATIONS

20. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week, and were subject to Defendants' timekeeping

1 policies/practices, during the four years preceding the filing of the lawsuit through
2 the present.

3 b. The Minimum Wage Class consists of all of Defendants' current and former non-
4 exempt employees in California who were subject to Defendants' timekeeping
5 policies/practices, during the four years preceding the filing of the lawsuit through
6 the present.

7 c. The Wage Deduction Class consists of all of Defendants' current and former non-
8 exempt employees in California who had deduction from their earned wages,
9 during the four years immediately preceding the filing of the lawsuit through the
10 present.

11 d. The Meal Period Class consists of all of Defendants' current and former non-
12 exempt employees in California who worked at least one shift in excess of 5.0,
13 during the four years immediately preceding the filing of the lawsuit through the
14 present.

15 e. The Rest Period Class consists of all of Defendants' current and former non-
16 exempt employees in California who worked at least one shift of 3.5 hours, during
17 the four years immediately preceding the filing of the lawsuit through the present.

18 f. The Wage Statement Class consists of all members of the: (i) Overtime Class; (ii)
19 Minimum Wage Class; (iii) Wage Deduction Class; (iv) Meal Period Class; and/or
20 (v) Rest Period Class, during the one year immediately preceding the filing of the
21 lawsuit through the present.

22 g. The Waiting Time Penalty Class consists of all members of the: (i) Overtime
23 Class; (ii) Minimum Wage Class; (iii) Wage Deduction Class; (iv) Meal Period
24 Class; and/or (v) Rest Period Class who separated their employment with
25 Defendants during the three years immediately preceding the filing of the lawsuit
26 through the present.

27 h. The UCL Class consists of members of (i) Overtime Class; (ii) Minimum Wage
28 Class; (iii) Wage Deduction Class; (iv) Meal Period Class, (v) Rest Period; (vi)

Prevailing Wage Class; (vii) Wage Statement Class; and/or (viii) Waiting Time Penalty Class during the four years immediately preceding the filing of the lawsuit through the present

21. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than thirty (30) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

23. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants properly paid all minimum wages and/or overtime wages at the regular rate to members of the Minimum Wage Class and Overtime Class pursuant to Labor Code §§ 204, 221, 510, 558, 1192, 1194, 1194.2, 1197, 1197.1, 1198, and 1774;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- v. Whether Defendants unlawfully made deductions from earned wages from the Wage Deduction Class pursuant to Labor Code § 221;
- vi. Whether Defendants paid all wages owed to its terminated/separated employees at

1 the time of said termination/separation pursuant to Labor Code §§ 201-203; and
2 vii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
3 business practices by and through the wage and hour policies and practices
4 described above, and whether as a result Defendants owe the classes restitution.

5 24. **Predominance of Common Questions:** Common questions of law and fact
6 predominate over questions that affect only individual members of the Classes. The common
7 questions of law set forth above are numerous and substantial and stem from Defendants' policies
8 and/or practices applicable to each individual class member, such as Defendants' uniform
9 minimum wage and overtime wage payment, wage deduction, and meal and rest period
10 policies/practices. As such, the common questions predominate over individual questions
11 concerning each individual class member's showing as to their eligibility for recovery or as to the
12 amount of their damages.

13 25. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
14 Plaintiff was employed by Defendants as a non-exempt employee in California during the
15 statute(s) of limitations period applicable to each cause of action pled in the FAC. As alleged
16 herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum
17 wages, overtime wages, was not provided with all required meal periods, was not authorized and
18 permitted to take all required rest periods, did not receive meal and rest period premium wages
19 when he was not provided compliant meal periods or not authorized or permitted to take
20 compliant rest periods, had unlawful deductions from his earned wages, was not provide accurate,
21 itemized wage statements, and was not provided with all wages due upon termination.

22 26. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
23 to represent fairly and adequately the interests of the members of the Classes. Moreover,
24 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
25 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
26 and-hour class actions in state and federal courts in the past and are committed to vigorously
27 prosecuting this action on behalf of the members of the Classes.

28 27. **Superiority:** The California Labor Code is broadly remedial in nature and serves

1 an important public interest in establishing minimum working conditions and standards in
2 California. These laws and labor standards protect the average working employee from
3 exploitation by employers who have the responsibility to follow the laws and who may seek to
4 take advantage of superior economic and bargaining power in setting onerous terms and
5 conditions of employment. The nature of this action and the format of laws available to Plaintiff
6 and members of the Classes make the class action format a particularly efficient and appropriate
7 procedure to redress the violations alleged herein. If each employee were required to file an
8 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
9 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
10 their vastly superior financial and legal resources. Moreover, requiring each member of the
11 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
12 employees who would be disinclined to file an action against their former and/or current employer
13 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
14 employment. Further, the prosecution of separate actions by the individual class members, even
15 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
16 with respect to the individual class members against Defendants herein; and which would
17 establish potentially incompatible standards of conduct for Defendants; and/or legal
18 determinations with respect to individual class members which would, as a practical matter, be
19 dispositive of the interest of the other class members not parties to adjudications or which would
20 substantially impair or impede the ability of the class members to protect their interests. Further,
21 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
22 individual prosecution considering all of the concomitant costs and expenses attending thereto.
23 As such, the Classes identified in Paragraph 20 are maintainable as a Class under § 382 of the
24 Code of Civil Procedure.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY ALL OVERTIME WAGES**

27 **(AGAINST ALL DEFENDANTS)**

28 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

30. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 16. Labor Code § 510 and Wage Order 16, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 16, Section 3 also require an employer to pay an employee double the employee’s regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such hours. Defendants also caused Plaintiff and the members of the Overtime Class to work in excess of 12 hours in a workday but did not properly compensate Plaintiff and the members of the Overtime Class at double their regular rate of pay for such hours.

31. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys’ fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 16, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 33. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and
2 1198 which provide that all non-exempt employees are entitled to all minimum wages for all
3 hours worked, and provide a private right of action for the failure to pay all minimum wage
4 compensation for all work performed.

5 34. At all times relevant herein, Defendants were required to properly compensate
6 Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California
7 Labor Code §§ 1194, 1197 and 1198, and Wage Order 16. Wage Order 16, Section 4 requires an
8 employer to pay to every employee on the established payday for the period involved not less
9 than the applicable minimum wage for all hours worked in the payroll period. Defendants caused
10 Plaintiff and the members of the Minimum Wage Class to work hours in a workweek but did not
11 properly compensate Plaintiff and the members of the Minimum Wage Class at least minimum
12 wages for such hours.

13 35. At all times relevant herein, Defendants lacked good faith and had no reasonable
14 grounds for believing that their practices in failing to pay all minimum wages owed at the
15 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
16 or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing
17 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
18 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
19 Labor Code § 1194.2.

20 36. The foregoing practices and policies are unlawful and create entitlement to
21 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
22 amount of minimum wages owing, including interest thereon, as well as statutory penalties,
23 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
24 §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 16, California Code
25 of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§
26 3287(b) and 3289.

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1 **THIRD CAUSE OF ACTION**

2 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 37. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
5 fully set forth herein.

6 38. This cause of action is brought pursuant to Labor Code § 221, which makes it
7 unlawful for an employer to make deductions from an employee's earned wages.

8 39. Plaintiff and members of the Wage Deduction Class had work hours deducted
9 from earned wages for unclean trucks.

10 40. Defendants' policy and/or practice of deducting earned wages from Plaintiff and
11 members of the Wage Deduction Class is unlawful and creates an entitlement to recovery by
12 Plaintiff and members of the Wage Deduction Class for unpaid wages, interest, attorneys' fees
13 and costs in a civil action according to Labor Code §§ 218.6, 221, and Code of Civil Procedure §
14 1021.5.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **(AGAINST ALL DEFENDANTS)**

18 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed in their affirmative obligation to provide all of their non-exempt employees in California,
21 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
22 in accordance with the mandates of the California Labor Code and Wage Order 16, § 11. Despite
23 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
24 of the Meal Period Class at their respective regular rates of compensation, in accordance with
25 California Labor Code §§ 226.7, and 512.

26 43. As a result, Defendants are responsible for paying premium compensation for meal
27 period violations including interest thereon, as well as statutory penalties, civil penalties, and
28 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 16, California Code of

Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT ALL REST PERIODS

(AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

45. Wage Order 16, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

46. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

47. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 16, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

49. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements with respect to their actual regular and overtime hours worked, total gross wages earned, and total net wages earned, in violation of Labor Code § 226 *et seq.*

50. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all earned overtime and minimum wages,

1 and meal and rest period premium wages, and deprived them of the information necessary to
2 identify the discrepancies in Defendants' reported data.

3 51. Defendants' failures create an entitlement to recovery by Plaintiff and members of
4 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
5 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
6 costs of suit according to California Labor Code § 226 *et seq.*

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION**

9 **(AGAINST ALL DEFENDANTS)**

10 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 53. This cause of action is brought pursuant to Labor Code §§ 201-203 which require
12 an employer to pay all wages immediately at the time of termination of employment in the event
13 the employer discharges the employee or the employee provides at least 72 hours of notice of
14 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
15 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
16 employee's last date of employment.

17 54. Defendants failed to timely pay Plaintiff all of his final wages at the time of
18 termination, which include, among other things, underpaid minimum wages, overtime wages and
19 meal period and rest period premium wages. Further, Plaintiff is informed and believes, and
20 based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail
21 to pay members of the Waiting Time Penalty Class all earned wages at the end of employment in
22 a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to
23 pay all final wages was willful within the meaning of Labor Code § 203.

24 55. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
25 Time Penalty Class their earned wages upon separation from employment results in a continued
26 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff
27 and members of the Waiting Time Penalty Class are entitled to compensation pursuant to Labor
28 Code § 203, plus reasonable attorneys' fees and costs of suit.

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

4 56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 57. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.*, by failing to pay all overtime and/or minimum wages owed, failing to provide all required
8 meal periods and failing to authorize and permit all required rest periods, and failing to pay meal
9 and rest period premium wage payments.

10 58. Defendants' utilization of these unfair and/or unlawful business practices deprived
11 Plaintiff and continues to deprive members of the Classes of compensation to which they are
12 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
13 over Defendants' competitors who have been and/or are currently employing workers and
14 attempting to do so in honest compliance with applicable wage and hour laws.

15 59. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
16 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
17 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
18 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

19 60. The acts complained of herein occurred within the last four years immediately
20 preceding the filing of the lawsuit in this action.

21 61. Plaintiff was compelled to retain the services of counsel to file this court action to
22 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
23 of Defendants' current non-exempt employees, and to enforce important rights affecting the
24 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
25 which he is entitled to recover under Code of Civil Procedure § 1021.5.

26 //

27 //

28 //

1 **NINTH CAUSE OF ACTION**

2 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 **(AGAINST ALL DEFENDANTS)**

4 62. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 63. Defendants have committed several Labor Code violations against Plaintiff and
6 other Aggrieved Employees. Plaintiff, an “Aggrieved Employee” within the meaning of Labor
7 Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this
8 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
10 2699 (a) and (f) including, but not limited to: (1) \$250.00 for each initial violation and \$1,000.00
11 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or
12 (2) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
13 pay period for those violations of the Labor Code for which no civil penalty is specifically
14 provided, based on the following Labor Code violations:

