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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 19 2023

BY Regue Mmesimal
DEPUTY

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

11
12 **VICTOR CASAREZ**, as an aggrieved
13 employee pursuant to the Private
Attorneys General Act ("PAGA"), on
14 behalf of the State of California and
other non-party Aggrieved
15 Employees,

16 **Plaintiff,**

17 **vs.**

18 **ORCO BLOCK & HARDSCAPE**, a
California corporation; **ORCO**
19 **BLENDED PRODUCTS CO.**, a
California corporation; and **DOES 1**
20 **through 10**, inclusive,

21 **Defendants.**

Case No.: **CIV SB 2303058**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Victor Casarez, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on November 10, 2022, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

1 4. Venue is proper in this Court because Defendant ORCO BLENDED
2 PRODUCTS CO. filed Statement of Information forms with the California Secretary of State
3 designating a principal place of business in Highland, County of San Bernardino, in accordance
4 with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is
5 also proper in this Court because Defendants employ persons in this county, and thus a
6 substantial portion of the transactions and occurrences related to this action occurred in this
7 county.

8 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys
9 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys
10 general their current or former employers for various civil penalties for violations of various
11 provisions in the California Labor Code.

12 **THE PARTIES**

13 6. Plaintiff Victor Casarez is a resident of Riverside, in Riverside County,
14 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
15 approximately January 2021 to August 2022. Plaintiff worked as a Machine/Dry Side Operator
16 for Defendants at their facility in Mira Loma, California. Plaintiff typically worked twelve (12)
17 hours per day, five (5) days per week. At the time Plaintiff’s employment with Defendants
18 ended, he was compensated approximately \$19.37 per hour. Plaintiff’s job duties included,
19 without limitation, operating paver machines, conducting quality inspections, and training
20 employees.

21 7. On information and belief, Defendants required some employees, including
22 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
23 employment. On further information and belief, Defendants’ arbitration agreement was and is
24 both procedurally and substantively unconscionable. Specifically, Defendants presented
25 employees with a “Comprehensive Agreement for Mutual/Bilateral Arbitration and Class
26 Action Waiver” (“the Agreement”) during the onboarding process, which had to be reviewed
27 and acknowledged immediately. Specifically, on information and belief, the Agreement was
28 one of several documents presented to new employees for signature during the orientation

1 process, including the ORCO Block & Hardscape Confidentiality Agreement and
2 Acknowledgement of Receipt of Staff Handbook, among other documents. Also, employees
3 did not have a meaningful opportunity to negotiate the terms of the Agreement. Rather, it was
4 provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with all
5 of the other onboarding documents.

6 8. ORCO BLOCK & HARDSCAPE was and is, upon information and belief, a
7 California corporation, and at all times hereinafter mentioned, an employer whose employees
8 are engaged throughout this county, the State of California.

9 9. ORCO BLENDED PRODUCTS CO. was and is, upon information and belief, a
10 California corporation, and at all times hereinafter mentioned, an employer whose employees
11 are engaged throughout this county, the State of California.

12 10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
13 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
14 complaint and serve such fictitiously named Defendants once their names and capacities
15 become known.

16 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of ORCO BLOCK & HARDSCAPE and ORCO
18 BLENDED PRODUCTS CO. at all relevant times.

19 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, ORCO BLOCK &
21 HARDSCAPE; ORCO BLENDED PRODUCTS CO.; and/or DOES 1 through 10 (collectively,
22 "Defendants" or "ORCO"), each acting as the agent, employee, alter ego, and/or joint venturer
23 of, or working in concert with, each of the other co-Defendants and was acting within the course
24 and scope of such agency, employment, joint venture, or concerted activity with legal authority
25 to act on the others' behalf. The acts of any and all Defendants were in accordance with, and
26 represent, the official policy of Defendants.

27 13. At all relevant times, Defendants, and each of them, ratified each and every act
28 or omission complained of herein. At all relevant times, Defendants, and each of them, aided

1 and abetted the acts and omissions of each and all the other Defendants in proximately causing
2 the damages herein alleged.

3 14. Plaintiff is informed and believes, and thereon alleges, that each of said
4 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
5 omissions, occurrences, and transactions alleged herein.

6 15. Under California law, Defendants are jointly and severally liable as employers
7 for the violations alleged herein because they have each exercised sufficient control over the
8 wages, hours, working conditions, and employment status of Plaintiff and other non-party
9 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
10 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
11 of employment, determined their rate of pay, and maintained their employment records.
12 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
13 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a common-
14 law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved
15 Employees, Defendants are jointly and severally liable for the civil penalties available to
16 Plaintiff and other non-party Aggrieved Employees under the law.

17 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
18 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
19 non-party Aggrieved Employees because Defendants have:

- 20 (a) jointly exercised meaningful control over the work performed by Plaintiff
21 and other non-party Aggrieved Employees;
- 22 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
23 Aggrieved Employees’ wages, hours, and working conditions, including
24 the quantity, quality standards, speed, scheduling, and operative details
25 of the tasks performed by Plaintiff and other non-party Aggrieved
26 Employees;
- 27 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
28 perform work which is an integral part of Defendants’ businesses; and

1 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
2 Employees as a matter of economic reality in that Plaintiff and other non-
3 party Aggrieved Employees were dependent on Defendants, who shared
4 the power to set the wages of Plaintiff and other non-party Aggrieved
5 Employees and determined their working conditions, and who jointly
6 reaped the benefits from the underpayment of their wages and
7 noncompliance with other statutory provisions governing their
8 employment.

9 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
10 there has existed a unity of interest and ownership between Defendants such that any
11 individuality and separateness between the entities has ceased.

12 18. ORCO BLOCK & HARDSCAPE; ORCO BLENDED PRODUCTS CO.; and/or
13 DOES 1 through 10 are therefore alter egos of each other.

14 19. Adherence to the fiction of the separate existence of Defendants would permit an
15 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
16 liability for the wrongful acts committed by them under the name ORCO.

17 20. Plaintiff further alleges, upon information and belief, that the Defendants ORCO
18 BLOCK & HARDSCAPE and ORCO BLENDED PRODUCTS CO. are alter egos of each other
19 for the following reasons:

20 (a) According to the most recent "Statement of Information" forms filed with
21 the California Secretary of State, ORCO BLOCK & HARDSCAPE and
22 ORCO BLENDED PRODUCTS CO. share common officers and/or
23 directors, including, but not limited to, Chief Executive Officer and
24 Director Richard J. Muth; Chief Financial Officer Jim Wodach; and
25 Secretary Stephanie Muth;

26 (b) According to the most recent "Statement of Information" forms filed with
27 the California Secretary of State, ORCO BLOCK & HARDSCAPE and
28 ORCO BLENDED PRODUCTS CO. share the same agent for service of

process, Richard J. Muth; and

(c) On information and belief, ORCO BLOCK & HARDSCAPE and ORCO BLENDED PRODUCTS CO. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants are a leading Southern California manufacturer of masonry and hardscape products, such as pavingstones, cement products, wall units, and outdoor fireplaces. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Stanton, California, or Highland, California, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

22. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

23. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Stanton, California, or Highland, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in

1 which each employee's employment ends.

2 24. Defendants continue to employ non-exempt or hourly paid employees in
3 California.

4 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
6 advisors knowledgeable about California labor and wage law, employment and personnel
7 practices, and about the requirements of California law.

8 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
9 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
10 were not recorded.

11 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive certain wages for overtime compensation and that they were not receiving certain wages
14 for overtime compensation.

15 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to be
17 paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and
18 rest period premiums leave that included as eligible income all remuneration required by law,
19 including but not limited to, all income derived from incentive pay, shift differential pay,
20 nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms
21 of remuneration in calculating the regular rate of pay for Plaintiff other non-party Aggrieved
22 Employees.

23 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 receive at least minimum wages for compensation and that they were not receiving at least
26 minimum wages for work that was required to be done off-the-clock. In violation of the
27 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
28 least minimum wages for work done off-the-clock.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
4 payment of one (1) additional hour of pay at their regular rates of pay when they were not
5 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
6 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
7 additional hour of pay at their regular rates of pay when they did not receive a timely,
8 uninterrupted, thirty (30) minute meal period.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
11 periods in accordance with the California Labor Code and applicable IWC Wage Order or
12 payment of one (1) additional hour of pay at their regular rates of pay when they were not
13 authorized and permitted to take a compliant rest period. In violation of the California Labor
14 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to
15 take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
16 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
17 they were not authorized and permitted to take a compliant rest period.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 receive complete and accurate wage statements in accordance with California law. In violation
21 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
22 provided complete and accurate wage statements.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that they had a duty to maintain accurate and complete payroll records in
25 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
26 and intentionally failed to do so.

27 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 timely payment of wages during their employment. In violation of the California Labor Code,
2 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
3 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
4 premiums, within permissible time periods.

5 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 timely payment of all wages earned upon termination of employment. In violation of the
8 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
9 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
10 and/or meal and rest period premiums, within permissible time periods.

11 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that they had a duty to maintain, for Plaintiff and other non-party Aggrieved
13 Employees, a temperature in work areas that provided reasonable comfort consistent with
14 industry-wide standards for the nature of the process and the work performed, and to take all
15 feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort,
16 but failed to do so.

17 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 receive reimbursement for all business-related expenses and costs they incurred during the
20 course and scope of their employment and that they did not receive reimbursement of applicable
21 business-related expenses and costs incurred.

22 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and
24 other non-party Aggrieved Employees with safety devices and safeguards to protect their life,
25 safety, and health in the workplace, but failed to do so.

26 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
28 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the

1 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
2 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they
3 were properly denied wages, all in order to increase Defendants' profits.

4 40. At all times herein set forth, PAGA provides that any provision of law under the
5 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
6 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
7 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
8 behalf of themselves and other current or former employees pursuant to procedures outlined in
9 California Labor Code section 2699.3.

10 41. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
11 person who was employed by the alleged violator and against whom one or more of the alleged
12 violations was committed."

13 42. Plaintiff and other current and former employees of Defendants are "aggrieved
14 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
15 or former employees and one or more of the alleged violations were committed against them.

16 43. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
17 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
18 requirements have been met:

19 (a) The aggrieved employee shall give written notice by online filing
20 (hereinafter "Employee's Notice") to the LWDA and by certified mail to
21 the employer of the specific provisions of the California Labor Code
22 alleged to have been violated, including the facts and theories to support
23 the alleged violations.

24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be accompanied
26 by a filing fee of seventy-five dollars (\$75).

27 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
28 employer and the aggrieved employee by certified mail that it does not

1 intend to investigate the alleged violation within sixty (60) calendar days
2 of the postmark date of the Employee's Notice. Upon receipt of the
3 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
4 (65) calendar days of the postmark date of the Employee's Notice, the
5 aggrieved employee may commence a civil action pursuant to California
6 Labor Code section 2699 to recover civil penalties in addition to any other
7 penalties to which the employee may be entitled.

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

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing to the LWDA and by certified mail to the employer of the
13 specific provisions of the California Labor Code alleged to have been
14 violated (other than those listed in Section 2699.5), including the facts
15 and theories to support the alleged violation.
- 16 (b) An aggrieved employee's notice filed with the LWDA pursuant to
17 2699.3(c) and any employer response to that notice shall be accompanied
18 by a filing fee of seventy-five dollars (\$75).
- 19 (c) The employer may cure the alleged violation within thirty-three (33)
20 calendar days of the postmark date of the notice. The employer shall give
21 written notice by certified mail within that period of time to the aggrieved
22 employee or representative and the agency if the alleged violation is
23 cured, including a description of actions taken, and no civil action
24 pursuant to Section 2699 may commence. If the alleged violation is not
25 cured within the 33-day period, the employee may commence a civil
26 action pursuant to Section 2699.

27 45. On November 10, 2022, Plaintiff provided written notice by online filing to the
28 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, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-919003-22. On November 14, 2022, Plaintiff filed an amended 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, supplementing and/or clarifying the facts and theories to support the alleged violations set forth in his original LWDA notice, in accordance with California Labor Code section 2699.3. True and correct copies of Plaintiff's written notices to the LWDA and Defendants are attached hereto as "Exhibit 1."

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

47. 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 for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

48. 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. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for

1 himself, all other non-party Aggrieved Employees, and the State of California against
2 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
3 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
4 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
5 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

6 49. Defendants, at all times relevant to this complaint, were employers or persons
7 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
8 Employees' rights by violating various sections of the California Labor Code as set forth above.

9 50. As set forth below, Defendants have violated numerous provisions of both the
10 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
11 Order.

12 51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
13 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
14 attorney general, seeks assessment and collection of civil penalties for himself, all other non-
15 party Aggrieved Employees, and the State of California against Defendants for violations of
16 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
17 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

18 **FIRST CAUSE OF ACTION**

19 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

20 **(Against all Defendants)**

21 52. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 53. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
24 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
25 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
26 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved
27 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
28 sections not found in section 2699.5, including sections 516, 1182.12, 6401, and 6403.

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

- 3 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
4 Wage Order for Defendants' failure to compensate Plaintiff and other
5 non-party Aggrieved Employees with all required overtime pay, as set
6 forth below;
- 7 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable
8 IWC Wage Order for Defendants' failure to include all forms of
9 remuneration in the "regular rate" of pay as required by law for purposes
10 of paying overtime wages, minimum wages, and/or meal and rest period
11 premiums, to Plaintiff and other non-party Aggrieved Employees, as set
12 forth below;
- 13 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to compensate
15 Plaintiff and other non-party Aggrieved Employees with at least
16 minimum wages for all hours worked, as set forth below;
- 17 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
18 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
19 and other non-party Aggrieved Employees with meal periods, as set forth
20 below;
- 21 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
22 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
23 and other non-party Aggrieved Employees to take rest periods, as set forth
24 below;
- 25 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
26 IWC Wage Order for failure to provide accurate and complete wage
27 statements to Plaintiff and other non-party Aggrieved Employees, as set
28 forth below;

- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;
- (i) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (j) Violation of Labor Code section 1198 for failure to maintain, for Plaintiff and other non-party Aggrieved Employees, a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, and to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort, as set forth below;
- (k) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (l) Violation of Labor Code sections 6401 and 6403 for failure to provide Plaintiff and other non-party Aggrieved Employees with safety devices and safeguards for the workplace, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

55. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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.”

56. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-

1 and-one-half or two-times that person's regular rate of pay, depending on the number of hours
2 worked by the person on a daily or weekly basis.

3 57. Specifically, the applicable IWC Wage Order provides that Defendants are and
4 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
5 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
6 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
7 hours in a workweek.

8 58. The applicable IWC Wage Order further provides that Defendants are and were
9 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
10 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
11 An employee's regular rate of pay includes all remuneration for employment paid to, or on
12 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

13 59. California Labor Code section 510 codifies the right to overtime compensation
14 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
15 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
16 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
17 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
18 the seventh (7th) day of work.

19 60. During the relevant time period, Defendants willfully failed to pay all overtime
20 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
21 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
22 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
23 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
24 not recorded.

25 61. First, during the relevant period, Defendants had a company-wide policy and/or
26 practice of improperly rounding employees' clock-in and clock-out times in their timekeeping
27 system to the nearest quarter (0.25) of an hour. Defendants' rounding policy resulted in the
28 failure to compensate Plaintiff and other non-party Aggrieved Employees fully for all hours

1 worked, causing Plaintiff and other non-party Aggrieved Employees not be paid overtime wages
2 for all of the overtime hours they actually worked. Defendants' policy of rounding is unfair and
3 has, over time, resulted in the underpayment of wages to Plaintiff and other non-party Aggrieved
4 Employees. To the extent Defendants' rounding policy has taken away time worked that was
5 eligible for overtime, Plaintiff and other non-party Aggrieved Employees were denied overtime
6 pay for all hours worked.

7 62. Second, Defendants had, and continue to have, a company-wide policy and/or
8 practice of understaffing their facilities while assigning heavy workloads, resulting in Plaintiff
9 and other non-party Aggrieved Employees being required to perform various work-related tasks
10 while off-the-clock after their shifts and on their days off. For example, Plaintiff was sometimes
11 required to troubleshoot paver machines after clocking out because there were not enough
12 employees on shift to diagnose and correct issues on the production line. Additionally, on his
13 days off, Defendants required Plaintiff to communicate with management via phone calls for
14 15-20 minutes at a time regarding work-related matters, such as problems with the paver
15 machines. While this off-the-clock work could have been accounted for and recorded by
16 Defendants, instead, Defendants refused to do so to avoid payment of additional wages to
17 Plaintiff and other non-party Aggrieved Employees. Defendants failed to track all of the time
18 that employees spent performing work-related tasks after their scheduled shifts and on their
19 days off, and Plaintiff and other non-party Aggrieved Employees received no compensation for
20 this time.

21 63. Third, Defendants' policies and/or practices of understaffing their worksites
22 while assigning heavy workloads, including pressuring employees to meet quotas and
23 productivity requirements, such as producing a certain number of pavers (*see infra*), resulted in
24 a failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal
25 period coverage, and thus, Plaintiff and other non-party Aggrieved Employees were not always
26 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive
27 a meal period. Defendants also had a practice of failing to schedule meal periods, which further
28 caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for

1 compliant meal periods. For example, Plaintiff worked through his meal periods multiple times
2 during his employment and had his meals interrupted and/or cut short 3-4 times per week due
3 to the heavy workload. Thus, Plaintiff and other non-party Aggrieved Employees worked
4 through meal periods and/or had meal periods interrupted in order to complete their assigned
5 workloads and meet productivity expectations. Defendants did not compensate Plaintiff and
6 other non-party Aggrieved Employees for the time they spent working off the clock during meal
7 periods.

8 64. Further, during the relevant time period, Defendants maintained and
9 implemented a company-wide on-premises meal period policy, which mandated Plaintiff and
10 other non-party Aggrieved Employees remain on the work premises during their meal periods.
11 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the
12 premises during meal periods, they were denied the ability to use their meal periods freely for
13 their own purposes, such as running personal errands. Thus, Defendants effectively maintained
14 control over Plaintiff and other non-party Aggrieved Employees during meal periods.
15 Moreover, Plaintiff and other non-party Aggrieved Employees were required to respond to calls
16 from management and co-workers on their personal mobile devices during unpaid meal periods.
17 Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees
18 were being made to work during unpaid meal periods, including communicating with
19 management and co-workers in order to meet Defendants' expectations, but failed to
20 compensate them for this off-the-clock work.

21 65. Fourth, on information and belief, Defendants' company-wide timekeeping
22 system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours
23 worked when their meal periods were shortened or interrupted, because the system locked
24 Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period,
25 and would not permit them to clock back in from a meal period until about 30 minutes had
26 elapsed. Thus, Defendants' timekeeping system further prevented Plaintiff and other non-party
27 Aggrieved Employees from recording all hours worked when their meal periods were shortened
28 or interrupted.

66. Defendants knew or should have known that, as a result of these company-wide practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing their assigned duties off-the-clock and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked.

67. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees incentive pay, shift differential pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all compensation, including incentive pay, shift differential pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and other non-party Aggrieved Employees worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

68. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PAY MINIMUM WAGES

VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198

69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 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 in

1 IWC Wage Order No. 1-2001 as “the time during which an employee is subject to the control
2 of an employer, and includes all the time the employee is suffered or permitted to work, whether
3 or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

4 70. As set forth above, Defendants had a company-wide policy and/or practice of
5 rounding Plaintiff’s and other non-party Aggrieved Employees’ hourly clock-in and clock-out
6 times in their timekeeping system to the nearest quarter hour, resulting in the failure to
7 compensate them for all hours worked. Moreover, as stated above, Defendants maintained
8 policies and/or practices requiring Plaintiff and other non-party Aggrieved Employees to
9 perform work off-the-clock after the end of their shifts and/or on their days off, including
10 troubleshooting paver machines and communicating with management and co-workers about
11 work-related matters.

12 71. Further, as also stated above, due to Defendants’ policies and/or practices of
13 understaffing their worksites while assigning heavy workloads, enforcing productivity
14 requirements, and failing to schedule meal periods, Plaintiff and other non-party Aggrieved
15 Employees were impeded from taking all uninterrupted meal periods to which they were entitled
16 and were required to work off-the-clock during meal periods. As also set forth above, due to
17 Defendants’ company-wide policies and/or practices of requiring employees to stay on the work
18 premises during meal periods, Plaintiff and other non-party Aggrieved Employees were not
19 relieved of all duties during unpaid meal periods. Thus, Defendants systematically failed to pay
20 Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal
21 periods because these hours were not always correctly recorded. Additionally, as stated,
22 Plaintiff would be required to respond to calls from management on his personal cellular phone
23 during unpaid meal periods.

24 72. Furthermore, Defendants’ timekeeping system prevented Plaintiff and other non-
25 party Aggrieved Employees from recording all hours worked when their meal periods were
26 shortened or interrupted, because the system locked out Plaintiff and other non-party Aggrieved
27 Employees once they clocked out for a meal period, and would not permit them to clock back
28 in from a meal period until about 30 minutes had elapsed. Thus, Defendants’ timekeeping

1 system further prevented Plaintiff and other non-party Aggrieved Employees from recording all
2 hours worked when their meal periods were shortened or interrupted.

3 73. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
4 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
5 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
6 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
7 1197, and 1198.

8 74. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
9 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
10 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
11 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

12 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
13 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

14 75. At all relevant times herein set forth, the applicable IWC Wage Order and
15 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
16 other non-party Aggrieved Employees' employment by Defendants.

17 76. At all relevant times herein set forth, California Labor Code section 512(a)
18 provides that an employer may not require, cause, or permit an employee to work for a period
19 of more than five (5) hours per day without providing the employee with a meal period of not
20 less than thirty (30) minutes, except that if the total work period per day of the employee is not
21 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
22 and the employee. Under California law, first meal periods must start after no more than five
23 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

24 77. At all relevant times herein set forth, California Labor Code sections 226.7,
25 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
26 meal period mandated by an applicable order of the IWC.

27 78. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
28 and the applicable IWC Wage Order also require employers to provide a second meal period of

1 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
2 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
3 hours worked is no more than twelve (12) hours, the second meal period may be waived by
4 mutual consent of the employer and the employee only if the first meal period was not waived.

5 79. As set forth above, during the relevant time period, Defendants had, and continue
6 to have, company-wide policies and/or practices of understaffing their locations and assigning
7 strict quotas for production. Defendants enforced certain production goals, which required that
8 paver machines run continuously throughout the day. In order for the paver machines to run
9 continuously, employees such as Plaintiff have to monitor product output at all times and
10 respond quickly to re-start production when the machines slowed down. However, Defendants
11 understaffed their locations in order to reduce and limit their labor costs, resulting in Plaintiff's
12 meal periods being missed, interrupted, cut short, or taken late in order to attend to production.
13 These company-wide practices, combined with the failure to schedule meal periods, led to a
14 lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees
15 from taking all timely, uninterrupted meal periods to which they were entitled. The resulting
16 lack of meal period coverage was exacerbated by the shortage of employees on duty to handle
17 the workload.

18 80. Moreover, as stated above, in conjunction with these policies and/or practices,
19 Defendants required Plaintiff and other non-party Aggrieved Employees to remain on the work
20 premises for their meal periods. Because Plaintiff and other non-party Aggrieved Employees
21 were restricted from leaving the premises during meal periods, they were denied the ability to
22 use their meal periods freely for their own purposes, such as running personal errands. Thus,
23 Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
24 Employees during meal periods.

25 81. Defendants' practices and policies prevented Plaintiff and other non-party
26 Aggrieved Employees from taking all compliant meal periods to which they were entitled. As
27 a result, Plaintiff and other non-party Aggrieved Employees would be forced to work in excess
28 of five (5) hours before taking a meal period and, at times, had their meal periods interrupted

1 and/or had to forgo their meal periods altogether. For example, Plaintiff missed his meal periods
2 entirely several times and regularly had to take his meal periods after his fifth hour of work
3 because of understaffing and in order to meet production requirements. As a further example,
4 Plaintiff's meal periods were interrupted 3-4 times per week by phone calls from management
5 and co-workers asking him questions about the paver machines, and they were cut short several
6 times because he had to help restart production.

7 82. Additionally, Defendants did not schedule second meal periods and had no policy
8 for permitting Plaintiff and other non-party Aggrieved Employees to take second 30-minute
9 meal periods on days that they worked in excess of ten (10) hours in one day. For example,
10 Plaintiff would work in excess of ten (10) hours per day every shift, and was not provided his
11 second meal period during these shifts. Plaintiff and other non-party Aggrieved Employees did
12 not sign valid meal period waivers on days that they were entitled to meal periods and were not
13 relieved of all duties.

14 83. Moreover, Defendants had a company-wide policy of requiring all employees to
15 sign blanket meal period waivers. Defendants took the position that non-exempt, hourly paid
16 employees had waived their rights to first and/or second meal periods for the entirety of their
17 employment and, on that basis, did not provide them with all meal periods to which they were
18 entitled. Defendants' presumption that meal periods would not be provided for shifts in excess
19 of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less
20 than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire
21 discouraged and impeded Plaintiff and other non-party Aggrieved Employees from taking all
22 meal periods to which they were entitled.

23 84. Furthermore, an employer's obligation to provide a meal period is only
24 "triggered" when the employer "employs an employee for a work period of more than five hours
25 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
26 work for a full five hours, its meal break obligation is triggered.").

27 ///

28 ///

1 [A]fter the meal break obligation is triggered . . . an employer is put to a
2 choice: it must (1) afford an off-duty meal period; (2) consent to a
3 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
4 obtain written agreement to an on-duty meal period if circumstances
5 permit. Failure to do one of these will render the employer liable for
6 premium pay.

7 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
8 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
9 simultaneously (as opposed to on a specific work day) renders them invalid and unenforceable,
10 because Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees
11 with meal periods did not arise until they had employed them for a full five (5) hours.

12 85. At all times herein mentioned, Defendants knew or should have known that, as a
13 result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented from
14 being relieved of all duties and required to perform some of their assigned duties during meal
15 periods. Defendants further knew or should have known that they did not pay Plaintiff and
16 other non-party Aggrieved Employees meal period premiums when meal periods were late,
17 interrupted, shortened, and/or missed.

18 86. As set forth above, Defendants has a company-wide policy and/or practice of
19 rounding employee clock-in and clock-out times in their timekeeping system, which prevented
20 Plaintiff and other non-party Aggrieved Employees from receiving all meal period premiums
21 when they took late and/or shortened meal periods. As stated, Defendants' rounding policy
22 rounded employees' clock-in and clock-out times in their timekeeping system to the nearest
23 quarter (0.25) of an hour. To the extent that Defendants' timekeeping system reported that
24 Plaintiff and other non-party Aggrieved Employees were provided with timely, full 30-minute
25 meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less
26 than 30 minutes, Plaintiff and other non-party Aggrieved Employees were entitled to a meal
27 period penalty. Thus, Plaintiff and other non-party Aggrieved Employees did not receive meal
28 period penalties for these improperly rounded meal periods. Moreover, as stated, Defendants'
company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved
Employees from recording when their meal periods were shortened or interrupted, because the

1 system locked out Plaintiff and other non-party Aggrieved Employees once they clocked out
2 for a meal period, and would not permit them to clock back in from a meal period before about
3 30 minutes had elapsed.

4 87. Moreover, Defendants engaged in a company-wide practice and/or policy of not
5 paying all meal period premiums owed when compliant meal periods are not provided. Because
6 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
7 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the
8 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees premium
9 pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and other
10 non-party Aggrieved Employees at the correct rate of pay for premiums because Defendants
11 systematically failed to include all forms of compensation, such as incentive pay, shift
12 differential pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular
13 rate of pay.

14 88. Defendants' conduct violates the applicable IWC Wage Order, and California
15 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
16 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
17 and/or 2699(a), (f), and (g).

18 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

19 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

20 89. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
22 non-party Aggrieved Employees' employment by Defendants.

23 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof" unless the total daily work time is less than three and one-half
28 (3 ½) hours.

1 91. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to authorize and permit rest periods
4 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
5 must “relinquish any control over how employees spend their break time, and relieve their
6 employees of all duties—including the obligation that an employee remain on call. A rest
7 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
8 257, 269-270 (2016).

9 92. Pursuant to the applicable IWC Wage Order and California Labor Code section
10 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
11 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
12 required rest period was not authorized and permitted.

13 93. During the relevant time period, Defendants regularly failed to authorize and
14 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
15 per each four (4) hour period worked or major fraction thereof. As with meal periods,
16 Defendants’ company-wide practices, including understaffing and assigning heavy workloads,
17 including pressure to meet quotas and productivity requirements, prevented Plaintiff and other
18 non-party Aggrieved Employees from being relieved of all duty to take rest periods.
19 Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants’
20 failure to provide adequate rest period coverage, further led to Plaintiff and other non-party
21 Aggrieved Employees not being authorized and permitted to take compliant rest periods.

22 94. Furthermore, Defendants maintained and implemented a company-wide on-
23 premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved
24 Employees remain on the premises during their rest periods. Because Plaintiff and other non-
25 party Aggrieved Employees were restricted from leaving Defendants’ premises during rest
26 periods, they were denied the ability to use their rest periods freely for their own purposes, such
27 as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and
28 other non-party Aggrieved Employees during rest periods.

1 95. As a result of Defendants' practices and policies, Plaintiff and other non-party
2 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
3 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
4 entitled. For example, Plaintiff's rest periods would be interrupted regularly by supervisors and
5 co-workers contacting him on his personal cellular phone or due to machinery that required
6 servicing and/or re-starting. Additionally, Plaintiff did not receive second or third rest periods
7 at all when working shifts in excess of 6 hours and in excess of 10 hours, respectively.

8 96. Defendants have also engaged in a company-wide practice and/or policy of not
9 paying all rest period premiums owed when compliant rest periods are not authorized and
10 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
11 Employees have not received premium pay for all missed rest periods. Alternatively, to the
12 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
13 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
14 other non-party Aggrieved Employees at the correct rate of pay for premiums because
15 Defendants failed to include all forms of compensation, such as incentive pay, shift differential
16 pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

17 97. Accordingly, Defendants failed to authorize and permit all compliant rest periods
18 and failed to pay the full rest period premiums due. Defendants' conduct violates the applicable
19 IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other
20 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
21 Labor Code sections 558 and/or 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
23 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

24 98. At all relevant times herein, California Labor Code section 226(a) provides that
25 every employer shall furnish each of his or her employees an accurate and complete itemized
26 wage statement in writing, including, but not limited to, the name and address of the legal entity
27 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
28 rates of pay.

1 99. During the relevant time period, Defendants have knowingly and intentionally
2 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
3 inaccurate wage statements. For example, Defendants issued uniform wage statements to
4 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
5 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
6 the pay period, including rates of pay for overtime wages and/or meal and rest period premiums,
7 and the corresponding number of hours worked at each hourly rate. Specifically, Defendants
8 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

9 100. Because Defendants did not record the time Plaintiff and other non-party
10 Aggrieved Employees spent working off-the-clock, improperly rounded their total hours
11 worked, and deducted time from their records for meal periods that were interrupted and/or
12 missed (and therefore time for which they should have been paid), Defendants did not list the
13 correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved
14 Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the
15 same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff
16 and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list
17 the applicable hourly rates of pay in effect during the pay period and the corresponding accurate
18 number of hours worked at each hourly rate, in violation of section 226(a)(9).

19 101. Additionally, because Defendants did not calculate Plaintiff's and other non-
20 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
21 wages and/or meal and rest period premiums, Defendants did not list the correct amount of gross
22 wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in
23 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates
24 in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
25 rest period premiums in violation of section 226(a)(9).

26 102. The wage statement deficiencies also include, among other things, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
28 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for

1 which aggrieved employees were paid; failing to list the name of the employee and only the last
2 four digits of his or her social security number or an employee identification number other than
3 a social security number; failing to list the name and address of the legal entity that is the
4 employer; and/or failing to state all hours worked as a result of not recording or stating the hours
5 they worked off-the-clock.

6 103. California Labor Code section 1174(d) provides that “[e]very person employing
7 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
8 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
9 plants or establishments at which employees are employed, payroll records showing the hours
10 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
11 applicable piece rate paid to, employees employed at the respective plants or
12 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
13 civil penalty if they fail to maintain accurate and complete records as required by section
14 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
15 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
16 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
17 result of failing to record the off-the-clock hours that they worked and improperly rounding
18 Plaintiff’s and other non-party Aggrieved Employees’ total hours worked.

19 104. California Labor Code section 1198 provides that the maximum hours of work
20 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
21 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
22 of any employees for longer hours than those fixed by the order or under conditions of labor
23 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
24 are required to keep accurate time records showing when the employee begins and ends each
25 work period and meal period. During the relevant time period, Defendants engaged in company-
26 wide practices and/or policies of failing to record actual hours worked, and thereby failed, on a
27 company-wide basis, to keep accurate records of work period and meal period start and stop
28 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198.

Furthermore, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

105. Defendants' conduct violates California Labor Code 226(a), 1174(d), and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

106. At all relevant times herein set forth, California 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 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. Labor Code section 204 further provides 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.

107. At all relevant times herein, California 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, at all relevant times herein, 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 (7) calendar days following the close of the payroll period.

21. During the relevant time period, Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees all wages due to them within any time period specified by California Labor Code section 204 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums.

108. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

3 109. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
4 that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
6 her employment, his or her wages shall become due and payable not later than seventy-two (72)
7 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
8 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
9 quitting.

10 110. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
11 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
12 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
13 period premiums, either at the time of discharge, or within seventy-two (72) hours of their
14 leaving Defendants' employ.

15 111. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
16 who are no longer employed by Defendants their wages earned and unpaid at the time of
17 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
18 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
19 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
20 (g).

21 **FAILURE TO MAINTAIN WORK TEMPERATURE PROVIDING REASONABLE**
22 **COMFORT**

23 **VIOLATION OF LABOR CODE SECTION 1198**

24 112. At all relevant times, California Labor Code section 1198 dictates that no
25 employer may employ an employee under conditions of labor that are prohibited by the
26 applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the
27 standard conditions of labor fixed by the commission shall be the . . . standard conditions of
28 labor for employees. The employment of any employee . . . under conditions of labor prohibited

1 by the order is unlawful.”

2 113. California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide
3 that “[t]he temperature maintained in each work area shall provide reasonable comfort
4 consistent with industrywide standards for the nature of the process and the work performed. . . .
5 If excessive heat or humidity is created by the work process, the employer shall take all feasible
6 means to reduce such excessive heat or humidity to a degree providing reasonable comfort.”
7 California law requires an employer to endeavor to provide a safe and healthy workplace (Cal.
8 Code Regs., tit. 8, § 3203). Moreover, California Labor Code section 6720 required the
9 California Division of Occupational Safety and Health (“OSHA”) to propose an indoor heat
10 illness standard by January 1, 2019; OSHA’s draft standard, as of April 22, 2019, applies its
11 proposed regulations to “all indoor work areas where the temperature equals or exceeds 82
12 degrees Fahrenheit when employees are present.”

13 114. Upon information and belief, Defendants violated California Labor Code section
14 1198 and California Code of Regulations, Title 8, section 11010(15), because Defendants failed
15 to maintain a temperature in work areas that provided reasonable comfort consistent with
16 industry-wide standards for the nature of the process and the work performed and failed to take
17 all feasible means to reduce excessive heat or humidity to a degree providing reasonable
18 comfort.

19 115. During the relevant time period, Plaintiff and other non-party Aggrieved
20 Employees were subjected to excessive heat and/or humidity resulting in temperatures equaling
21 or exceeding 82 degrees Fahrenheit. Defendants failed to provide Plaintiff and other non-party
22 Aggrieved Employees with reasonable comfort by maintaining the indoor temperature within
23 the range of industry standards by providing adequate air conditioning, in violation of California
24 Labor Code section 1198 and IWC Wage Order No. 1-2001, Section 15. For example, Plaintiff
25 and other non-party Aggrieved Employees who were present in Defendants’ facilities were not
26 consistently provided air conditioning or fans, and would be required to work indoors at 82
27 degrees Fahrenheit or more. Accordingly, Defendants failed to maintain, in their work areas, a
28 temperature providing reasonable comfort for their employees, including Plaintiff and other

1 non-party Aggrieved Employees, in violation of California Labor Code section 1198. Plaintiff
2 and other non-party Aggrieved Employees are therefore entitled to recover civil penalties
3 pursuant to Labor Code sections 2699(a), (f), and (g).

4 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

5 **VIOLATION OF LABOR CODE SECTION 2802**

6 116. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: “[w]hen tools
12 or equipment are required by the employer or are necessary to the performance of a job, such
13 tools and equipment shall be provided and maintained by the employer, except that an employee
14 whose wages are at least two (2) times the minimum wage provided herein may be required to
15 provide and maintain hand tools and equipment customarily required by the trade or craft.”

16 117. During the relevant time period, Plaintiff and other non-party Aggrieved
17 Employees were required to use their personal mobile devices, including, but not limited to,
18 cellular phones, and/or mobile data to carry out their job duties, but Defendants failed to
19 reimburse them for the costs of their work-related mobile device expenses. For example,
20 Plaintiff was required to use his personal cellular phone to communicate with management and
21 co-workers about work-related matters. Although Defendants required Plaintiff and other non-
22 party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry
23 out their work-related duties, Defendants failed to reimburse them for these costs.

24 118. Also, during the relevant time period, Defendants required Plaintiff and other
25 non-party Aggrieved Employees to purchase tools, supplies, and/or equipment that were
26 necessary for the completion of their work-related duties. For example, during his employment,
27 Plaintiff spent about \$500 to purchase safety equipment such as steel-toed boots, because
28 Defendants failed to provide him with these necessary tools, supplies, and/or safety equipment

1 which were required for the workplace to operate properly and/or meet management's
2 expectations. Although Defendants required Plaintiff and other non-party Aggrieved
3 Employees to purchase and use their own tools, supplies, and/or safety equipment in the
4 performance of their duties, they did not reimburse them for these expenses.

5 119. Defendants could have provided Plaintiff and other non-party Aggrieved
6 Employees with the actual equipment for use on the job, such as company mobile devices and
7 safety equipment, or Defendants could have fully reimbursed employees for their mobile device
8 usage, and tools, supply, and/or safety equipment. Instead, Defendants passed these operating
9 costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant times,
10 Plaintiff did not earn at least two (2) times the minimum wage.

11 120. Defendants' company-wide policy and/or practice of not reimbursing employees
12 for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-
13 party Aggrieved Employees violates California Labor Code section 2802. Plaintiff and other
14 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
15 Labor Code sections 2699(a), (f), and (g).

16 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

17 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

18 121. At all relevant times herein, California Labor Code section 6401 provides that
19 employers must furnish and use safety devices and safeguards, and adopt and use practices,
20 means, methods, operations, and processes which are reasonably adequate to render the
21 employment and place of employment safe and healthy. California Labor Code Section 6401
22 further provides that an employer must do everything reasonably necessary to protect the life,
23 safety and health of its employees.

24 122. During the relevant period, as stated above, Defendants failed to provide Plaintiff
25 and other non-party Aggrieved Employees with personal protective equipment, such as steel-
26 toed boots, to keep them safe in the workplace. Despite the fact that Defendants required
27 Plaintiff and other non-party Aggrieved Employees to wear certain personal protective
28 equipment, including steel-toed boots, while engaged in their work-related duties, Defendants

1 failed to provide such reasonably necessary equipment to Plaintiff and other non-party
2 Aggrieved Employees to keep them safe.

3 123. Defendants' failure to provide Plaintiff and other non-party Aggrieved
4 Employees with safety devices and safeguards for the workplace violates Labor Code sections
5 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are entitled to recover
6 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a),
7 (f), and (g).

8 **REQUEST FOR JURY TRIAL**

9 Plaintiff requests a trial by jury.

10 **PRAYER FOR RELIEF**

11 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
12 judgment against Defendants, jointly and severally, as follows:

13 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
14 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

15 **As to the First Cause of Action**

16 2. That the Court declare, adjudge and decree that Defendants violated the
17 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
18 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
19 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of
20 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198
21 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198
22 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
23 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and
24 maintain accurate payroll records); 204 (by failing to timely pay all earned wages during
25 employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 1198
26 and the applicable IWC Wage Order (by failing to maintain reasonable work temperature); 2802
27 (by failing to reimburse business expenses); and 6401 and 6403 (by failing to provide safety
28 devices and safeguards);

1 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
2 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
3 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and
4 6403;

5 4. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
8 1197, 1198, 2802, 6401, and 6403;

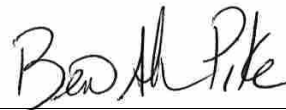
9 5. For pre-judgment and post-judgment interest as provided by law; and

10 6. For such other and further relief as the Court may deem equitable and
11 appropriate.

12
13 Dated: January 19, 2023,

Respectfully submitted,

Capstone Law APC

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15
16 By: 

17 Bevin Allen Pike
18 Daniel S. Jonathan
19 Trisha K. Monesi

20 Attorneys for Plaintiff Victor Casarez
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EXHIBIT “1”



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November 10, 2022

VIA ONLINE SUBMISSION

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

Subject: *Victor Casarez v. ORCO Block Co., Inc., et al.*

Dear PAGA Administrator:

This office represents Victor Casarez in connection with his claims under the California Labor Code. Mr. Casarez was an employee of ORCO BLOCK CO., INC.; ORCO BLOCK & HARDSCAPE; and/or ORCO BLENDED PRODUCTS CO. For the purpose of this letter, Mr. Casarez collectively refers to these entities as "ORCO."

The employers may be contacted directly at the addresses below:

ORCO BLOCK CO., INC.
11100 BEACH BLVD
STANTON, CA 90680

ORCO BLOCK & HARDSCAPE
11100 BEACH BLVD.
STANTON, CA 90680

ORCO BLENDED PRODUCTS CO.
27347 E 3RD ST
HIGHLAND, CA 92346

Mr. Casarez intends to seek civil penalties, attorney's fees, costs, and other available relief for 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. Casarez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ORCO as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ORCO employed Mr. Casarez as an hourly paid, non-exempt employee from approximately January 2021 to August 2022. Mr. Casarez worked for ORCO as a Machine/Dry Side Operator at its facility in Mira Loma, California. During his employment, Mr. Casarez typically worked twelve (12) hours per day and five (5) days per week. At the time his employment ended, Mr. Casarez was

compensated approximately \$19.37 per hour. Mr. Casarez's primary job duties included, without limitation, operating paver machines, conducting quality inspections, and training employees.

ORCO committed one or more of the following Labor Code violations against Mr. Casarez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

ORCO's Company-Wide and Uniform Payroll and HR Practices

ORCO BLOCK CO., INC. is a business entity of unknown origin. ORCO BLOCK & HARDSCAPE and ORCO BLENDED PRODUCTS CO. are California corporations. Together, they manufacture masonry and hardscape products, such as paving stones, cement products, wall units, and outdoor fireplaces. Upon information and belief, ORCO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Stanton, California, or Highland, California, for all non-exempt, hourly paid employees working for ORCO in California, including Mr. Casarez and other aggrieved employees. At all relevant times, ORCO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Casarez and other aggrieved employees, regardless of their location or position.

Upon information and belief, ORCO maintains a centralized Payroll department at its corporate headquarters in Stanton, California, or Highland, California, which processes payroll for all non-exempt, hourly paid employees working for ORCO in California, including Mr. Casarez and other aggrieved employees. Further, ORCO issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Casarez and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, ORCO utilized the same methods and formulas when calculating wages due to Mr. Casarez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Casarez's experience and counsel's review of those records currently available relating to Mr. Casarez'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 (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Casarez 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.

ORCO willfully failed to pay all overtime wages owed to Mr. Casarez and other aggrieved employees. During the relevant time period, Mr. Casarez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, ORCO had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. ORCO's rounding policy resulted in the failure to compensate Mr. Casarez and other aggrieved employees fully for all hours worked, causing Mr. Casarez and other aggrieved employees not be paid overtime wages for all of the overtime hours they actually worked. ORCO's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Casarez and other aggrieved employees. To the extent ORCO's rounding policy has taken away time worked that was eligible for overtime, Mr. Casarez and other aggrieved employees were denied overtime pay for all hours worked.

Second, ORCO had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while assigning heavy workloads, resulting in Mr. Casarez and other aggrieved employees being required to perform various work-related tasks while off-the-clock after their shifts and on their days off. For example, Mr. Casarez was sometimes required to troubleshoot paver machines after clocking out because there were not enough employees on shift to diagnose and correct issues on the production line. Additionally, on his days off, ORCO required Mr. Casarez to communicate with management via phone calls for 15-20 minutes at a time regarding work-related matters, such as problems with the paver machines. While this off-the-clock work could have been accounted for and recorded by ORCO, instead, ORCO refused to do so to avoid payment of additional wages to Mr. Casarez and other aggrieved employees. ORCO failed to track all of the time that employees spent performing work-related tasks after their scheduled shifts and on their days off, and Mr. Casarez and other aggrieved employees received no compensation for this time.

Third, ORCO's policies and/or practices of understaffing its worksites while assigning heavy workloads, including pressuring employees to meet quotas and productivity requirements, such as producing a certain number of pavers (*see infra*), resulted in a failure to provide Mr. Casarez and other aggrieved employees with adequate meal period coverage, and thus, Mr. Casarez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. ORCO also had a practice of failing to schedule meal periods, which further caused Mr. Casarez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Casarez missed his meal periods multiple times during his employment and had his meals interrupted 3-4 times per week due to the heavy workload. Thus, Mr. Casarez and other aggrieved employees missed meal periods and/or had meal periods interrupted in order to complete their assigned workloads and meet productivity expectations. ORCO did not compensate Mr. Casarez and other aggrieved employees for the time they spent working off the clock during meal periods.

Moreover, Mr. Casarez and other aggrieved employees were required to respond to calls from management and co-workers on their personal cellular phones during unpaid meal periods. ORCO knew or should have known that Mr. Casarez and other aggrieved employees were being made to work during unpaid meal periods, including communicating with management and co-workers in order to meet ORCO's expectations, but failed to compensate them for this off-the-clock work.

Fourth, on information and belief, ORCO's company-wide timekeeping system prevented Mr. Casarez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Mr. Casarez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until about 30 minutes had elapsed. Thus, ORCO's timekeeping system further prevented Mr. Casarez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

ORCO knew or should have known that as a result of these company-wide practices and/or policies, Mr. Casarez and other aggrieved employees were performing their assigned duties off-the-clock and/or during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Casarez and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Casarez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, ORCO did not pay Mr. Casarez and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, ORCO paid Mr. Casarez and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ORCO failed to incorporate all compensation, including shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Casarez and other aggrieved employees worked overtime and received these other forms of pay, ORCO failed to pay all overtime wages by paying a lower overtime rate than required.

For example, ORCO paid Mr. Casarez and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Casarez's and other aggrieved employees' wage statements as "Staff Referral." During pay periods that Mr. Casarez and other aggrieved employees were paid overtime wages, ORCO did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Casarez's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, ORCO paid Mr. Casarez and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. ORCO's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Casarez and other aggrieved employees on a company-wide basis.

ORCO's failure to pay Mr. Casarez 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. Mr. Casarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 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 in Wage Order No. 1-2001 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, § 11010(2)(G) (defining “Hours Worked”).

As set forth above, ORCO had a company-wide policy and/or practice of rounding Mr. Casarez’s and other aggrieved employees’ hourly clock-in and clock-out times in their timekeeping system to the nearest quarter hour, resulting in the failure to compensate them for all hours worked. Moreover, as stated above, ORCO maintained policies and/or practices requiring Mr. Casarez and other aggrieved employees to perform work off-the-clock after the end of their shifts and/or on their days off, including troubleshooting paver machines and communicating with management and co-workers about work-related matters.

Further, as also stated above, due to ORCO’s policies and/or practices of understaffing its worksites while assigning heavy workloads, enforcing productivity requirements, and failing to schedule meal periods, Mr. Casarez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Thus, ORCO systematically failed to pay Mr. Casarez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded. Additionally, as stated, Mr. Casarez would be required to respond to calls from management on his personal cellular phone during unpaid meal periods.

Furthermore, ORCO’s timekeeping system prevented Mr. Casarez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Casarez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until about 30 minutes had elapsed. Thus, ORCO’s timekeeping system further prevented Mr. Casarez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Thus, ORCO did not pay at least minimum wages for all hours worked by Mr. Casarez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, ORCO did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, ORCO regularly failed to pay at least minimum wages to Mr. Casarez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Casarez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) 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 after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, ORCO had, and continues to have, company-wide policies and/or practices of understaffing its locations and assigning strict quotas for production. ORCO enforced certain production goals, which required that paver machines run continuously throughout the day. In order for the paver machines to run continuously, employees such as Mr. Casarez have to monitor product output at all times and respond quickly to re-start production when the machines slowed down. However, ORCO understaffed its locations in order to reduce and limit its labor costs, resulting in Mr. Casarez's meal periods being missed, interrupted, cut short, or taken late in order to attend to production. These company-wide practices, combined with the failure to schedule meal periods, led to a lack of meal period coverage and prevented Mr. Casarez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. The resulting lack of meal period coverage was exacerbated by the shortage of employees on duty to handle the workload.

ORCO's practices and policies prevented Mr. Casarez and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Casarez and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, Mr. Casarez missed his meal periods entirely several times and regularly had to take his meal periods after his fifth hour of work because of understaffing and in order to meet production requirements. As a further example, Mr. Casarez's meal periods were interrupted 3-4 times per week by phone calls from management and co-workers asking him questions about the paver machines, and they were cut short several times because he had to help restart production.

Additionally, ORCO did not schedule second meal periods and had no policy for permitting Mr. Casarez and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Casarez would work in excess of ten (10) hours per day every shift, and was not provided his second meal period during these shifts. Mr. Casarez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, ORCO had a company-wide policy of requiring all employees to sign blanket meal period waivers. ORCO took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. ORCO's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire discouraged and impeded Mr. Casarez and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That ORCO required Mr. Casarez and other aggrieved employees to sign meal period waivers simultaneously (as opposed to on a specific work day) renders them invalid and unenforceable, because ORCO's obligation to provide Mr. Casarez and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

Furthermore, during the relevant time period, ORCO maintained and implemented a company-wide on-premises meal period policy, which mandated Mr. Casarez and other aggrieved employees remain on the work premises during their meal periods. Because Mr. Casarez and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, ORCO effectively maintained control over Mr. Casarez and other aggrieved employees during meal periods.

At all times herein mentioned, ORCO knew or should have known that, as a result of these policies, Mr. Casarez and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. ORCO further knew or should have known that it did not pay Mr. Casarez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

As set forth above, ORCO has a company-wide policy and/or practice of rounding employee clock-in and clock-out times in its timekeeping system, which prevented Mr. Casarez and other aggrieved employees from receiving all meal period premiums when they took late and/or shortened meal periods. As stated, ORCO's rounding policy rounded employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. To the extent that ORCO's timekeeping system reported that Mr. Casarez and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Casarez and other aggrieved employees were entitled to a meal period penalty. Thus, Mr. Casarez and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods. Moreover, as stated, ORCO's company-wide timekeeping system prevented Mr. Casarez and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Casarez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before about 30 minutes had elapsed.

Moreover, ORCO engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Casarez and other aggrieved employees have not received premium pay for missed, late,

and interrupted meal periods. Alternatively, to the extent that ORCO did pay Mr. Casarez and other aggrieved employees premium pay for missed, late, and interrupted meal periods, ORCO did not pay Mr. Casarez and other aggrieved employees at the correct rate of pay for premiums because ORCO systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ORCO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Casarez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC 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 (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC 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).

During the relevant time period, ORCO regularly failed to authorize and permit Mr. Casarez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, ORCO's company-wide practices, including understaffing and assigning heavy workloads, including pressure to meet quotas and productivity requirements, prevented Mr. Casarez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, ORCO failed to schedule rest periods, which, coupled with ORCO's failure to provide adequate rest period coverage, further led to Mr. Casarez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, ORCO maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Casarez and other aggrieved employees remain on the premises during their rest periods. Because Mr. Casarez and other aggrieved employees were restricted from leaving ORCO's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, ORCO effectively maintained control over Mr. Casarez and other aggrieved employees during rest periods.

As a result of ORCO's practices and policies, Mr. Casarez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all

uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Casarez's rest periods would be interrupted regularly by supervisors and co-workers contacting him on his personal cellular phone or due to machinery that required servicing and/or re-starting. Additionally, Mr. Casarez did not receive second or third rest periods at all when working shifts in excess of 6 hours and in excess of 10 hours, respectively.

ORCO has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Casarez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ORCO did pay Mr. Casarez and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ORCO did not pay Mr. Casarez and other aggrieved employees at the correct rate of pay for premiums because ORCO failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ORCO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Casarez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. ORCO has not provided Mr. Casarez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, 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).

During the relevant time period, ORCO has knowingly and intentionally provided Mr. Casarez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ORCO issued uniform wage statements to Mr. Casarez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, ORCO violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because ORCO did not record the time Mr. Casarez and other aggrieved employees spent working off-the-clock, improperly rounded Mr. Casarez's and other aggrieved employees' total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), ORCO did not list the correct amount of gross wages and net wages earned by Mr. Casarez and other aggrieved employees in compliance with

section 226(a)(1) and section 226(a)(5), respectively. For the same reason, ORCO failed to accurately list the total number of hours worked by Mr. Casarez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because ORCO did not calculate Mr. Casarez's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, ORCO did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). ORCO also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Further, and separate from these violations, ORCO issued uniform wage statements to Mr. Casarez and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Casarez's and other aggrieved employees' wage statements incorrectly list the employer as "ORCO BLOCK CO., INC.," but according to the California Secretary of State's website, there is no such entity by this name. *See example paystub below.*

CO	RRH	FILE	DEPT	CLOCK	VCHR NO

Earnings Statement

ORCO BLOCK CO., INC.
11100 BEACH BLVD
STANTON, CA 90680

SEQ 000068

Period Beginning: 08/03/2022
Period Ending: 08/16/2022
Pay Date: 08/18/2022

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California 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, and in violation of Labor Code section 1174(d), ORCO willfully failed to maintain accurate payroll records for Mr. Casarez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of

failing to record the off-the-clock hours that they worked and improperly rounding Mr. Casarez's and other aggrieved employees' total hours worked.

California 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 Order. 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 IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, ORCO engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and stop times for Mr. Casarez and other aggrieved employees, in violation of section 1198. Furthermore, in light of ORCO's failure to provide Mr. Casarez and other aggrieved employees with second 30-minute meal periods to which they were entitled, ORCO kept no records of meal start and end times for second meal periods.

Because ORCO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Casarez 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. Instead, Mr. Casarez 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, thereby causing them injury.

Mr. Casarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California 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 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. California 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, 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 (7) calendar days following the close of the payroll period.

During the relevant time period, ORCO failed to pay Mr. Casarez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Casarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

ORCO willfully failed to pay Mr. Casarez and other aggrieved employees who are no longer employed by ORCO all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving ORCO's employ.

Mr. Casarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

California 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, sections 11010(15)(A) and (B) provide that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. . . . If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.” California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs., tit. 8, § 3203). Moreover, California Labor Code section 6720 required the California Division of Occupational Safety and Health (“OSHA”) to propose an indoor heat illness standard by January 1, 2019; OSHA's draft standard, as of April 22, 2019, applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

Upon information and belief, ORCO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15), because ORCO failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

During the relevant time period, Mr. Casarez and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit. ORCO failed to provide Mr. Casarez and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and IWC Wage Order

1-2001, Section 15. For example, Mr. Casarez and other aggrieved employees who were present in ORCO's facilities were not consistently provided air conditioning or fans, and would be required to work indoors at 82 degrees Fahrenheit or more. Accordingly, ORCO failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, including Mr. Casarez and other aggrieved employees, in violation of California Labor Code section 1198.

Mr. Casarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her 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 Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, 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."

During the relevant time period, Mr. Casarez and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but ORCO failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Casarez was required to use his personal cellular phone to communicate with management and co-workers about work-related matters. Although ORCO required Mr. Casarez and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, ORCO failed to reimburse them for their costs incurred.

Also, during the relevant time period, ORCO required Mr. Casarez and other aggrieved employees to purchase tools, supplies, and/or equipment that were necessary for the completion of their work-related duties. For example, during his employment, Mr. Casarez spent about \$500 to purchase safety equipment such as steel-toed boots, because ORCO failed to provide him with these necessary tools, supplies, and/or equipment which were required for the workplace to operate properly and/or meet management's expectations. Although ORCO required Mr. Casarez and other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

ORCO could have provided Mr. Casarez and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and steel-toed boots, or ORCO could have reimbursed employees for their mobile device usage and tools, supply, and/or equipment expenses. Instead, ORCO passed these operating costs off onto Mr. Casarez and other aggrieved employees.

Thus, ORCO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Casarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

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 of 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. 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.

At all relevant times, on information and belief, ORCO failed, on a company-wide basis, to provide written notice to Mr. Casarez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). ORCO's failure to provide Mr. Casarez and other aggrieved employees with written notice of basic information regarding their employment with ORCO is in violation of Labor Code section 2810.5.

Mr. Casarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California 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. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." 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." ORCO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Casarez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Casarez seeks the remedies set forth in Labor Code section 558 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), 2699.3(c), 2699.5, and 558, Mr. Casarez, 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 ORCO for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Casarez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Casarez's reasonable attempt to settle his dispute with ORCO prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform ORCO of Mr. Casarez's aforementioned grievances and the proposed remedies as detailed below, while affording ORCO a reasonable opportunity to satisfy Mr. Casarez's demands.

Demand is hereby made that ORCO shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. ORCO shall pay Mr. Casarez and all other aggrieved employees employed by ORCO at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. ORCO shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. ORCO shall conduct a survey or interview all current and former aggrieved employees in California who worked for ORCO in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device usage; tools, supply, and equipment expenses; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. ORCO shall pay Mr. Casarez and each aggrieved employee one hour of pay at her or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. ORCO also shall pay Mr. Casarez and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. ORCO shall reimburse Mr. Casarez and all aggrieved employees who were required to pay for any business expenses incurred for ORCO's benefit, including, but not limited to, costs of mobile device usage and tools, supply, and equipment expenses, as required by Labor Code section 2802.
6. ORCO shall pay accrued legal interest to Mr. Casarez and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. ORCO shall provide Mr. Casarez and all aggrieved employees employed by ORCO at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

8. ORCO shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. ORCO shall maintain a temperature in work areas that provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and take all feasible means to reduce excessive heat to a degree providing reasonable comfort, as required by California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15).
10. ORCO shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. ORCO shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 1-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Sairah Budhwani

Copy: ORCO BLOCK CO., INC. (via U.S. Certified Mail); ORCO BLOCK & HARDSCAPE (via U.S. Certified Mail); ORCO BLENDED PRODUCTS CO. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7022 2410 0000 2406 3836

ORCO BLOCK & HARDSCAPE
11100 BEACH BLVD.
STANTON, CA 90680

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

ORCO BLOCK & HARDSCAPE
11100 BEACH BLVD.
STANTON, CA 90680

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery



2. Addressee's name and address on the reverse
7022 2410 0000 2406 3836

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

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For delivery information, visit our website at www.usps.com.

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Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

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ORCO BLOCK & HARDSCAPE
11100 BEACH BLVD.
STANTON, CA 90680

ORCO

Postmark
Date

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



7022 2410 0000 2406 3829

ORCO BLENDED PRODUCTS CO.
27347 E 3RD ST
HIGHLAND, CA 92346

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

Address labels should be placed on this receipt, not this card.

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) ☐ Address
- C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

ORCO BLENDED PRODUCTS CO.
27347 E 3RD ST
HIGHLAND, CA 92346



2. ADDRESS ONLY (Do not place labels on this receipt)

7022 2410 0000 2406 3829

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

7022 2410 0000 2406 3829

U.S. Postal Service[™]
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

CAVnet

Postage and Fees (Total)

Postmark

Delivery Point

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Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7022 2410 0000 2406 3812

ORCO BLOCK CO., INC.
11100 BEACH BLVD
STANTON, CA 90680

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

ORCO BLOCK CO., INC.
11100 BEACH BLVD
STANTON, CA 90680



2 40601 0000 0000 2406 3812

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent ☐ Addressee
- B. Received by (Printed Name) ☒ X
- C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

Service Type

- | | |
|--|---|
| ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Restricted Delivery | ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery |
|--|---|

Domestic Return Receipt

7022 2410 0000 2406 3812

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OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fees as appropriate)

- ☒ Return Receipt (hardcopy) \$ _____
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____

CASMEER

Postmark

ORCO BLOCK CO., INC.
11100 BEACH BLVD
STANTON, CA 90680



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

SAIRAH BUDHWANI
310.929.5455 Direct
Sairah.Budhwani@capstonelawyers.com

November 14, 2022

VIA ONLINE SUBMISSION

Division of Occupational Safety and Health
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Victor Casarez v. ORCO Block Co., Inc., et al.*
LWDA Case No. LWDA-CM-919003-22 - AMENDED NOTICE

Dear PAGA Administrator:

This office represents Victor Casarez in connection with his claims under the California Labor Code. Mr. Casarez was an employee of ORCO BLOCK CO., INC.; ORCO BLOCK & HARDSCAPE; and/or ORCO BLENDED PRODUCTS CO. For the purpose of this letter, Mr. Casarez collectively refers to these entities as "ORCO." We previously provided notice of Mr. Casarez's claims to the California Labor and Workforce Development Agency ("LWDA") on November 10, 2022, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. Casarez's prior LWDA notice and adds an additional claim.

The employers may be contacted directly at the addresses below:

ORCO BLOCK CO., INC.
11100 BEACH BLVD
STANTON, CA 90680

ORCO BLOCK & HARDSCAPE
11100 BEACH BLVD.
STANTON, CA 90680

ORCO BLENDED PRODUCTS CO.
27347 E 3RD ST
HIGHLAND, CA 92346

Mr. Casarez intends to seek civil penalties, attorney's fees, costs, and other available relief for 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. Casarez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by ORCO in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ORCO employed Mr. Casarez as an hourly paid, non-exempt employee from approximately January 2021 to August 2022. Mr. Casarez worked for ORCO as a Machine/Dry Side Operator at its facility in Mira Loma, California. During his employment, Mr. Casarez typically worked twelve (12) hours per day and five (5) days per week. At the time his employment ended, Mr. Casarez was compensated approximately \$19.37 per hour. Mr. Casarez's primary job duties included, without limitation, operating paver machines, conducting quality inspections, and training employees.

ORCO has committed one or more of the following Labor Code violations against Mr. Casarez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, ORCO failed to provide Mr. Casarez and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that ORCO required Mr. Casarez and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots, while engaged in their work-related duties, ORCO failed to provide such reasonably necessary equipment to Mr. Casarez and other aggrieved employees to keep them safe.

ORCO's failure to provide Mr. Casarez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Casarez and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Accordingly, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a)-(c), and 2699.5, Mr. Casarez, 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 ORCO for violations of California Labor Code sections 6401 and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Casarez seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

¹ These facts, theories, and claims are based on Mr. Casarez's experience and counsel's review of those records currently available relating to Mr. Casarez'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 (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Casarez 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.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

Sairah Budhwani

Copy: ORCO BLOCK CO., INC. (via U.S. Certified Mail); ORCO BLOCK & HARDSCAPE (via U.S. Certified Mail); ORCO BLENDED PRODUCTS CO. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7022 2410 0000 2406 3867

ORCO BLOCK & HARDSCAPE
11100 BEACH BLVD.
STANTON, CA 90680

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

ORCO BLOCK & HARDSCAPE
11100 BEACH BLVD.
STANTON, CA 90680



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7022 2410 0000 2406 3867

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
- B. Received by (Printed Name) ☐ Addressee
- C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

- Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☐ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Insured Mail
 - ☐ Priority Mail Express®
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

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OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$

Postmark

ORCO BLOCK & HARDSCAPE
11100 BEACH BLVD.
STANTON, CA 90680

Instructions

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL®



7022 2410 0000 2406 3843

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

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OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$

Postmark
Here

ORCO BLENDED PRODUCTS CO.
27347 E 3RD ST
HIGHLAND, CA 92346

Instructions

ORCO BLENDED PRODUCTS CO.
27347 E 3RD ST
HIGHLAND, CA 92346

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

ORCO BLENDED PRODUCTS CO.
27347 E 3RD ST
HIGHLAND, CA 92346



7022 2410 0000 2406 3843

COMPLETE THIS SECTION ON DELIVERY

A. Signature
☒ Agent
☐ Addressee
B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail
☐ Mail Restricted Delivery

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

ORCO BLENDED PRODUCTS CO.
27347 E 3RD ST
HIGHLAND, CA 92346



2 Article Number 7022 2410 0000 2406 3843

7022 2410 0000 2406 3843

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Handwritten Signature]

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Erick Sandoval

C. Date of Delivery

11-16-22

- D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Service Type

Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ First-Class Mail®

☐ First-Class Mail Restricted Delivery

☐ International Mail

☐ International Mail Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery