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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

LUIS BECERRA, as an individual and on
 behalf of all employees similarly situated,

Plaintiff,

v.

SHINSUKE CLIFFORD YAMAMOTO,
 INC., and DOES 1 through 50, inclusive,

Defendants.

Case No. **23STCV06354**

CLASS ACTION COMPLAINT

1. Violation of Labor Code §§ 510, 1194 (Failure to Pay All Wages);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code §§ 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse Necessary Business Expenditures)
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices).

DEMAND FOR JURY TRIAL

1 Plaintiff LUIS BECERRA (hereinafter referred to as “Mr. Becerra” or “Plaintiff”) on
2 behalf of himself and all others similarly situated, complains 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” or “Class Members”). Class Members consist of all non-exempt,
6 hourly-paid employees currently and/or formerly employed by SHINSUKE CLIFFORD
7 YAMAMOTO, INC., in the State of California during the Class Period. The term “Class Period”
8 is defined as four (4) years prior to the filing of this Complaint through the date final judgment is
9 entered. Plaintiff reserves the right to amend this Complaint to reflect a different “Class Period”
10 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 SHINSUKE CLIFFORD YAMAMOTO, INC. (“S C Yamamoto” or “Defendant”) for
13 Defendant’s: failure to pay all wages due, including both regular and overtime wages; failure to
14 provide meal periods or compensation in lieu thereof; failure to provide rest periods or
15 compensation in lieu thereof; failure to provide accurate itemized wage statements upon payment
16 of wages; failure to pay wages of terminated or resigned employees; and failure to reimburse for
17 necessary business expenditures.

18 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
19 relief, and relief under Business and Professions Code section 17200 et seq. for unfair business
20 practices.

21 4. At all relevant times herein, Defendants carried out a joint scheme, business plan
22 or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to
23 the other Defendants. Defendants have consistently maintained and enforced against Plaintiff and
24 Plaintiff Class the following unlawful practices and policies:

- 25 (a) willfully refusing to pay Plaintiff and Plaintiff Class for all hours worked,
26 including both regular and overtime, due to illegal rounding;
27 (b) willfully refusing to permit Plaintiff and Plaintiff Class from taking meal
28 periods or compensation in lieu thereof;

- 1 (c) willfully refusing to permit Plaintiff and Plaintiff Class from taking rest
2 periods or compensation in lieu thereof;
- 3 (d) willfully refusing to furnish to Plaintiff and Plaintiff Class accurate
4 itemized wage statements upon payment of wages;
- 5 (e) willfully refusing to compensate Plaintiff and certain members of the
6 Plaintiff Class wages due and owing at the time of Plaintiff and Plaintiff
7 Class's employment with Defendant ended; and
- 8 (f) willfully failing to reimburse Plaintiff and Plaintiff Class for necessary
9 business expenditures.

10 **JURISDICTION AND VENUE**

11 5. Venue is proper in this judicial district and in the County of Los Angeles,
12 California because Defendant maintained its locations and/or transacted business in this county,
13 the obligations and liability arise in this county, and work was performed by members of the
14 proposed class made the subject of this action in this county.

15 6. The wages, statutory penalties, monetary damages and restitution sought by
16 Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established
17 according to proof at trial. This Court has jurisdiction over this action pursuant to the California
18 Constitution, article VI, section 10. The statutes under which this action is brought do not specify
19 any other basis for jurisdiction.

20 7. The California Superior Court has jurisdiction in the matter because the individual
21 claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for
22 Federal Court and the five million dollars (\$5,000,000.00) aggregate jurisdictional threshold for
23 Federal Court and, upon information and belief, Plaintiff and Defendant are residents of,
24 domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no
25 federal question at issue as the issues herein are based solely on California statutes and law
26 including the Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, the Code of
27 Civil Procedure, the Rules of Court, and the Business and Professions Code.

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1 **ADMINISTRATIVE PREREQUISITES**

2 8. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action
3 under PAGA only after giving the Labor Workforce Development Agency (“LWDA”) and the
4 employer notice of the Labor Code sections alleged to have been violated, and after receiving
5 notice from the LWDA of its intention not to investigate, or after 65 days have passed without
6 notice from the LWDA.

7 9. On February 7, 2023, prior to the filing of this complaint, Plaintiff gave written
8 notice of the specified provisions alleged to have been violated, including the facts and theories
9 to support the alleged violations, as required by Labor Code section 2699.3. This written notice
10 was given via certified mail to Defendant and to the LWDA by electronically filing the notice via
11 the Department of Industrial Relations website. Plaintiff was given a LWDA case number of
12 LWDA-CM-934379-23. A true and correct copy of Plaintiff’s notice to the LWDA and
13 Defendant, dated February 7, 2023, is attached hereto as Exhibit A.

14 10. Under Labor Code section 2699.3(a)(2)(C), “Notwithstanding any other provision
15 of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action
16 arising under this part at any time within 60 days of the time periods specified in this
17 part.” Therefore, Plaintiff intends to amend his complaint upon the expiration of the 65-day period
18 for the LWDA to provide notice of its intent to investigate Plaintiff’s claims, if the LWDA fails
19 to provide notice.