- 15 a) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay
16 Plaintiff and other Aggrieved Employees the statutory minimum wage for all
17 hours worked;
- 18 b) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
19 pay Plaintiff and other Aggrieved Employees all overtime compensation earned;
- 20 c) Defendants violated Labor Code § 221 by illegally and deducting from the wages
21 of Plaintiff and other Aggrieved Employees;
- 22 d) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all
23 legally required meal periods and failing to pay meal period premiums to
24 Plaintiff and other Aggrieved Employees;
- 25 e) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all
26 legally required rest periods and failing to pay rest period premiums to Plaintiff
27 and other Aggrieved Employees;
- 28

- 1 f) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other
2 Aggrieved Employees with accurate and compliant itemized wage statements;
- 3 g) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay
4 all final wages due to Plaintiff and other Aggrieved Employees;
- 5 h) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
6 Aggrieved Employees all earned wages at least twice during each calendar
7 month;
- 8 i) Defendants violated Labor Code § 1174 by failing to maintain accurate records
9 on behalf of Plaintiff and other Aggrieved Employees.

10 64. On October 19, 2022, Plaintiff notified Defendants via certified mail, and the
11 California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’
12 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
13 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
14 Code identified in Paragraph 63 (a)-(i). Attached hereto as **Exhibit 1** is a true and correct copy of
15 the October 19, 2022 correspondence. Now that sixty-five days have passed from Plaintiff
16 notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements
17 for bringing a claim under the Labor Code Private Attorneys General Act with respect to these
18 violations.

19 65. Plaintiff was compelled to retain the services of counsel to file this court action to
20 protect his interests and the interests of other aggrieved employees, and to assess and collect the
21 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
22 she is entitled to recover under California Labor Code § 2699(g).

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
25 this suit is brought against Defendants, as follows:

- 26 1. For an order certifying the proposed Classes;
- 27 2. For an order appointing Plaintiff as representative of the Classes;
- 28 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1 4. Upon the First Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.

3 5. Upon the Second Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and
5 1198;

6 6. Upon the Third Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 221;

8 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

10 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
11 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

12 9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant
13 to Labor Code § 226 *et seq.*;

14 10. Upon the Seventh Cause of Action, for waiting time penalties pursuant to Labor §
15 203;

16 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
17 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
18 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
19 *seq.*;

20 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
21 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
22 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
23 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
24 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
25 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
26 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
27 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
28 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00

1 for each subsequent violation per employee per pay period for those violations of the Labor Code
2 for which no civil penalty is specifically provided, based on the Labor Code violations cited in
3 Paragraph 63 (a)-(i) above.

4 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
5 Code § 218.6 and Civil Code §§ 3287 and 3289;

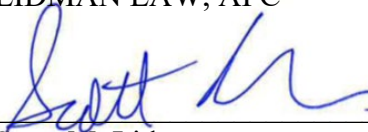
6 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
7 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

8 15. For such other and further relief the Court may deem just and proper.

9
10 Dated: December 27, 2022

Respectfully submitted,
LIDMAN LAW, APC

11
12 By:



Scott M. Lidman
Attorneys for Plaintiff
RAFAEL SOTO

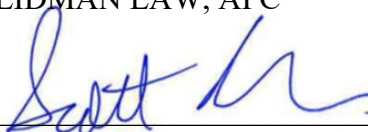
13
14
15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

18
19 Dated: December 27, 2022

Respectfully submitted,
LIDMAN LAW, APC

20
21 By:



Scott M. Lidman
Attorneys for Plaintiff
RAFAEL SOTO

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

October 19, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

United Scaffold, Inc., a California corporation

c/o Gregory Leonard, Registered Agent

5021 Medalist Court

Oceanside, CA 92057

Re: *Rafael Soto v. United Scaffold, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Rafael Soto in claims arising from his employment with United Scaffold, Inc., a California corporation (“Defendant”). Mr. Soto is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Soto intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendant’s all current and former non-exempt, hourly employees in California who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Defendant has provided scaffolding services to their clients during the time period relevant to this action in California, including, but not limited to, the city of San Diego. Mr. Soto was employed by Defendant as a non-exempt employee from approximately April 2021 through approximately August 25, 2022. Mr. Soto was a non-exempt Supervisor and his job duties included without limitation, providing scaffolding services, driving to and from projects and communicating with Defendant’s customers on a daily basis.

During his employment with Defendant, Mr. Soto and other non-exempt, hourly employees were not paid for time worked at the yard during the workday. For example, Mr. Soto and other non-exempt, hourly employees often were required to arrive at Defendant’s yard to collect his work truck with materials and supplies. Despite this compensable work at the yard and the compensable traveling time to the worksite, Defendant only paid Mr. Soto and other non-exempt, hourly employees starting from the

time they arrived at the job worksite (i.e. 6:30 a.m.). Similarly, Mr. Soto and other non-exempt, hourly employees were never paid for compensable time worked traveling from the job worksite to the yard and/or time worked at the yard when Mr. Soto and other non-exempt, hourly employees were required to return to the yard at the end of the workday to turn in the daily reports for him and his crew.

During his employment with Defendant, Mr. Soto and other non-exempt employees often worked over 8 hours in a shift and/or 40 hours in a week. Defendant had a policy and/or practice of keeping track of their travel time separately and always paid it at the base rate of pay. Therefore, Defendant failed to pay all overtime wages when Mr. Soto and other non-exempt, hourly employees worked over 8 hours in a shift and/or 40 hours in a week. Additionally, Mr. Soto and other non-exempt, hourly employees would consistently work on weekends but was only paid at their base rate of pay. Accordingly, Defendant failed to pay Mr. Soto and other non-exempt, hourly employees all of their overtime wages on weekend shifts where they worked over 8 hours in a day and/or 40 hours in week.

Throughout Mr. Soto's employment with Defendant, Defendant would keep track of Mr. Soto's and other non-exempt, hourly employees' time worked and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. Specifically, Defendant directed Mr. Soto and other non-exempt, hourly employees to only record rounded hours and not their actual start and stop times. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor such that Mr. Soto and other non-exempt, hourly employees were routinely underpaid for their time worked. Further, during Mr. Soto's employment with Defendant, he and other non-exempt, hourly employees often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Soto and other non-exempt, hourly employees been properly paid for all of the time that they actually worked, they would have been paid additional minimum and/or overtime wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Soto and other non-exempt, hourly employees, and also resulted in Defendant paying Mr. Soto and other non-exempt, hourly employees less than they were owed for the work they performed, including failing to pay their all required minimum and overtime wages.

Additionally, Defendant had a policy or practice of deducting at least one hour of work time from Mr. Soto and other non-exempt hourly employees' earned wages. Specifically, Defendant had a policy and/or practice of deducting one hour of work time from Mr. Soto and the other non-exempt employees if the work trucks were not clean. Mr. Soto is informed and believes, and thereon alleges, that Defendant consistently deducted for unclean trucks from their earned wages. Further, Mr. Soto and other non-exempt, hourly employees did not authorize Defendant to deduct such expenses from their earned wages. As a result, Defendant failed to pay Mr. Soto and other non-exempt employees all of their minimum and overtime wages owed.

Throughout Mr. Soto's employment with Defendant, Mr. Soto and other non-exempt, hourly employees were not provided all required meal periods due to Defendant's

meal period policies and practices, which fail to provide 30-minute first meal periods before the end of the fifth hour of work. Specifically, as a result of Defendant's failure to consider the compensable time worked before arriving at the job worksite as time worked for purposes of providing a meal period before the end of the fifth hour of work, the meal periods were untimely or otherwise unlawful. Further, Defendant's meal period policies and practices fail to provide Mr. Soto and the other non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Soto and other non-exempt, hourly employees worked in excess of 10.0 hours, they were not provided with a second 30-minute meal period in violation of California law.

