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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MERCED COUNTY

SAMIR JIMENEZ, an individual, on behalf
of himself, all aggrieved employees, and the
State of California,

Plaintiff,

v.

ALVARADO STONE SLAB
FABRICATION, INC., a California
corporation; JUAN ALVARADO JR., an
individual; JUAN ALVARADO SR., an
individual; PEGGY S. LANE, INC., a
California corporation, dba CULTURED
MARBLE PRODUCTS; MATTHEW
CLEMENTZ, an individual; and DOES 1-100
INCLUSIVE,

Defendants.

ALVARADO STONE SLAB FABRICATION,
INC., a California corporation; JUAN
ALVARADO JR., an individual; JUAN
ALVARADO SR., an individual,

Cross-Complainants,

v.

PEGGY S. LANE, INC., a California
corporation, dba CULTURED MARBLE
PRODUCTS; WALKING LIBERTY PSL
HOLDINGS, LLC, a California limited liability
company; and ROES 1-10, inclusive,

Cross-Defendants.

Case No.: 22CV-01932

[Assigned for all purposes to the Honorable
Brian McCabe, Courtroom 8]

**SECOND AMENDED COMPLAINT FOR
DAMAGES AND OTHER RELIEF:**

1. FAILURE TO PAY MINIMUM WAGE
2. FAILURE TO PAY OVERTIME &
DOUBLE-TIME WAGES
3. FAILURE TO PROVIDE MEAL
PERIODS
4. FAILURE TO PROVIDE REST
PERIODS
5. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
6. WAITING TIME PENALTIES
7. UNFAIR BUSINESS PRACTICES
8. PRIVATE ATTORNEYS GENERAL
ACT VIOLATIONS (Labor Code §§
2698 *et seq.*)

DEMAND FOR JURY TRIAL

Complaint Filed: June 24, 2022
Trial Date: Not set

1
2 Plaintiff SAMIR JIMENEZ, an individual (“Plaintiff”), on behalf of himself demanding a
3 jury trial, brings his claims for minimum wage, overtime and double-time wages, liquidated
4 damages, meal period violations, rest period violations, failure to provide accurate itemized wage
5 statements, failure to pay all wages due upon the end of employment, and interest, pursuant to the
6 California Labor Code and Industrial Welfare Commission, Wage Order 16-2001, and for unlawful,
7 unfair and deceptive business practices claims pursuant to Business & Professions Code §§ 17200 *et*
8 *seq.*, against Defendant ALVARADO STONE SLAB FABRICATION, INC., a California
9 corporation; Defendant JUAN ALVARADO JR., an individual; Defendant JUAN ALVARADO
10 SR., an individual; PEGGY S. LANE, INC., a California corporation, dba CULTURED MARBLE
11 PRODUCTS; MATTHEW CLEMENTZ, an individual; and DOES 1 through 100 (collectively
12 “Defendants”), and Plaintiff, on behalf of himself, all other aggrieved employees of Defendants
13 anywhere in California, and the State of California demanding a jury trial for penalties pursuant to
14 the Private Attorneys General Act for violations of the California Labor Code and Wage Order
15 against Defendants. Plaintiff therefore, upon information and belief, alleges as follows:

16 **Jurisdiction and Venue**

17 1. This Court has jurisdiction over all causes of action asserted herein pursuant to the
18 California Constitution, Article VI, § 10, California Code of Civil Procedure § 410.10, and Business
19 & Professions Code §§ 17200 *et seq.*

20 2. Venue is proper in that some or all Defendants reside in and conduct significant
21 amounts of business in Merced County, Defendants employed Plaintiff and other employees in
22 Merced County, and a substantial part of the events and omissions giving rise to Plaintiff’s claims
23 and Defendants’ Labor Code violations against Plaintiff and other employees occurred in Merced
24 County.

25 **The Parties**

26 3. Plaintiff Samir Jimenez is an individual residing in Stanislaus County, California. He
27 was employed as a non-exempt employee by Defendants in Merced County and elsewhere in
28 California from approximately February 2019 to the present.

1 4. Defendant Alvarado Stone Slab Fabrication, Inc. (“Alvarado Fabrication”) is a
2 California corporation located in Merced County, California, that regularly employs employees
3 within Merced County, California, including at its headquarters in Merced County, where Alvarado
4 Fabrication and the other Defendants employed Plaintiff. Alvarado Fabrication also employed
5 Plaintiff and other non-exempt employees at its headquarters in Merced County and elsewhere in
6 California.

7 5. Defendant Juan Alvarado Jr. (“Alvarado Jr.”) is a natural person who is an owner,
8 director, officer, and/or managing agent of Alvarado Fabrication acting on behalf of Alvarado
9 Fabrication as to Plaintiff and other non-exempt employees throughout California, who violated or
10 caused to be violated, provisions regulating minimum wages or hours and days of work in an order
11 of the Industrial Welfare Commission, and violated or caused to be violated Labor Code sections
12 203, 226, 226.7 and 1194, pursuant to Labor Code section 558.1, and is a manager of Alvarado
13 Fabrication. Alvarado Jr. employed Plaintiff and other non-exempt employees in Merced County
14 and elsewhere in California.

15 6. Defendant Juan Alvarado Sr. (“Alvarado Sr.”) is a natural person who is an owner,
16 director, officer, and/or managing agent of Alvarado Fabrication acting on behalf of Alvarado
17 Fabrication as to Plaintiff and other non-exempt employees throughout California, who violated or
18 caused to be violated, provisions regulating minimum wages or hours and days of work in an order
19 of the Industrial Welfare Commission, and violated or caused to be violated Labor Code sections
20 203, 226, 226.7 and 1194, pursuant to Labor Code section 558.1, and is a manager of Alvarado
21 Fabrication. Alvarado Sr. employed Plaintiff and other non-exempt employees in Merced County
22 and elsewhere in California.

23 7. Defendant Peggy S. Lane, Inc., dba Cultured Marble Products (“PSL”) is a California
24 corporation located in Alameda County, California, that regularly employs employees in California,
25 where PSL and the other Defendants employed Plaintiff. PSL also employed Plaintiff and other
26 non-exempt employees in Alameda County and elsewhere in California.

27 8. Defendant Matthew Clementz (“Clementz”) is a natural person who is an owner,
28 director, officer, and/or managing agent of PSL acting on behalf of PSL as to Plaintiff and other non-

1 exempt employees throughout California, who violated or caused to be violated, provisions
2 regulating minimum wages or hours and days of work in an order of the Industrial Welfare
3 Commission, and violated or caused to be violated Labor Code sections 203, 226, 226.7 and 1194,
4 pursuant to Labor Code section 558.1, and is a manager of PSL. Clementz employed Plaintiff and
5 other non-exempt employees in Alameda County and elsewhere in California.

6 9. DOES 1 through 100, inclusive, are sued herein under fictitious names. Their true
7 names and capacities are unknown to Plaintiff at this time. When their true names and capacities are
8 ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities herein.
9 Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-named Defendants
10 is responsible in some manner for the occurrences alleged herein, and that Plaintiff's damages as
11 alleged herein were actually and/or proximately caused by such Defendants.

12 10. Plaintiff is informed and believes and thereon alleges that at all relevant times
13 each Defendant was the principal, agent, employer, owner, manager, managing agent, joint
14 employer, employee, partner, servant, joint venturer, officer, director, controlling shareholder,
15 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
16 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
17 a joint enterprise for profit, and bore such other relationships to some or all of the other
18 Defendants so as to be liable for the conduct of them. Plaintiff is also informed and believes that
19 each Defendant solely and/or jointly employed Plaintiff and other non-exempt employees in
20 California pursuant to the California Labor Code and Wage Order 16. Plaintiff is also informed
21 and believes and thereon alleges that each Defendant was a sole and/or joint employer and/or
22 other person acting on behalf of an employer, including but not limited to the other Defendants,
23 who violated, or caused to be violated, a section of Chapter 1 of the Labor Code or any provision
24 regulating hours and days of work in any order of the Industrial Welfare Commission, pursuant
25 to Labor Code section 558. Plaintiff is further informed and believes and thereon alleges that
26 each Defendant was a sole and/or joint employer or an other person acting on behalf of an
27 employer, including but not limited to the other Defendants, who violated, or caused to be
28

violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violated, or caused to be violated, Labor Code §§ 203, 226, or 1194, pursuant to Labor Code § 558.1. Plaintiff is further informed and believes and thereon alleges that each Defendant was a sole and/or joint employer or other person acting either individually or as an officer, agent, or employee of another person, including but not limited to the other Defendants, who paid or caused to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, and who (a) required or caused any employee to work for longer than those fixed, or under conditions of labor prohibited by an order of the commission, (b) paid or caused to be paid to any employee a wage less than the minimum fixed by an order of the commission, and/or (c) violated or refused or neglected to comply with any provision of Chapter 1 of the Labor Code or any order or ruling of the commission, pursuant to Labor Code §§ 1197.1 and 1199. Plaintiff is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants, and that each Defendant acted pursuant to an agreement to do the things alleged herein.

Defendants Each Solely and Together Jointly Employed Plaintiff and Other Non-Exempt Employees in California

11. At all relevant times, Plaintiff and other non-exempt employees were subject to the control, direction and supervision of each Defendant solely and/or two or more Defendants jointly in connection with Plaintiff's and other non-exempt employees' hours worked, and such hours worked were within the usual course of Defendant's business.

12. At all relevant times, each Defendant solely and/or two or more Defendants jointly employed Plaintiff and other non-exempt employees in California by, inter alia, exercising control over their wages, hours, or working conditions, suffering or permitting

1 Plaintiff and other non-exempt employees to work, and/or engaging Plaintiff and other non-
2 exempt employees.

3 13. At all relevant times, each Defendant was a sole and/or joint employer of Plaintiff
4 and other non-exempt employees and/or other person acting on behalf of an employer, including
5 but not limited to the other Defendants, who violated, or caused to be violated, a section of
6 Chapter 1 of the Labor Code or any provision regulating hours and days of work in any order of
7 the Industrial Welfare Commission, pursuant to Labor Code section 558.

8 14. Upon information and belief, Defendants operated individually and in concert and
9 each retained and shared significant control over the terms and conditions of Plaintiff's and other
10 non-exempt employees' employment, including, without limitation, those terms and conditions
11 related to the claims alleged herein.
12

13 **General Allegations**

14 15. From approximately February 2019 to the present, Defendants employed Plaintiff and
15 other non-exempt employees in California, including in Merced County and Alameda County, as
16 part of Defendants' construction businesses of inter alia, altering, demolishing, building, renovating,
17 remodeling, and improving residences.

18 16. Wage Order No. 16-2001 applies to Certain On-Site Occupations in the Construction,
19 Drilling, Logging and Mining Industries, and thus applies to Defendants' employment of Plaintiff
20 and other non-exempt employees.

21 17. Defendants were Plaintiff's and other non-exempt employees' employers when they
22 worked for them because Defendants "directly or indirectly, or through an agent or any other person,
23 employ[ed] or exercise[d] control over the wages, hours, or working conditions of" Plaintiff and
24 other non-exempt employees. IWC Wage Order No. 16-2001, Sec. 2(I); *Turman v. Superior Court*
25 (2017) 17 Cal.App.5th 969, 982. Defendants also engaged, suffered, or permitted Plaintiff and other
26 non-exempt employees to work. IWC Wage Order No. 16-2001, Sec. 2(G); *Martinez v. Combs*
27 (2010) 49 Cal.4th 35, 64.

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1 18. Pursuant to Labor Code section 558.1, Defendant Alvarado Jr., Defendant Alvarado
2 Sr., and Defendant Clementz are also liable to Plaintiff and other non-exempt employees for
3 violations of provisions regulating minimum wages and hours and days of work in IWC Wage Order
4 No. 16-2001, and for violations of Labor Code sections 203, 226, 226.7, and 1194, because as
5 Plaintiff's and other non-exempt employees' employers and as natural persons who were an owner,
6 director, officer and/or managing agent of Defendant Alvarado Stone Slab Fabrication, Inc. in the
7 case of Defendant Alvarado Jr. and Defendant Alvarado Sr. and of Defendant Peggy S. Lane, Inc. in
8 the case of Defendant Clementz were the "employer or other person acting on behalf of an employer,
9 who violate[d], or cause[d] to be violated" said provisions regulating minimum wages and hours and
10 days of work in IWC Wage Order No. 16-2001 and Labor Code sections 203, 226, 226.7 and 1194.

11 19. During all times relevant to this Complaint, each Defendant solely and/or jointly
12 employed Plaintiff and other non-exempt employees in California, pursuant to the California Labor
13 Code and IWC Wage Order No. 16-2001.

14 20. During all times relevant to this Complaint, each Defendant was a sole and/or joint
15 employer of Plaintiff and other non-exempt employees who violated or caused to be violated,
16 provisions regulating minimum wages or hours and days of work in IWC Wage Order No. 16-2001,
17 and violated or caused to be violated Labor Code sections 203, 226, and 1194. Labor Code § 558.1.

18 21. Throughout Defendants' employment of Plaintiff and other non-exempt employees,
19 Defendants regularly failed to pay them the minimum wage for all hours that Plaintiff and other non-
20 exempt employees worked for Defendants.

21 22. Throughout Defendants' employment of Plaintiff and other non-exempt employees,
22 Defendants regularly failed to pay overtime wages to Plaintiff and other non-exempt employees
23 when they worked more than 8 hours in a workday or more than 40 hours in a workweek or to pay
24 them double-time wages when they worked more than 12 hours in a workday.

25 23. Throughout Defendants' employment of Plaintiff and other non-exempt employees,
26 Defendants regularly failed to provide Plaintiff and other non-exempt employees with uninterrupted
27 thirty-minute meal periods for each work period of more than five hours.

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1 24. Throughout Defendants’ employment of Plaintiff and other non-exempt employees,
2 Defendants did not pay an extra hour of wages to Plaintiff or other non-exempt employees for the
3 meal periods that Defendants failed to provide them.

4 25. Throughout Defendants’ employment of Plaintiff and other non-exempt employees,
5 Defendants regularly failed to authorize and permit Plaintiff and other non-exempt employees to
6 take an uninterrupted, on-the-clock ten-minute rest period for each work period of 4 hours or major
7 fraction thereof, including within the first three and one-half hours of his workday.

8 26. Throughout Defendants’ employment of Plaintiff and other non-exempt employees,
9 Defendants did not pay an extra hour of wages to Plaintiff or other non-exempt employees for the
10 rest periods that Defendants failed to provide them.

11 27. Throughout Defendants’ employment of Plaintiff and other non-exempt employees,
12 Defendants knowingly and intentionally failed to provide Plaintiff and other non-exempt employees
13 with accurate itemized wage statements and Plaintiff and other non-exempt employees were injured
14 each pay period by Defendants’ knowing and intentional failure to provide them with accurate
15 itemized wage statements.

16 28. At the end of Defendants’ employment of Plaintiff and other non-exempt employees,
17 Defendants willfully failed to pay Plaintiff and other non-exempt employees all wages due to them.

18 29. Throughout Defendants’ employment of Plaintiff, Plaintiff was subjected to the
19 following unlawful, unfair, and deceptive conduct:

20 a. Defendants failed to pay minimum wages to Plaintiff as required by California
21 law;

22 b. Defendants failed to pay overtime wages and double-time wages to Plaintiff
23 as required by California law;

24 c. Defendants failed to provide Plaintiff with meal periods as required by
25 California law and then failed to pay him an extra hour of wages for each workday when they did
26 not provide a meal period;

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1 d. Defendants failed to authorize and permit Plaintiff to take rest periods as
2 required by California law and then failed to pay him an extra hour of wages for each workday when
3 they did not provide a rest period;

4 e. Defendants knowingly and intentionally failed to provide Plaintiff with
5 accurate itemized wage statements;

6 f. Defendants willfully failed to timely pay all wages due to Plaintiff upon the
7 end of Defendants' employment of Plaintiff; and

8 g. Defendants committed unlawful, unfair and deceptive business practices in an
9 effort to increase profits and gain an unfair business advantage at Plaintiff's expense.

10 30. Plaintiff seeks payment of all compensation, all benefits required under California
11 law, including California Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 510, 512, 558.1,
12 1194, 1194.2, 1197, and 1198, and IWC Wage Order No. 16-2001, plus damages, penalties and
13 interest owed to Plaintiff, as well as attorney's fees and costs as provided by Labor Code sections
14 226 and 1194.

15 31. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained or
16 withheld by Defendants through their unlawful, unfair and deceptive business practices, pursuant to
17 Business & Professions Code sections 17200 *et seq.*, to prevent Defendants from benefitting from
18 their violations of law and/or their unfair and deceptive acts. Such sums recovered under Business
19 & Profession Code sections 17200 *et seq.* are equitable in nature and are not considered damages.

20 32. Plaintiff also alleges that Defendants violated and continue to violate the
21 California Labor Code and Wage Order protections applicable to himself and other non-exempt
22 employees in California, thereby making them Aggrieved Employees under Labor Code section
23 2698, *et al.* ("PAGA"). Defendants' violations of the California Labor Code and the Wage
24 Order as to Plaintiff and other Aggrieved Employees include:

25 (a) Defendants' failure to pay Plaintiff and other Aggrieved Employees the
26 minimum wage or overtime wages for hours worked in excess of 8 hours in a workday or 40
27 hours in a workweek. For example, Plaintiff regularly worked in excess of 8 hours in a workday
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1 and 40 hours in a workweek, but each payday, Defendants failed to pay him the minimum wage
2 or overtime wages for those hours worked. Defendants thus violated or caused to be violated
3 Labor Code sections 204, 210, 510, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and
4 the Wage Order against Plaintiff and other Aggrieved Employees in California during the PAGA
5 statutory period.

6 (b) Defendants' failure to provide Plaintiff and other Aggrieved Employees
7 with wage statements that accurately show their gross wages earned (such as unpaid minimum
8 wage and overtime wages for hours worked in excess of 8 hours in a day and 40 hours in a
9 workweek), total hours worked by the employee, net wages earned (such as unpaid minimum
10 wage and overtime wages for hours worked in excess of 8 hours in a day and 40 hours in a
11 workweek), and all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate. Defendants failed to keep on file a copy of the
13 records required by Labor Code section 226(a) for at least three years at the place of employment
14 or at a central location in California. Defendants failed to keep, for at least three years, at a
15 central location within the State of California or at the plants or establishments where Plaintiff
16 and other Aggrieved employees are employed, payroll records showing their hours worked daily.
17 Defendants also willfully failed to maintain records showing the hours worked daily by Plaintiff
18 and other Aggrieved Employees. Defendants also failed to keep accurate information with
19 respect to Plaintiff and other Aggrieved Employees, including time records showing when
20 employees began and ended each work period, meal periods, split shift intervals and daily hours
21 worked, total hours worked in the payroll period and applicable rates of pay, and Defendants
22 failed to keep such records on file for at least three years at the place of employment or at a
23 central location within California. Defendants also failed to maintain records of the wages and
24 wage rates of Plaintiff and other Aggrieved Employees in California for a period of three years.
25 Defendants thus violated or caused to be violated Labor Code sections 226(a), 226.3, 558.1,
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1 1174(d), 1174.5, 1197.5, and 1199, and the Wage Order against Plaintiff and other Aggrieved
2 Employees in California during the PAGA statutory period.

3 (c) Defendants’ failure to provide Plaintiff and other Aggrieved Employees
4 with meal periods of not less than 30 minutes, including second meal periods when they worked
5 more than 10 hours in a day. Defendants failed to provide Plaintiff and other Aggrieved
6 Employees with 10-minute rest periods for every four hours that they worked or major fraction
7 thereof. Defendants also failed to pay Plaintiff and other Aggrieved Employees an additional
8 hour of pay at the employee’s regular rate of pay for each workday in which Defendants did not
9 provide them with such meal and/or rest periods. Defendants thus violated or caused to be
10 violated Labor Code sections 226.7, 512, and 558.1, and the Wage Order against Plaintiff and
11 other Aggrieved Employees in California during the PAGA statutory period.

12 (d) Defendants willfully failed to pay Plaintiff and other Aggrieved
13 Employees all wages earned and unpaid at the time of discharge or within 72 hours after quitting.
14 Defendants thus violated or caused to be violated Labor Code sections 201, 202, 203, and 558.1
15 against Plaintiff and other Aggrieved Employees in California during the PAGA statutory period.

16 (e) PSL and Clementz voluntarily and knowingly misclassified Plaintiff and
17 other Aggrieved Employees in California as independent contractors. PSL and Clementz thus
18 violated Labor Code section 226.8 during the PAGA statutory period.

19
20 33. Plaintiff brings this action pursuant to PAGA on behalf of himself, all other
21 Aggrieved Employees, and the State of California, for civil penalties for violations of Labor
22 Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d),
23 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 1199, and Wage Order 16.

24 **First Cause of Action**
25 **Failure to Pay Minimum Wage**
26 Violation of California Labor Code §§ 558.1, 1194, 1194.2 & 1197; IWC Wage Order No. 16-2001
(On Behalf of Plaintiff Against All Defendants)

27 34. The preceding paragraphs of this Complaint are realleged and incorporated by
28 reference as though fully set forth herein.

1 35. Pursuant to Labor Code section 1197, payment of less than the minimum wage fixed
2 by the commission is unlawful.

3 36. Under IWC Wage Order No. 16-2001, the commission established that employers
4 shall pay employees the minimum wage for all hours worked.

5 37. For the entire time of Defendants' employment of Plaintiff, he was entitled to the
6 minimum wage for all hours worked but Defendants regularly failed to pay him the minimum wage
7 for all hours worked. Defendants' failure to pay Plaintiff the minimum wage for all hours worked
8 was knowing, willful, intentional, and unlawful.

9 38. Labor Code section 1194 permits an employee to recover in a civil action the full
10 amount of unpaid minimum wages, as well as interest thereon, reasonable attorney's fees, and costs
11 of suit.

12 39. In any action under Labor Code section 1194 to recover wages because of the
13 payment of a wage less than the minimum wage fixed by an order of the commission or by statute,
14 Labor Code section 1194.2 permits an employee to recover liquidated damages in an amount equal
15 to the wages unlawfully unpaid and interest thereon.

16 40. "Any employer or other person acting on behalf of an employer, who violates, or
17 causes to be violated, any provision regulating minimum wage or hours and days of work in any
18 order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
19 226.7, [or] 1194 may be held liable as the employer for such violation." Labor Code § 558.1(a).
20 "[T]he term 'other person acting on behalf of an employer' is limited to a natural person who is an
21 owner, director, officer, or managing agent of the employer, and the term 'managing agent' has the
22 same meaning as in subdivision (b) of Section 3294 of the Civil Code." *Id.* § 558.1(b).

23 41. Defendant Alvarado Jr. and Defendant Alvarado Sr. were Plaintiff's employers or
24 other persons acting on behalf of Plaintiff's employers, who violated, or caused to be violated,
25 provisions regulating minimum wage or hours and days of work in IWC Wage Order No. 16-2001,
26 or violated or caused to be violated, Labor Code sections 203, 226, 226.7, or 1194. Alvarado Jr. and
27 Alvarado Sr. were each also an owner, director, officer, or managing agent of Plaintiff's employers.
28

1 Therefore, they, along with the other Defendants, may be held liable as Plaintiff's employers for
2 such violation.

3 42. Defendants are liable to Plaintiff for the minimum wage for all hours worked,
4 liquidated damages in an amount equal to the wages unlawfully unpaid to Plaintiff and interest
5 thereon, reasonable attorney's fees, and costs of suit.

6 **Second Cause of Action**

7 **Failure to Pay Overtime & Double-Time Wages**

8 Violation of California Labor Code §§ 510, 558.1, 1194 & 1198; IWC Wage Order No. 16-2001
(On Behalf of Plaintiff Against All Defendants)

9 43. The preceding paragraphs of this Complaint are realleged and incorporated by
10 reference as though fully set forth herein.

11 44. "Any work in excess of eight hours in one workday and any work in excess of 40
12 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half
13 times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
14 compensated at the rate of no less than twice the regular rate of pay for an employee." Labor Code §
15 510(a).

16 45. Pursuant to Labor Code section 1198, the maximum hours of work and the standard
17 conditions of labor are fixed by the commission, and the employment of employees for longer hours
18 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

19 46. IWC Wage Order No. 16-2001, Section 3 requires employers to pay an employee
20 wages of one and one-half times the employee's regular rate of pay for all hours worked in excess of
21 8 hours up to and including 12 hours in a workday, and to pay an employee double the employee's
22 regular rate of pay for all hours worked in excess of 12 hours in a workday.

23 47. For the entire time of Defendants' employment of Plaintiff, he was entitled to wages
24 of one and one-half times his regular rate of pay for all hours worked in excess of 8 hours up to and
25 including 12 hours in a workday ("overtime wages"). Plaintiff regularly worked in excess of 8 hours
26 up to and including 12 hours in a workday for Defendants but Defendants failed to pay Plaintiff the
27 overtime wages to which he was entitled. Defendants failure to pay Plaintiff the overtime wages to
28 which he was entitled was knowing, willful, intentional, and unlawful.

50. Defendants are liable to Plaintiff for failing to pay him the overtime wages due and owing when he worked more than 8 hours up to and including 12 hours in a workday and for failing to pay him the double-time wages due and owing when he worked more than 12 hours in a workday. Plaintiff is entitled to recover his unpaid overtime wages and double-time wages, interest thereon, reasonable attorney's fees, and costs of suit.

16 Violation of California Labor Code §§ 226.7, 512, 558.1 & 1198; Wage Order No. 16-2001
(On Behalf of Plaintiff Against All Defendants)

52. Labor Code section 226.7 prohibits an employer from requiring an employee to work during a meal period mandated pursuant to an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, and if an employer fails to provide an employee with such meal period, then the employer shall pay the employee an additional hour of pay at the employee's regular rate of pay for each workday that such meal period is not provided.

24 53. Labor Code section 512(a) and IWC Wage Order No. 16-2001, section 10 prohibit an
25 employer from employing any person for a work period of more than five hours per day without
26 providing a thirty-minute uninterrupted meal period, except that if the employee is working no more
27 than six hours, the meal period can be waived by the mutual consent of the employer and the

1 employee. An employer is also prohibited from employing any person for a work period of more
2 than ten hours per day without providing a second thirty-minute uninterrupted meal period, except
3 that if the total hours worked is no more than 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 54. For the entire time of Defendants' employment of Plaintiff, Defendants regularly
6 failed to provide him with meal periods as required by Labor Code sections 226.7 and 512 and IWC
7 Wage Order No. 16-2001, nor did Defendants pay Plaintiff an additional hour of pay at his regular
8 rate of pay for each workday that Defendants failed to provide him with a meal period.

9 55. Because Defendants failed to pay Plaintiff an additional hour of pay for each workday
10 that Defendants failed to provide him with a meal period in accordance with California Labor Code
11 sections 226.7 and 512 and Wage Order No. 16-2001, Plaintiff is entitled to one hour of pay at his
12 regular rate of pay for each such workday.

13 **Fourth Cause of Action**
14 **Failure to Provide Rest Periods**

15 Violation of California Labor Code §§ 226.7, 558.1 & 1198; Wage Order No. 16-2001
16 (On Behalf of Plaintiff Against All Defendants)

17 56. The preceding paragraphs of this Complaint are realleged and incorporated by
18 reference as though fully set forth herein.

19 57. Labor Code section 226.7 prohibits an employer from requiring an employee to work
20 during a rest period mandated pursuant to an applicable statute or applicable regulation, standard, or
21 order of the Industrial Welfare Commission, and if an employer fails to provide an employee with
22 such rest period, then the employer shall pay the employee an additional hour of pay at the
23 employee's regular rate of pay for each workday that such rest period is not provided.

24 58. IWC Wage Order No. 16-2001, section 11 requires employers to authorize and permit
25 employees to take on-the-clock rest periods of ten minutes for each four-hour period or major
26 fraction thereof, including if employees work shifts of more than three and one-half hours.

27 59. For the entire time of Defendants' employment of Plaintiff, Defendants regularly
28 failed to authorize and permit him to take rest periods as required by California Labor Code sections

1 226.7 and Wage Order No. 16-2001, nor did Defendants pay Plaintiff an additional hour of pay at his
2 regular rate of pay for each workday that Defendants failed to provide him with a rest period.

3 60. Because Defendants failed to pay Plaintiff an additional hour of pay for each workday
4 that Defendants did not provide him with a rest period in accordance with Labor Code sections 226.7
5 and Wage Order No. 16-2001, Plaintiff is entitled to one hour of pay at his regular rate of pay for
6 each such workday.

7 **Fifth Cause of Action**
8 **Failure to Provide Accurate Itemized Wage Statements**
9 Violation of California Labor Code §§ 226 & 558.1
10 (On Behalf of Plaintiff Against All Defendants)

11 61. The preceding paragraphs of this Complaint are realleged and incorporated by
12 reference as though fully set forth herein.

13 62. Labor Code section 226(a) requires an employer to provide its employees with an
14 accurate itemized statement with their wages. The itemized statement must accurately show, among
15 other things, the gross wages earned, the total hours worked by the employee, the net wages earned,
16 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee.

18 63. For the entire time of Defendants' employment of Plaintiff, Defendants failed to
19 provide him with itemized wages statements that accurately showed his gross wages earned, his total
20 hours worked, the net wages he earned, and all applicable hourly rates in effect during the pay period
21 and the corresponding number of hours he worked at each hourly rate. Defendants thus violated
22 Labor Code section 226(a). Defendants' failure to provide Plaintiff with accurately itemized wage
23 statements was knowing and intentional.

24 64. Plaintiff suffered an injury each pay period because Defendants failed to provide him
25 with accurately itemized wage statements as required by Labor Code section 226(a) and Defendants'
26 inaccurate wage statements made it difficult for Plaintiff to promptly and easily determine from the
27 wage statement alone his total hours worked or the applicable hourly rates in effect during the pay
28 period and the corresponding number of hours that Plaintiff worked at each hourly rate.

///

Waiting Time Penalties

66. The preceding paragraphs of this Complaint are realleged and incorporated by
reference as though fully set forth herein.

68. Pursuant to Labor Code section 203, if an employer willfully fails to timely pay all wages due an employee upon his or her discharge or resignation from employment, the employee's wages continue until he or she is paid all wages due, up to thirty days.

SECOND AMENDED COMPLAINT FOR DAMAGES, OTHER RELIEF & PAGA

1 these additional wages to Plaintiff. Defendants willfully failed to pay Plaintiff all wages due to him
2 upon his discharge or resignation from employment.

3 70. Pursuant to Labor Code section 203, because of Defendants' willful failure to pay to
4 Plaintiff all wages due to him upon his discharge or resignation from employment, Plaintiff is
5 entitled to thirty days of waiting time penalties.

6 **Seventh Cause of Action**
7 **Unfair Business Practices**

8 Business & Professions Code §§ 17200 *et seq.*
9 (On Behalf of Plaintiff Against All Defendants)

10 71. The preceding paragraphs of this Complaint are realleged and incorporated by
11 reference as though fully set forth herein.

12 72. At all times mentioned herein, Defendants were and are subject to the requirements of
13 Business & Professions Code §§ 17200 *et seq.*, which prohibit unlawful, unfair, deceptive or
14 fraudulent business practices.

15 73. Defendants' conduct, including but not limited to failing to pay Plaintiff the minimum
16 wage for all hours worked, failing to pay overtime wages for hours worked in excess of 8 hours up to
17 and including 12 hours in a workday and double-time wages for all hours worked in excess of 12
18 hours in a workday, failing to provide Plaintiff with meal periods and rest periods and then failing to
19 pay Plaintiff additional hours of wages for not providing him with meal periods and rest periods, was
20 unlawful, unfair and deceptive and therefore amounts to violations of Business & Professions Code
21 §§ 17200 *et seq.*, as the unlawful, unfair and deceptive practices occurred in connection with
22 Defendants' conduct of trade and commerce in California.

23 74. Defendants' violations of California law, as alleged above, constitute business
24 practices because they were done repeatedly over a substantial period of time. These practices were
25 the result of policies that worked to Plaintiff's detriment because Defendants retained wages due to
26 Plaintiff.

27 75. Due to these unlawful, unfair and deceptive business practices, Defendants gained a
28 competitive advantage over other comparable businesses doing business in the State of California

1 because Defendants retained more profit by unlawfully, unfairly and deceptively underpaying
2 Plaintiff and by subjecting Plaintiff to unlawful and unfair working conditions.

3 76. As a direct result of Defendants' unlawful, unfair and deceptive business practices as
4 herein alleged, Defendants have been unjustly enriched, including by their retention of wages due to
5 Plaintiff. Therefore, Plaintiff seeks restitution and/or disgorgement of all sums wrongfully retained
6 by Defendants during the statutory period.

7 **EIGHTH CLAIM FOR RELIEF**
8 **Private Attorneys General Act Violations**
9 **[Labor Code §§ 2698, et seq.]**
10 **(On Behalf of Plaintiff, All Other Aggrieved Employees, and the State of California**
11 **Against All Defendants)**

12 77. Plaintiff realleges and incorporates by reference all other paragraphs as if they
13 were set forth again herein.

14 78. Pursuant to Labor Code § 2699(c), an “aggrieved employee” means any person
15 who was employed by the alleged violator and against whom one or more of the alleged
16 violations was committed.” PAGA provides that any provision of law under the Labor Code that
17 sets forth a civil penalty to be assessed and collected by the Labor and Workforce Development
18 Agency (“LWDA”), may, as an alternative, be recovered through a civil action brought by an
19 aggrieved employee on behalf of herself or herself and other current or former all other
20 aggrieved employees pursuant to the procedures outlined in Labor Code § 2699.3.

21 79. As a result of the California Labor Code violations that Defendants committed
22 against Plaintiff and other current and former Aggrieved Employees of Defendants, Plaintiff and
23 his fellow Aggrieved Employees of Defendants are all “aggrieved employees” of Defendants
24 within the definition of Labor Code § 2699(c). As an aggrieved employee, Plaintiff seeks, on
25 behalf of himself and his fellow Aggrieved Employees and on behalf of the State of California,
26 to recover civil penalties from Defendants under Labor Code §§ 2699, 210, 226.3, 558, 1174.5,
27 and 1197.1, and Wage Order 16, § 18 for Defendants' Labor Code violations set forth above,
28 including Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3,

1 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
2 and 1199, and Wage Order 16.

3 80. Pursuant to Labor Code § 2699.3, an aggrieved employee may commence a civil
4 action arising under Labor Code § 2699 after the following requirements have been met:

5 a. The aggrieved employee or representative shall give written notice by filing online
6 with the LWDA and by certified mail to the employer of the specific provisions of the
7 Labor Code alleged to have been violated, including the facts and theories to support
8 the alleged violation. A \$75 filing fee should accompany the notice.

9 b. For violations of any provision listed in Labor Code § 2699.5, the LWDA shall notify
10 the employer and the aggrieved employee or representative by certified mail that it
11 does not intend to investigate the alleged violation within 60 calendar days of the
12 postmark date of the notice received. Upon receipt of that notice or if no notice is
13 provided within 65 calendar days of the postmark date of the notice, the aggrieved
14 employee may commence a civil action pursuant to Section 2699. For violations of
15 any provision other than those listed in Labor Code § 2699.5 or Division 5, the
16 aggrieved employee may commence a civil action pursuant to Section 2699 if the
17 employer has not cured the violations within 33 calendar days of the postmark date of
18 the notice.

19 81. On or about February 13, 2023, Plaintiff gave timely written notice by certified
20 mail to Defendants of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a),
21 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5,
22 1198, and 1199, and Wage Order 16 alleged in this Complaint, including the facts and theories to
23 support the alleged violations, and Plaintiff filed the notice online with the LWDA. Plaintiff also
24 paid the accompanying filing fee of \$75.00. Plaintiff has complied with all notice and
25 exhaustion procedures as required by PAGA.

26 82. The LWDA did not provide notice of its intention to investigate Defendants'
27 violations of provisions listed in Labor Code § 2699.5 by the expiration of the 65-day waiting
28

1 time period. Defendants have not cured the violations of provisions other than those listed in
2 Labor Code § 2699.5 or Division 5 by the expiration of the 33-day period. Consequently,
3 Plaintiff's right to file the instant lawsuit then duly accrued.

4 83. Therefore, Plaintiff has complied with all of the requirements set forth in Labor
5 Code § 2699.3 to commence a representative action under PAGA.

6 84. Plaintiff, on behalf of himself, his fellow Aggrieved Employees, and on behalf of
7 the State of California, seeks civil penalties under PAGA, 75% of which will be distributed to the
8 State of California, and 25% of which will be distributed to Plaintiff and his fellow Aggrieved
9 Employees. Under this PAGA action, Plaintiff is also entitled to an award of reasonable
10 attorney's fees and costs.

11 85. Pursuant to Labor Code § 2699, Plaintiff is entitled to recover civil penalties in the
12 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
13 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
14 subsequent violation or the civil penalties and remedies specifically provided by statutes or the Wage
15 Order, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.7,
16 226.8, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, and 1199,
17 and Wage Order 16 § 18, plus reasonable attorney's fees and costs.

18 **Prayer for Relief**

19 WHEREFORE, Plaintiff requests judgment against Defendants as follows according
20 to proof:

- 21 A. Unpaid minimum wage of more than \$72,116.00;
22 B. Liquidated damages of more than \$72,116.00;
23 C. Unpaid overtime and double-time wages of more than \$265,857.00;
24 D. For meal periods not provided, unpaid wages of more than \$16,616.00;
25 E. For rest periods not provided, unpaid wages of more than \$16,616.00;
26 F. Damages pursuant to Labor Code § 226(e) of \$4,000.00;
27 G. Waiting time penalties pursuant to Labor Code § 203 of more than \$14,850.00;
28

- H. Interest at the legal rate in the amount of more than \$55,354.00;
- I. Restitution and/or disgorgement of all sums pursuant to Business & Professions Code §§ 17200 *et seq.*;
- J. Costs of suit pursuant to Labor Code §§ 218.5(a), 226, 1194 & 2699;
- K. Attorney’s fees pursuant to Labor Code §§ 218.5(a), 226, 1194 & 2699;
- L. Civil penalties pursuant to Labor Code § 2699;
- M. The remedy provided by Labor Code § 226.8(e);
- N. An appropriate service payment to Plaintiff for his service as PAGA representative; and
- O. For such other and further relief in law or equity as the Court may deem appropriate and just.

Dated: April 30, 2023

LAW OFFICE OF STEVEN ELSTER



Steven Elster
Attorney for Plaintiff Samir Jimenez