20 **THE PARTIES**

21 **A. Plaintiff**

22 11. Plaintiff, at all relevant times herein, was Defendant’s employee and was entitled
23 to compensation for all hours worked, including regular time and overtime compensation, and
24 penalties from Defendant. Plaintiff was employed by Defendant as a non-exempt, hourly paid
25 employee during the Class Period. Specifically, Plaintiff worked as a Laborer from on or about
26 August 2008 until April 1, 2022. Each of the Class Members are identifiable, current and/or
27 former similarly situated persons who were employed in non-exempt hourly positions in
28 California by Defendant during the Class Period.

1 **B. Defendant**

2 12. Plaintiff is informed and believes, and based thereon alleges, that S C
3 YAMAMOTO is a California limited liability company. S C YAMAMOTO is in the business of
4 providing gardening services. On information and belief, S C YAMAMOTO was and/or is the
5 employer of Plaintiff and Plaintiff Class during the Class Period. Plaintiff also alleges that S C
6 YAMAMOTO is conducting business in good standing in California.

7 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of
8 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50,
9 inclusive, but on information and belief alleges that these Defendants are legally responsible for
10 the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff
11 and Plaintiff Class by virtue of their unlawful practices, and therefore sues these Defendants by
12 such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities
13 of each DOE defendant when ascertained.

14 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
15 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
16 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
17 are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as
18 the employer and/or joint employer of Plaintiff and Plaintiff Class.

19 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
20 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
21 managing agent, and/or principal of the Defendant, and in performing the actions mentioned
22 below was acting, at least in part, within the course and scope of that authority as such agent,
23 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
24 permission and consent of the Defendant. Plaintiff also alleges the acts of each Defendant are
25 legally attributable to the other Defendants.

26 16. Plaintiff is informed and believes, and based thereon alleges, that each of the
27 Defendants sued herein was, at all times relevant hereto, the employer, owner, shareholder,
28 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing

1 agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in
2 part, within the course and scope of such employment and agency, with the express and implied
3 permission, consent, and knowledge, approval and/or ratification of the other Defendants.

4 17. The above Defendant, managing agents, and supervisors aided, abetted, condoned,
5 permitted, approved, authorized and/or ratified the unlawful acts described herein.

6 **GENERAL ALLEGATIONS**

7 18. Plaintiff began his employment with Defendant in or around August 2008 until
8 April 1, 2022. Plaintiff was employed by Defendant as a Laborer.

9 19. Labor Code section 1194 provides that notwithstanding any agreement to work for
10 a lesser wage, an employee receiving less than the legal overtime compensation is entitled to
11 recover in a civil action the unpaid balance of his or her overtime compensation, including interest
12 thereon, reasonable attorneys' fees, and costs of suit.

13 20. Further, Business and Professions Code section 17203 provides that any person
14 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
15 Business and Professions Code section 17204 provides that any person who has suffered actual
16 injury and has lost money or property as a result of the unfair competition may bring an action in
17 a court of competent jurisdiction.

18 21. During all, or a portion of the Class Period, Plaintiff and each member of the
19 Plaintiff Class was employed by Defendant in the State of California.

20 22. Plaintiff and Class Members were non-exempt employees covered under one or
21 more IWC Wage Order(s), and Labor Code section 510, and/or other applicable Wage Orders,
22 regulations and statutes, and each Class Member was not subject to an exemption for executive,
23 administrative or professional employees, which imposed obligations on the part of Defendant to
24 pay Plaintiff and Class Members lawful overtime compensation.

25 23. Plaintiff and Plaintiff Class were covered by one or more IWC Wage Order(s), and
26 Labor Code section 226.7 and other applicable Wage Orders, regulations and statutes which
27 imposed an obligation on the part of Defendant to pay Plaintiff and Plaintiff Class rest and meal
28 period compensation.

1 24. During the Class Period, Defendant was obligated to pay Plaintiff and Class
2 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one
3 (1) day or forty (40) hours in one (1) week, and double-time compensation for hours worked in
4 excess of twelve (12) in one (1) day. However, Defendant did not pay Plaintiff and Class Members
5 proper overtime and/or double-time rates for hours worked off-the-clock as required by law. In
6 fact, Plaintiff typically worked Monday through Friday from 4:30 a.m. until 6:30 p.m. or 7:30
7 p.m., however, Defendant's practice was to only pay Plaintiff for approximately twenty (20) hours
8 of overtime worked, but at his regular hourly rate. These overtime hours were paid in cash or
9 through a personal check from Defendant. Defendant failed to pay overtime hours at the correct
10 overtime rates and would pay all hours worked at Plaintiff's regular hourly rate. In addition,
11 Plaintiff regularly worked two Saturdays per month, but he was not compensated for any work
12 done on a Saturday.

13 25. In addition, Plaintiff and Plaintiff Class were required to work off-the-clock during
14 the Class Period. For example, Plaintiff regularly was required to begin working before the start
15 of his shift and clock-out after his shift ended, but continue working. Plaintiff was only paid at
16 his regular rate of pay for this time worked off-the-clock.

17 26. During the Class Period, Defendant failed to utilize a clock-in/out method.
18 Plaintiff and Class Members would send a text message to Defendant's secretary saying "Good
19 Morning" as their way of clocking in. Plaintiff and Plaintiff Class allege this was the only way
20 Defendant could see when employees arrived to work. At the end of their shifts, Plaintiff and
21 Plaintiff Class were not required to text Defendant's secretary to "punch out" as their times would
22 routinely be modified by Defendant.

23 27. During the Class Period, Defendant was obligated to pay Plaintiff and Class
24 Members for all hours worked. However, Defendant applied a time rounding policy as
25 specifically described herein and practice of not paying Plaintiff and Class Members for all hours
26 worked by requiring its employees to work off-the-clock. Specifically, Defendant had a rounding
27 policy and practice of providing Plaintiff and Class Members with a timesheet form at the end of
28 every work week and requiring that employees record each day that they worked exactly from

6:30 a.m. to 10:30 a.m., and then from 11:30 a.m. until 3:30 p.m., even though Plaintiff and Plaintiff Class regularly worked until 6:30 p.m. or 7:30 p.m. Therefore, Plaintiff and Plaintiff Class's time sheets were rounded to the nearest half-hour increment for payroll purposes. Upon information and belief, Defendant's rounding policies and practices resulted in a disproportionate impact which does not average out over a period of time and results in a failure to compensate Plaintiff and those similarly situated for all time actually worked.

28. Defendant knew or should have known that rounding of employees' time cannot have a negative impact on employee compensation.

29. During the Class Period, Defendant was obligated to provide Plaintiff and Plaintiff Class with a work-free meal period within the first five (5) hours of a shift when the workday was longer than six (6) hours. Plaintiff and Class Members were entitled to a full, thirty (30) minute, off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours of their shifts. However, Plaintiff and Class Members were routinely not provided with timely, 30-minute off-duty meal periods, and were not permitted and authorized to take uninterrupted rest periods.

30. Plaintiff and Plaintiff Class were required to falsely reflect on their time sheets that they received a meal break from 10:30 a.m. until 11:30 a.m., even when they in fact did not receive these meal breaks. When Plaintiff did receive a meal break, it was typically interrupted.

31. Additionally, Defendant was obligated to provide Plaintiff and Class Members with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each day. Defendant prevented Plaintiff and Class Members from taking rest breaks throughout their shifts. This was due in part to Defendant's policy and practice of providing inadequate coverage to allow for breaks to be taken.

32. Defendant further failed and/or refused to schedule Plaintiff and Plaintiff Class during the Class Period so as to reasonably ensure they took meal and/or rest breaks within the required statutory time frame as required by law.

33. Further, due to the pressure from Defendant, and in violation of Labor Code and applicable IWC Wage Orders, Plaintiff was not authorized and permitted to take a second rest

1 period, on shifts exceeding six hours of work, and/or third rest breaks, on shifts exceeding ten
2 hours of work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1030 (2012).
3 “Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length,
4 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10
5 hours up to 14 hours, and so on.”

6 34. Furthermore, Defendant failed and/or refused to pay Plaintiff and Class Members
7 one (1) hour’s pay at the employees’ regular rate of pay as premium compensation for
8 Defendant’s failure to provide lawful thirty (30) minute, off-duty meal periods and failure to
9 provide lawful ten (10) minute rest periods within the statutory time frames.

10 35. In addition, during the Class Period, Defendant failed to reimburse Plaintiff and
11 Plaintiff Class for necessary business expenditures. Specifically, Plaintiff and Plaintiff Class were
12 required to wear work uniforms containing Defendant’s name and logo. Plaintiff and Plaintiff Class
13 were required to pay for the maintenance of their work uniforms. Plaintiff and Plaintiff Class were
14 also required to use their personal cell phones for work-related purposes. Defendant failed to
15 reimburse for these expenditures.

16 36. Defendant continues to employ non-exempt, hourly-paid employees within
17 California.

18 37. Plaintiff and Class Members primarily performed non-exempt work, often in
19 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),
20 regulations or statutes, and therefore entitled the Plaintiff and Class Members to overtime
21 compensation at the rate of one and a half times their regular rate of pay and, when applicable,
22 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or
23 statutes.

24 38. During the Class Period, Defendant required Plaintiff and Class Members to work
25 regular hours, off-the-clock hours, and overtime hours without lawful compensation in violation
26 of the applicable IWC Wage Order(s), regulations and statutes, and Defendant: (1) willfully failed
27 and refused, and continues to fail and refuse to pay compensation for all hours worked, including
28 lawful regular time, overtime and double-time compensation, to Class Members; and (2) willfully

1 failed and refused, and continues to fail and refuse to pay due and owing wages promptly upon
2 termination of employment to Plaintiff and affected Class Members.

3 39. Class Members who ended their employment with Defendant during the Class
4 Period, but were not paid the above due compensation for all hours worked timely upon the
5 termination of their employment as required by Labor Code sections 201, 202, and 203, are
6 entitled to penalties as provided by Labor Code section 203.