Although Mr. Soto and other non-exempt, hourly employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Soto and other non-exempt, hourly employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Mr. Soto and other non-exempt, hourly employees were also not authorized and permitted to take all required rest periods due to Defendant's rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, Defendant had a policy and/or practice of combining rest periods and meal periods. Further, when Mr. Soto and other non-exempt, hourly employees worked in excess of 10.0 hours, they were not authorized and permitted to take a third 10-minute rest period in violation of California law.

On those occasions when Mr. Soto and other non-exempt, hourly employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendant failed to compensate Mr. Soto and other non-exempt, hourly employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

As a result of Defendant's failure to pay all overtime and/or minimum wages owed, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Soto and other non-exempt, hourly employees. Further, Defendant faces independent liability for issuing wage statement to Mr. Soto and other non-exempt, hourly employees that inaccurately listed drive time as overtime. Accordingly, the wage statements were inaccurate as they did not list the proper overtime rates or otherwise listed incorrect items.

As a further result of Defendant's failure to pay all overtime and/or minimum wages owed, and failure to pay all meal and rest period premium wages, Defendant failed to provide pay Mr. Soto and other former non-exempt, hourly employees all wages owed upon their separation of employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 16 ("Wage Order 16"):

Overtime Violations

Defendant was required to pay Mr. Soto and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 16, § 3. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked.”

As previously detailed, during his employment with Defendant, Mr. Soto was not paid for time worked at the yard during the workday. Similarly, Mr. Soto was never paid for compensable time worked traveling from the job worksite to the yard and/or time worked at the yard when Mr. Soto was required to return to the yard at the end of the work day to turn in the daily reports for him and his crew. Mr. Soto often worked over 8 hours in a shift and/or 40 hours in a week. Defendant had a policy and/or practice of keeping track of Mr. Soto’s travel time separately and always paid it at the base rate of pay. Therefore, Defendant failed to pay all overtime wages when Mr. Soto worked over 8 hours in a shift and/or 40 hours in a week. Additionally, Mr. Soto would consistently work on weekends but was only paid at his base rate of pay. Accordingly, Defendant failed to pay Mr. Soto and other Aggrieved Employees all of their overtime wages on weekend shifts where he worked over 8 hours in a day and/or 40 hours in week.

Throughout Mr. Soto’s employment with Defendant, Defendant would keep track of Mr. Soto’s time worked and would unlawfully shave Mr. Soto’s work time and/or round Mr. Soto’s work time such that Mr. Soto would not be fully paid for all time worked. Specifically, Defendant directed Mr. Soto to only record rounded hours and not his actual start and stop times. This time shaving/rounding practice utilized by Defendant was not even handed over time and would round and shave in Defendant’s favor such that Mr. Soto was routinely underpaid for his time worked. Further, during Mr. Soto’s employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Soto been properly paid for all of the time that he actually worked, he would have been paid additional overtime wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Soto, and also resulted in Defendant paying Mr. Soto and other Aggrieved Employees less than they were owed for the work he performed, including failing to pay him all required overtime wages.

Additionally, Defendant had a policy or practice of deducting at least one hour of work time from Mr. Soto’s earned wages. Specifically, Defendant had a policy and/or practice of deducting one hour of work time from Mr. Soto and other Aggrieved Employees if the work trucks were not clean. Mr. Soto is informed and believes, and thereon alleges, that Defendant consistently deducted for unclean trucks from his earned wages. Further,

Mr. Soto did not authorize Defendant to deduct such expenses from his earned wages. As a result, Defendant failed to pay Mr. Soto and other Aggrieved Employees all of their overtime wages owed.

Minimum Wage Violations

Defendant was required to pay Mr. Soto and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 16, § 4. Mr. Soto and other Aggrieved Employees were not paid for all hours worked due to Defendant's timekeeping and compensation practices.

