

Assigned for All Purposes

Judge Randall J. Sherman

cx-105

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Attorneys for Plaintiff, ANA ROSA IBARRA, individually and on behalf of other aggrieved current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE – COMPLEX CIVIL

ANA ROSA IBARRA, individually and on
behalf of other aggrieved current and former
employees,

Plaintiff(s),

v.

CUSTOM INDUSTRIES, INC.,
TOM McAFEE, CHARLOTTE McAFEE,
and DOES 1 to 50,

Defendants.

Case No.: 30-2023-01301455-CU-OE-CXC

**COMPLAINT FOR DAMAGES,
PENALTIES AND OTHER RELIEF:**

Individual Employment Law Claims

1. Failure to Pay Overtime
 2. Failure to Pay Minimum Wages
 3. Meal Period Violations
 4. Rest Break Violations
 5. Sick Time Violations
 6. Failure to Pay Wages for All Time Worked
 7. Failure to Indemnify for Business Expenses
 8. Failure to Provide Accurate Wage Statements
 9. Failure to Timely Pay Wages Owed at Time of Termination/Separation
 10. Failure to Provide Employment Records
- PAGA Claims**
11. Violation of Labor Laws Giving Rise to an Action Under the PAGA
- UCL Claim**
12. Unfair Business Practices

Jury Trial Demanded

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2. On or about 2017, Plaintiff ANA ROSA IBARRA was employed to work at CUSTOM INDUSTRIES, INC., located at 1371 N. Miller Street, Anaheim, California 92806, as a nonexempt employee. Thereafter, sometime in or about 2019, Plaintiff left CUSTOM INDUSTRIES and returned sometime on or about May 2021. At all times when Plaintiff worked at CUSTOM INDUSTRIES she was a customer representative at the Laminated Glass and/or Shower Glass Departments.

General Allegations re Defendants

4. ANA ROSA IBARRA brings this action against the following Defendants and said Defendants' successors in interest, alter egos, and other persons/entities engaged with Defendants in a joint enterprise of manufacturing, producing, fabricating and/or selling glass:

a. Defendants CUSTOM INDUSTRIES, INC., TOM McAFEE, CHARLOTTE McAFEE and DOES 1 through 10 (hereinafter collectively referred to as the CUSTOM INDUSTRIES DEFENDANTS) were the employers/joint employers of ANA ROSA IBARRA and the other aggrieved employees referenced herein.

1 CUSTOM INDUSTRIES, INC. is an active California corporation registered with
2 the Secretary of State with an entity address located at 1371 N. Miller Street,
3 Anaheim, California 92806, which is also its principal place of business.

4 b. At all relevant times, Defendants TOM McAFEE, CHARLOTTE McAFEE and
5 DOES 11 – 30 have been officers, directors and/or managing agents of Defendants
6 CUSTOM INDUSTRIES, INC. and DOES 1 through 10. Said Defendants have
7 also been supervisors at CUSTOM INDUSTRIES, INC. who 1) either directly
8 participated in and/or encouraged the illegal conduct described herein and/or 2)
9 ratified the illegal conduct of employees/co-employees under their supervision.

10 c. Defendants DOES 31 through 50 are unidentified persons or entities who are
11 legally responsible in some actionable manner for the illegal acts and omissions
12 complained of herein. To the extent said Defendants are a business entity, the
13 form of said Defendants is unknown at the present time.

14 5. Each of the above Defendants had authority to set the CUSTOM INDUSTRIES
15 DEFENDANTS' policies, procedures, and practices as well as the authority to hire, transfer,
16 promote, assign, reward, discipline the employees working for the CUSTOM INDUSTRIES
17 DEFENDANTS or to effectively recommend said actions. Additionally, said Defendants also
18 had responsibility to act on employee grievances and/or to effectively recommend action on
19 employee grievances. Said Defendants also had the responsibility to direct Plaintiff's daily
20 work activities for the CUSTOM INDUSTRIES DEFENDANTS. The exercise of said
21 authority and responsibility by said individual Defendants required the use of their independent
22 judgment.

23 6. At all times herein and for many prior years, Defendants CUSTOM INDUSTRIES,
24 INC., TOM McAFEE, CHARLOTTE McAFEE and DOES 1 through 50 either employed
25 individuals in California and/or were involved in managing businesses and/or employees in
26 California. During those years, said Defendants were provided with notifications from various
27 governmental agencies as well as from various publications advising employers of the
28 employment laws referenced herein. Accordingly, said Defendants knew the obligations the

1 CUSTOM INDUSTRIES DEFENDANTS owed to employees under California law. As such,
2 Defendants' failures to comply with the applicable Labor Code sections, Industrial Wage
3 Orders, regulations, and local laws as described herein were done willfully, intentionally and
4 with knowledge of their illegality. Despite said knowledge, said Defendants deliberately
5 approved, established and/or implemented company-wide policies, procedures and/or practices
6 they knew violated California law as set forth herein and did so for the purpose of maximizing
7 the profits of the CUSTOM INDUSTRIES DEFENDANTS as well as their own personal gain
8 (monetary or otherwise) to the illegal detriment of employees working at CUSTOM
9 INDUSTRIES, INC., including ANA ROSA IBARRA.

10 7. Additionally, based on requirements set forth in the Labor Code and wage orders
11 applicable to Defendants' business, at all times herein, Defendants knew it was necessary to
12 possess, and Defendants did possess, a certain level of knowledge and skill in order to comply
13 with the labor and employment laws applicable to their area of business. Said knowledge was
14 vastly superior to that of Defendants' employees. Moreover, as set forth herein, Defendants'
15 employees depended on Defendants to know, record, and/or track certain information to ensure
16 California labor laws and/or employment laws were followed. Such things include the dates
17 and times worked by employees, when wages were owed to employees, the minimum and
18 overtime wages owed to employees, the number of rest breaks and meal breaks the employees
19 were entitled to, when rest breaks and meal breaks were required to be provided, the
20 information required to be accurately reported on wage statements, when employees should be
21 paid their final wages, what expenditures employees were required to be reimbursed, etc.

22 **Alter-Ego / Joint Enterprise Allegations**

23 8. All business entity Defendants herein are and at all times herein mentioned were the
24 alter-egos of each and every individually named Defendant and there exists, and at all times
25 herein mentioned has existed, a unity of interest and ownership between said Defendants such
26 that any separateness between them has ceased to exist in that the defendants have completely
27 controlled, dominated, managed, and operated the business entity defendants and have
28 intermingled the assets of each to suit their convenience. Further, the business entity

1 defendants are, and at all times mentioned herein were, mere shells, instrumentalities and
2 conduits through which Defendants carried out their business by its name while exercising
3 complete control and dominance of the business such that individuality or separateness of the
4 business entities did not exist. Additional facts supporting the existence of an alter ego and/or
5 joint enterprise relationship between Defendants include the following: Defendants
6 commingled funds and other assets, Defendants held themselves out as a single entity,
7 Defendants share equitable ownership, they use the same offices, Defendants have disregarded
8 corporate formalities, Defendants share the same directors and officers, etc.

9 9. All Defendants herein were also members of a joint enterprise of manufacturing,
10 producing, fabricating and/or selling glass. Each said Defendant contributed skill, effort,
11 knowledge, and/or money to achieve a common purpose, namely, maximizing their respective
12 and collective business profits as well as their individual profits.

13 10. The facts linking the fictitiously designated Defendants with the causes of action
14 alleged herein and/or the true names and capacities, whether individual, corporate, partnership,
15 or otherwise of Defendants, DOES 1 through 50, are unknown to Plaintiff(s) at this time, who
16 therefore sue said Defendants by such fictitious names and will seek to amend this Complaint
17 to show their true names and/or capacities when ascertained. Said Defendants are sued as
18 employers, principals and/or agents, servants, and/or employees of said employers or principals
19 who were performing acts within the course and scope of their authority and/or employment.
20 Each and every Defendant designated herein as a "DOE" is responsible in some actionable
21 manner for the events and happenings referred to herein which proximately caused the injuries,
22 damages, losses and/or penalties as alleged herein.

23 11. Plaintiff does not have copies of all of her employment records with Defendants and
24 Defendants have failed to provide Plaintiff with complete copies of employment records
25 (including work schedules, time sheets, rest break/meal break records, sick time records,
26 business expense and reimbursement records and wage statements) even though such records
27 pertain to Plaintiff's employment with Defendants and were requested from Defendants by
28 Plaintiff pursuant to Labor Code § 226. Sometime on or about Feb. 2022, Defendants produced

1 a series of records which included a handbook and a few pages of payroll data and other
2 personnel file records. That production was incomplete. The balance of Plaintiff's records were
3 also not produced by Defendants after a complaint was filed with the LWDA (and concurrently
4 served on Defendants), in which it was alleged that said records had not been provided in
5 accordance with Labor Code § 226. Plaintiff also does not have access to the employment
6 records of other similarly aggrieved employees. After Defendants have produced said
7 employment records during discovery processes in this action, additional facts in support of
8 each cause of action pled in this complaint can be reasonably determined.

9 12. Defendants' wrongful conduct as set forth in this complaint occurred on a continuous
10 basis during the CUSTOM INDUSTRIES DEFENDANTS' employment relationship with
11 ANA ROSA IBARRA and the other aggrieved employees encompassed by Plaintiff's PAGA
12 Notice Letter. Therefore, under the Continuous Violation Doctrine, the applicable statute of
13 limitation did not begin to accrue until the date that each said employees' employment with
14 Defendants ended, extended by the applicable waiting time for receipt of payment of the
15 amounts owed at the separation. Additionally, in violation of various sections of the Labor
16 Code and/or the applicable Industrial Wage Order, Defendants failed to post the notices
17 required under California law which the Legislature, Industrial Wage Commission and/or other
18 authorized officials determined were necessary to reasonably place California employees on
19 notice of their rights as employees under California law. Defendants' continuing failure to post
20 the required notices was done for the purpose of keeping its employees uninformed of their
21 rights as non-exempt employees under California law. Moreover, even though Defendants were
22 served with requests for all records pertaining to ANA ROSA IBARRA's employment with
23 CUSTOM INDUSTRIES, INC. to evaluate whether and/or the extent to which the CUSTOM
24 INDUSTRIES DEFENDANTS had complied and/or failed to comply with California law,
25 CUSTOM INDUSTRIES, INC. failed to timely and fully comply with such requests in
26 violation of Labor Code § 226. Consequently, under the Delayed Discovery Rule, prior to the
27 filing of this action, MS. IBARRA did not discover (and could not have reasonably discovered)
28 all of the ways in which the CUSTOM INDUSTRIES DEFENDANTS failed to comply with

California wage and hour laws at issue in this action.

13. There is no legally recognized exemption or exception which excused Defendants from complying with the California employment laws at issue in this action; therefore, Defendants were without legal justification or excuse for failing to comply with said laws.

14. While acting on behalf of CUSTOM INDUSTRIES, INC., Defendants TOM McAFEE, CHARLOTTE McAFEE, and DOES 11-30 (who were owners, directors, officers, and/or managing agents of CUSTOM INDUSTRIES, INC.) caused the California employment laws at issue in this action to be violated by establishing and/or implementing employment, wage, and/or payroll procedures, and/or policies that violated said laws. Therefore, to the extent permitted under Labor Code § 558.1, said Defendants are as liable as CUSTOM INDUSTRIES, INC. for such violation(s).

FIRST CAUSE OF ACTION -- FAILURE TO PAY OVERTIME WAGES BY PLAINTIFF ANA ROSA IBARRA AGAINST ALL DEFENDANTS

15. Plaintiff hereby incorporates and fully realleges by this reference the allegations contained in paragraphs 1 through 14 of this Complaint as though fully set forth here.

16. At all times herein, pursuant to Labor Code § 510 and the Industrial Wage Order applicable to the CUSTOM INDUSTRIES DEFENDANTS, employers of non-exempt employees (including ANA ROSA IBARRA and the other similarly aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) were required to pay their non-exempt employees overtime pay as follows:

- a. If an employee works in excess of 8 hours in one workday, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 8 hours up to and including 12 hours in one workday.
- b. If an employee works in excess of 12 hours in one workday, the employer must pay the employee no less than twice the employee's regular rate of pay.
- c. If an employee works in excess of 40 hours in any one workweek, the employer must pay the employee no less than one and one-half times the employee's regular

rate of pay for all hours worked in excess of 40 hours.

- d. If an employee works seven days in any workweek, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay the first 8 hours worked on the seventh day.

17. At all times during the statute of limitations period applicable to this cause of action, \$\$ and each of them willfully, knowingly, and intentionally failed to calculate and/or compensate ANA ROSA IBARRA (and the other similarly aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) the overtime wages mandated by Labor Code § 510 and/or applicable Industrial Wage Order in at least the following ways:

- a. Employees working more than 8 hours in a workday have not been paid time and one-half. Instead, they either were not paid for the time they worked over 8 hours, or they were only paid regular wages rather than overtime wages.
- b. Employees working more than 40 hours in a workweek have not been paid time and one-half. Instead, they either were not paid for the time they worked over 40 hours in a week, or they were only paid regular wages rather than overtime wages.
- c. Employees working more than 12 hours in a workday have not been paid double time. Instead, they either were not paid for the time they worked over 12 hours, or they were only paid regular wages or time and one-half rather than double time wages.

18. The CUSTOM INDUSTRIES DEFENDANTS' failure to pay said employees overtime wages in accordance with the Labor Code has been, in part, accomplished by wrongfully failing to include all the time worked by employees on their wage statements/paychecks. Such failures include time worked off-the-clock (including rounded times), on-duty meal periods, on-duty travel time, etc.

19. Accordingly, said employees were denied overtime wages as required under Labor Code § 510 as set forth above.

20. The last date that Defendants failed to pay Plaintiff ANA ROSA IBARRA the overtime

1 that she was due was on November 8, 2021. Defendants mailed a check to Plaintiff in the
2 amount of \$701.36, lesser amount than due, which was received by Plaintiff on 11/10/2021.

3 21. As applicable under California law to the allegations made in this cause of action,
4 Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth
5 below in the Prayer for Damages, Awards and Other Relief under the section entitled
6 “Individual Causes of Action for Labor Law Violations.”

7 **SECOND CAUSE OF ACTION -- FAILURE TO PAY MINIMUM WAGES BY**
8 **PLAINTIFF ANA ROSA IBARRA AGAINST ALL DEFENDANTS**

9 22. Plaintiff hereby incorporates and fully realleges by this reference the allegations
10 contained in paragraphs 1 through 14 of this Complaint as though fully set forth here.

11 23. At all times herein, pursuant to Labor Code § 1182.12, employers were required to pay
12 their employees at least the minimum hourly wage set forth in the Labor Code, the applicable
13 Industrial Wage Order or other applicable local law, ordinance and/or regulation for all time
14 worked by their employees.

15 24. At all times during the applicable statutes of limitations period, the CUSTOM
16 INDUSTRIES DEFENDANTS willfully, knowingly, and intentionally failed to calculate
17 and/or compensate ANA ROSA IBARRA (and the other aggrieved employees encompassed by
18 Plaintiff’s PAGA Notice Letter) the minimum wages owed under Labor Code § 1182.12, the
19 applicable wage order and/or local regulation for all the hours worked for the CUSTOM
20 INDUSTRIES DEFENDANTS, including but not limited to the following times: Because not
21 all of the time worked by said employees has been/is being reported on the employees’ time
22 records and/or paychecks, said employees have not been paid at least the minimum wage for all
23 the time they actually worked for the CUSTOM INDUSTRIES DEFENDANTS. Such times
24 include time worked off-the-clock (including rounded clock-in/out times), on-duty meal
25 periods, on-duty travel time, etc.

26 25. The last date that Defendants failed to pay Plaintiff ANA ROSA IBARRA the
27 minimum wages that she was due was on November 8, 2021. Defendants mailed a check to
28 Plaintiff in the amount of \$701.36, lesser amount than due, which was received by Plaintiff on

1 11/10/2021.

2 26. As applicable under California law to the allegations made in this cause of action,
3 Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth
4 below in the Prayer for Damages, Awards and Other Relief under the section entitled
5 “Individual Causes of Action for Labor Law Violations.”

6 **THIRD CAUSE OF ACTION -- FAILURE TO PROVIDE MEAL PERIODS OR**
7 **PREMIUM PAY BY PLAINTIFF ANA ROSA IBARRA AGAINST ALL DEFENDANTS**

8 27. Plaintiff hereby incorporates and fully realleges by this reference the allegations
9 contained in paragraphs 1 through 14 of this Complaint as though fully set forth here.

10 28. At all times herein, pursuant to Labor Code § 512 and the applicable wage order, an
11 employer may not employ a non-exempt employee to work more than a five hours per day
12 without providing the employee with a thirty-minute meal break within the first five hours of
13 their workday.

14 29. Labor Code § 512 and the applicable wage order further provide that an employer may
15 not employ an employee for a work period of more than ten hours per day without providing
16 the employee with a second meal period of not less than 30 minutes.

17 30. California law further requires that for a meal period to qualify as a valid meal period
18 under the law, the meal period must be timely, off-duty, unrestricted, and uninterrupted.

19 31. At all times during the statute of limitations period applicable to this cause of action,
20 Defendants either deprived ANA ROSA IBARRA (and the other aggrieved employees
21 encompassed by Plaintiff’s PAGA Notice Letter) of taking the meal period(s) required each
22 workday under California law, required them to take their meal periods after their fifth hour of
23 work, restricted their meal periods, required employees to remain on-duty during their meal
24 periods, shortened their 30-minute meal period, and/or interrupted their meal periods. As a
25 result, the CUSTOM INDUSTRIES DEFENDANTS were required by Labor Code § 226.7
26 and/or the applicable IWC Wage Order to pay said employees “premium pay”, i.e., one (1)
27 hour of pay at their regular rate of compensation for each workday that a legally compliant
28 meal period was not provided in violation of California law.

32. Nevertheless, during the time that ANA ROSA IBARRA (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) were employed by the CUSTOM INDUSTRIES DEFENDANTS, said Defendants failed to provide meal periods in compliance with Labor Code § 512 and also failed to pay their employees (including Plaintiff) the premium pay required for the failure to provide legally compliant meal periods.

33. The last date that Defendants failed to pay Plaintiff ANA ROSA IBARRA the premium pay for the meal period violations that she was due was on November 8, 2021. Defendants mailed a check to Plaintiff in the amount of \$701.36, lesser amount than due, which was received by Plaintiff on 11/10/2021.

34. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

FOURTH CAUSE OF ACTION -- FAILURE TO PROVIDE REST PERIODS OR PREMIUM PAY BY PLAINTIFF ANA ROSA IBARRA AGAINST ALL DEFENDANTS

35. Plaintiff hereby incorporates and fully realleges by this reference the allegations contained in paragraphs 1 through 14 of this Complaint as though fully set forth here.

36. At all times herein, pursuant to the California Labor Code, the applicable Industrial Wage Order, and/or applicable regulation, employers must authorize and permit non-exempt employees to take paid rest periods at the rate of 10 minutes net rest time per four hours or major fraction thereof (unless the total work time is less than 3 ½ hours). California law further provides that so far as practical, the mandatory rest breaks must be provided in the middle of each work period of the workday.

37. California law further requires that for a rest break to qualify as a valid rest break under the law, the rest break must be paid and timely in addition to being 10-minutes in length without restrictions, off-duty, and uninterrupted.

38. At all times during the statute of limitations period applicable to this cause of action, ANA ROSA IBARRA (and the other aggrieved employees encompassed by Plaintiff's PAGA

1 Notice Letter) regularly worked more than 5 hours a day, entitling them to one or two 10-
2 minute rest breaks. Employees working more than five hours were/are entitled to one rest
3 break within the first five hours. Employees working more than six hours were/are entitled to
4 two rest breaks, one in the middle of their first work period of each of their workdays (within
5 the first 5 hours) and one in the middle of their second work period during each of their
6 workdays.

7 39. In violation of California law, the CUSTOM INDUSTRIES DEFENDANTS either 1)
8 deprived ANA ROSA IBARRA (and the other similarly aggrieved employees encompassed by
9 Plaintiff's PAGA Notice Letter) of taking the rest periods required under California law, 2)
10 unlawfully shortened rest breaks that were provided, 3) required said employees to take their
11 rest breaks too early or too late (even though it was practical for them to take their rest breaks
12 in the middle of each work period), 4) required said employees to remain on-duty during rest
13 breaks, 5) restricted their rest breaks, and/or 6) interrupted their rest breaks.

14 40. In violation of Labor Code § 226.7, the CUSTOM INDUSTRIES DEFENDANTS also
15 failed to pay ANA ROSA IBARRA (and the other similarly aggrieved employees encompassed
16 by Plaintiff's PAGA Notice Letter) premium pay, i.e., one (1) hour of pay at their regular rate
17 of compensation for each workday that a legally compliant rest break was not provided.

18 41. The last date that Defendants failed to pay Plaintiff ANA ROSA IBARRA the premium
19 pay for rest break violations that she was due was on November 8, 2021. Defendants mailed a
20 check to Plaintiff in the amount of \$701.36, lesser amount than due, which was received by
21 Plaintiff on 11/10/2021.

22 42. Plaintiff is entitled to recover the other wages, damages, penalties, awards and remedies
23 set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled
24 "Individual Causes of Action for Labor Law Violations."

25 **FIFTH CAUSE OF ACTION -- FAILURE TO PROVIDE/PERMIT USE OF/PAY OUT**
26 **ACCRUED SICK TIME BY PLAINTIFF ANA ROSA IBARRA AGAINST ALL**
27 **DEFENDANTS**

28 43. Plaintiff hereby incorporates and fully realleges by this reference the allegations

1 contained in paragraphs 1 through 14 of this Complaint as though fully set forth here.

2 44. At all times herein, pursuant to Labor Code § 246, employers in California are required
3 to provide employees with sick leave that accrues at the rate mandated in § 246. Additionally,
4 Labor Code § 246(i) requires employers to notify employees of the amount of sick leave they
5 have accrued either in their wage statements or in a separate writing provided to each employee
6 on the designated pay date with the employee's payment of wages.

7 45. Pursuant to Labor Code § 233, employers are required to permit employees to use
8 accrued sick time for any of the reasons specified under California law including the following:
9 diagnosis, care or treatment of an existing health condition of (or preventive care for) an
10 employee or an employee's family member. Labor Code § 246.5 specifically prohibits an
11 employer from denying employees the right to use accrued sick days or attempting to exercise
12 their right to use accrued sick time.

13 46. Once accrued sick leave is used by an employee, Labor Code 246(h) requires
14 employers to pay out the used sick leave no later than the payday for the next regular payroll
15 period after the sick leave was taken.

16 47. Employers in California were/are also required to comply with California's
17 supplemental sick leave laws relative to the COVID pandemic.

18 48. Because of the amount of time ANA ROSA IBARRA (and the other aggrieved
19 employees encompassed by Plaintiff's PAGA Notice Letter) were employed by the CUSTOM
20 INDUSTRIES DEFENDANTS, California law required that said employees be provided with
21 sick leave benefits. Nevertheless, at all times during the statute of limitations period applicable
22 to this cause of action, in violation of Labor Code § 233 and Labor Code § 246.5, said
23 Defendants failed to provide ANA ROSA IBARRA (and the other aggrieved employees
24 encompassed by Plaintiff's PAGA Notice Letter) with the sick leave time mandated by law.
25 Additionally, said employees (including ANA ROSA IBARRA) were not notified of the
26 amount of their accrued sick leave time, either in their wage statements or in a separate writing
27 provided on the designated pay date with their wage statements.

28 49. Moreover, when ANA ROSA IBARRA (and the other similarly aggrieved employees

encompassed by Plaintiff's PAGA Notice Letter) called in sick, they were not allowed to use their accumulated sick time and were not paid any sick time for time taken off for reasons permitted under California sick leave laws.

50. The last date that Defendants failed to pay Plaintiff ANA ROSA IBARRA the sick pay that she was due was on November 8, 2021. Defendants mailed a check to Plaintiff in the amount of \$701.36, lesser amount than due, which was received by Plaintiff on 11/10/2021.

51. At all times herein, in violation of Labor Code § 233 and Labor Code § 246.5, the CUSTOM INDUSTRIES DEFENDANTS failed to provide their employees (including ANA ROSA IBARRA and the other similarly aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with the supplemental sick leave time mandated by law and failed to pay said employees within the timeframe mandated under the law.

52. The CUSTOM INDUSTRIES DEFENDANTS, and each of them, have also violated and continues to violate Labor Code § 246(i) and/or §248.2(d)(2)(C)) by failing to notify their employees (including ANA ROSA IBARRA) as to the amount of their available sick leave hours (including COVID-related variable hours) either in their wage statements or in a separate writing provided to employees on the designated pay date along with the employees' payment of wages.

53. The last date that Defendants failed to pay Plaintiff ANA ROSA IBARRA the supplemental sick leave pay that she was due was on November 8, 2021. Defendants mailed a check to Plaintiff in the amount of \$701.36, lesser amount than due, which was received by Plaintiff on 11/10/2021.

54. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

SIXTH CAUSE OF ACTION – FAILURE TO PAY WAGES/TIMELY PAY WAGES FOR ALL TIME WORKED BY PLAINTIFF ANA ROSA IBARRA AGAINST ALL DEFENDANTS

55. Plaintiff hereby incorporates and fully realleges the allegations contained in paragraphs

1 through 54, except for paragraphs 15, 22, 27, 35, and 43 of this Complaint.

56. At all times herein, pursuant to Labor Code § 200, wages in California include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Wages under Labor Code § 200 not only includes regular, overtime and minimum wages, it also includes vested benefits such as accrued vacation pay/personal time off (PTO), sick leave benefits owed due to use of accrued sick leave, and premium pay for missed, untimely, restricted and/or interrupted meal periods and/or rest breaks.

57. All non-exempt employees must be paid all wages earned within the timeframes set forth in Labor Code § 204.

58. At all times during the statute of limitations period applicable to this cause of action, the CUSTOM INDUSTRIES DEFENDANTS and each of them willfully, knowingly, and intentionally failed to pay ANA ROSA IBARRA (and the other aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) for all the time they actually worked and earned wages (including regular wages, overtime wages and/or minimum wages) by failing to pay them: 1) for time worked off-the-clock, 2) for unfairly rounding the employees' punch-in/out times to the unjust benefit of Defendants; 3) for not paying employees premium wages owed for missed, untimely, on-duty, short, interrupted and/or or restricted meal periods and/or rest breaks; 4) for not accurately calculating the times worked by said employees and/or the wages owed to said employees, 5) for not paying out vested vacation time, 6) for not paying out sick time used in accordance with California law, etc.

59. Since such wages were not paid, said wages were also not paid in accordance with the time frames set forth in Labor Code § 204.

60. The last date that Defendants failed to pay Plaintiff ANA ROSA IBARRA the wages she was owed (including regular wages, overtime wages, minimum wages, premium wages, vested vacation/PTO hours, and sick time wages) was on November 8, 2021. Defendants mailed a check to Plaintiff in the amount of \$701.36, lesser amount than due, which was received by Plaintiff on 11/10/2021.

61. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

**SEVENTH CAUSE OF ACTION -- FAILURE TO INDEMNIFY FOR EXPENDITURES
BY PLAINTIFF ANA ROSA IBARRA AGAINST ALL DEFENDANTS**

62. Plaintiff hereby incorporates and fully realleges by this reference the allegations contained in paragraphs 1 through 14 of this Complaint as though fully set forth here.

63. At all times herein, pursuant to Labor Code § 2802(a), an employer is required to indemnify employees for all necessary expenditures incurred by the employee in the discharge of the employee’s duties or in obedience to the directions of the employer.

64. At all times during the statute of limitations period applicable to this cause of action, in violation of Labor Code § 2802(a), the CUSTOM INDUSTRIES DEFENDANTS failed to indemnify ANA ROSA IBARRA (and the other aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter) for necessary expenditures incurred by them in the discharge of their duties or in obedience to the directions of Defendants including the following expenditures: Use of Employees’ personal vehicles resulting in necessary expenditures for gas, vehicle maintenance, and insurance; availability and/or use of Employees’ personal cell phone devices.

65. The last date that Defendants failed to pay Plaintiff ANA ROSA IBARRA for business expenses that she was due was on November 8, 2021. Defendants mailed a check to Plaintiff in the amount of \$701.36, lesser amount than due, which was received by Plaintiff on 11/10/2021.

66. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

**EIGHTH CAUSE OF ACTION -- FAILURE TO PROVIDE ACCURATE WAGE
STATEMENTS BY PLAINTIFF ANA ROSA IBARRA AGAINST ALL DEFENDANTS**

67. Plaintiff hereby incorporates and fully realleges the allegations contained in paragraphs

1 through 66, except for paragraphs 15, 22, 27, 35, 43, 55 and 62 of this Complaint.

68. At all times herein, pursuant to Labor Code § 226(a), each time an employer pays wages to an employee, the employer is required to furnish the employee with an “accurate itemized statement in writing” that itemizes the following: 1) gross wages earned; 2) total hours worked; 3) the number of piece-rate units earned and the applicable piece rates; 4) all deductions; 5) net wages earned; 6) the inclusive dates for which the employee is being paid; 7) name of the employee and only the last 4 digits of her social security number or employee I.D. number; 8) the name and address of the legal entity of the employer; 9) all hourly rates in effect to the pay period and corresponding number of hours worked at each hourly rate.

69. At all times during the statute of limitations period applicable to this cause of action, Defendants violated Labor Code §226(a) in all of the following ways with respect to ANA ROSA IBARRA (and the other similarly aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter):

- a. The wage statements that were provided to said employees (including ANA ROSA IBARRA) were not accurate because, among other things, the statements did not accurately record the gross and net wages earned by said employees in that the statements: 1) did not accurately record the minimum wages or regular time wages earned under California law as set forth herein, 2) did not accurately record the overtime pay earned as set forth herein, 3) did not include the premium pay owed due to missed, untimely, short, on-duty, restricted, interrupted meal periods/rest breaks as set forth herein; 4) did not include the premium pay owed for split-shift pay as set forth herein; 5) did not include wages owed and due for vested vacation/PTO hours; and 6) did not take into account regular rate (as opposed to basic rate) of owed wages and premium pay.
- b. The wage statements did not accurately record the total hours worked by said employees in that, among other times, the statements did not include: 1) times that said employees worked off-the-clock, 2) times that were unfairly rounded, 3) all the time that was reported on the employees’ time records, etc.

- 1 c. The wage statements did not accurately record the legally acceptable deductions
- 2 from wages earned.
- 3 d. The wage statements did not accurately state the hourly rate(s) in effect to the pay
- 4 period and/or the corresponding number of hours worked at each hourly rate.
- 5 e. The wage statements did not include the inclusive dates for which said employees
- 6 were being paid.
- 7 f. The wage statements did not provide/accurately provide only the last four digits of
- 8 the employee's social security number or another employee I.D. number.
- 9 g. The wage statements did not identify the accurate name and address of the legal
- 10 entity of the employer.

11 70. As a result of the above statutory deficiencies in the wage statements provided to ANA
12 ROSA IBARRA (and the other similarly aggrieved employees encompassed by Plaintiff's
13 PAGA Notice Letter), said employees (including Plaintiff) were not reasonably able to
14 promptly and easily determine from the wage statements alone one or more of the following
15 items of information:

- 16 a. The accurate amount of gross wages earned and paid for the pay period,
- 17 b. The accurate amount of net wages earned and paid for the pay period,
- 18 c. The accurate total number of hours worked,
- 19 d. The accurate deductions that were made and/or the deductions made from the
- 20 gross wages to determine the net wages paid during the pay period,
- 21 e. The accurate inclusive dates of the period for which wages were paid,
- 22 f. The accurate hourly rates in effect during the pay period and/or the corresponding
- 23 number of hours worked at each hourly rate,
- 24 g. The accurate name and address of the legal entity of the employer.

25 71. A reasonable person would also have been unable to readily discern the above
26 information without reference to other documents or information.

27 72. The last date that Defendants failed to provide Plaintiff ANA ROSA IBARRA with an
28 accurate wage statement was on November 8, 2021.

73. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “Individual Causes of Action for Labor Law Violations.”

NINTH CAUSE OF ACTION FOR FAILURE TO PAY WAGES OWED AT TIME OF SEPARATION BY PLAINTIFF ANA ROSA IBARRA AGAINST ALL DEFENDANTS

74. Plaintiff hereby incorporates and fully realleges the allegations contained in paragraphs 1 through 66, except for paragraphs 15, 22, 27, 35, 43, 55 and 62 of this Complaint.

75. Pursuant to Labor Code § 201, employers are required to immediately pay employees all wages due at the time employees are discharged. Additionally, pursuant to Labor Code § 202, if an employee gives at least 72-hours previous notice of their intent to quit/retire, the employer is required to pay the employee all wages due the time the employee quits/retires. Pursuant to Labor Code § 202, if an employee does not give 72-hours previous notice of their intention to quit/retire, the employer is required to pay the employee all wages due the employee within 72-hours of the time the employee leaves employment.

76. At all times during the applicable statute of limitations period, in violation of Labor Code §§ 201-202, ANA ROSA IBARRA (and the other similarly aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter) were not timely paid all wages due them at the time of their separation from employment even though Defendants knew such payment was owed and it was within Defendants’ control to make such payment in accordance with Labor Code §§ 201-202. With respect to Plaintiff ANA ROSA IBARRA, she had received a voice message from Defendant Tom McAfee either on 11/8 or 9/2021, to the effect “I have good news for you.” When Plaintiff returned the call, she was told that she was terminated. Plaintiff received her last paycheck in mail on 11/10/2021. Defendants thereby willfully violated Labor Code §§ 201-202 and the applicable IWC Wage Order(s).

77. Because ANA ROSA IBARRA (and the other aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter) were not paid all the wages owed to them in accordance with the timeframes set forth in Labor Code §§ 201-202, pursuant to Labor Code § 203, the

1 CUSTOM INDUSTRIES DEFENDANTS were required to pay ANA ROSA IBARRA (and
2 the other similarly aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) their
3 regular wages from the due date thereof at the same rate until paid, up to a maximum of thirty
4 (30) days of pay. However, not only did Defendants fail to pay the wages owed said employees
5 (including Plaintiff) at the time of their separation from employment, but the CUSTOM
6 INDUSTRIES DEFENDANTS also failed to provide said employees (including Plaintiff) with
7 the continuous wages mandated under Labor Code § 203.

8 78. As applicable under California law to the allegations made in this cause of action,
9 Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth
10 below in the Prayer for Damages, Awards and Other Relief under the section entitled
11 "Individual Causes of Action for Labor Law Violations."

12 **TENTH CAUSE OF ACTION -- FAILURE TO PROVIDE EMPLOYMENT RECORDS**
13 **BY PLAINTIFF ANA ROSA IBARRA AGAINST DEFENDANTS CUSTOM**
14 **INDUSTRIES, INC. AND DOES 1 THROUGH 10**

15 79. Plaintiff hereby incorporates and fully realleges by this reference the allegations
16 contained in paragraphs 1 through 14 of this Complaint as though fully set forth here.

17 80. At all times herein, pursuant to Labor Code § 226(b), employers are required to afford
18 their current and former employees the right to inspect or copy all records pertaining to their
19 employment upon reasonable notice.

20 81. Pursuant to Labor Code § 226(c), an employer who receives a written or oral request to
21 inspect or copy records must comply with the request as soon as practicable, but no later than
22 21 calendar days from the date of the request.

23 82. Pursuant to Labor Code § 226(b), if the employer provides copies of the records, the
24 actual cost of reproduction may be charged to the employee.

25 83. Pursuant to Labor Code § 226(b), ANA ROSA IBARRA (via written correspondence
26 transmitted via certified letter with return receipt) requested all records pertaining to Plaintiff's
27 employment with the CUSTOM INDUSTRIES, INC.

28 84. CUSTOM INDUSTRIES, INC. received the request but failed to provide all the

1 requested documents. As a result, CUSTOM INDUSTRIES, INC. prevented MS. IBARRA
2 from discovering all facts and/or theories of liability to support the allegation in this action.

3 85. As applicable, Plaintiff is entitled to recover the damages, penalties, awards and
4 remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section
5 entitled "Individual Causes of Action for Labor Law Violations."

6 **ELEVENTH CAUSE OF ACTION -- VIOLATION OF LABOR LAWS GIVING RISE**
7 **TO AN ACTION PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
8 **(PAGA) -- BY ANA ROSA IBARRA ON BEHALF OF HERSELF AND OTHER**
9 **CURRENT AND FORMER AGGRIEVED EMPLOYEES AGAINST ALL**
10 **DEFENDANTS**

11 86. Plaintiff hereby incorporates and fully realleges the allegations contained in paragraphs
12 1 through 85, except for paragraphs 15, 22, 27, 35, 43, 55, 62, 67 and 79 of this Complaint.

13 87. Plaintiff brings this cause of action pursuant to the Private Attorneys General Act
14 (Labor Code §2699) on behalf of herself and all aggrieved employees as described as follows:
15 All current and former employees of Defendants who performed non-exempt work for said
16 entities/individuals and were either: 1) classified as a non-exempt employee or 2) should have
17 been classified as a non-exempt employee. Said employees are limited to employees
18 performing work for said entities/individuals at any time during the following time period: One
19 year prior to October 13, 2022 (the date of Plaintiff's PAGA Notice Letter) to the present and
20 continuing until the unlawful employment practices are stopped or a judgment is obtained.

21 88. Plaintiff has exhausted all statutory prerequisites to filing a Private Attorneys General
22 Action in this matter by providing written notice to the Labor and Workforce Development
23 Agency on or about October 13, 2022, that Defendants had violated and were continuing to
24 violate provisions of the California Labor Code. Pursuant to the PAGA, said filing resulted in a
25 tolling of the applicable statute of limitation(s).

26 89. At least sixty-five days has passed since Plaintiff provided written notice (by online
27 submission to the Labor and Workforce Development Agency and by certified mail to
28 Defendants) that Defendants had violated and continued to violate provisions of the California

1 Labor Code. Plaintiff has not received notice from the LWDA that it intends to prosecute an
2 action against Defendants. Therefore, as statutorily permitted by Labor Code § 2699.3, Plaintiff
3 has the right to commence a Private Attorneys General Action (PAGA) pursuant to Labor Code
4 § 2699

5 **COUNT ONE – FAILURE TO PAY OVERTIME WAGES**

6 90. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and/or
7 other aggrieved employees) is entitled to recover the penalties, awards and remedies set forth
8 below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA
9 Cause of Action.”

10 **COUNT TWO -- FAILURE TO PAY MINIMIUM WAGES**

11 91. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and/or
12 other aggrieved employees) is entitled to recover the penalties, awards, and remedies set forth
13 below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA
14 Cause of Action.”

15 **COUNT THREE – FAILURE TO PROVIDE MEAL PERIODS/PREMIUM PAY**

16 92. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and/or
17 other aggrieved employees) is entitled to recover the penalties, awards and remedies set forth
18 below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA
19 Cause of Action.”

20 **COUNT FOUR – FAILURE TO PROVIDE REST BREAKS/PREMIUM PAY**

21 93. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and/or
22 other aggrieved employees) is entitled to recover the damages, penalties, awards, and remedies
23 set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled
24 “PAGA Cause of Action.”

25 **COUNT FIVE – FAILURE TO COMPLY WITH SICK LEAVE LAWS**

26 94. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and/or
27 other aggrieved employees) is entitled to recover the penalties, awards and remedies set forth
28 below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA

Cause of Action.”

COUNT SIX -- FAILING TO PAY/TIMELY PAY

WAGES FOR ALL TIME WORKED

95. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and other similarly aggrieved employees) is entitled to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT SEVEN – FAILURE TO INDEMNIFY FOR BUSINESS EXPENSES

96. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and other similarly aggrieved employees) is entitled to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT EIGHT – FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

97. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and/or other aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT NINE – FAILURE TO PAY WAGES OWED AT SEPARATION

98. As applicable under California law, Plaintiff (on behalf of the LWDA, herself, and/or other aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT TEN -- MISCLASSIFICATION OF EMPLOYEES

AS EXEMPT EMPLOYEES

99. At all times that aggrieved employees encompassed by Plaintiff’s PAGA Notice Letter provided work for the CUSTOM INDUSTRIES DEFENDANTS, they were non-exempt employees of the CUSTOM INDUSTRIES DEFENDANTS for the following reasons:

- a. They were either not paid a salary or the salary they were paid was not at least

twice the minimum wage for full-time employment.

b. Their primary duties did not consist of administrative, executive, or professional tasks.

c. Their job duties did not involve the use of discretion or independent judgment.

d. Other reasons set forth in the applicable Industrial Wage Order.

100. Based on the above and pursuant to California law, at all times herein, the aggrieved employees encompassed by Plaintiff's PAGA Notice Letter were non-exempt employees rather than exempt employees of the CUSTOM INDUSTRIES DEFENDANTS.

101. During the applicable statutory period, the employees encompassed by Plaintiff's PAGA Notice Letter were misclassified as exempt employees. Misclassifying employees as exempt employees was done willfully by Defendants for the purpose of maximizing the business profits of CUSTOM INDUSTRIES, INC. and DOES 1 through 10 as well as the personal assets of TOM McAFEE, CHARLOTTE McAFEE and DOES 11 through 30 to the illegal detriment of said employees. This was accomplished by depriving said employees of employment benefits that employers owe to non-exempt employees (but not exempt employees) under California law including the following: Employer contributions to federal and state tax accounts (including Social Security), sick leave benefits, medical benefits, reimbursement of business expenses under Labor Code §2802, overtime wages, legally compliant rest breaks and meal periods, workers' compensation benefits, legally complaint and accurate wage statements, etc., as set forth in this complaint.

102. Under California law, Plaintiff (on behalf of the LWDA and/or other aggrieved employees) is entitled to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief for "PAGA Cause of Action."

COUNT ELEVEN - FAILURE TO PROVIDE SEATING

103. At all times herein, pursuant to the applicable Industrial Wage Order (IWO), the CUSTOM INDUSTRIES DEFENDANTS were required to provide aggrieved employees encompassed by Plaintiff's PAGA Notice Letter) with seating as follows: 1) Suitable seating when the nature of the Employees' work reasonably permits use of seats and 2) Suitable seating

1 in reasonable proximity to Employee's work areas for use by Employees when a) they are not
2 engaged in active duty, b) their work requires standing and c) such seats would not interfere
3 with the performance of their duties. Specifically, employees involved in the manufacture,
4 production and/or fabrication of glass are not provided with mandated seating.

5 104. The CUSTOM INDUSTRIES DEFENDANTS failed to provide aggrieved employees
6 encompassed by Plaintiff's PAGA Notice Letter with the legally required seating.

7 105. Under California law, Plaintiff (on behalf of the LWDA, herself, and/or other aggrieved
8 employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer
9 for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

10 **TWELFTH CAUSE OF ACTION – UNFAIR/ILLEGAL BUSINESS PRACTICES BY**
11 **PLAINTIFF ANA ROSA IBARRA, AGAINST DEFENDANT CUSTOM INDUSTRIES,**
12 **INC. AND DOES 1 THROUGH 10**

13 106. Plaintiff incorporates and fully realleges the allegations contained in paragraphs 1
14 through 105, except for paragraphs 15, 22, 27, 35, 43, 55, 62, 67, 79 and 86 of this Complaint.

15 107. Business and Professions Code §17200 provides in pertinent part ". . . [U]nfair
16 competition shall mean and include any unlawful, unfair or fraudulent business act or practice
17"

18 108. Business and Professions Code §17205 provides that unless otherwise expressly
19 provided, the remedies or penalties provided for unfair competition "are cumulative to each
20 other and to the remedies or penalties available under all other laws of this state."

21 109. Business and Professions Code §17204 provides that an action for any relief from unfair
22 competition may be prosecuted by any person who has suffered injury in fact and has lost
23 money or property as a result of such unfair competition.

24 110. CUSTOM INDUSTRIES INC. and DOES 1 through 10 have engaged in unlawful
25 business acts or practices, including those set forth in the preceding paragraphs of the
26 Complaint, and, thereby, have wrongfully deprived Plaintiff ANA ROSA IBARRA of the
27 minimum working standards and conditions due Plaintiff under the California Labor Code, the
28 Code of Regulations and/or applicable IWC Wage Order(s), as set forth herein.

1 111. CUSTOM INDUSTRIES INC. and DOES 1 through 10 have also engaged in unfair
2 business practices in California by practicing, employing, and utilizing the employment
3 practices outlined in the preceding paragraphs, including, but not limited to:

- 4 a. Requiring employees (including Plaintiff) to perform labor without paying/timely
5 paying them the requisite compensation (including regular wages, overtime
6 wages, minimum wages, etc.),
- 7 b. Not providing employees (including Plaintiff) with the requisite meal periods
8 and/or rest breaks or the applicable premium pay,
- 9 c. Not providing employees (including Plaintiff) with required sick leave benefits,
10 failing to permit employees to use accrued sick time and failing to pay employees
11 accrued and legally used sick leave benefits,
- 12 d. Not paying employees vested vacation wages,
- 13 e. Not indemnifying employees (including Plaintiff) for necessary business
14 expenditures,
- 15 f. Not paying/timely paying employees (including Plaintiff) all the wages owed
16 them at the time of their separation from employment,
- 17 g. Not providing employees (including Plaintiff) with accurate wage statements.

18 112. CUSTOM INDUSTRIES INC. and DOES 1 through 10 use of such illegal and unfair
19 practices constitutes an unfair business practice, unfair competition and provides an unfair
20 advantage over said Defendants' competitors who comply with the above-referenced
21 employment laws and regulations.

22 113. CUSTOM INDUSTRIES INC. and DOES 1 through 10 have engaged in said unlawful
23 and unfair business practices on a continuous basis for many years up until the present time.

24 114. As a result of said unlawful and/or unfair business practices resulting in unfair
25 competition prohibited by Business and Professions Code § 17200, Plaintiff has suffered injury
26 in fact and has lost money and/or property as described herein.

27 115. As a direct and proximate result of said Defendants' unlawful and/or unfair business
28 practices in violation of Business and Professions Code § 17200, said Defendants are required

1 to pay restitution, as necessary and according to proof, to restore any and all monies withheld,
2 acquired and/or converted by said Defendants by means of the unfair practices complained of
3 herein.

4 116. Further, if said Defendants are not enjoined from the conduct set forth above, said
5 Defendants will continue to practice, employ, and utilize the employment practices outlined in
6 the preceding paragraphs. Therefore, the court is requested to issue a permanent injunction
7 prohibiting Defendants from engaging in the foregoing conduct.

8 117. As necessary, the court is requested to appoint a receiver to establish the total monetary
9 relief owed by said Defendants.

10 118. CUSTOM INDUSTRIES INC. and DOES 1 through 10 are also subject to an award of
11 attorneys' fees and costs of suit on this cause of action pursuant to Code of Civil Procedure
12 §1021.5.

13 119. As applicable under California law, the other damages, penalties, awards, and remedies
14 set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled
15 "Unfair Business Practices Cause of Action" are also being sought by way of this cause of
16 action.

17 **PRAYER FOR DAMAGES, AWARDS AND OTHER RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, in
19 an amount within the jurisdiction of the above-entitled court as follows:

20 **Individual Causes of Action for Labor Law Violations**

- 21 1. Unpaid/underpaid wages or other pay (including but not limited to regular wages,
22 overtime wages, minimum wages and/or vested vacation time) owed to Plaintiff under the
23 Labor Code and/or applicable Industrial Wage Order in the amount of \$50,000.
- 24 2. All premium pay/wages owed to Plaintiff under the Labor Code, applicable Industrial
25 Wage Order(s) and/or local law/ordinance for untimely, missed, or interrupted meal
26 periods and/or rest breaks in the amount of \$25,000.
- 27 3. Continuing wages to the fullest extent under Labor Code § 203 in the amount of \$4,000.
- 28 4. Reimbursement of expenditures to the fullest extent permitted under the Labor Code

- 1 and/or applicable Industrial Wage Order(s) in the amount of \$2,500.
- 2 5. All statutory penalties which the Labor Code permits an individual employee to recover
- 3 from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s)
- 4 and/or applicable local laws/ordinances which were violated with respect to Plaintiff's
- 5 employment as alleged herein, in the amount of \$10,000.
- 6 6. All liquidated damages which the Labor Code permits an individual employee to recover
- 7 from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s)
- 8 and/or applicable local laws/ordinances which were violated with respect to Plaintiff's
- 9 employment as alleged herein, in the amount of \$10,000.
- 10 7. Any and all other economic, non-economic and consequential damages to the fullest
- 11 extent recoverable under California law in the amount of \$50,000, according to proof.
- 12 8. All equitable relief permitted under California law, according to proof.
- 13 9. Attorney's fees to the fullest extent permitted under California law, according to proof.
- 14 10. Costs to the fullest extent permitted under California law.
- 15 11. Prejudgment interest to the fullest extent permitted under California law.
- 16 12. Post-judgment interest and to the fullest extent permitted under California law.
- 17 13. For such further relief as the court deems just and proper under California law.

18 **PAGA Cause of Action**

- 19 1. All civil penalties and/or other penalties and remedies recoverable under the PAGA for
- 20 violations of the Labor Code, applicable Industrial Wage Order(s) and/or applicable
- 21 regulation, local law/ordinance, in the amount of \$2,500,000. To the extent required by
- 22 the PAGA, the civil penalties recovered on behalf of all aggrieved employees shall be
- 23 distributed seventy-five percent (75%) to the LWDA and the remaining twenty-five
- 24 percent (25%) distributed to Plaintiff and all similarly aggrieved employees.
- 25 2. Attorneys' fees and/or costs to the full extent under the PAGA, the Labor Code, the
- 26 applicable Industrial Wage Order and/or other applicable California law.
- 27 3. Prejudgment interest to the fullest extent permitted under California law.
- 28 4. Post-judgment interest to the fullest extent permitted by California law.

5. For such further relief as the court deems just and proper.

Unfair Business Practices Cause of Action

1. Full restitution of all monies withheld, acquired and/or converted by Defendants by means of unlawful and/or unfair business practices prohibited by Bus. & Prof. Code § 17200, in the amount of \$150,000.
2. A preliminary and permanent injunction prohibiting Defendants from engaging in the unlawful and/or unfair employment practices complained of herein.
3. The appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.
4. Attorneys' fees and costs to the fullest extent permitted under California law.
5. Prejudgment interest to the fullest extent permitted under California law.
6. Post-judgment interest if applicable, to the fullest extent permitted under California law.
7. For such further relief as the court deems just and proper.

DATED: January 11, 2023

MOORADIAN LAW, APC

Zorik Mooradian

By: _____

Zorik Mooradian

Andrina G. Hanson

Nanor C. Kamberian

Attorney for Plaintiff ANA ROSA IBARRA

DEMAND FOR A JURY TRIAL

Plaintiff, ANA ROSA IBARRA, hereby demands a jury trial in the within matter.

DATED: January 11, 2023

MOORADIAN LAW, APC

Zorik Mooradian

By: _____

Zorik Mooradian

Andrina G. Hanson

Nanor C. Kamberian

Attorney for Plaintiff ANA ROSA IBARRA