

LAW OFFICES OF MARK YABLONOVICH
Mark Yablonovich (SBN 186670)
Mark@Yablonovichlaw.com
Tony Roberts (SBN 315595)
Tony@Yablonovichlaw.com
9595 Wilshire Boulevard, Suite 900
Beverly Hills, California 90212-2511
Telephone: (310) 286-0246 • Fax: (310) 407-5391

Attorneys for Plaintiff Kenneth Gibson,
a proxy for the State of California as an
aggrieved employee pursuant to the Private Attorneys General Act

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

KENNETH GIBSON, a proxy for the
State of California as an aggrieved
employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

SHIMMICK CEC JOINT VENTURE;
SHIMMICK CONSTRUCTION
COMPANY, INC.; CALIFORNIA
ENGINEERING CONTRACTORS,
INC.; AECOM, INC.; and DOES 1
through 10, inclusive,

Defendants.

Case No.: **23CV026333**

ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET SEQ.

**COMPLAINT FOR CIVIL PENALTIES FOR
VIOLATIONS OF CALIFORNIA LABOR
CODE, PURSUANT TO PAGA, §§ 2698, ET SEQ.**

Jury Trial Demanded

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

01/26/2023 at 01:19:00 PM

By: Angela Linhares,
Deputy Clerk

Plaintiff Kenneth Gibson (“Plaintiff”), a proxy for the State of California as an aggrieved employee, alleges, on behalf the State of California and all aggrieved employees, as follows:

JURISDICTION AND VENUE

1. This is a law enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698 et seq. (“PAGA”) to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former employees who worked for Shimmick CEC Joint Venture; Shimmick Construction Company, Inc.; California Engineering Contractors, Inc.; AECOM, Inc., and DOES 1 through 10, inclusive (collectively “Defendants”) in California as non-exempt, hourly-paid employees, and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint (“Aggrieved Employees”), at any time between one year before Plaintiff’s submission of the LWDA Notice (defined below) in advance of Plaintiff’s filing of this complaint (in addition to all days the period was stayed or tolled) until judgment. Plaintiff’s pro-rata share of civil penalties sought in this action does not exceed \$75,000.

2. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure section 410.10 and the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. There is no basis for federal diversity jurisdiction in this action given that the State of California, the real party in interest, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013) (holding when the real party in interest is a state, it cannot be a “citizen” for purposes of diversity jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the

1 amount in controversy requirement for federal diversity jurisdiction in this action, and that
2 diversity jurisdiction cannot be established when Plaintiff's share of the civil penalties
3 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4 5. Venue is proper in this county because Defendants employ Aggrieved
5 Employees in this county and Labor Code violations occurred throughout California, including
6 in this county. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60
7 Cal.App.5th 1069, 1075 (2021) ("Venue is proper in any county in which an aggrieved
8 employee worked and Labor Code violations allegedly occurred.")

9 6. PAGA authorizes aggrieved employees to sue as private attorneys general their
10 current or former employers for civil penalties for violations of various provisions in the
11 California Labor Code.

12 THE PARTIES

13 7. The State of California is the real party in interest under PAGA.

14 8. Plaintiff is a resident of Santa Clara County, California. Defendants employed
15 Plaintiff from approximately September of 2021 to approximately February 2022 as a non-
16 exempt, hourly-paid employee for Defendants in California. Plaintiff worked as a watchman.
17 Plaintiff typically worked approximately eight or more hours per workday and forty hours or
18 more per week. Plaintiff's job duties included, but were not limited to. Providing onsite security
19 for a construction location.

20 9. Plaintiff is informed and believes, and alleges, that Defendant Shimmick CEC
21 Joint Venture is doing business in California, and at all times mentioned, an employer whose
22 employees are engaged throughout this county and the State of California.

23 10. Plaintiff is informed and believes, and alleges, that Defendant Shimmick
24 Construction Company, Inc. is doing business in California, and at all times mentioned, an
25 employer whose employees are engaged throughout this county and the State of California.

26 11. Plaintiff is informed and believes, and alleges, that Defendant California
27 Engineering Contractors, Inc. is doing business in California, and at all times mentioned, an
28 employer whose employees are engaged throughout this county and the State of California.

12. Plaintiff is informed and believes, and alleges, that Defendant AECOM, Inc. is doing business in California, and at all times mentioned, an employer whose employees are engaged throughout this county and the State of California.

13. Plaintiff is unaware of the true names or capacities of the Defendants sued in this complaint under the fictitious names DOES 1 through 10 and will seek leave of this Court to amend the complaint and serve such fictitiously named defendants once their names and capacities become known. Plaintiff is informed and believes, and alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of the other named Defendants, and that each and all of the acts and omissions alleged in this complaint were performed by, or is attributable to, Defendants each acting as the agent, employee, alter ego, joint employer, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

14. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of in this Complaint. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the harm and violations alleged in this Complaint.

15. Plaintiff is informed and believes, and alleges, that each of the Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged in this Complaint.

PAGA REPRESENTATIVE ALLEGATIONS

16. Plaintiff is informed and believes that Defendants operate, manage, and/or staff constructions sites for transportation and transit projects throughout California, including but not limited to providing security services. Upon information and belief, Defendants maintain a centralized Human Resources department for all non-exempt, hourly-paid employees working for Defendants in California, including Plaintiff and Aggrieved Employees. At all relevant times, Defendants issued and maintained uniform standardized practices and procedures for all

1 non-exempt, hourly-paid employees in California, including Plaintiff and Aggrieved
2 Employees, regardless of their location or position.

3 17. Upon information and belief, Defendants process payroll for all non-exempt,
4 hourly-paid employees working for Defendants in California, including Plaintiff and Aggrieved
5 Employees. Further, Defendants issue the same uniform and formatted wage statements to all
6 non-exempt, hourly-paid employees in California, irrespective of their work location, position,
7 or manner in which each employee's employment ended. Defendants' payroll department
8 processed payroll for non-exempt, hourly-paid employees in the same manner throughout
9 California. In other words, Defendants utilized the same methods and formulas when calculating
10 wages and any other remunerations due to Plaintiff and Aggrieved Employees in California.

11 18. Defendants continue to employ non-exempt, hourly-paid employees in
12 California.

13 19. Plaintiff is informed and believes, and alleges, that at all times mentioned,
14 Defendants were advised by skilled lawyers and other professionals, employees, and advisors
15 knowledgeable about California labor and wage law, employment, and personnel practices, and
16 about the requirements of California law.

17 20. Plaintiff is informed and believes, and alleges, that Plaintiff and Aggrieved
18 Employees were not fully compensated because, among other reasons, all hours worked may not
19 have been recorded, may have been rounded, and/or because Defendants did not always pay for
20 all hours worked.

21 21. Plaintiff is informed and believes, and alleges, that Defendants knew or should
22 have known that Plaintiff and Aggrieved Employees were entitled to receive certain wages for
23 overtime compensation and that they were not receiving overtime wages at the correct overtime
24 rate and/or for work that was required to be performed. Defendants have failed to compensate
25 Plaintiff and Aggrieved Employees with all required overtime pay and/or at the correct rate of
26 overtime pay.

27 22. Plaintiff is informed and believes, and alleges, that Defendants knew or should
28 have known that Plaintiff and Aggrieved Employees were entitled to receive at least minimum

1 wages for all hours worked. In violation of the California Labor Code, Plaintiff and Aggrieved
2 Employees were not paid at least minimum wages for all work performed.