As alleged above, during his employment with Defendant, Mr. Soto was not paid for time worked at the yard during the workday. Similarly, Mr. Soto was never paid for compensable time worked traveling from the job worksite to the yard and/or time worked at the yard when Mr. Soto was required to return to the yard at the end of the work day to turn in the daily reports for him and his crew. Throughout Mr. Soto's employment with Defendant, Defendant would keep track of Mr. Soto's time worked and would unlawfully shave Mr. Soto's work time and/or round Mr. Soto's work time such that Mr. Soto would not be fully paid for all time worked. Specifically, Defendant directed Mr. Soto to only record rounded hours and not his actual start and stop times. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and shave in Defendant's favor such that Mr. Soto was routinely underpaid for his time worked. Further, during Mr. Soto's employment with Defendant, he often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Soto been properly paid for all of the time that he actually worked, he would have been paid additional minimum wages. This practice by Defendant resulted in Defendant not properly tracking the time worked by Mr. Soto, and also resulted in Defendant paying Mr. Soto less than he was owed for the work he performed, including failing to pay him all required minimum wages.

Additionally, Defendant had a policy or practice of deducting at least one hour of work time from Mr. Soto's earned wages. Specifically, Defendant had a policy and/or practice of deducting one hour of work time from Mr. Soto and the other non-exempt employees if the work trucks were not clean. Mr. Soto is informed and believes, and thereon alleges, that Defendant consistently deducted for unclean trucks from his earned wages. Further, Mr. Soto did not authorize Defendant to deduct such expenses from his earned wages. As a result, Defendant failed to pay Mr. Soto and other Aggrieved Employees all of their minimum wages owed.

Unlawful Deductions

As a matter of practice and policy, Defendant regularly deducted from the wages owed to Mr. Soto and other Aggrieved Employees. Specifically, Defendant had a policy and/or practice of deducting one hour of work time from Mr. Soto and other Aggrieved Employees if the work trucks were not clean. Defendant knew or should have known

that it is unlawful to deduct from wages owed to Mr. Soto and other Aggrieved Employees.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Soto and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 11. Specifically, due to Mr. Soto's job duties, Mr. Soto was often prevented from taking meal periods that commenced before the end of the 5th hour of work. As a result of Defendant's unlawful meal period policies and practices, Mr. Soto's meal periods were often late or otherwise unlawful. Further, Defendant's meal period policies and practices fail to provide Mr. Soto and the other Aggrieved Employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Soto worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in violation of California law. Therefore, Mr. Soto and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Soto and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Soto and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Soto and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 12. As alleged above, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, as a result of the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or *major fraction thereof*. As a result, Mr. Soto and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Soto and other Aggrieved Employees all of their final wages at the time of separation, which

included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Mr. Soto and other Aggrieved Employees was willful and, consequently, entitles Mr. Soto and other similarly aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Soto and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premiums, in violation of Labor Code § 226 *et seq.* Further, Defendant faces independent liability for issuing wage statement to Mr. Soto that inaccurately listed drive time as overtime. Accordingly, the wage statements were inaccurate as they did not list the proper overtime rates or otherwise listed incorrect item. Defendant's failure to furnish Mr. Soto and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

As an "aggrieved employee," Mr. Soto will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Soto's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

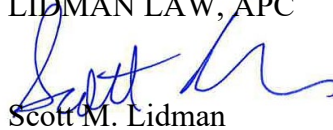
- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Soto and other Aggrieved Employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Soto and other Aggrieved Employees all overtime compensation earned;
- c) Defendant violated Labor Code § 221 by illegally and deducting from the wages of Mr. Soto and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Soto and other Aggrieved Employees;
- e) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Soto and other Aggrieved Employees;

- f) Defendant violated Labor Code § 226 by failing to furnish Mr. Soto and other Aggrieved Employees with accurate and compliant itemized wage statements;
- g) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Soto and other Aggrieved Employees;
- h) Defendant violated Labor Code § 204 by failing to pay Mr. Soto and other Aggrieved Employees all earned wages at least twice during each calendar month;
- i) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Soto and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman