

Kevin Mahoney (SBN: 235367)
kmahoney@mahoney-law.net
Berkeh Alemzadeh (SBN: 324834)
balem@mahoney-law.net
Alicia Reynaga (SBN: 342195)
areynaga@mahoney-law.net
MAHONEY LAW GROUP, APC
249 East Ocean Boulevard, Suite 814,
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Electronically FILED by
Superior Court of California,
County of Los Angeles
4/11/2023 10:34 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By R. Lozano, Deputy Clerk

Attorneys for Plaintiff EFREN SANCHEZ, as an individual, and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EFREN SANCHEZ, as an individual, and on
behalf of all similarly situated employees,

Plaintiff,

v.

GOLDSMITH CONSTRUCTION
COMPANY, INC., and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **23STCV07937**

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Failure to Pay All Wages, Including Minimum Wages and Overtime (Labor Code § 1194);
2. Failure to Provide Meal Periods (Labor Code §§ 226.5, 512);
3. Failure to Provide Rest Periods (Labor Code §§ 226.7, 512);
4. Failure to Reimburse for Necessary Expenditures (Labor Code §§ 2802(A));
5. Failure to Keep Accurate Payroll Records (Labor Code §§ 1174, 226(A), (E));
6. Failure to Provide Itemized Wage Statements (Labor Code §§ 226, 1174);
7. Failure to Pay Wages Upon Ending Employment (Labor Code §§ 201, 202, 203); and
8. Unfair Competition (Business and Professions Code § 17200 et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff Efren Sanchez ("Mr. Sanchez" or "Plaintiff") on behalf of himself and all others
2 similarly situated, complain and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
5 represent ("Plaintiff Class") pursuant to California Code of Civil Procedure section 382. Plaintiff
6 Class consists of all non-exempt, hourly-paid employees currently and/or formerly employed by
7 Defendant Goldsmith Construction Company, Inc. ("Defendant") in California during the Class
8 Period. The term "Class Period" is defined as four (4) years prior to the filing of the Complaint
9 through the date of Preliminary Approval. Plaintiff reserves the right to amend this Complaint to
10 reflect a different "Class Period" or "Plaintiff Class" as further discovery is conducted.

11 2. Plaintiff individually and on behalf of the class he seeks to represent, seeks relief
12 against Defendant for Defendant's practices in violating the applicable wage orders, the
13 applicable Code of Regulations, and the Labor Code, including (1) failure to pay all wages due,
14 including minimum, regular, and overtime and double-time wages; wages; (2) failure to provide
15 meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation
16 in lieu thereof; (4) failure to reimburse for necessary expenditures; (5) failure to keep accurate
17 time/payroll records; (6) failure to provide accurate itemized wage statements (7) failure to pay
18 wages of terminated or resigned employees; and (8) unfair business practices as set forth more
19 fully herein. These violations concern current and past employees of Defendant.

20 3. At all relevant times herein, Defendant, has consistently maintained and enforced
21 against Plaintiff and the Plaintiff Class the following unlawful policies and practices: (a) refusing
22 to pay Plaintiff and Plaintiff Class for all hours worked, including minimum wage, overtime and
23 double-time; (b) failing to provide Plaintiff and Plaintiff Class with meal periods or compensation
24 in lieu thereof; (c) failing to provide Plaintiff and Plaintiff Class with rest periods or compensation
25 in lieu thereof; (d) willfully refusing to compensate Plaintiff and members of the Plaintiff Class
26 wages due and owing at the time Plaintiff's and Plaintiff Class's employment with Defendants
27 ended; and (e) willfully refusing to furnish to Plaintiff and Plaintiff Class accurate itemized wage
28 statements upon payment of wages.

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

5. The California Superior Court has jurisdiction in the matter because the individual claims are under the (\$75,000.00) jurisdictional threshold. Upon information and belief Plaintiff is a resident of and/or domiciled in the State of California. Further, there is no federal question at issue as the issues herein is based solely on California Statutes and law including the Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, California Rules of Court, and Business and Professions Code.

A. The Plaintiff

7. Each of the Plaintiff Class consists of identifiable, current, and/or former similarly situated persons who were employed by Defendant in California during the Class Period.

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a California corporation, that is in the business of providing construction services in California and was the employer of the Plaintiff. On information and belief, and based thereon Plaintiff alleges that Defendant is conducting business in good standing throughout the State of California.

- 3 -

1 the violations alleged herein. Plaintiff will amend his complaint to allege the true names and
2 capacities of the DOE Defendants when that information is ascertained.

3 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action as the agent, servant, partner, joint venture, alter-ego,
5 employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the
6 actions mentioned below was acting, at least in part, within the course and scope of that authority
7 as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or
8 principal with the permission and consent of the co-Defendants. Plaintiff also alleges the acts of
9 each Defendant are legally attributable to the other Defendants.

10 **ADMINISTRATIVE PREREQUISITES**

11 11. By this complaint, Plaintiff also brings this case as a representative action seeking
12 penalties for the State of California in a representative capacity, as provided for by the Private
13 Attorneys General Act (“PAGA”), Labor Code section 2698 et seq., to the extent permitted by
14 law, as an aggrieved employee who was employed by Defendant and subject to alleged violations
15 set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following California
16 Labor Code violations, in his notice to the Labor Workforce Development Agency (“LWDA”)
17 and the employer: Labor code sections 201, 202, 203, 221, 226, 226.7, 510, 512, 558, 558.1, 1194,
18 1197, 1197.1, and 28022.

19 12. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
20 PAGA only after giving the Labor Workforce Development Agency (“LWDA”) and the employer
21 notice of the Labor Code sections alleged to have been violated, and after receiving notice from
22 the LWDA of its intention not to investigate, or after sixty-five (65) days have passed without
23 notice from the LWDA.

24 13. On February 27, 2023, prior to the filing of this complaint, Plaintiff gave written
25 notice of the specified provisions alleged to have been violated, including the facts and theories
26 to support the alleged violations, as required by Labor Code section 2699.3. This written notice
27 was given via certified mail to Defendant, and to the LWDA by electronically filing the notice
28 via the Department of Industrial relations website. Plaintiff was given an LWDA case number of

1 LWDA-CM-938742-23. A true and correct copy of Plaintiff's notice to the LWDA and
2 Defendant, dated February 27, 2023, is attached hereto as Exhibit A.

3 14. Under Labor Code section 2699.3(a)(2)(C), "Notwithstanding any other provision
4 of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action
5 arising under this part at any time within 60 days of the time periods specified in this part."
6 Therefore, Plaintiff intends to amend his complaint upon the expiration of the 65-day period for
7 the LWDA to provide notice of its intent to investigate Plaintiff's claims, if the LWDA fails to
8 provide notice.

9 **FACTUAL ALLEGATIONS**

10 15. Defendant operated its construction services business by employing non-exempt
11 hourly employees.

12 16. As employees, Plaintiff and Plaintiff Class are non-exempt employees within the
13 meaning of the California Labor Code, and the implementing rules of the IWC California Wage
14 Orders.

15 17. Plaintiff was employed by Defendant in a non-exempt, hourly position as a Lead
16 Man from around April 2020 through April 12, 2022.

17 18. Plaintiff is informed and believes that, and thereon alleges, that Defendant's
18 policies and practices described herein are common across each of Defendant's locations within
19 the State of California.

20 19. Plaintiff alleges that Defendant failed to compensate him and Plaintiff Class at the
21 legally mandated wage rates for all hours worked. Plaintiff and Plaintiff Class performed work
22 during overtime periods and during meal periods and regularly and frequently worked beyond
23 eight (8) hours in a day. For example, Plaintiff and Plaintiff Class routinely worked overtime
24 periods but were not compensated either properly or for all hours. During the Relevant Time
25 Period, Defendant had a policy and/or practice of paying Plaintiff and Plaintiff Class for eight (8)
26 hours on days when the workload required them to work over eight (8) hours, to complete.

27 ///

28 ///

20. Defendant had a pattern, practice, and policy of not providing proper meal periods. Specifically, it was Defendant's policy and practice to prohibit Plaintiff and Plaintiff Class to not take meal periods because completing a job assignment was the Defendant's priority.

21. Plaintiff and Plaintiff Class did not receive their ten (10) minute rest breaks. It was Defendant's policy and practice to prohibit Plaintiff and Plaintiff Class from taking a timely break period. Defendant failed to provide adequate coverage to relieve Plaintiff and Plaintiff Class to allow a duty-free rest break. In addition, Defendant subjected Plaintiff and Plaintiff Class to pressure to complete work on time, thus discouraging and essentially prohibiting Plaintiff and Plaintiff Class from taking their lawful breaks.

22. In violation of the Labor Code, Plaintiff and Plaintiff Class were not provided with accurate itemized wage statements showing the actual hours worked, correct premium wages earned per pay period, as well as the total hours worked per pay period.

23. It was Defendant's policy and practice to maintain time records that were inaccurate and/or falsified. Employer failed to keep accurate time records reflecting all hours worked by Plaintiff and Plaintiff Class, the time they began and ended their meal periods, and the time they ended their shifts. Plaintiff and Plaintiff Class allege the time records do not accurately reflect the hours worked when they either worked through meal breaks or was taken late.

24. Plaintiff and Plaintiff Class were not reimbursed for expenses they incurred for Defendant. Specifically, Defendant implemented a policy and procedure to require Plaintiff and Plaintiff Class to maintain their work required uniform.

25. Plaintiff and Plaintiff Class were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and Plaintiff Class did not receive payment of all wages due, within permissible time periods, upon separation of employment.

CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to California Civil Code of Procedure section 382. Plaintiff seeks to represent Classes composed of and defined as follows:

- 1 a. All current and former California hourly non-exempt employees who work or
2 worked for Defendant during the Class Period to be determined and were
3 entitled to be paid all wages accrued and earned, including but not limited to,
4 overtime, double overtime, and time spent working off-the-clock pre-shift,
5 during meal periods, and post-shift, but were not;
- 6 b. All current and former California hourly non-exempt employees who work or
7 worked for Defendant during the Class Period to be determined and were
8 entitled to be provided legally compliant meal periods or one (1) hour of pay
9 at the employee's regular rate of compensation for each workday that the meal
10 period is not provided in accordance with this section, but were not;
- 11 c. All current and former California hourly non-exempt employees who work or
12 worked for Defendant during the Class Period to be determined and who did
13 not receive, or were not afforded, or were not authorized or permitted, a rest
14 period of at least ten (10) consecutive minutes for each four (4) hours or major
15 fraction thereof pursuant to California law or one (1) hour of pay at the
16 employee's regular rate of compensation for each workday that the meal period
17 is not provided in accordance with this section, but not;
- 18 d. All current and former California hourly non-exempt employees who worked
19 for Defendant during the Class Period, who have been terminated or resigned,
20 and were entitled to be paid all wages pursuant to Labor code section 203 and
21 are owed restitution for waiting time penalties deriving from wages, but were
22 not;
- 23 e. All current and former California hourly non-exempt employees who work or
24 worked for Defendant during the Class Period to be determined and who were
25 entitled to be provided or subject to accurate time keeping records pursuant to
26 Labor Code sections 1174(d), but were not;
- 27 f. All current and former California hourly non-exempt employees who work or
28 worked for Defendant during the Class Period to be determined and who were

entitled to be provided pay stubs that complied with Labor Code sections 1174, and 226, but were not;

g. All current and former California hourly non-exempt employees who work or worked for Defendant during the Class Period to be determined and who were entitled to be reimbursed for the purchase of necessary business expenditures in direct consequence of the discharge of their duties, but were not; and

h. All current and former California hourly non-exempt employees who work or worked for Defendant during the Class Period to be determined and who suffered injury, including lost money, as a result of Defendant's unfair competition, including but not limited to their policy of willfully failing to pay all wages due, failing to provide meal and rest periods, failing to compensate for wages earned, failing to provide properly itemized wage statements, and failing to reimburse for necessary business expenditures.

27. Plaintiff's proposed class consists of and is defined as follows: all individuals who worked for Defendant in a California location, including but not limited to, all non-exempt hourly employees and at time during the period from your years prior to the filing of this complaint through the date of judgment ("Class Period.")

28. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend or modify the class description(s) with greater specificity or further division into subclasses or limitation to particular issues.

29. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and because the proposed classes are easily ascertained by Defendant's personnel and payroll records.

Numerosity

30. The potential members of the class as defined are so numerous that joinder of all class members is impracticable. While the precise number of the Plaintiff Class is unknown,

1 Plaintiff is informed and believes that Defendant has employed more than fifty (50) employees
2 during the Class Period.

3 **Commonality**

4 31. There are common questions of law and fact arising out of Defendant's conduct,
5 as described herein, including, but not limited to:

- 6 a. Whether Defendant failed to pay all wages, including minimum, overtime and
7 double-time wages, due to Plaintiff and the Plaintiff Class;
8 b. Whether Defendant failed to, and continues to fail, to provide meal periods to
9 Plaintiff and Plaintiff Class;
10 c. Whether Defendant failed to, and continues to fail, to authorize and permit
11 Class Members to take rest periods;
12 d. Whether Defendant failed to, and continues to fail to reimburse business
13 expenses;
14 e. Whether Defendant failed to maintain accurate time records, and continues to
15 fail to maintain accurate time records;
16 f. Whether Defendant failed to provide itemized wage statements, and continues
17 to fail to provide itemized wage statements;
18 g. Whether Defendant failed to pay all wages due upon termination of
19 employment, and continues to fail to provide all wages due upon termination
20 of employment; and
21 h. Whether Defendant engaged in unfair/unlawful business practices.

22 **Typicality**

23 32. The claims of the Plaintiff are typical of the claims for the Plaintiff Class, all of
24 whom have incurred and/or will incur damages, as a result of Defendant's common course of
25 conduct and common policies and practices. The claims of Plaintiff are typical because Defendant
26 subjected all of its non-exempt employees to the identical violations of the California Industrial
27 Welfare Commission Wage Orders, California Code of Regulations, California Labor Code, and
28 California Business and Professions Code, among other statutes.

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

Superiority

34. Under the facts and circumstances set forth above, a class action is superior to any other method available for both the fair and efficient adjudication of the rights of each class member in as much as joinder of individual relatively small claims of Class Members is not practical, and if each employee were required to file an individual lawsuit, the corporate defendant would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees fearful of retaliation and permanent damage to their careers at present and/or subsequent employment. Further, the substantial risk of inconsistent or varying verdicts or adjudication with respect to the individual Class Members against Defendant herein further support class certification.

FAILURE TO PAY MINIMUM WAGE AND OVERTIME WAGES
(Plaintiff and Plaintiff Class Against Defendant)

36. Plaintiff alleges that, Defendant maintained throughout the Class Period, a consistent policy and practice of failing to pay wages, including regular, overtime and double-time wages dur for hours worked. Specifically, Defendant required Plaintiff and Plaintiff Class to perform work during overtime periods and during meal periods without premium compensation.

///

1 37. Defendant had a policy and/or practice of failing to pay Plaintiff and Plaintiff Class
2 for overtime and/or double time for hours worked over eight (8) hours in a day or forty (40) in a
3 week.

4 38. Any employee receiving less than the legal minimum wage or legal overtime
5 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees,
6 and costs of suit pursuant to Labor Code sections 1194 and 1199.

7 39. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
8 Plaintiff Class all wages including both minimum wage and overtime. Defendant has regularly
9 violated the Labor Code with respect to meeting the requirements of paying wages earned,
10 including, overtime, double-time and remuneration when calculating the employees' regular rate
11 of pay, as herein before alleged.

12 40. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of
13 the unpaid wages resulting from Defendant's minimum wage violations, including interest
14 thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the
15 fullest extent permissible including those permitted pursuant to Labor Code sections 1194 and
16 1194.2 and Code of Civil Procedure section 1021.5 and/or any other statute.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**
19 **(Plaintiff and Plaintiff Class Against Defendant)**

20 41. Plaintiff and Plaintiff Class incorporates all previous paragraphs of this complaint
21 as though fully set forth herein.

22 42. Labor Code sections 226.7 and 512, provides that no employer shall employ any
23 person for a work period of more than five (5) hours without providing a meal period of not less
24 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours
25 without a second (2nd) meal period of not less than thirty (30) minutes.

26 43. Labor Code section 226.7 provides that if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28

(1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

44. As a result, Plaintiff and Plaintiff Class were often forced to forego meal periods and/or work during their meal periods. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff and Plaintiff Class in violation of Labor Code section 226.7 and 512 and other regulations and statutes.

45. Furthermore, Defendant failed to provide Plaintiff and Plaintiff Class with duty free meal periods in violation of Labor Code sections 226.7 and 512.

46. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than five (5) hours in a workday.

47. At varying times relevant hereto, Plaintiff and Plaintiff Class at times have worked more than ten (10) hours in a workday.

48. At all times relevant hereto, the Defendant, and each of them, due to their failure to schedule non-exempt positions in a manner so as to reasonably provide meal and/or work free meal period as required by Labor Code section 226.7 and 512.

49. By virtue of the Defendant's failure to schedule Plaintiff and Plaintiff Class in such a way as to provide meal periods, and/or work free meal periods to Plaintiff and Plaintiff Class thereby causing Plaintiff and Plaintiff Class to suffer, and will continue to suffer, damages in the amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

50. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of meal period compensation pursuant to Labor Code section 226.7 which they are owed beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory penalties against these Defendant, and each of them, in a sum as provided by the Labor Code and/or other statutes.

///

///

///

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIOD OR COMPENSATION IN LIEU THEREOF**

3 **(Plaintiff and Plaintiff Class Against Defendant)**

4 51. Plaintiff and Plaintiff Class incorporates all previous paragraphs of this complaint
5 as though fully set forth herein.

6 52. Labor Code section 226.7 provides that employers authorize and permit all
7 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

8 53. Labor Code section 226.7(b) provides that if an employer fails to provide an
9 employee, rest periods in accordance with this section, the employer shall pay the employee one
10 (1) hour of pay at the employee's regular rate of compensation for each workday that the rest
11 period is not provided.

12 54. Defendant, and each of them, failed and/or refused to implement a relief system
13 by which Plaintiff and Plaintiff Class could receive rest periods and/or work free rest periods.
14 Furthermore, due to Defendant's relief system, Plaintiff and Plaintiff Class did not receive their
15 rest periods within the required statutory time frame. By and through their actions, Defendant
16 intentionally and improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of
17 Labor Code sections 226.7 and 512.

18 55. At all times relevant hereto, Plaintiff and Plaintiff Class, have worked more than
19 four (4) hours in a workday.

20 56. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
21 and Plaintiff Class as a result of their scheduling and shift relief system, Plaintiff and Plaintiff
22 Class have suffered, and will continue to suffer, damages, in amounts which are presently
23 unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained
24 according to proof at trial.

25 57. Plaintiff, himself and on behalf of employees similarly situated, request recovery
26 of rest period compensation pursuant to Labor Code section 226.7, which they are owed beginning
27 four (4) years prior to filing this Complaint as well as the assessment of any statutory penalties
28

1 against Defendant, and each of them, in a sum as provided by the Labor Code and/or any other
2 statute.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

5 **(Plaintiff and Plaintiff Class Against all Defendants)**

6 58. Plaintiff and Plaintiff Class incorporates all previous paragraphs of this complaint
7 as though fully set forth herein.

8 59. Labor Code section 2802 states that “An employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties...”

11 60. Plaintiff and Plaintiff Class were not reimbursed by Defendant for necessary
12 expenditures as a direct consequence of the discharge of their duties.

13 61. Defendant knowingly, willingly, and intentionally attempted to offset the cost of
14 doing business, on Plaintiff and Plaintiff Class.

15 62. Defendant had a corporate practice and policy of requiring Plaintiff and Plaintiff
16 Class to shoulder the burden of Defendant’s cost of doing business by failing to reimburse
17 Plaintiff and Plaintiff Class for necessary business expenditures, specifically by requiring Plaintiff
18 and Plaintiff Class to maintain their work mandated uniforms.

19 63. Accordingly, Plaintiff and Plaintiff Class are entitled to an award of “necessary
20 expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s
21 fees and interest.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS**

24 **(By Plaintiff and Plaintiff Class Against All Defendants)**

25 64. Plaintiff and Plaintiff Class incorporates all previous paragraphs of this complaint
26 as though fully set forth herein.

27 65. Labor Code section 1174(d) provides “every person employing labor in this state
28 shall keep, at a central location in the state...payroll records showing the hours worked daily by

1 and the wages paid to...employees...These records shall be kept in accordance with rules
2 established for this purpose by the commission, but in any case, shall be kept on file for not less
3 than two years.

4 66. Defendant knowingly and intentionally failed to maintain accurate time records
5 for Plaintiff and Plaintiff Class in accordance with Labor Code section 1174(d) by failing to
6 record the accurate number of hours worked as a result of Defendant's policies and procedures.
7 Specifically, Defendant to record hours worked where Plaintiff and Plaintiff Class did not receive
8 a lunch. It is Plaintiff's and Plaintiff Class belief based on information, that the motive for
9 Defendant's policy was to make it appear as though Defendant was complying with the wage and
10 hour laws of California, even though Defendant was not in compliance. As a result of Defendant's
11 policies and procedures, Defendant failed to maintain accurate time records thus causing Plaintiff
12 and Plaintiff Class injury.

13 67. Labor Code section 226(e) provides that if an employer knowingly and
14 intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned, the
15 total hours worked by the employee and the applicable hourly overtime rates, causing the
16 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
17 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
18 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
19 Defendants willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

20 68. Paragraph 7(a) of the relevant IWC Wage Order, requires that every employer
21 shall keep accurate information with respect to each employee, including time records showing
22 when each employee begins and ends each work periods, the total daily hours worked by each
23 employee and the total hours worked in each payroll period, and applicable rates of pay. Plaintiff
24 is informed, and believes that Defendant willfully and intentionally failed to make and/or keep
25 records which accurately reflect the hours worked by Plaintiff and Plaintiff Class. Specifically,
26 Plaintiff believes that Defendant's records do not accurately reflect where Plaintiff and Plaintiff
27 Class worked during their meal and/or rest breaks due to Defendant's failure to schedule Plaintiff
28

1 and Plaintiff Class in an overlapping manner so as to provide them with a meal and/or rest period,
2 as well as Defendant's manipulation of the time clocks.

3 69. Plaintiff is informed, and believes that Defendant's failure to keep accurate payroll
4 records, as described above, violated Labor Code section 1174(d) and the applicable wage order.
5 Plaintiff and the Plaintiff Class are entitled to penalties of one hundred dollars (\$100.00) and for
6 the initial violation and two hundred dollars (\$200.00) for each subsequent violation for every
7 pay period during which these records and information was not kept by Defendants.

8 70. An employee suffering injury as a result of a knowing and intentional failure by
9 an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages
10 or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred
11 dollars (\$100.00) per employee for each violation in a subsequent pay period, not to exceed an
12 aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and
13 reasonable attorney's fees.

14 71. Plaintiff is informed and believe that Defendant's failure to keep and maintain
15 accurate records and information, as described above, were willful, and Plaintiff and Plaintiff
16 Class are entitled to a statutory penalty of five hundred dollars (\$500.00) for Plaintiff and each
17 member of Plaintiff Class pursuant to Labor Code section 1174.5.

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

20 **(Plaintiff and Plaintiff Class against all Defendants)**

21 72. Plaintiff and Plaintiff Class incorporates all previous paragraphs of this complaint
22 as though fully set forth herein.

23 73. Labor Code section 226, subdivision (a), states in pertinent part that, "every
24 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
25 employees, either as a detachable part of the check, draft, or voucher paying the employee's
26 wages, or separately when wages are paid by personal check or cash, an accurate itemized
27 statement in writing showing: (1) gross wages earned; (2) total hours worked by the
28 employee...(3) the number of piece-rate units earned...;(4) all deductions...;(5) net wages; (6) the

1 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
2 only the last four digits of his or her social security number or an employee identification number
3 other than a social security number; (8) the name and address of the legal entity that is the
4 employer ..and (9) all applicable hourly rates in effect during the pay period and corresponding
5 number of hours worked at each hourly rate by the employee...”

6 74. Defendant knowingly and intentionally failed to provide timely and accurate
7 itemized wage statements to Plaintiffs and Plaintiff Class in accordance with labor Code section
8 226, subdivision (a), by failing to record the accurate amount of premiums wages earned, the
9 accurate net pay, and the accurate gross pay.

10 75. Plaintiff and Plaintiff Class are entitled to damages under Labor Code section 226,
11 subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the initial pay
12 period in which a violation occurs and one-hundred (\$100) per employee for each violation in
13 each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES UPON TERMINATION**

16 **(Plaintiff and Plaintiff Class against all Defendants)**

17 76. Plaintiff and Plaintiff Class incorporates all previous paragraphs of this complaint
18 as though fully set forth herein.

19 77. During the relevant time period, Plaintiff and formerly employed members of the
20 Plaintiff Class resigned or were terminated from their positions with Defendant. Defendant,
21 however, willfully did not pay Plaintiff and Plaintiff Class all wages which were due them upon
22 their separation of employment immediately upon termination or within seventy-two (72) hours
23 of their resignation as required by Labor Code section 202, subdivision (a). Defendant failed to
24 pay Plaintiff and Plaintiff Class all minimum wage due which were earned throughout their
25 employment. Defendant also failed to pay proper premium wages for times Plaintiff and Class
26 Members were not provided meal and/or rest breaks.

27 78. Labor Code section 203 provides that “if an employer willfully fails to pay,
28 without abatement or reduction, in accordance with sections 201, 201.5, 202, and 205.5, any

1 wages of an employee who is discharged or who quits, the wages of the employee shall continue
2 as a penalty from the due date thereof at the same rate until paid or until an action therefor is
3 commenced; but the wages shall not continue for more than thirty (30) days.”

4 79. Plaintiff and Plaintiff Class who ended their employment with Defendant by
5 resignation or termination, during the relevant time period, were entitled to be promptly paid both
6 minimum wage and lawful overtime compensation and other premiums, as required by Labor
7 Code sections 201 and 203.

8 **EIGHTH CAUSE OF ACTION**

9 **VIOLATION OF UNFAIR COMPETITION LAW/UNFAIR-UNLAWFUL BUSINESS**
10 **PRACTICES**

11 **(Plaintiff and Plaintiff Class Against Defendant)**

12 80. Plaintiff and Plaintiff Class incorporates all previous paragraphs of this complaint
13 as though fully set forth herein.

14 81. California Business and Professions Code section 17200 et. seq. (also referred to
15 herein as the "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair
16 competition in the form of any unlawful, unfair or fraudulent business act or practice.

17 82. California Business and Professions Code section 17204 allows "any person who
18 has suffered injury in fact and has lost money or property as a result of such unfair competition"
19 to prosecute a civil action for violation of the Unfair Competition Law ("UCL").

20 83. Labor Code section 90.5(a) states that it is the public policy of California to
21 vigorously enforce minimum labor standards in order to ensure employees are not required to
22 work under substandard and unlawful conditions, and to protect employers who comply with the
23 law from those who attempt to gain competitive advantage at the expense of their workers by
24 failing to comply with minimum labor standards.

25 84. Beginning at an exact date unknown to Plaintiff, but at least four (4) years prior to
26 the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the
27 Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business
28 practices and acts described in this Complaint including but not limited to violations of Labor

Code sections 204, 226.7, 512, 1174, 1194, 1197, 1198, 2775(b), and 2802(A) as well as other statutes.

85. The violations of these laws and regulations, as well as of the fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code section 17200 et. seq.

86. The acts and practices described above constitute unfair, unlawful and fraudulent Business Practices, and unfair competition, within the meaning of Business and Professions Code section 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other similarly situated employees to labor for many hours without receiving the meal and rest periods and to receive both minim wage and overtime compensation, to which they are entitled by law, while enabling Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

87. As a result of Defendant's acts, Plaintiff and Plaintiff Class have suffered injury in fact in being denied their statutorily entitled meal and rest periods and full compensation for hours of labor. As a result of Defendant's unlawful acts of unfair competition, Plaintiff and Plaintiff Class have lost money and property in the form of a loss of wages in an amount to be proven at trial.

88. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and Plaintiff Class have suffered lost wages in an amount to be proven at trial.

89. Business and Professions Code section 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendant from repeating their unlawful, unfair and fraudulent business acts and business practices alleged above.

90. Business and Professions Code section 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business and Professions Code section 17203 for all wages and payments unlawfully withheld from employees,

1 including the fair value of the meal and rest periods taken away from them, during the four-year
2 period prior to the filing of this Complaint.

3 91. Business and Professions Code section 17202 provides, "Notwithstanding section
4 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
5 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled
6 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
7 Professions Code section 17202.

8 92. Plaintiff's success in this action will enforce important rights affecting public
9 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and
10 other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution,
11 civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

12 93. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
13 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
14 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
15 pay attorney's fees from the recovery in this action. Attorney's fees are appropriate pursuant to
16 Code of Civil Procedure section 1021.5 and otherwise.

17 **PRAYER FOR RELIEF**

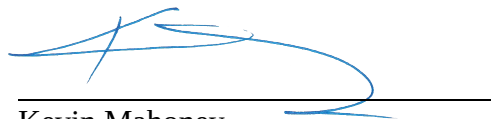
18 WHEREFORE, Plaintiff and Plaintiff Class pray for judgment as follows:

- 19 1. That the Court determine that this action may be maintained as a class action under
20 Code of Civil Procedure section 382;
- 21 2. The Court to appoint Plaintiff as Class Representative;
- 22 3. The Court to appoint Kevin Mahoney, Berkeh Alemzadeh and Alicia Reynaga as class
23 counsel;
- 24 4. For compensatory damages;
- 25 5. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits
26 from the unlawful business practices of Defendant;
- 27 6. For waiting time penalties pursuant to Labor Code section 203, on behalf of the
28 terminated or resigned employees;

7. For penalties pursuant to Labor Code section 226, 226(e), 226.7, 512 and 1194, and as provided for by Labor Code section 2699;
8. For interest accrued to date;
9. For costs of suit and expenses incurred herein pursuant to Labor Code section 226 and 1194;
10. For reasonable attorneys' fees pursuant to Labor Code sections 226 and 1194 and;
11. For all such other and further relief as the Court may deem just and proper.

Dated: April 11, 2023

MAHONEY LAW GROUP, APC



Kevin Mahoney
Attorneys for Plaintiff EFFREN SANCHEZ and
on behalf of all employees similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff EFREN SANCHEZ, on behalf of himself and all Class Members, hereby
3 demands a jury trial on all causes of action and claims with respect to which they have a right to
4 a jury trial.

5
6 Dated: April 11, 2023

MAHONEY LAW GROUP, APC

7
8 

9 Kevin Mahoney
10 Attorneys for Plaintiff EFFREN SANCHEZ and on
11 behalf of all employees similarly situated
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28