3 23. Plaintiff is informed and believes, and alleges, that Defendants knew or should
4 have known that Plaintiff and Aggrieved Employees were entitled to meal periods in accordance
5 with the Labor Codes and applicable Industrial Welfare Commission (“IWC”) Wage Order; that
6 Plaintiff and Aggrieved Employees were entitled to payment of one additional hour of pay at
7 their regular rates of compensation when they were not provided timely, uninterrupted, thirty-
8 minute meal periods; and that Plaintiff and Aggrieved Employees were not provided with all
9 meal periods or payments of one additional hour of pay at their regular rates of compensation
10 when they did not receive a full, timely, uninterrupted thirty-minute meal period.

11 24. Plaintiff is informed and believes, and alleges, that Defendants failed to provide
12 Plaintiff and Aggrieved Employees with written notice that sets forth the amount of paid sick
13 leave and/or supplemental sick leave available, or paid time off leave provided in lieu of sick
14 leave, for use on either Plaintiff’s and Aggrieved Employees’ itemized wage statements or in
15 separate writings provided on the designated pay dates with Plaintiff’s and Aggrieved
16 Employees’ payments of wages.

17 25. Plaintiff is informed and believes, and alleges, that Defendants knew or should
18 have known that Plaintiff and Aggrieved Employees were entitled to receive at least two hours
19 of pay, or at least half of their regularly scheduled hours worth of pay for those shifts regularly
20 over four hours when Plaintiff or Aggrieved Employees reported to work for their scheduled
21 shift but were put to work for less than half of their scheduled shift, but failed to do so.

22 26. Plaintiff is informed and believes, and alleges, Defendants’ policies and practices
23 resulted in the payment of less than statutorily required wages to Plaintiff and Aggrieved
24 Employees. Defendants acted with the intent to deprive Plaintiff and Aggrieved Employees of
25 statutory wages, including, but not limited to, overtime wages, minimum wages, sick pay wages,
26 reporting time wages, and meal period premium wages, to which they were entitled to under
27 California law.

28 27. Plaintiff is informed and believes, and alleges, that at all times mentioned,

Defendants knew or should have known that they had a duty to compensate Plaintiff and Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay such compensation, but failed to do so, and falsely represented to Plaintiff and Aggrieved Employees that they were properly denied wages, all in order to increase Defendants' profits.

28. Plaintiff is informed and believes, and alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and Aggrieved Employees were not provided complete and accurate wage statements.

29. Plaintiff is informed and believes, and alleges, that Defendants knew or should have known that Defendants had a duty to maintain accurate and complete payroll records in accordance with the Labor Code and applicable IWC Wage Order but failed to do so.

30. Plaintiff is informed and believes, and alleges, that Defendants knew or should have known that Defendants had a duty to maintain accurate and complete time records in accordance with the Labor Code and applicable IWC Wage Order but failed to do so.

31. Plaintiff is informed and believes, and alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to the timely payment of wages during their employment. In violation of the California Labor Code, Plaintiff and Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and reporting time wages, within permissible time periods.

32. Plaintiff is informed and believes, and alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff and Aggrieved Employees did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and reporting time wages, within permissible time periods.

33. Plaintiff is informed and believes, and alleges, that Defendants knew or should

1 have known that they had a duty to provide Plaintiff and Aggrieved Employees with written
2 notice of the material terms of their employment with Defendants as required by the California
3 Wage Theft Prevention Act but have failed to do so.

4 34. Plaintiff is informed and believes, and alleges, that Defendants knew or should
5 have known that Plaintiff and Aggrieved Employees were entitled to reimbursement for all
6 business-related expenditures and/or losses they incurred during the course and scope of their
7 employment, and that they did not receive reimbursement of business-related expenditures
8 and/or losses they incurred.

9 35. At all times, PAGA provides that any provision of law under the Labor Code and
10 applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the
11 Labor and Workforce Development Agency (“LWDA”) for violations of the California Labor
12 Code and applicable IWC Wage Order may, as an alternative, be recovered by Aggrieved
13 Employees in a civil action brought on behalf of themselves and other current or former
14 employees pursuant to procedures outlined in Labor Code section 2699.3.

15 36. PAGA defines an “Aggrieved Employee” in Labor Code section 2699(c) as “any
16 person who was employed by the alleged violator and against whom one or more of the alleged
17 violations was committed.”

18 37. Plaintiff and other current and former employees of Defendants are “Aggrieved
19 Employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or
20 former employees and one or more of the alleged violations were committed against them.

21 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an Aggrieved
22 Employee, including Plaintiff, may pursue a civil action arising under PAGA after exhausting
23 the notice requirements set forth in those sections:

- 24 (a) The aggrieved employee or representative shall give written notice by
25 online filing with the LWDA and by certified mail to the employer of the
26 specific provisions of the California Labor Code alleged to have been
27 violated, including the facts and theories to support the alleged violation.
28 (b) An aggrieved employee’s notice filed with the LWDA pursuant to

Section 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee’s notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

39. Pursuant to California Labor Code section 2699.3(c), aggrieved employees, through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

- (a) The aggrieved employee or representative shall give (a) written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to Section 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation

is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

40. On or about November 22, 2022, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, accompanied by the applicable filing fee of seventy-five dollars (\$75). A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated November 22, 2022, is attached as Exhibit 1.

41. As of the filing of this complaint, 65 days have passed since Plaintiff sent the LWDA Notice described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

42. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, 2810.5 as well as all applicable IWC Wage Orders.

43. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer who violated Plaintiff's and Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth in this complaint.

44. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work, as well as the applicable IWC Wage Order(s).

45. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, 2810.5 as well as all applicable IWC

Wage Orders.

46. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code.

FIRST CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code sections 2698, et seq.

(Against all Defendants)

47. California Labor Code sections 2698, et seq. permit Plaintiff to recover various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates, among others, Labor Code sections 201, 202, 203, 204, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 as well as all applicable IWC Wage Orders.

48. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, such as Sections 225.5, 1182.12, and 2810.5.

49. Defendants' conduct, as alleged, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violations of Labor Code sections 223, 224, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with meal periods and/or pay meal period premiums, as set forth below;
- (d) Violations of Labor Code sections 1194, 1197, 1198, and the applicable

IWC Wage Order for failure to provide reporting time pay, as set forth below;

(e) Violations of Labor Code section 204 for failure to timely pay Plaintiff and Aggrieved Employees all earned wages during employment, as set forth below;

(f) Violations of Labor Code sections 201, 202, and 203, for failure to timely pay all earned wages upon termination, as set forth below;

(g) Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for failure to furnish accurate and complete wage statements to Plaintiff and Aggrieved Employees, as set forth below;

(h) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order for failure to maintain accurate payroll records, as set forth below;

(i) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain accurate time records, as set forth below;

(j) Violations of Labor Code sections 1198 and 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and Aggrieved Employees' employment with Defendants, as set forth below; and,

(k) Violations of Labor Code sections 2800, 2802, and the applicable IWC Wage Order for failure to reimburse necessary expenditures and losses incurred by Plaintiff and other Aggrieved Employees in the performance of their jobs, as set forth below.

**FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF LABOR CODE SECTIONS 510, 1198 AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11160 SUBD. 3**

50. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and every allegation set forth above and below.

1 51. California Labor Code section 1198 makes it illegal to employ an employee
2 under conditions of labor that are prohibited by the applicable IWC Wage Order. Labor Code
3 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be
4 the . . . standard conditions of labor for employees. The employment of any employee . . . under
5 conditions of labor prohibited by the order is unlawful.”

6 52. California Labor Code section 1198 and the applicable IWC Wage Order provide
7 that it is unlawful to employ persons without compensating them at a rate of pay either time-
8 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
9 worked by the person on a daily or weekly basis.

10 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
11 were required to pay Plaintiff and Aggrieved Employees working more than eight hours in a day
12 or more than forty hours in a workweek, at the rate of time and one-half for all hours worked in
13 excess of eight hours in a day or more than forty hours in a workweek.

14 54. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiff and Aggrieved Employees working more than twelve hours in a day,
16 overtime compensation at a rate of two times their regular rate of pay, and required to pay
17 Plaintiff and Aggrieved Employees at a rate of two times their regular rate of pay for hours
18 worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

19 55. An employee’s regular rate of pay includes all remuneration for employment
20 paid to, or on behalf of, the employee, such as non-discretionary bonuses, shift differentials,
21 and/or other incentive pay.

22 56. California Labor Code section 510 codifies the right to overtime compensation at
23 one and one-half times the regular rate of pay for hours worked in excess of eight hours in a day
24 or forty hours in a week or for the first eight hours worked on the seventh day of work, and to
25 overtime compensation at twice the employee’s regular rate of pay for hours worked in excess
26 of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

27 57. At all relevant times, Defendants failed to pay all overtime wages owed to
28 Plaintiff and Aggrieved Employees as they were not paid overtime premiums for all of the hours

1 they worked in excess of eight (or twelve) hours in a day, in excess of forty hours in a week,
2 and/or for the seventh consecutive day of work (or in excess of eight hours on the seventh
3 consecutive day of work), sometimes because all hours that they worked were not recorded, and
4 other times because they were simply not paid for all hours that were recorded and/or worked.
5 Plaintiff and Aggrieved Employees have been subject to Defendants' control during pre-shift
6 and post-shift times, as well as during unpaid meal periods, which, when working overtime-
7 eligible shifts, results in underpaid overtime compensation. For example, because Shimmick
8 essentially paid pre-determined scheduled hours rather than actual hours worked, this resulted in
9 not paying all hours worked. Additionally, Defendants have forced Plaintiff and Aggrieved
10 Employees to don and doff personal protective equipment (PPE), attend briefings or pre-shift
11 meetings, and/or mandatory commutes on company vans to and from the worksites while
12 employees are off the clock. Also, based on information and belief, not all recorded work hours
13 were paid because of rounding practices and/or inaccurate timekeeping policies and practices.¹
14 As a result, Plaintiff believes the hours he and other Aggrieved Employees have worked may
15 not have been properly recorded and/or paid, and therefore, Plaintiff and other Aggrieved
16 Employees may not have been properly compensated for all hours that were recorded and/or
17 worked.

18 58. At all relevant times, Defendants did not pay Plaintiff and Aggrieved Employees
19 the correct overtime rate for the recorded overtime hours that they generated. Defendants'
20 regular rate of pay for calculating overtime wages has not included all required remunerations or
21 the correct calculation. For example, on information and belief, during times when Plaintiff and
22 Aggrieved Employees have worked overtime and to the extent they received non-discretionary
23 bonuses, shift differentials, and/or other incentive pay, Defendants have not paid all overtime
24 wages because Defendants have paid a lower overtime rate than required by California law.

25
26 ¹ Upon information and belief, Shimmick's records indicate that it would pay, for
27 example, Mr. Gibson exactly 40 hours per workweek regardless of actual hours worked and
28 even if he worked more than 40 hours in a week. The failure to accurately pay all hours worked
may have been exacerbated as a result of an absence of timeclocks.

1 59. At all relevant times Defendants knew or should have known that, as a result of
2 their policies, practices and/or procedures, Plaintiff and Aggrieved Employees were at times
3 performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of
4 Defendants, and/or were suffered or permitted to perform work for which they were not paid.
5 Defendants also knew, or should have known, that they did not compensate Plaintiff and
6 Aggrieved Employees for off-the-clock work or all hours worked. Because Plaintiff and
7 Aggrieved Employees sometimes worked shifts longer than eight or twelve hours a day, more
8 than forty hours a week, and/or seven consecutive days (or in excess of eight hours on the
9 seventh consecutive day), some of the unrecorded work qualified for overtime premium pay. At
10 other times, Defendants simply did not pay for all the hours that were recorded. Therefore,
11 Plaintiff and Aggrieved Employees were not paid overtime wages for all of the overtime hours
12 they actually worked. Defendants' failure to pay Plaintiff and Aggrieved Employees the balance
13 of overtime compensation, as required by California law, violates the California Labor Code and
14 the applicable Wage Order.

15 60. Defendants knew or should have known that, as a result of their policies and/or
16 practices, Plaintiff and Aggrieved Employees were performing work for which Plaintiff and
17 Aggrieved Employees were not paid. Defendants also knew or should have known that they did
18 not compensate Plaintiff and Aggrieved Employees for all hours worked. Because Plaintiff and
19 Aggrieved Employees sometimes worked shifts of eight hours a day or more and forty hours a
20 week or more, some of this work performed before shifts qualified for overtime premium pay.
21 Therefore, Plaintiff and Aggrieved Employees were not paid overtime wages for all of the
22 overtime hours they actually worked.

23 61. Defendants' failure to pay Plaintiff and Aggrieved Employees overtime
24 compensation, as required by California law, violates the provisions of California Labor Code
25 sections 510, 558, 1194, and 1198 and applicable IWC Wage Order. Plaintiff and Aggrieved
26 Employees are entitled to recover from Defendants civil penalties, attorneys' fees, costs, and
27 interest pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).
28

**FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, 1197.1, 1198, AND
CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11160, SUBD. 4**

62. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and every allegation set forth above and below.

63. California Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Order require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by the applicable Wage Order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11160, subd. 2(J) (defining “Hours Worked”).

64. During all relevant times, Defendants have not paid for all the time Plaintiff and Aggrieved Employees have worked throughout the day such as all time in the workday when the employees have performed work tasks subject to the control of Defendants. Plaintiff and Aggrieved Employees have been subjected to Defendants’ control pre-shift, post-shift, and throughout the workday. For example, because Shimmick essentially paid pre-determined scheduled hours rather than actual hours worked, this resulted in not paying all hours worked. Additionally, Defendants have forced Plaintiff and other Aggrieved Employees to don and doff personal protective equipment (PPE), attend briefings or pre-shift meetings, and/or mandatory commutes on company vans to and from the worksites, travel through the tunnel to go underground, during times while employees are off the clock.

65. To the extent that the off-the-clock work and/or unpaid hours do not qualify for overtime premium payment, Defendants have not paid at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable Wage Order.

66. Defendants’ failure to pay Plaintiff and Aggrieved Employees minimum wages violates California Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198. Plaintiff

1 and Aggrieved Employees are entitled to recover from Defendants civil penalties, attorneys'
2 fees, costs, and interest pursuant to Labor Code sections 225.5, 1194, 1197.1, and/or 2699(a),
3 (f), and (g).

4 **FAILURE TO PROVIDE AND PROPERLY RECORD MEAL PERIODS IN**
5 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 1198, AND**
6 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11160 SUBD. 10**

7 67. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
8 every allegation set forth above and below.

9 68. At all relevant times set forth, the applicable IWC Wage Order and California
10 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and Aggrieved Employees'
11 employment by Defendants.

12 69. At all relevant times set forth, Labor Code sections 226.7, 512(a), 1198, and the
13 applicable Wage Order require employers to provide meal periods and to pay employees one
14 additional hour of pay at the employee's regular rate of compensation for each workday that a
15 meal period (or rest period) is not provided. Pursuant to Labor Code sections 226.7 and 512(a)
16 and the applicable Wage Order, an employer may not require, cause or permit an employee to
17 work for a period of more than five hours per day without providing the employee with an
18 uninterrupted duty-free and control-free meal period of not less than thirty minutes, except that
19 if the total work period per day of the employee is not more than six hours, the meal period may
20 be waived by mutual consent of both the employer and the employee. Under California law, first
21 meal periods must start no later than the end of an employee's fifth hour of work. *See Brinker*
22 *Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, §
23 11160, subd. 10. Labor Code sections 226.7 and 512(a) also require employers to provide a
24 second meal period of not less than thirty minutes if an employee works over ten hours in a day,
25 except that if the total hours worked is no more than twelve hours, the second meal period may
26 be waived by mutual consent of the employer and the employee only if the first meal period was
27 taken, and if not provided, to also pay an employee one additional hour of pay at the employee's
28 regular rate of compensation.

70. At all relevant times set forth, Defendants have not provided Plaintiff and Aggrieved Employees an opportunity to take first (or second) meal periods and, further, took no efforts to relieve them of all of their duties such that Plaintiff and Aggrieved Employees could take compliant meal periods. As a result, Plaintiff and Aggrieved Employees have frequently not been permitted to take timely compliant meal periods. Also, for the same reason, Defendants have not authorized and permitted Plaintiff and Aggrieved Employees who worked in excess of ten hours but not longer than twelve hours and who did not waive their legally mandated meal periods by mutual consent to take a second uninterrupted meal period of not less than thirty minutes. On information and belief, Defendants have failed to provide meal periods and as a matter of policy and practice, Defendants have not provided Plaintiff and Aggrieved Employees with full thirty-minute meal periods for each day worked where they are free from Defendants' required duties and control. Defendants have subjected Plaintiff and Aggrieved Employees to control and demanding duties throughout their workday, even during times which should constitute uninterrupted duty-free meal periods. For example, because Shimmick essentially paid pre-determined scheduled hours rather than actual hours worked, this resulted in not paying all hours worked. Additionally, Defendants have forced Plaintiff and other Aggrieved Employees to attend briefings as well as the donning and doffing of protective equipment upon leaving or returning to the work location before and after shifts. Defendants have encouraged and required Plaintiff and Aggrieved Employees to stay working and/or remain under employer control. Furthermore, Plaintiff and Aggrieved Employees have also not been provided timely meal periods. For instance, all the time Plaintiff and Aggrieved Employees have worked off-the-clock pre-shift and/or have had their time rounded has not been accounted for and has resulted in meal periods being provided, if at all, after the end of the fifth hour of work. For example, Plaintiff was almost never provided with a duty-free meal period during his employment, particularly during graveyard shifts. The grounds not only had insufficient places conducive for a meal break, but Plaintiff also was not permitted to leave the premises, and required to remain vigilant and on-duty throughout breaks.

71. During the relevant time period, Defendants have intentionally and willfully

1 required Plaintiff and Aggrieved Employees to work through meal periods. Defendants have
2 also engaged in a systematic, company-wide policy to not pay meal period premiums. As a
3 result, Defendants have failed to provide Plaintiff and Aggrieved Employees with compliant
4 meal periods and failed to pay the full meal period premiums due in violation of California
5 Labor Code sections 226.7 and 512 and applicable IWC Wage Order.

6 72. When Defendants have paid meal period premium wages, based on information
7 and belief and to the extent Defendants pay any non-discretionary remuneration, they have been
8 paid at incorrect rates given Defendants' failure to incorporate non-discretionary remuneration
9 into their regular rate calculation. Because Defendants have not properly calculated their
10 employees' regular rates of compensation by failing to include all applicable remunerations,
11 such as any nondiscretionary bonuses, shift differentials (e.g., graveyard shifts), and/or incentive
12 pay, any premiums paid for meal period violations have been paid at an incorrect rate and have
13 resulted in an underpayment of meal period premium wages. In other words, based on
14 information and belief and to the extent Defendants pay any non-discretionary remuneration,
15 when Defendants have paid employees meal period premium payments, the regular rate of
16 compensation for calculating the premium payment has not included all required remunerations
17 or the correct calculation. Based on information and belief and to the extent Plaintiff and
18 Aggrieved Employees have been paid any nondiscretionary remunerations, Defendants have not
19 paid all meal period premium wages because Defendants have paid meal period premium wages
20 at a lower rate than required by California law. Furthermore, to the extent Defendants have paid
21 meal period premium wages to Plaintiff and Aggrieved Employees, such payments have been
22 admissions of Defendants' failure to provide meal periods.

23 73. Pursuant to California Labor Code section 226.7(b) and the applicable IWC
24 Wage Order, Plaintiff and Aggrieved Employees are entitled to recover from Defendants one
25 additional hour of pay at their regular rates of compensation for each workday that a required
26 meal period was not provided.²

27 _____
28 ² To the extent a Wage Order other than Wage Order 16 applies, Plaintiff reserves the
right to amend to add allegations based on rest period violations because Plaintiff and

74. Defendants' conduct has violated California Labor Code sections 226.7, 512, 558, and 1198, and the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled to recover from Defendants civil penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226.7, 512, 558, 1198, and 2699(a), (f), and (g).

FAILURE TO PAY REPORTING TIME WAGES
VIOLATIONS OF LABOR CODE SECTIONS 1194, 1197, 1198, CALIFORNIA CODE
OF REGULATIONS TITLE 8, SECTION 11160 SUBD. 5

75. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and every allegation set forth above and below.

76. At all relevant times, California Labor Code section 1197 makes it unlawful to pay an employee less than the minimum wage as established by the Industrial Welfare Commission.

77. At all relevant times, California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

78. At all relevant times, the applicable reporting time wages are fixed by the applicable IWC Wage Order. In relevant part, Section 5 of the applicable wage order provides: "(A) All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above." Additionally, the applicable Wage Order provides: "(B) Each workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day's

Aggrieved Employees regularly were not provided with duty-free rest periods.

1 work, the employer shall pay him/her for half the usual or scheduled day's work, but in no event
2 for less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay,
3 which shall not be less than the minimum wage."

4 79. Defendants have failed to pay reporting time wages. In particular, Plaintiff and
5 Aggrieved Employees have been forced to report to work and have been furnished with less
6 than half their usual or scheduled day's work. For instance, Plaintiff had reported to work based
7 on the schedule that Defendants provided to him only to be sent home immediately or be sent
8 home before having worked less than half of his scheduled shift. When this occurred, Plaintiff
9 did not receive the proper reporting time pay.

10 80. On information and belief, Plaintiff and Aggrieved Employees have reported to
11 work at Defendants' direction, and then have been sent home without the legal compensation at
12 their regular rate of pay (or even at the minimum wage).

13 81. By failure to pay hourly wages for reporting time, Defendants have willfully
14 violated California Labor Code sections 1194, 1197, 1198, and applicable IWC Wage Orders.
15 Plaintiff and Aggrieved Employees are therefore entitled to recover from Defendants civil
16 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 2699(a), (f), and
17 (g).

18 **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT**
19 **VIOLATIONS OF LABOR CODE SECTION 204**

20 82. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
21 every allegation set forth above and below.

22 83. At all relevant times, California Labor Code section 204 provides that all wages
23 earned by any person in any employment between the first and the fifteenth days, inclusive, of
24 any calendar month, other than those wages due upon termination of an employee, are due and
25 payable between the sixteenth and the twenty-sixth day of the month during which the labor was
26 performed.

27 84. At all relevant times, California Labor Code section 204 provides that all wages
28 earned by any person in any employment between the sixteenth and the last day, inclusive, of

any calendar month, other than those wages due upon termination of an employee, are due and payable between the first and the tenth day of the following month.

85. At all relevant times, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

86. At all relevant times, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due including, but not limited to, overtime wages, minimum wages, reporting time wages, and/or meal period (and rest period) premium wages within the time periods specified by California Labor Code section 204.

87. Pursuant to Labor Code section 210, at all relevant times, every person who fails to pay the wages of each employee as provided in Labor Code section 204, shall be subject to a penalty.

88. Plaintiff and Aggrieved Employees are therefore entitled to recover from Defendants civil penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

**FAILURE TO PAY WAGES UPON TERMINATION IN
VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

89. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and every allegation set forth above and below.

90. At all relevant times, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

1 91. During the relevant time period, on information and belief, Defendants have
2 failed to pay Plaintiff and Aggrieved Employees who are no longer employed by Defendants all
3 their earned wages at the time of discharge or within seventy-two hours of their leaving
4 Defendants' employ, including but not limited to, overtime wages and minimum wages, in
5 violation of California Labor Code sections 201 and 202. On information and belief, Defendants
6 have also unlawfully deducted wages, resulting in further violations of Sections 201-202.

7 92. Defendants' failure to pay Plaintiff and those Aggrieved Employees who are no
8 longer employed by Defendants their wages earned and unpaid at the time of discharge, or
9 within seventy-two hours of their leaving Defendants' employ, violates California Labor Code
10 sections 201 and 202.

11 93. Plaintiff and Aggrieved Employees are entitled to recover from Defendants civil
12 penalties, attorneys' fees, costs, and interest pursuant to PAGA.

13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN**
14 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(a) AND 1198**

15 94. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
16 every allegation set forth above and below.

17 95. At all relevant times, Labor Code sections 226(a) and 1198, and the Wage Order
18 have applied to Plaintiff and the Aggrieved Employees.

19 96. At all relevant times, Labor Code section 226(a) requires employers to make,
20 keep and furnish true, accurate, and complete employment records. Defendants have not
21 provided Plaintiff and other Aggrieved Employees with properly itemized wage statements.
22 Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for
23 violations of wage statement requirements without the need to establish injury. *Lopez v. Friant*
24 *& Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under
25 PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and
26 intentional' requirements of section 226(e)(1)."). Rather, Labor Code section 226.3 provides
27 that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount
28 of \$250 per employee per violation in an initial citation and \$1,000 per employee for each

1 violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 statement or fails to keep the required records pursuant to Section 226(a).

3 97. Defendants have provided Plaintiff and other Aggrieved Employees with
4 incomplete and inaccurate wage statements. Specifically, Defendants violated, among others,
5 Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Defendants did not record all
6 the hours Plaintiff and other Aggrieved Employees worked while off-the-clock and/or did not
7 pay all hours recorded, Defendants did not list the correct amount of gross wages earned by
8 Plaintiff and other Aggrieved Employees in compliance with Section 226(a)(1). Similarly,
9 Defendants failed to list the correct amount of net wages earned by Plaintiff and other
10 Aggrieved Employees in violation of Section 226(a)(5). In addition, upon information and
11 belief, the total regular and overtime hours listed in Defendants' wage statements, when added
12 together, do not sum up to the total hours worked by the employee during the pertinent time
13 period. Likewise, Defendants provide wage statements which do not properly itemize the total
14 hours worked because Defendants itemize the incorrect total number of hours worked. Without
15 additional information regarding the wage statement and undecipherable codes, an employee
16 cannot simply 'arrive at the sum of hours worked.' As such, Defendants' wage statements do
17 not comply with Labor Code section 226(a)(2). Additionally, upon information and belief,
18 because Defendants did not calculate other Aggrieved Employees' regular rate of pay correctly
19 for purposes of paying overtime and/or premium wages, they did not list the correct amount of
20 gross wages and net wages earned by other Aggrieved Employees in compliance with Sections
21 226(a)(1) and (5). Defendants also failed to correctly list all applicable hourly rates in effect
22 during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal
23 period premium wages, in violation of Section 226(a)(9). Furthermore, because Defendants
24 failed to pay all meal period (and rest period) premiums to Plaintiff and other Aggrieved
25 Employees, Defendants did not list the correct amount of gross wages earned by Plaintiff and
26 other Aggrieved Employees in compliance with Section 226(a)(1). For the same reasons,
27 Defendants failed to list the correct amount of net wages earned by Plaintiff and other
28 Aggrieved Employees in violation of Section 226(a)(5). Additionally, Defendants failed to

1 itemize the amount of paid sick leave/paid time off Plaintiff and other Aggrieved Employees
2 had available each pay period.

3 98. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
4 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226(a), 226.3,
5 1198.5, and/or 2699(a), (f), and (g).

6 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN**
7 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1174(d), 1198, AND**
8 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11160 SUBD. 6**

9 99. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
10 every allegation set forth above and below.

11 100. At all relevant times, Labor Code section 1174(d) provides that "[e]very person
12 employing labor in this state shall ... [k]eep a record showing the names and addresses of all
13 employees employed and the ages of all minors" and "[k]eep, at a central location in the state or
14 at the plants or establishments at which employees are employed, payroll records showing the
15 hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
16 any applicable piece rate paid to, employees employed at the respective plants or
17 establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500
18 civil penalty if they fail to maintain accurate and complete records as required by Section
19 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
20 Defendants wilfully failed to maintain accurate payroll records for Plaintiff and other Aggrieved
21 Employees showing the daily hours they worked and the wages paid as a result of failing to
22 record all hours worked and/or failing to correctly list the gross wages and/or net wages earned
23 by them in violation of Labor Code section 1174(d).

24 101. Labor Code section 1198 provides that the maximum hours of work and the
25 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in
26 the applicable IWC Wage Order(s). Section 1198 further provides that "[t]he employment of
27 any employees for longer hours than those fixed by the order or under conditions of labor
28 prohibited by the order is unlawful." Pursuant to the applicable Wage Order, employers are

1 required to keep accurate time records showing when the employee begins and ends each work
2 period and meal period. Cal. Code Regs. tit. 8, § 11160, subd. 6. During the relevant time
3 period, Defendants failed, on a company-wide basis, to keep accurate records of shift, and meal
4 period, start and stop times, along with daily hours worked, for Plaintiff and other Aggrieved
5 Employees, in violation of Section 1198 and Wage Order No. 16.

6 102. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
7 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
8 2699(a), (f), and (g).

9 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN**
10 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA**
11 **CODE OF REGULATIONS TITLE 8, SECTION 11160 SUBD. 6**

12 103. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and
13 every allegation set forth above and below.

14 104. At all relevant times, California Labor Code section 1198 provides that the
15 maximum hours of work and the standard conditions of labor shall be those fixed by the Labor
16 Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further
17 provides that "[t]he employment of any employees for longer hours than those fixed by the
18 order or under conditions of labor prohibited by the order is unlawful." Pursuant to the
19 applicable IWC Wage Order, employers are required to keep accurate time records showing
20 when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, §
21 11160(6)(A).

22 105. During the relevant time period, Defendants failed, on a company-wide basis, to
23 keep accurate records of shift, and meal period, start and stop times for Plaintiff and other
24 Aggrieved Employees, in violation of Section 1198 and Wage Order No. 16.

25 106. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
26 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 1174.5 and/or
27 2699(a), (f), and (g).

28

**FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF
EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 1198 AND 2810.5**

107. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and every allegation set forth above and below.

108. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances.

109. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

110. During the relevant time period, Defendants failed to provide a written notice to Plaintiff and Aggrieved Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis.

111. On information and belief, Defendants failed to provide Plaintiff and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). Defendants produced Plaintiff's personnel file and a portion of Plaintiff's employment records. Absent from Plaintiff's personnel file and employment records was a Section 2810.5 notice containing all the requisite information, such as the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or

otherwise, including any rates for overtime. Defendants' failure to provide Plaintiff and Aggrieved Employees with written notice of basic information regarding their employment with Defendants. Defendants' failure to provide Plaintiff and Aggrieved Employees with written notice of basic information regarding their employment with Defendants, such as the rate(s) of pay and rate(s) for overtime, is in violation of Labor Code section 2810.5.

112. Plaintiff and Aggrieved Employees are therefore entitled to recover from Defendants civil penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES IN
VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802**

113. Plaintiff incorporates by reference and re-alleges, as if fully stated, each and every allegation set forth above and below.

114. At all relevant times, Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). Wage Order No. 16 provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." Cal. Code Regs. tit. 8 § 11160, subd. 8(B).

115. On information and belief, Plaintiff and other Aggrieved Employees have incurred necessary business-related expenses and costs that Defendants have not fully reimbursed. For example, Defendants have required Plaintiff and other Aggrieved Employees to use personal cell phones because radios were not allowed to be used except for emergencies.

116. Defendants' policy, practice, and/or procedure of passing their operating costs on to Plaintiff and Aggrieved Employees by requiring them to incur business-related costs is in

violation of California Labor Code sections 2800 and 2802.

117. Plaintiff and Aggrieved Employees are entitled to recover from Defendants civil penalties, attorneys' fees, costs, and interest pursuant to PAGA.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAAYER FOR RELIEF

Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees and costs in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, 1197.1 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide all meal periods and/or meal premiums); 1194, 1197, 1198 and California Code of Regulations, Title 8, section 11160 (5)(A) (by failing to pay reporting time pay); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198 and California Code of Regulations, Title 8, section 11160(6) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11160(6) (by failing to maintain accurate and complete time records); 1198 and 2810.5(a)(1) (by failing to provide written notice of the material terms of employment); and 2800 and 2802 (by failing to reimburse necessary business expenses).

3. For civil penalties pursuant to California Labor Code sections 225.5, 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), and any and all other relevant statutes for civil penalties, for Defendants violations of the California Labor Code sections and allegations described above as well as all applicable IWC Wage Orders;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. For attorneys’ fees and costs pursuant to California Labor Code sections 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of the California Labor Code sections above, as well as all applicable IWC Wage Orders;
5. For pre-judgment and post-judgment interest as provided by law; and
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: January 26, 2023

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

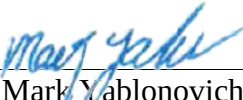
By: 
Mark Yablonoich
Tony Roberts
Attorneys for Plaintiff Kenneth Gibson, a proxy
for the State of California as an aggrieved
employee pursuant to PAGA

EXHIBIT 1

Kenneth Gibson v. Shimmick CEC Joint Venture, et al.

LAW OFFICES OF
MARK YABLONOVICH
9595 WILSHIRE BOULEVARD, SUITE 900
BEVERLY HILLS, CALIFORNIA 90212-2511
TELEPHONE: (310) 286-0246
FACSIMILE: (310) 407-5391

November 22, 2022

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*

Dear PAGA Administrator:

This law firm represents Kenneth Gibson (“Mr. Gibson”) in connection with his claims under the California Labor Code against his former employers:

Shimmick CEC Joint Venture
8201 Edgewater Drive, Suite 202
Oakland, CA 94621

Shimmick Construction Company, Inc.
5865 Katella Avenue
Cypress, CA 90630

California Engineering Contractors, Inc.
20 Happy Valley Road
Pleasanton, CA 94566

AECOM, Inc.
13355 Noel Road, #400
Dallas, TX 75240

The employers identified above are referred to collectively as “Shimmick.”

Mr. Gibson intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for Shimmick’s violations of the California Labor Code, which are recoverable under Sections 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Gibson seeks relief on behalf of the State of California, himself, and persons who are or were employed by Shimmick in California as non-exempt, hourly-paid employees and who received or should have received at least one wage statement during the relevant time period which begins at least one year prior to the date of this notice (“Aggrieved Employees”). Mr. Gibson sends this letter in compliance with the notice and reporting requirements of Labor Code section 2699.3.

Shimmick employed Mr. Gibson from approximately September of 2021 to February of 2022, as a non-exempt, hourly-paid employee at Shimmick’s worksite in the California Bay Area. Mr. Gibson typically worked approximately eight hours or more per workday and forty hours or more per week. His job duties as a watchman included, but were not limited to, providing onsite security for a construction location.

Shimmick committed one or more of the following Labor Code violations against Mr. Gibson and/or the Aggrieved Employees, the facts and theories of which follow, making him an

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 2 of 14

“aggrieved employee” pursuant to California Labor Code section 2699(c):¹

Shimmick’s Company-Wide and Uniform Payroll and Human Resources Practices

Shimmick operates, manages, and/or staffs construction sites for transportation and transit projects throughout California, including but not limited to providing security services. Upon information and belief, Shimmick maintains a centralized Human Resources department for all non-exempt, hourly-paid employees working for Shimmick in California, including Mr. Gibson and other Aggrieved Employees. At all relevant times, Shimmick issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Mr. Gibson and other Aggrieved Employees, regardless of their location, position, or job duties.

Upon information and belief, Shimmick maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for Shimmick in California, including Mr. Gibson and other Aggrieved Employees. Further, Shimmick issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or the manner in which each employee’s employment ended. Shimmick’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, Shimmick has utilized the same methods and formulas when calculating any wages and other remunerations owed to Mr. Gibson and other Aggrieved Employees in California.

Violations of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11160, Subdivision 3

California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order, California Code of Regulations Title 8, section 11160 (“Wage Order No. 16”),² require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. The applicable Wage Order further provides that employers are

¹ These facts, theories, and claims are based on Mr. Gibson’s experience and counsel’s review of those records currently available relating to Mr. Gibson’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employees of the law’s requirements, or because the employer effectively hid the violations. Thus, Mr. Gibson reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

² To the extent any other Wage Orders (e.g., Wage Order No. 4) apply to any of the claims in this letter, Shimmick also violated those Wage Orders.

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 3 of 14

required to pay employees working more than twelve hours in a day or in excess of eight hours on the seventh consecutive day overtime compensation at a rate of two times their regular rate of pay.

Upon information and belief, Shimmick failed to pay all overtime wages owed to Mr. Gibson and other Aggrieved Employees. During the relevant time period, Mr. Gibson and other Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight (or twelve) hours in a day, in excess of forty hours in a week, and/or for the seventh consecutive day of work (or in excess of eight hours on the seventh consecutive day of work), sometimes because all hours that they worked were not recorded, and other times because they were simply not paid for all hours that were recorded and/or worked. Aggrieved Employees have also been subject to Shimmick's control during unpaid meal periods resulting in unpaid overtime where they are not getting paid, which, when working overtime-eligible shifts, results in underpaid overtime compensation. Based on information and belief, not all recorded work hours were paid because of inaccurate timekeeping policies and practices. Based on information and belief, not all work hours were paid because of rounding practices³ and/or inaccurate timekeeping policies and/or practices. As a result, Mr. Gibson believes the hours he and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Mr. Gibson and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

Shimmick knew or should have known that, as a result of its policies, practices and/or procedures, Mr. Gibson and other Aggrieved Employees were at times performing their assigned duties off-the-clock (and/or unrecorded), were subject to control of Shimmick, and/or were suffered or permitted to perform work for which they were not paid. Shimmick also knew, or should have known, that it did not compensate Mr. Gibson and other Aggrieved Employees for off-the-clock work, or all hours worked. Because Mr. Gibson and other Aggrieved Employees sometimes worked shifts longer than eight or twelve hours a day, more than forty hours a week, and/or seven consecutive days (or in excess of eight hours on the seventh consecutive day), some of the unrecorded work qualified for overtime premium pay. At other times, Mr. Gibson simply did not pay for all the hours that were recorded. Therefore, Mr. Gibson and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. Shimmick's failure to pay Mr. Gibson and other Aggrieved Employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198 and the applicable Wage Order.

Based on the foregoing, Mr. Gibson and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 510 and 1198 and the applicable Wage Order, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f),

³ Upon information and belief, Shimmick's records indicate that it would pay, for example, Mr. Gibson exactly 40 hours per workweek regardless of actual hours worked and even if he worked more than 40 hours in a week. The failure to accurately pay all hours worked may have been exacerbated as a result of an absence of timeclocks.

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 4 of 14

and (g).

Violations of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, 1198, and California Code of Regulations Title 8, Section 11160, Subdivision 4

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Order require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by the applicable Wage Order as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11160, subd. 2(J) (defining “Hours Worked”).

Shimmick has not paid for all the time Mr. Gibson and Aggrieved Employees have worked throughout the day including all time in the workday when the employees were performing work tasks subject to the control of Shimmick. Mr. Gibson and other Aggrieved Employees are subjected to Shimmick’s control throughout the workday. Furthermore, based on information and belief, not all work hours were paid because of inaccurate timekeeping policies and practices. For example, because Shimmick essentially paid pre-determined scheduled hours rather than actual hours worked, this resulted in not paying all hours worked. Additionally, based on information and belief, Shimmick did not compensate Mr. Gibson and Aggrieved Employees for the donning and doffing of personal protective equipment (PPE), debriefings or pre-shift meetings, or the mandatory commute on company vans to and from the worksite.

To the extent the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Shimmick did not pay at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Order.⁴

Mr. Gibson and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest, pursuant to Labor Code sections 225.5,⁵ 1194, 1197.1 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11160 Subdivisions 10 and 11

Labor Code sections 226.7, 512(a), 1198, and the applicable Wage Order require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the

⁴ To the extent Shimmick did not properly pay any applicable prevailing wages to aggrieved employees, Mr. Gibson asserts and seeks available penalties for those violations.

⁵ Labor Code section 2699.3(c) permits aggrieved employees, including Mr. Gibson, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including section 225.5.

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 5 of 14

employee's regular rate of compensation for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7, 512(a), and the applicable Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted duty-free and control-free meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee.

Under California law, first meal periods must start no later than the end of an employee's fifth hour of work. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11160, subd. 10. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours in a day, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was taken.

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. The applicable Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours. Cal. Code Regs. tit. 8, § 11160, subd. 11. To comply with its obligation to provide rest periods under Labor Code section 226.7 and the applicable Wage Order, an employer must "relinquish any control over how employees spend their break time and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

Shimmick has failed to provide meal periods and authorize and permit rest periods to Mr. Gibson and other Aggrieved Employees. As a matter of policy and practice, Shimmick has not provided Mr. Gibson and other Aggrieved Employees with full thirty-minute meal periods and net 10-minute rest periods for each day worked where they are free from Shimmick's required duties and control. Shimmick has subjected Mr. Gibson and other Aggrieved Employees to control and demanding duties throughout their workday, even during times which should constitute uninterrupted duty-free rest periods and meal periods.

Shimmick knew or should have known that as a result of its policies and/or practices, Mr. Gibson and other Aggrieved Employees were prevented from being relieved of all duties and employer control and required to perform some of their assigned duties during meal periods and rest periods and that they did not receive timely meal periods and rest periods. As a result, Mr. Gibson and other Aggrieved Employees have had to work through all or part of their meal periods and rest periods, have their meal periods and rest periods interrupted, and/or have waited extended periods of time before taking meal periods and rest periods.

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 6 of 14

Shimmick has also engaged in a systematic, company-wide policy and/or practice of not properly training Mr. Gibson and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Mr. Gibson and other Aggrieved Employees have been unaware of when meal period and/or rest period premiums were owed to them. Based upon information and belief, Mr. Gibson and other Aggrieved Employees have not received all meal period and/or rest period premium wages owed when compliant meal periods and rest periods have not been provided. To the extent that Shimmick did pay meal period and/or rest period premium wages to Mr. Gibson and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods.⁶

Indeed, Mr. Gibson was almost never provided with a duty-free meal period or rest period during his employment, particularly during graveyard shifts.

Accordingly, Shimmick has failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums, in violation of Labor Code sections 226.7, 512, 1198, and the applicable Wage Order. Mr. Gibson and other Aggrieved Employees are therefore entitled to civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 226.7, 558 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 226(a)

Labor Code section 226(a) requires employers to keep and furnish accurate and complete wage statements. Shimmick has not provided Mr. Gibson and other Aggrieved Employees with properly itemized wage statements. Moreover, an Aggrieved Employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017) ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."). Rather, Labor Code section 226.3 provides that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

Shimmick has provided Mr. Gibson and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, Shimmick has violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Shimmick has not recorded all the hours Mr. Gibson and other Aggrieved Employees worked and/or paid all hours recorded, Shimmick

⁶ Furthermore, on information and belief, to the extent employees were paid additional nondiscretionary remuneration, those payments have not been included in the calculation of the regular rate of compensation for meal period and/or rest period premiums and has likely resulted in an underpayment of meal period and/or rest period premium wages.

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 7 of 14

has not listed the correct amount of gross wages and net wages earned by Mr. Gibson and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5), respectively. Shimmick also has not accurately listed the total hours worked by Mr. Gibson and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9).

In addition, the total regular, overtime, and any other applicable hours listed in Shimmick's wage statements, when added together, do not add up to the total hours worked by the employee during the pertinent time period. Likewise, Shimmick provides wage statements which do not properly itemize the total hours worked because Shimmick itemizes the incorrect number of hours worked or an undecipherable number of hours worked or both. Without additional information regarding the wage statement and undecipherable codes, an employee cannot simply 'arrive at the sum of hours worked.' Thus, Shimmick's wage statements do not comply with Labor Code section 226(a)(2). Furthermore, in violation of Section 226(a)(2), Shimmick has also failed to accurately list the total hours worked by Mr. Gibson and other Aggrieved Employees for work performed while off-the-clock.

Furthermore, because Shimmick has failed to pay all meal period and rest period premiums to Mr. Gibson and other Aggrieved Employees, Shimmick has not listed the correct amount of gross wages and net wages earned by Mr. Gibson and other Aggrieved Employees in violation of Sections 226(a)(1) and (5).

In addition, Shimmick has failed to itemize the amount of paid sick leave/paid time off Mr. Gibson and other Aggrieved Employees have had available every pay period.

Because Shimmick has failed to provide, among other things, the accurate number of total hours worked, gross wages earned, net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked on wage statements, Mr. Gibson and other Aggrieved Employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full, and were given confusing and/or incomplete information about their employer(s). Instead, Mr. Gibson and other Aggrieved Employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thus causing them injury.

Mr. Gibson and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code sections 226(a), and 1198.5, pursuant to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 226(c)

Labor Code section 226(c) provides as follows: "An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 8 of 14

or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.”

Mr. Gibson requested that Shimmick produce his employment records pursuant to Section 226(c), which requires an employer to produce records within 21 days and Section 1198.5 which requires an employer to produce records within 30 days.⁷ Shimmick did not fully comply. The records that were provided were incomplete. Labor Code section 2699.3(c) permits aggrieved employees, including Mr. Gibson, to recover civil penalties for Labor Code sections 226(c) and 1198.5 violations.

Mr. Gibson and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys’ fees, costs, and interest for violations of Labor Code sections 226(c) and 1198.5, pursuant to Labor Code sections 2699(a), (f), and (g).

Violations of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11160 Subdivision 6

Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by Section 1174(d). During the relevant time period, Shimmick has willfully failed to maintain accurate payroll records for Mr. Gibson and other Aggrieved Employees showing the daily hours they have worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period, as well as total daily hours. Cal. Code Regs. tit. 8, § 11160, subd. 6. During the relevant time period, Shimmick failed, on a company-wide basis, to keep accurate records of shifts and meal period start and stop times and total daily hours for Mr. Gibson and other Aggrieved Employees, in violation of Labor Code section 1174(d) and the applicable Wage Order.

⁷ AECOM communicated to Mr. Gibson’s counsel that it did not have in its possession a copy of Mr. Gibson’s personnel file to produce. The other entities did not respond to the undersigned’s request for documents sent via certified mail on or about September 26, 2022.

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 9 of 14

Due to Shimmick's failure to maintain accurate payroll and time records, Mr. Gibson and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 1198

Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11160(5)(A) and (B) provide that:

- (A) All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.
- (B) Each workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day's work, the employer shall pay him/her for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage

Upon information and belief, Shimmick violated Labor Code section 1198 and California Code of Regulations, Title 8, section 11160(5), because (1) employer-mandated travel was not compensated and (2) it failed to pay Mr. Gibson and Aggrieved Employees reporting time pay when they reported to work for the scheduled shift but were put to work for less than half of the scheduled hours. For instance, Mr. Gibson has reported to work based on the schedule that Shimmick provided to him only to be sent home immediately or be sent home before having worked less than half of their scheduled shifts. When this occurred, Shimmick did not pay the required reporting time pay.

Based on the foregoing, Mr. Gibson and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest for violations of Labor Code section 1198 and the applicable Wage Order, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

Violations of California Labor Code Section 204

Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 10 of 14

upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code section 204 provides that the requirements of this Section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

During the relevant time period, Shimmick did not pay Mr. Gibson and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal period and rest period premium wages, and/or reporting time pay within the time periods specified by Labor Code section 204.

Mr. Gibson and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 201, 202, and 203

Labor Code sections 201-202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

Shimmick has failed to pay Mr. Gibson and other Aggrieved Employees who are no longer employed by Mr. Gibson all their earned wages at the time of discharge, or within seventy-two hours of their leaving Shimmick's employment, in violation of Labor Code sections 201-202.

Furthermore, Shimmick has not paid Mr. Gibson and other Aggrieved Employees who are no longer employed by Shimmick all their earned wages, at the time of discharge, or within seventy-two hours of their leaving Shimmick's employment, including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages.

For example, on or about February 17, 2022, Shimmick terminated Mr. Gibson. However, Shimmick did not provide Mr. Gibson his final paycheck at the time of termination. Instead, Shimmick delayed in sending him his final paycheck.

As a result of Shimmick's violations of Labor Code sections 201-202, Mr. Gibson and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 203 and/or 2699(a), (f), and (g).

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 11 of 14

Violations of California Labor Code Sections 1198 and 2810.5(a)(1)

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime; any allowances claimed as part of the minimum wage, including meal or lodging allowances the regular payday designated by the employer; and the name of the employer, including any "doing business as" names used by the employer as well as the employer's physical and mailing address(es) and telephone number. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, Shimmick failed to provide Mr. Gibson and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). Shimmick's failure to provide Mr. Gibson and other Aggrieved Employees with written notice of basic information regarding their employment with Shimmick, such as a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

Mr. Gibson and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 2699(a), (f), and (g).

Violations of California Labor Code Sections 246 and 248.5

Under Labor Code section 246, employers in California must provide employees with paid sick leave to be paid at a specified rate of pay which must factor in additional earnings during the pay period in which such leave is used. Upon information and belief, Shimmick has failed to provide Mr. Gibson and other Aggrieved Employees with the appropriate rate of pay when paying sick pay, as required under Labor Code section 246. On information and belief, Shimmick has subjected Mr. Gibson and other Aggrieved Employees to Shimmick's violations of Labor Code section 246.

Under Labor Code section 246(b)(1), employees shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment (subject to the use and accrual limitations set forth in Section 246). Also, under Labor Code section 246(b)(3), an employer may use a different accrual method, other than providing one

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 12 of 14

hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. Furthermore, under Labor Code section 246(b)(4), an employer may satisfy the accrual requirements of Section 246 by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment. Despite this, and in violation of Labor Code 246, based on information and belief, Shimmick's accrual method does not provide employees sick time at the correct rate per year.

Additionally, employers must provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages. Shimmick has also failed to provide Mr. Gibson and other Aggrieved Employees with written notice that sets forth the amount of paid sick leave available, or paid time off Shimmick provides in lieu of sick leave, for use on either Mr. Gibson's or other Aggrieved Employees' itemized wage statements or in separate writings provided on the designated pay dates with the employees' payments of wages.

As a result of Shimmick's violations of Labor Code section 246, Mr. Gibson and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

Violations of California Labor Code Sections 2800 and 2802 and California Code of Regulations Title 8, Section 11160 Subdivision 8

Labor Code sections 2800 and 2802 require employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

During the relevant time period, Mr. Gibson and other Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Shimmick. Mr. Gibson and other Aggrieved Employees would be required to communicate using their personal cell phones because to the extent radios were provided, the radios did not work and the employees instead needed to use their personal cell phones. Additionally, employees were informed that radios were to be used in cases of emergency only and thus, personal cell phones were the only reasonable means for employees to communicate with each other or their superiors. Shimmick did not reimburse Mr. Gibson and Aggrieved Employees for expenses that they incurred for Shimmick's benefit.

Shimmick's policy, practice, and/or procedure of passing its operating costs on to Mr. Gibson and other Aggrieved Employees violates Labor Code sections 2800 and 2802. Mr. Gibson and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest,

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 13 of 14

pursuant to Labor Code sections 2699(a), (f), and (g).

Violations of California Labor Code Section 558(a)

Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”⁸ Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” Shimmick, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Gibson’s and other Aggrieved Employees’ rights by violating various sections of the California Labor Code as set forth in this notice.

Pursuant to Labor Code section 2699(f) and the other Labor Code sections as set forth above, Mr. Gibson seeks recovery of applicable civil penalties. In the alternative to the penalties above, Mr. Gibson seeks penalties pursuant to Labor Code section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Labor Code sections 558(a)(1) and 558(a)(2) should such provision be applicable.

* * *

Accordingly, Mr. Gibson seeks the remedies set forth above for himself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Mr. Gibson, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other Aggrieved Employees, and the State of California against Shimmick for violations of California Labor Code sections 201, 202, 203, 204, 223, 227.3, 226(a), 226.7, 246, 246.8, 510, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and the applicable Wage Orders, as well as sections 225.5, 226(c), 1198.5, 2810.5, which are ‘curable’ violations pursuant to section 2699.3(c)(2)(A).

Therefore, Mr. Gibson seeks all applicable civil penalties and other available relief related to these violations of the California Labor Code pursuant to PAGA.

⁸ Mr. Gibson does not seek to recover any unpaid wages that are provided for in Section 558(a). He only seeks civil penalties allowed by PAGA. *See ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

LAW OFFICES OF
MARK YABLONOVICH

Re: *Kenneth Gibson v. Shimmick CEC Joint Venture, et al.*
Labor & Workforce Development Agency
November 22, 2022
Page 14 of 14

Sincerely,



Mark Yablonoich

Copy to: Shimmick CEC Joint Venture
Attention: Human Resources
8201 Edgewater Drive, Suite 202
Oakland, CA 94621

Shimmick Construction Company, Inc.
Attention: Human Resources
5865 Katella Avenue
Cypress, CA 90630

California Engineering Contractors, Inc.
Attention: Human Resources
20 Happy Valley Road
Pleasanton, CA 94566

AECOM, Inc.
Attention: Human Resources
13355 Noel Road, #400
Dallas, TX 75240