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Attorneys for Plaintiff DOUGLAS HERNANDEZ,
Individually and on behalf of all others similarly
situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

DOUGLAS HERNANDEZ, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

CRAFTSMAN LATH AND PLASTER INC.,
a California Corporation; and DOES 1-50,
inclusive,

Defendant.

CASE NO.: CVRI2301019
Hon. Harold W. Hopp

SECOND AMENDED COMPLAINT:

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194;
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Orders;
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512;
4. Failure to Pay Timely Wages Required by Labor Code § 203;
5. Failure to Timely Pay Wages During Employment Required by Labor Code § 204;
6. Failure to Provide Accurate Wage Statements Required by Labor Code §§ 226, 226.3, 558.1;
7. Failure to Reimburse Necessary Business Expenses Required by Labor Code § 2802; and
8. Violation of Business & Professions Code § 17200, et seq.
9. Private Attorneys General Act of 2004 ("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiff DOUGLAS HERNANDEZ (“Plaintiff”), individually, and on behalf of all others
2 similarly situated, hereby files this Complaint against Defendant CRAFTSMAN LATH AND
3 PLASTER INC., a California Corporation and DOES 1-50, inclusive (“Defendant”) and alleges on
4 information and belief as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over this action pursuant to the California Constitution
7 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
8 except those given by statute to other courts. The statutes under which this action is brought do
9 not give jurisdiction to any other court.

10 2. This Court has jurisdiction over Defendant because, upon information and belief,
11 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
12 avails itself of the California market so as to render the exercise of jurisdiction over it by the
13 California Courts consistent with traditional notions of fair play and substantial justice.

14 3. Venue is proper in this Court because upon information and belief, one or more of
15 the Defendant, reside, transact business, or have offices in this County and/or the acts or omissions
16 alleged herein took place in this County.

17 **II. PARTIES**

18 4. Plaintiff, DOUGLAS HERNANDEZ, was at all times relevant to this action, a
19 resident of California. Plaintiff was employed by Defendant during the year 2010 as a Non-
20 Exempt Employee with the title Forman and worked during the liability period for Defendant until
21 Plaintiff’s separation from Defendant’s employ in approximately November 2022.

22 5. Defendant operates as a plaster contracting business. Defendant operates in one
23 location in Riverside, California where Plaintiff was working during the relevant time period.
24 Plaintiff estimates there are in excess of one hundred (100) Non-Exempt Employees who work or
25 have worked for Defendant over the last four years.

26 6. Other than identified herein, Plaintiff is unaware of the true names, capacities,
27 relationships, and extent of participation in the conduct alleged herein, of the Defendant sued as
28 DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant is

1 legally responsible for the wrongful conduct alleged herein and therefore sues these Defendant by
2 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
3 are ascertained.

4 7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
5 or indirectly, or through agents or other persons, employed Plaintiff, and exercised control over
6 the wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
7 that each Defendant acted in all respects pertinent to this action as the agent of the other
8 Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and
9 the acts of each Defendant is legally attributable to the other Defendant.

10 **III. FACTUAL ALLEGATIONS**

11 8. At all times set forth herein, Defendant employed Plaintiff and other persons in the
12 capacity of non-exempt positions, however titled, throughout the state of California.

13 9. Defendant continues to employ Non-Exempt Employees, however titled, in
14 California and implement a uniform set of policies and practices to all non-exempt employees, as
15 they were all engaged in the generic job duties related to Defendant's plaster contracting business.

16 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is and was
17 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
18 the requirements of California's wage and employment laws.

19 11. On information and belief, during the relevant time frame, Plaintiff frequently
20 worked well over eight (8) hours in a day and forty (40) hours in a work week.

21 12. During the relevant time frame, Defendant compensated Plaintiff based upon an
22 hourly rate.

23 13. On information and belief, during the relevant time frame, Plaintiff typically
24 worked five (5) days a week.

25 14. During the relevant time, as a consequence of Defendant's staffing and scheduling
26 practices, work demands, and Defendant's policies and practices, Defendant frequently failed to
27 provide Plaintiff and other aggrieved employees timely, legally complaint uninterrupted 30-minute
28 meal periods on shifts over five hours as required by law.

1 15. On information and belief, Plaintiff and other aggrieved employees did not waive
2 their rights to meal periods under the law.

3 16. Plaintiff and other aggrieved employees were not provided with valid lawful on-
4 duty meal periods.

5 17. Plaintiff and other aggrieved employees who worked over 10 hours in a day were
6 never provided a second meal period or any premium wages.

7 18. Despite the above-mentioned meal period violations, Defendant failed to
8 compensate Plaintiff and other aggrieved employees, one additional hour of pay at their regular
9 rate as required by California law when meal periods were not timely or lawfully provided in a
10 compliant manner.

11 19. Plaintiff is informed and believe, and thereon alleges, that Defendant know, should
12 know, knew, and/or should have known that Plaintiff and other aggrieved employees were
13 entitled to receive premium wages based on their regular rate of pay under California Labor Code
14 § 226.7 but were not receiving such compensation.

15 20. In addition, during the relevant time frame, Plaintiff and other aggrieved employees
16 were systematically not authorized and permitted to take one net ten-minute paid, rest period for
17 every four hours worked or major fraction thereof, which is a violation of the California Labor
18 Code and IWC wage order.

19 21. Defendant maintained and enforced scheduling practices, policies, and imposed
20 work demands that frequently required Plaintiff and other aggrieved employees to forego their
21 lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction
22 thereof. Such requisite rest periods were not timely authorized and permitted as a result of
23 Defendant's failure to provide relief for Plaintiff and other aggrieved employees to take their
24 lawfully required breaks. Plaintiff was not given a third rest break on the aforementioned ten (10)
25 hour and above work days.

26 22. Defendant required Plaintiff and other aggrieved employees to keep radios on them
27 at all times including during Plaintiff's rest periods.

28 23. Despite the above-mentioned rest period violations, Defendant did not compensate

1 Plaintiff and other aggrieved employees, one additional hour of pay at their regular rate as required
2 by California law, including California Labor Code § 226.7 and the applicable IWC wage order,
3 for each day on which lawful rest periods were not authorized and permitted.

4 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendant knew that at the time of termination of employment (or within 72 hours
6 thereof for resignations without prior notice as the case may be) they had a duty to accurately
7 compensate Plaintiff and other aggrieved employees for all wages owed including minimum
8 wages, meal and rest period premiums, and any associated profit shares earned by Plaintiff and
9 other aggrieved employees which Defendant had the financial ability to pay such compensation,
10 but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the
11 above-specified violations.

12 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
13 or should have known that Plaintiff and other aggrieved employees were entitled to receive all
14 wages owed to them during their employment. Plaintiff and other aggrieved employees did not
15 receive payment of all wages, including overtime and minimum wages and meal and rest period
16 premiums, within any time permissible under California Labor Code section 204.

17 26. During the relevant time period, Defendant failed to pay Plaintiff and other
18 aggrieved employees all wages within any time permissible under California law, including, *inter*
19 *alia*, California Labor Code section 204.

20 27. During the relevant time period, Defendant failed to pay Plaintiff and other
21 aggrieved employees overtime at the regular rate due to payment of bonuses.

22 28. Defendant failed to pay Plaintiff and other aggrieved employees for business
23 expenses incurred pursuant to California Labor Code § 2802. Plaintiff and other aggrieved
24 employees were not reimbursed for the personal equipment they used to carry out their work
25 duties. Some of this personal equipment included hammers, measuring tape, and saw, which
26 Plaintiff and other aggrieved employees were required to use every day.

27 29. Upon information and belief, Defendant knew and or should have known that it is
28 improper to implement policies and commit unlawful acts such as:

1 (a) requiring employees to work four (4) hours or a major fraction thereof without
2 being provided a minimum ten (10) minute rest period and without compensating the employees
3 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
4 rest period was not provided;

5 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
6 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
7 and without compensating employees with one (1) hour of pay at the regular rate of compensation
8 for each workday that such a meal period was not provided;

9 (c) failing to pay overtime and minimum wages;

10 (d) failing to reimburse necessary business expenses;

11 (e) failing to pay timely wages upon separation from Defendant's employ;

12 (f) failing to pay timely wages upon during employment;

13 (g) failing to maintain accurately itemized wage statements; and

14 (h) conducting and engaging in unfair business practices.

15 30. In addition to the violations above, and on information and belief, Defendant knew
16 they had a duty to compensate Plaintiff for the allegations asserted herein, and that Defendant had
17 the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or
18 intentionally failed to do so.

19 31. Plaintiff they seek to represent are covered by, and Defendant is required to comply
20 with, applicable California Labor Codes, Industrial Welfare Commission Occupational Wage
21 Orders (hereinafter "IWC Wage Orders") and corresponding applicable provisions of California
22 Code of Regulations, Title 8, § 11000 *et seq.*

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

25 **(Individually Against All Defendants)**

26 32. Plaintiff incorporates and re-alleges each and every allegation contained above as
27 though fully set forth herein.

28 33. At all times relevant, the IWC wage orders applicable to Plaintiff require employers

1 to pay its employees for each hour worked at least minimum wage. “Hours worked” means the
2 time during which an employee is subject to the control of an employer, and includes all the time
3 the employee is suffered or permitted to work, whether or not required to do so, and in the case of
4 an employee who is required to reside on the employment premises, that time spent carrying out
5 assigned duties shall be counted as hours worked.

6 34. At all relevant times, California Labor Code § 1197 provides that the minimum
7 wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the
8 payment of a lesser wage than the established minimum is unlawful. Further, pursuant to the IWC
9 Wage Order and Labor Code, Plaintiff is to be paid minimum wage for each hour worked, and
10 cannot be averaged At all times relevant, the IWC wage orders applicable to Plaintiff’s
11 employment by Defendant provided that employees working for more than eight (8) hours in a day
12 or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and
13 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
14 forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day is
15 entitled to overtime compensation at a rate of twice the regular rate of pay.

16 35. At all relevant times, California Labor Code § 1197.1 states “[a]ny employer or
17 other persons acting individually as an officer, agent, or employee of another person, who pays or
18 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
19 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
20 liquidated damages payable to the employee, and any applicable penalties pursuant to § 203.

21 36. California Labor Code § 510 codifies the right to overtime compensation at the rate
22 of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours
23 in a day or forty (40) hours in a work week and to overtime compensation at twice the regular rate
24 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a
25 day on the seventh day of work in a particular work week.

26 37. At all times relevant, Plaintiff regularly performed non-exempt work and thus was
27 subject to the overtime requirements of the IWC Wage Orders, CCR § 11000, et. seq. and the
28 Labor Code.

1 38. At all times relevant, Plaintiff consistently worked in excess of eight (8) hours in a
2 day and/or forty (40) hours in a week and Defendant failed to accurately calculate overtime pay to
3 Plaintiff .

4 39. Defendant failed to compensate Plaintiff accurately for minimum and overtime
5 wages due to Defendant's failure to account for all off-the-clock work performed by Plaintiff .

6 40. Defendant further failed to incorporate bonuses, shift differentials, and other
7 remunerations into the employees' regular rates of pay for purposes of calculating overtime.

8 41. At all times relevant, Defendant has failed to accurately pay minimum and
9 overtime owed to Plaintiff.

10 42. Accordingly, Defendant owes Plaintiff minimum and overtime wages, and have
11 failed to pay Plaintiff their wages owed.

12 43. Pursuant to California Labor Code §§ 510, 558 and 1194, Plaintiff is entitled to
13 recover their unpaid wages and overtime compensation, as well as interest, costs, and attorneys'
14 fees.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

17 **(Individually Against All Defendant)**

18 44. Plaintiff incorporates and re-alleges each and every allegation contained above as
19 though fully set forth herein.

20 45. Pursuant to California Labor Code § 512, no employer shall employ an employee
21 for a work period of more than five (5) hours without providing a meal break of not less than thirty
22 (30) minutes in which the employee is relieved of all of his duties. An employer may not employ
23 an employee for a work period of more than ten (10) hours per day without providing the
24 employee with a second meal period of not less than thirty (30) minutes, except that if the total
25 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
26 consent of the employer and the employee only if the first meal period was not waived.

27 46. Pursuant to the IWC wage orders applicable to Plaintiff's employment by
28 Defendant, in order for an "on duty" meal period to be permissible, the nature of the work of the

1 employee must prevent an employee from being relieved of all duties relating to Plaintiff's work
2 for the employer and the employees must consent in writing to the "on duty" meal period. On
3 information and belief, Plaintiff did not consent in writing to an "on duty" meal period. Further,
4 the nature of the work of Plaintiff was not such that they were prevented from being relieved of all
5 duties. Despite the requirements of the IWC wage orders applicable to Plaintiff's employment
6 by Defendant and California Labor Code § 512 and § 226.7, Defendant did not provide Plaintiff
7 with all their statutorily authorized meal periods.

8 47. For the four (4) years preceding the filing of this lawsuit, Defendant failed to
9 provide Plaintiff, timely and uninterrupted meal periods of not less than thirty (30) minutes
10 pursuant to the IWC wage orders applicable to Plaintiff's employment by Defendant. As a
11 proximate result of the aforementioned violations, Plaintiff have been damaged in an amount
12 according to proof at time of trial.

13 48. By their failure to provide a compliant meal period for each shift worked over five
14 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
15 (10) hours per day by Plaintiff, and by failing to provide compensation in lieu of such non-
16 provided meal periods, as alleged above, Defendant violated the provisions of California Labor
17 Code §§ 226.7 and 512 and applicable IWC Wage Orders.

18 49. Plaintiff did not voluntarily or willfully waive meal periods and was regularly
19 required to work shifts without being provided all of their legally required meal periods.
20 Defendant created a working environment in which Plaintiff was not provided all of their meal
21 periods due to shift scheduling and/or work related demands placed upon him by Defendant as
22 discussed above. On information and belief, Defendant's implemented a policy and practice which
23 resulted in systematic violations of the Labor Code. On information and belief, Defendant's
24 violations have been widespread throughout the liability period and will be evidenced by
25 Defendant's time records for Plaintiff.

26 50. As a result of the unlawful acts of Defendant described herein, Plaintiff has been
27 deprived of premium wages in amounts to be determined at trial. Pursuant to California Labor
28 Code § 226.7, Plaintiff is entitled to recover one (1) hour of premium pay for each day in which a

1 meal period was not provided, along with interest and penalties thereon, attorneys' fees, and costs.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

4 **(Individually Against All Defendant)**

5 51. Plaintiff incorporates and re-alleges each and every allegation contained above as
6 though fully set forth herein.

7 52. Pursuant to the IWC wage orders applicable to Plaintiff's employment by
8 Defendant, "Every employer shall authorize and permit all employees to take rest periods, which
9 insofar as practicable shall be in the middle of each work period.... [The] authorized rest period
10 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
11 four (4) hours worked or major fraction thereof... Authorized rest period time shall be counted as
12 hours worked, for which there shall be no deduction from wages." California Labor Code §
13 226.7(a) prohibits an employer from requiring any employee to work during any rest period
14 mandated by an applicable order of the IWC.

15 53. Defendant was required to authorize and permit employees such as Plaintiff to take
16 rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest per four (4)
17 hours worked, or major fraction thereof, with no deduction from wages. Despite said
18 requirements of the IWC wage orders applicable to Plaintiff's employment by Defendant,
19 Defendant failed and refused to authorize and permit Plaintiff, to take ten (10) minute rest periods
20 for every four (4) hours worked, or major fraction thereof.

21 54. On information and belief Defendant created a working environment in which
22 Plaintiff was not provided all of his rest periods due to shift scheduling and/or work related
23 demands placed upon him by Defendant to meet the needs of Defendant's business as discussed
24 above. On information and belief, Defendant implemented a policy and practice which resulted in
25 systematic and violations of the Labor Code. On information and belief, Defendant's violations
26 have been widespread throughout the liability period.

27 55. Labor Code 226.7 provides: (a) No employer shall require any employee to work
28 during any meal or rest period mandated by an applicable order of the Industrial Welfare

1 Commission. (b) If an employer fails to provide an employee a meal period or rest period in
2 accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay
3 the employee one additional hour of pay at the employee's regular rate of compensation for each
4 work day that the meal or rest period is not provided.

5 56. As a proximate result of the aforementioned violations, Plaintiff has been damaged
6 in an amount according to proof at time of trial. Pursuant to California Labor Code § 226.7,
7 Plaintiff is entitled to recover one (1) hour of premium pay for each day in which Defendant failed
8 to provide a rest period to Plaintiff, plus interest and penalties thereon, attorneys' fees, and costs.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PAY TIMELY PAY WAGES**

11 **(Individually Against All Defendant)**

12 57. Plaintiff incorporates and re-alleges each and every allegation contained above as
13 though fully set forth herein.

14 58. California Labor Code §§ 201-202 requires an employer who discharges an
15 employee to pay compensation due and owing to said employee immediately upon discharge and
16 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
17 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
18 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
19 is entitled to his or her wages on their last day of work.

20 59. California Labor Code § 203 provides that if an employer willfully fails to pay
21 compensation promptly upon discharge, as required by California Labor Code §§ 201-202, the
22 employer is liable for waiting time penalties in the form of continued compensation for up to thirty
23 (30) work days.

24 60. During the relevant time period, Defendant willfully failed and refused, and
25 continue to willfully fail and refuse, to pay Plaintiff his wages, earned and unpaid, either at the
26 time of discharge, or within seventy-two (72) hours of their voluntarily leaving Defendant's
27 employ. These wages include regular and overtime.

28 61. As a result, Defendant is liable to Plaintiff for waiting time penalties pursuant to

1 California Labor Code § 203, in an amount according to proof at the time of trial.

2 **FIFTH CAUSE OF ACTION**

3 **FOR FAILURE TO PAY TIMELY PAY WAGES DURING EMPLOYMENT**

4 **(Individually Against All Defendant)**

5 62. Plaintiff incorporates and re-alleges each and every allegation contained above as
6 though fully set forth herein.

7 63. At all times herein set forth, California Labor Code section 204 provides that all
8 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
9 calendar month, other than those wages due upon termination of an employee, are due and payable
10 between the 16th and the 26th day of the month during which the labor was performed.

11 64. At all times herein set forth, California Labor Code section 204 provides that all
12 wages earned by any person in any employment between the 16th and the last day, inclusive, of
13 any calendar month, other than those wages due upon termination of an employee, are due and
14 payable between the 1st and the 10th day of the following month.

15 65. At all times herein set forth, California Labor Code section 204 provides that all
16 wages earned for labor in excess of the normal work period shall be paid no later than the payday
17 for the next regular payroll period.

18 66. During the relevant time period, Defendant intentionally and willfully failed to pay
19 Plaintiff all wages due to him , within any time period permissible under California Labor Code
20 section 204.

21 67. Plaintiff is entitled to recover all remedies available for violations of California
22 Labor Code section 204.

23 **SIXTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

25 **(Individually Against All Defendant)**

26 68. Plaintiff incorporates and re-alleges each and every allegation contained above as
27 though fully set forth herein.

28 69. Section 226(a) of the California Labor Code requires Defendant to itemize in wage

1 statements all deductions from payment of wages and to accurately report total hours worked by
2 Plaintiff including applicable hourly rates and reimbursement expenses among other things.
3 Defendant has knowingly and intentionally failed to comply with Labor Code section 226 and 204
4 on wage statements that have been provided to Plaintiff.

5 70. IWC Wage Orders require Defendant to maintain time records showing, among
6 others, when the employee begins and ends each work period, meal periods, split shift intervals
7 and total daily hours worked in an itemized wage statement and must show all deductions and
8 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff. On
9 information and belief, Defendant has failed to record all or some of the items delineated in
10 Industrial Wage Orders and Labor Code § 226.

11 71. As a result of Defendant's knowing and intentional failure to comply with Labor
12 Code § 226(a), Plaintiff has suffered injury and damage to his statutorily protected rights.
13 Specifically, Plaintiff has been injured by Defendant's intentional violation of Labor Code §
14 226(a) because he was denied both his legal right to receive, and his protected interest in
15 receiving, accurate itemized wage statements under Labor Code § 226(a). In addition, Defendant
16 has made it difficult to calculate the amount of wages and compensation owed to Plaintiff.
17 Plaintiff has had to file this lawsuit and will be required to conduct discovery and perform
18 computations in order to analyze whether in fact Plaintiff was paid correctly and the extent of the
19 underpayment, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have
20 had to engage in these efforts and incur these costs had Defendant provided wage statements
21 accurately showing Plaintiff's regular and overtime rates of pay, among other things. This has also
22 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendant.

23 72. Plaintiff is entitled to recover from Defendant the greater of his actual damages
24 caused by Defendant's failure to comply with Labor Code § 226(a) or an aggregate penalty not
25 exceeding \$4,000 dollars per employee.

26 **SEVENTH CAUSE OF ACTION**

27 **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES**

28 **(Individually Against All Defendant)**

1 73. Plaintiff incorporates and re-alleges each and every allegation contained above as
2 though fully set forth herein.

3 74. Labor Code § 2802 requires Defendant to indemnify Plaintiff for necessary
4 expenditures incurred in direct consequences of the discharge of his duties. As a necessary part of
5 employment, Plaintiff was not adequately reimbursed by Defendant for expenses described above.
6 Despite these realities of the job, Defendant failed to provide reimbursements.

7 75. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
8 implied, made by any employee to waive the benefits of this article or any part thereof is null and
9 void, and this article shall not deprive any employee or his or her personal representative of any
10 right or remedy to which he is entitled under the laws of this State.

11 76. As a result of the unlawful acts of Defendant, Plaintiff has been deprived of un-
12 reimbursed expense amounts to be determined at trial, and are entitled to the recovery of such
13 amounts, plus interest and penalties thereon, attorneys’ fees, and costs, pursuant to Labor Code §
14 2802.

15 **EIGHTH CAUSE OF ACTION**

16 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, et. seq.**

17 **(Individually Against All Defendant)**

18 77. Plaintiff incorporates and re-alleges each and every allegation contained above as
19 though fully set forth herein.

20 78. Defendant’s conduct, as alleged in this complaint, has been, and continues to be,
21 unfair, unlawful, and harmful to Plaintiff, Defendant’s competitors, and the general public.
22 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of the
23 California Code of Civil Procedure § 1021.5.

24 79. Defendant’s policies, activities, and actions as alleged herein, are violations of
25 California law and constitute unlawful business acts and practices in violation of California
26 Business and Professions Code §§ 17200, et seq.

27 80. A violation of California Business and Professions Code §§ 17200, et seq., may be
28 predicated on the violation of any state or federal law. Defendant’s policy of failing to accurately

1 pay overtime wages, failing to pay minimum wages, failing to reimburse expenses, and failing to
2 provide Plaintiff with meal periods and rest breaks or the one (1) hour of premium pay when a
3 meal or rest break period was not provided or provided outside of the required time frames,
4 violates California Labor Code §203, § 512, § 226.7, § 1194, § 2802 and applicable IWC Wage
5 Orders and California Code of Regulations.

6 81. Plaintiff has been personally aggrieved by Defendant's unlawful and unfair
7 business acts and practices alleged herein by the loss of money and/or property.

8 82. Pursuant to California Business and Professions Code §§ 17200, et seq., Plaintiff is
9 entitled to restitution of the wages withheld and retained by Defendant during a period that
10 commences four (4) years prior to the filing of this complaint; an award of attorneys' fees,
11 interest; and an award of costs.

12 NINTH CAUSE OF ACTION

13 **PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**

14 **(On behalf of Aggrieved Employees Against All Defendants)**

15 83. Plaintiff incorporates and re-alleges each and every allegation contained above as
16 though fully set forth herein.

17 84. Pursuant to Labor Code § 2699.3, (a) A civil action by an aggrieved employee
18 pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in
19 Section 2699.5 shall commence only after the following requirements have been met:

20 (1) The aggrieved employee or representative shall give written notice by certified mail to
21 the Labor and Workforce Development Agency and the employer of the specific
22 provisions of this code alleged to have been violated, including the facts and theories to
23 support the alleged violation.

24 (A) The agency shall notify the employer and the aggrieved employee or representative by
25 certified mail that it does not intend to investigate the alleged violation within sixty (60)
26 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon
27 receipt of that notice or if no notice is provided within sixty-five (65) calendar days of the
28 postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may

1 commence a civil action pursuant to Section 2699

2 85. On February 28, 2023 Plaintiff complied with notice requirements pursuant to
3 Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
4 **A**, indicating that the LWDA and Defendant was put on notice of the claims alleged here and that
5 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
6 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
7 representative capacity. The substance and violations set forth in this Complaint of which the
8 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
9 Action Complaint to the LWDA.

10 86. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
11 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
12 Employees of Defendants.

13 87. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
14 the above allegations referenced in this complaint which Defendant is liable due to numerous
15 Labor Code violations as set forth in this Complaint, including without limitation Labor Code
16 section 201-204, 226, 226.3, 510, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and,
17 2698 *et seq.*, applicable IWC Wage Orders and California Code of Regulations, Title 8, section
18 11000 *et. seq.*

19 88. As a result of Defendant's unlawful acts, Plaintiff is entitled to civil penalties
20 pursuant to Labor Code Private Attorney General Act of 2004, Labor Code §2698 *et. seq.*

21 89. WHEREFORE, Plaintiff and the aggrieved employees request relief as described
22 herein.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

25 **On the First Cause of Action**

26 1. For compensatory damages equal to the unpaid balance of minimum wage
27 compensation and overtime owed to Plaintiff as well as interest and costs;

28 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 510,

1 and 1194;

2 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
3 interest thereon pursuant to California Labor Code §§ 1194.2, 558;

4 4. For such other and further relief as the Court deems proper.

5 On the Second Cause of Action

6 1. For one (1) hour of premium pay for each day in which a required meal period was
7 not provided or not provided in a timely manner; and

8 2. For such other and further relief as the Court deems proper.

9 On the Third Cause of Action

10 1. For one (1) hour of premium pay for each day in which a required rest period was
11 not authorized or permitted; and

12 2. For such other and further relief as the Court deems proper.

13 On the Fourth Cause of Action

14 1. For statutory penalties pursuant to California Labor Code §203;

15 2. For interest for wages untimely paid; and

16 3. For such other and further relief as the Court deems proper.

17 On the Fifth Cause of Action

18 1. For statutory penalties pursuant to Labor Code §204;

19 2. For interest for wages untimely paid; and

20 3. For such other and further relief as the Court deems proper.

21 On the Sixth Cause of Action

22 1. For statutory penalties pursuant to Labor Code §226;

23 2. For interest for wages untimely paid;

24 3. For penalties pursuant to Labor Code §266.3; and

25 4. For such other and further relief as the Court deems proper.

26 On the Seventh Cause of Action

27 1. For statutory penalties pursuant to Labor Code §2802;

28 2. For interest for wages untimely paid; and

3. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

1. That Defendant, jointly and/or severally, pay restitution of sums to Plaintiff for its past failure to accurately pay overtime, failing to pay minimum wages, failing to reimburse expenses, and failing to provide Plaintiff with meal periods and rest breaks or the one (1) hour of premium pay when a meal or rest break period was not provided or provided outside of the required time frames as described herein to Plaintiff over the last four (4) years in an amount according to proof;

2. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;

3. For reasonable attorneys' fees that Plaintiff is entitled to recover;

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court deems proper.

On the Ninth Cause of Action

1. For statutory penalties pursuant to Labor Code §2698 et. seq.; and

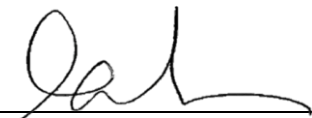
2. For such other and further relief as the Court deems proper;

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial in this matter.

Dated: December 18, 2023

JAMES HAWKINS APLC

By: 
JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
LAUREN FALK, ESQ.
AVA ISSARY, ESQ.

Attorneys for Plaintiff DOUGLAS
HERNANDEZ individually and on behalf of
all others similarly situated

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On December 18, 2023, I served on the interested parties in this action the following document(s) entitled:

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

HILL, FARRER & BURRILL LLP

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Alma Chavarin
Alma Chavarin