7 40. Defendant knew or should have known that Plaintiff and the Class were entitled
8 to receive accurate wage statements, which would include meal break premiums, and/or rest break
9 premiums, as required by Labor Code 226.

10 41. Defendant knew or should have known that Plaintiff and the Class were entitled
11 to timely payment of all wages earned upon termination. Plaintiff and the Class did not receive
12 payment of all wages, including but not limited to, meal and rest break premiums, in violation of
13 the Labor Code.

14 **CLASS ALLEGATIONS**

15 42. Plaintiff brings this action on behalf of himself, the general public, and the Plaintiff
16 Class, as a class action pursuant to Code of Civil Procedure section 382. The Plaintiff Class
17 consists of all non-exempt, hourly-paid employees who work or worked for Defendant in
18 California during the Class Period. Plaintiff reserves the right under Rules of Court, rule 3.765,
19 to amend or modify the Plaintiff Class description, or to further divide the Plaintiff Class into
20 subclasses by limitation to particular issues or by other means.

21 43. This action has been brought and may be maintained as a class action pursuant to
22 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
23 litigation, and because the Plaintiff Class is easily ascertained by Defendant's personnel and
24 payroll records.

25 **Numerosity**

26 44. The potential members of the class as defined are so numerous that joinder of all
27 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
28 Plaintiff is informed and believes that Defendant employed over fifty (50) employees during the

1 Class Period within the state of California, and alleges on information and belief that a large
2 enough portion of those so-employed held non-exempt positions so as to be part of the Plaintiff
3 Class.

4 **Commonality**

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

- 7 (a) Whether Defendant failed to pay all wages, including minimum, overtime and
8 double-time wages, due to Plaintiff and the Plaintiff Class;
- 9 (b) Whether Defendant failed, and continues to fail, to provide meal periods or
10 premium compensation in lieu thereof to Plaintiff and the Plaintiff Class;
- 11 (c) Whether Defendant failed, and continues to fail, to authorize and permit
12 Plaintiff and the Plaintiff Class to take rest breaks, or pay premium
13 compensation in lieu thereof;
- 14 (d) Whether Defendant failed to furnish accurate itemized wage statements to
15 Plaintiff and the Plaintiff Class containing all information required by Labor
16 Code section 226, subdivision (a);
- 17 (e) Whether Defendant failed to pay all unpaid wages earned during the course of
18 employment to Plaintiff and the Plaintiff Class upon the separation of their
19 employment;
- 20 (f) Whether Defendant failed to reimburse Plaintiff and the Plaintiff Class for all
21 necessary business expenditures; and
- 22 (g) Whether Defendant engaged in unlawful or unfair business practices.

23 **Typicality**

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

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Superiority of Class Action

48. 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 members inasmuch as joinder of individual relatively small claims of each member of the Plaintiff Class is not practical, and if each employee were required to file an individual lawsuit, the 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 member of the Plaintiff Class 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 adjudications with respect to the individual members of the Plaintiff Class against Defendant herein further support class certification.

Failure to Pay All Wages Owed, Including Minimum Wage and Overtime
(Against Defendant, DOES 1 through 50, and each of them)

50. Labor Code section 510, subdivision (a) states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee.”

51. Labor Code section 1194, subdivision (a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal

overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

52. Further, pursuant to Labor Code section 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

53. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

54. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and Class Members for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

55. During the Class Period, Defendant, as a matter of established company policy and procedure, (1) administered a uniform company policy and practice as to the rounding policies regarding the Plaintiff Class, and (2) rounded the actual time worked and recorded by the members of the Plaintiff Class to the half-hour, so that during the course of the their employment, the Plaintiff Class were paid far less than they would have been paid had they been paid for actual recorded time rather than “rounded” time.

56. Because Defendant required Plaintiff and Plaintiff Class to remain under Defendant’s control without paying therefore, this resulted in the Plaintiff Class earning less than the legal minimum wage in the State of California.

57. Plaintiff and the Plaintiff Class regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff and the Plaintiff Class all minimum wage, overtime premiums, and/or double-time premiums for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week for work performed for Defendant. Pursuant to Labor Code sections 510, 1182.12, 1194, and the applicable IWC Wage Order, Plaintiff and the Plaintiff Class seek the payment of all minimum wage, overtime, and/or double-time

1 compensation, and reporting time pay earned and accrued beginning four (4) years prior to filing
2 this complaint, according to proof.

3 58. Plaintiff and the Plaintiff Class routinely worked shifts in excess of twelve (12)
4 hours, but Defendant failed to pay any overtime or double-time rates. All hours were paid at the
5 employees' regular rate of pay.

6 59. Plaintiff and the Plaintiff Class were also frequently required to work through meal
7 periods for which Defendant required at least thirty (30) minutes be deducted from the time
8 recorded, resulting in additional unpaid wages. Additional time was worked by Plaintiff and the
9 Plaintiff Class that employees were not permitted to record on time records also resulting in
10 unpaid wages.

11 60. Defendant's pattern, practice and uniform administration of corporate policy
12 regarding illegal employee compensation as described herein is unlawful and creates an
13 entitlement, pursuant to Labor Code section 218, to recovery by Plaintiff and the members of the
14 Rounding Class, in a civil action, of the unpaid balance of the full amount of wages owing,
15 calculated at the appropriate rate.

16 61. Additionally, Plaintiff and Plaintiff Class were required to work before the start of
17 their shifts as well as after their shifts had ended, yet they were never paid for this off-the-clock
18 work.

19 62. Further, Defendant's pattern and practice in uniform administration of corporate
20 policy regarding Defendant's failure to pay the legal minimum wage to the members of the
21 Plaintiff Class as described herein is unlawful and creates entitlement, pursuant to Labor Code
22 section 1194(a), to recovery by the members of the Plaintiff Class, in a civil action, for the unpaid
23 balance of the full amount of the unpaid minimum wages owed, calculated as the difference
24 between the straight time compensation paid and the applicable minimum wage (and/or the full
25 amount of unpaid overtime compensation, which includes any unpaid straight time and unpaid
26 overtime premium for overtime hours worked), including interest thereon.

27 63. Pursuant to Labor Code section 1194.2(a) (which provides that in any action under
28 Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the Plaintiff

1 Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours
2 of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully
3 unpaid and interest thereon.

4 64. That calculation of individual damages for Plaintiff and Plaintiff Class may at
5 some point be required does not foreclose the possibility of taking common evidence on questions
6 regarding their entitlement to overtime compensation (see, e.g. *Collins v. Rocha* (1972) 7 Cal.3d
7 232; *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior*
8 *Court* (1981) 30 Cal.3d 256).

9 65. Pursuant to Labor Code sections 218.6 and 1194(a) and Civil Code section 3287,
10 the members of the Plaintiff Class seek recovery of pre-judgment interest on all amounts
11 recovered herein.

12 66. Pursuant to Labor Code sections 218.5 and/or 1194, the members of the Plaintiff
13 Class request that the Court award reasonable attorneys' fees and costs incurred by them in this
14 action.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

17 **(Against Defendant, DOES 1 through 50, and each of them)**

18 67. Plaintiff and Class Members reallege and incorporate by reference all preceding
19 paragraphs of this complaint as though fully set forth herein.

20 68. Labor Code sections 226.7 and 512 provide that no employer shall employ any
21 person for a work period of more than five (5) hours without providing a meal period of not less
22 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
23 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
24 minutes.

25 69. Labor Code section 226.7 provides that if an employer fails to provide an
26 employee a meal period in accordance with this section, the employer shall pay the employee one
27 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
28 period is not provided in accordance with this section.

1 70. Defendant failed to schedule Plaintiff and Class Members in a manner as to
2 reasonably ensure that Plaintiff and Class Members could take such meal periods within the
3 statutory timeframe. As a result, Plaintiff and Plaintiff Class were often forced to forego their
4 meal periods, work during their meal periods and/or take meal periods after the fifth (5th) hour
5 of their shifts. In so doing, Defendant has intentionally and improperly denied meal periods to
6 Plaintiff and Class Members in violation of Labor Code sections 226.7 and 512, and other
7 regulations and statutes.

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

10 72. At all times relevant hereto, Defendant failed to schedule Plaintiff and Class
11 Members in a manner so as to reasonably provide work-free meal periods in accordance with
12 Labor Code sections 226.7 and 512.

13 73. By virtue of Defendant's failure to schedule Plaintiff and Class Members in such
14 a way as to provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff
15 and Class Members have suffered, and will continue to suffer, damages in an amount which is
16 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
17 ascertained according to proof at trial.

18 74. Plaintiff, individually and on behalf of Class Members, requests recovery of meal
19 period compensation pursuant to Labor Code section 226.7 for the four (4) years prior to filing
20 this complaint, as well as the assessment of any statutory penalties against Defendant in a sum as
21 provided by the Labor Code and/or other statutes.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

24 **(Against Defendant, DOES 1 through 50, and each of them)**

25 75. Plaintiff and Class Members reallege and incorporate by reference all preceding
26 paragraphs of this complaint as though fully set forth herein.

1 76. The IWC Wage Orders and Labor Code section 226.7 provides that employers
2 must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest
3 time per four (4) work hours or major fraction thereof.

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

8 78. During the Class Period, Defendant did not provide Plaintiff and Class Members
9 with a ten-minute rest period for every four (4) work hours or major fraction thereof. Therefore,
10 Plaintiff and Class Members were not provided lawful rest periods.

11 79. Defendants, and each of them, failed and/or refused to implement a relief system
12 by which Plaintiff and Class Members could receive rest periods and/or work free rest periods.
13 By and through its actions, Defendant intentionally and improperly denied rest periods to Plaintiff
14 and Class Members in violation of Labor Code sections 226.7 and 512.

15 80. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than
16 four (4) hours in a workday.

17 81. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
18 and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer,
19 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of
20 this Court and which will be ascertained according to proof at trial.

21 82. Plaintiff, individually and on behalf of employees similarly situated, requests
22 recovery of rest period compensation pursuant to Labor Code section 226.7 for the four (4) years
23 prior to filing this Complaint, as well as the assessment of any statutory penalties against
24 Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

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(Against Defendant, DOES 1 through 50, and each of them)

84. Labor Code section 1174, subdivision (d) requires an employer to keep at a central location in California, or at the plant or establishment at which the employee is employed, payroll records showing the hours worked daily by, and the wages paid to, each employee.

86. Moreover, the IWC Wage Orders require that every employer shall keep accurate information with respect to each employee, including time records showing when each employee begins and ends each work period, the total daily hours worked by each employee and the total hours worked in each payroll period, and applicable rates of pay.

88. Labor Code section 226, subdivision (e) provides that if an employer knowingly

1 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
2 the total hours worked by the employee and the applicable hourly overtime rates, causing the
3 employee injury, then the employee is entitled to recover the greater of all actual damages or
4 fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each
5 subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes
6 that Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

7 89. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
8 records, as described above, violated Labor Code section 1174, subdivision (d) and section 226,
9 subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code section 2699,
10 subdivision (f)(2), Plaintiff and the Plaintiff Class are entitled to penalties of \$100.00 and for the
11 initial violation and \$200.00 for each subsequent violation for every pay period during which
12 these records and information were not kept by Defendant.

13 90. Plaintiff is informed and believes that Defendant's failure to keep and maintain
14 accurate records and information, as described above, was willful, and Plaintiff and the Plaintiff
15 Class are entitled to statutory penalties pursuant to Labor Code section 1174.5.

16 **FIFTH CAUSE OF ACTION**

17 **Failure to Pay Wages upon Termination of Employment**

18 **(Against Defendant, DOES 1 through 50, and each of them)**

19 91. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
20 paragraphs of this complaint as though fully set forth herein.

21 92. Plaintiff is informed and believes, and based thereon alleges, that as part of
22 Defendant's ongoing unfair business practices, Defendant failed to pay all employees all wages
23 earned during their employment at the time of their separation in violation of Labor Code sections
24 201, 202, and 203.

25 93. Labor Code section 201 provides that employers are required to pay an employee
26 whose employment is terminated by the employer all wages earned throughout their employment
27 and unpaid immediately upon termination.
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94. Labor Code section 202 requires employers to pay an employee who quits his or her employment all wages earned and unpaid no later than seventy-two (72) hours thereafter.

95. Labor Code section 203 provides that when an employer who fails to pay all wages earned and due to an employee who is discharged or quits within the appropriate timeframes set forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid, up to thirty (30) days.

96. Plaintiff and members of the Plaintiff Class whose employment was severed within four (4) years of the filing of this complaint until the date of entry of judgment, without being paid the proper payments, are entitled to up to thirty (30) days of pay at their regular rate of pay as waiting time penalties, as appropriate to Plaintiff and each member of the Plaintiff Class.

SIXTH CAUSE OF ACTION

Indemnification for Expenditures or Losses in Discharge of Duties

(Plaintiff against All Defendants)

97. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

98. Defendant failed to indemnify Plaintiff and the Plaintiff Class for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff and the Plaintiff Class for expenditures including, without limitation, a reasonable percentage of their cellular phone bills for purposes of utilizing personal cell phones in direct consequence of the discharge of their duties to Defendant. In addition, Defendant failed to indemnify Plaintiff and the Plaintiff Class for the cost of cleaning and maintenance of their work uniforms.

99. Defendant has not reimbursed Plaintiff and the Plaintiff Class for all expenditures. Plaintiff and the Plaintiff Class are therefore entitled to be paid damages, attorneys' fees, costs, and interest pursuant to Labor Code section 2802, subdivisions (b) and (c), as well as all statutory penalties, against Defendant in accordance with Labor Code section 2802, subdivision (d).

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1 **SEVENTH CAUSE OF ACTION**

2 **Unfair Business Practices**

3 **(Against Defendant, DOES 1 through 50, and each of them)**

4 100. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
5 paragraphs of this complaint as though fully set forth herein.

6 101. Business and Professions Code section 17200 et seq. (also referred to herein as the
7 “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition in
8 the form of any unlawful, unfair or fraudulent business act or practice.

9 102. Business and Professions Code section 17204 allows “a person who has suffered
10 injury in fact and has lost money or property as a result of the unfair competition” to prosecute a
11 civil action for violation of the Unfair Competition Law (“UCL”).

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

17 104. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
18 years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as
19 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
20 business practices and acts described in this Complaint including but not limited to violations of
21 Labor Code sections 201-204, 226, 226.7, 512, 1174, 1197, and 1198, as well as other statutes.

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

25 106. The acts and practices described above constitute unfair, unlawful and fraudulent
26 business practices, and unfair competition, within the meaning of Business and Professions Code
27 section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
28 similarly situated employees to labor for many consecutive hours without receiving the meal and

1 rest periods and overtime compensation to which they are entitled by law, while enabling
2 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

3 107. As a result of Defendant's acts, Plaintiff and Plaintiff Class Members have
4 suffered injury in fact in being denied their statutorily entitled meal and rest periods and full
5 compensation for hours worked.

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

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

13 110. Business and Professions Code section 17203 provides that the Court may restore
14 to any person in interest any money or property that may have been acquired by means of such
15 unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business
16 and Professions Code section 17203 for all wages and payments unlawfully withheld from
17 employees, including the fair value of the meal and rest periods taken away from them during the
18 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
19 by Plaintiff and Plaintiff Class in direct consequence of the discharge of his or her duties, or of
20 his or her obedience to the directions of the employer.

21 111. Business and Professions Code section 17202 provides, "Notwithstanding section
22 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
23 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled
24 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
25 Professions Code section 17202.

26 112. Plaintiff's success in this action will enforce important rights affecting public
27 interest, and in that regard Plaintiff sues on behalf of the general public, as well as himself and
28

1 other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution,
2 civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

3 113. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
4 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
5 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
6 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
7 Code of Civil Procedure section 1021.5 and otherwise.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 10 1. That the Court determine that this action may be maintained as a class action
11 under Code of Civil Procedure section 382;
- 12 2. The Court appoint Plaintiff as Class Representative;
- 13 3. The Court appoint Mahoney Law Group, APC as class counsel;
- 14 4. For compensatory and statutory damages;
- 15 5. For restitution of all monies due to Plaintiff and Plaintiff Class from the
16 unlawful/unfair business practices of Defendant;
- 17 6. For injunctive relief;
- 18 7. For statutory and civil penalties according to proof;
- 19 8. For reasonable attorneys' fees and costs pursuant to Labor Code sections 226(e),
20 218.5 and 1194, Code of Civil Procedure section 1021.5 and/or other applicable
21 law; and

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9. That the Court award such other and further relief as this Court may deem appropriate.

Dated: March 22, 2023

MAHONEY LAW GROUP, APC

Kevin Mahoney, Esq.
Atoy H. Wilson, Esq.
Attorneys for Plaintiff LUIS BECERRA,
individually and on behalf of all others similarly
situated

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Dated: March 22, 2023


K. i. M. l. — F.

Attorneys for Plaintiff LUIS BECERRA,
individually and on behalf of all others similarly
situated

EXHIBIT A



Atoy H. Wilson, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
awilson@mahoney-law.net

February 7, 2023

LWDA Online Submission

LABOR AND WORKFORCE DEVELOPMENT AGENCY
<http://dir.tfaforms.net/308>

VIA CERTIFIED MAIL # 7022 2410 0000 2418 5392

Return Receipt Requested

Shinsuke Clifford Yamamoto, Inc.
Attn: Shinsuke Yamamoto
2031 Emery Ave.
La Habra, CA 90631

Re: Luis Becerra v. Shinsuke Clifford Yamamoto, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: Labor and Workforce Development Agency; Shinsuke Clifford Yamamoto, Inc.
("Employer" or "S C Yamamoto, Inc.")

From: Luis Becerra, on behalf of himself and all aggrieved Employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents Luis Becerra ("Mr. Becerra" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other Aggrieved employees.

Theories of Labor Code Violations and Remedies

S C Yamamoto, Inc., ("Employer") is a California corporation conducting business throughout California, and was the employer of Mr. Becerra. Employer owns and operates at least one (1) facility that provides gardening services.

Mr. Becerra is a former employee of S C Yamamoto, Inc., who worked there as a non-

exempt hourly employee from approximately August 2008 until or around April 1, 2022.

Mr. Becerra alleges that Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 206, 216, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, and 2802 by:

- a) failing to pay Mr. Becerra and Aggrieved Employees for all hours worked;
- b) failing to provide Mr. Becerra and Aggrieved Employees with compliant meal periods or premium compensation in lieu thereof;
- c) failing to provide Mr. Becerra and Aggrieved Employees with compliant rest periods or premium compensation in lieu thereof;
- d) failing to provide Mr. Becerra and Aggrieved Employees with accurate itemized wage statements;
- e) failing to pay Mr. Becerra and Aggrieved Employees all wages due upon separation;
- f) failing to pay earned wages to Mr. Becerra and Aggrieved Employees; and
- g) failing to reimburse Mr. Becerra and Aggrieved Employees for all necessary business expenditures.

Mr. Becerra and the similarly Aggrieved Employees are identifiable current, and/or former hourly non-exempt employees who worked for Employer in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employer failed to pay Mr. Becerra and Aggrieved Employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 510, subdivision (a), provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

Employer failed to pay Mr. Becerra and other Aggrieved Employees at the legally mandated wage rates for all hours worked in violation of California law. Specifically, Employer applied a time rounding policy and practice of not paying Mr. Becerra and other Aggrieved Employees for all hours worked by requiring its employees to work off-the-clock. For example, Employer had a rounding policy dividing the hour into quarter-hour increments when calculating pay. Therefore, Employee's time was rounded to the nearest 15-minute increment for payroll purposes. Employer's rounding policies and practices favored Employer to the detriment of Mr. Becerra and the Aggrieved Employees. As a result, Employer failed to compensate Mr. Becerra and those similarly situated for all time actually worked. In addition, Employer was obligated to pay Mr. Becerra and other Aggrieved Employees overtime compensation for all hours worked in excess of eight (8) hours of work in one (1) day or forty (40) hours in one (1) week, and double-time compensation for hours worked in excess of twelve (12) in one (1) day. However, Employer

also failed to pay Mr. Becerra and other Aggrieved Employees proper overtime and/or double-time rates for hours worked off-the-clock as required by law. Further, Employer also failed to pay Mr. Becerra and Aggrieved Employees the proper rate for meal and rest period premiums when they missed meal and rest breaks.

During the Relevant Time Period, Defendant did not use any electronic means of keeping track of employees' work hours. Employees were provided with a timesheet form at the end of every work week and were forced to write down that they worked from 6:30 a.m. to 10:30 a.m., and then from 11:30 a.m. to 3:30 p.m. from Monday through Friday, even though employees actually worked more than eight (8) hours each day and were rarely provided with a meal break.

Employer's failure to pay Mr. Becerra and Aggrieved Employees for all hours worked, including applicable minimum wage and overtime and double-time rates, as detailed above is actionable under PAGA as a violation of Labor Code sections 510, 1194 and 1197.

B. Employer failed to provide Mr. Becerra and Aggrieved Employees with meal and rest period premiums or compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no Employer shall employ a person for a work period of more than five hours without providing an uninterrupted meal period of at least thirty minutes. Further, when an Employer fails to provide an employee a required meal period, the Employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Frequently, Mr. Becerra and Aggrieved Employees did not receive their meal periods until after the fifth (5th) hour of work, if at all. Employer routinely failed to provide adequate coverage to allow Mr. Becerra and other Aggrieved Employees to take their meal and rest breaks. Additionally, when Mr. Becerra and other Aggrieved Employees were able to take their meal breaks, they were regularly interrupted due to the high volume of work.

Similarly, Mr. Becerra and Aggrieved Employees did not receive their rest periods, even though they regularly worked eight (8) hours of work per day. Employer failed or refused to provide adequate premium compensation to Mr. Becerra and Aggrieved Employees for late, missed, or interrupted meal and rest periods and not receiving a second (2nd) rest period during an eight (8) hour shift.

Employer's conduct in failing to provide compliant meal and rest periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Mr. Becerra and Aggrieved Employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages,

applicable hourly rates, the corresponding number of hours worked at each hourly rate, and the name and address of the legal entity that is the employer. Labor Code section 1174 further requires employers to keep accurate payroll records that include "the hours worked daily" by employees.

By failing to pay Mr. Becerra and Aggrieved Employees for all hours worked during meal and rest breaks and premium compensation for missed, late, and/or interrupted meal and rest periods, and by failing to include among other things, shift differential pay in the regular rate for purpose of calculating overtime rates to the detriment of Mr. Becerra and Aggrieved Employees, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate total number of hours worked which resulted in inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate. Similarly, Employer provided wage statements that only included the employees' regular rate of pay for all overtime and double-time hours worked.

Employer's conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

D. Employer failed to pay Mr. Becerra and Aggrieved Employees all wages due upon separation of employment

Labor Code section 201, subdivision (a), states that "[i]f an Employers discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

At the time that Mr. Becerra and any of the Aggrieved Employees' employment ended, they were entitled to timely compensation of regular and overtime wages for all hours worked. However, Employer failed or refused to compensate Mr. Becerra and Aggrieved Employees for all hours worked. Thus, Employer willfully withheld the wages due to Mr. Becerra and Aggrieved Employees and they are therefore entitled to waiting penalties.

Code section 203, subdivision (a), states that "[i]f an Employers willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid."

Employer's conduct is not compliant with Labor Code sections 201 and 203 and is therefore actionable under PAGA.

E. Failure to Timely Pay All Wages Due

Pursuant to Labor Code section 204, employers must pay employees at least twice a month for all wages earned during the preceding pay period. Labor Code section 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 1th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and the 10th day of the following month. Employers using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period within which

the wages are earned.

Employer failed to pay all overtime wages, minimum wages and meal/rest premium wages earned on the regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Mr. Becerra and Aggrieved Employees for work they performed off-the-clock, during meal and rest periods and failing to pay them proper overtime wages.

Employer knew it was required to pay Mr. Becerra and Aggrieved Employees these wages owed no later than the payday following the payroll period in which the wages were earned, yet it willfully failed to do so.

F. Failure to Reimburse Employees for Necessary Business Expenditures

Labor Code section 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Labor Code section 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

Here, Employer failed to indemnify Mr. Becerra and Aggrieved Employees for all necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties. Specifically, Defendant failed to indemnify them for expenditures they incurred, including the general maintenance and upkeep of work uniforms and the usage of their personal cell phones for work-related purposes and in direct consequence of the discharge of their duties to Employer.

G. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Becerra becomes aware of additional compensation owed or losses incurred by him or by any other aggrieved employee of the Employer, Mr. Becerra expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney, Esq.
Atoy H. Wilson, Esq.
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: awilson@mahoney-law.net

Sincerely,

A handwritten signature in black ink, appearing to read "Atoy H. Wilson", with a large, stylized loop at the end.

Atoy H. Wilson, Esq.

MAHONEY LAW GROUP, APC