

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 Austin D. Sork (Cal. State Bar No. 360918)
5 **Shimoda & Rodriguez Law, PC**
6 9401 East Stockton Boulevard, Suite 120
7 Elk Grove, CA 95624
8 Telephone: (916) 525-0716
9 Facsimile: (916) 760-3733
10 Email: attorney@shimodalaw.com
11 jrodriguez@shimodalaw.com
12 rkonini@shimodalaw.com
13 asork@shimodalaw.com

14 Attorneys for Plaintiff BONFILIO DAMIAN GARCIA
15 Individually and on behalf of similarly situated employees

FILED
SUPERIOR COURT SAN JOAQUIN

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BY _____
DEPUTY

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN JOAQUIN**

13 **BONFILIO DAMIAN GARCIA,**

14 **Plaintiff,**

15 **vs.**

16 **BAJA CONSTRUCTION SERVICES, INC., a**
17 **California Corporation; ALEXANDRA**
18 **LUNA, an Individual; RAUL LUNA, an**
19 **Individual; and DOES 1 to 100, inclusive,**

20 **Defendants.**

Case No. STK-CV-UOE-2025-0008456

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES:

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Failure to Pay All Hours Worked
4. Failure to Pay Non-Productive Time
5. Meal Period Violations
6. Rest Period Violations
7. Wage Statement Violations and Failure to Produce Personnel Records
8. Waiting Time Penalties
9. Failure to Reimburse Expenses
10. Unfair Competition
11. Private Attorney's General Act

DEMAND FOR JURY TRIAL

1 Plaintiff BONFILIO DAMIAN GARCIA ("Plaintiff") hereby files this First Amended
2 Complaint against Defendants BAJA CONSTRUCTION SERVICES, INC., a California
3 Corporation; ALEXANDRA LUNA, an Individual; RAUL LUNA, an Individual; and DOES 1 to
4 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
5 Plaintiff alleges the following:

6 INTRODUCTION

7 1. This is a class action and Private Attorney's General Act ("PAGA") lawsuit brought by
8 Plaintiff against Defendant for failure to pay overtime wages, failure to pay minimum wages, meal
9 period violations, rest period violations, wage statement violations, failure to produce personnel records,
10 waiting time penalties, failure to reimburse expenses and unfair competition.

11 JURISDICTION AND VENUE

12 2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 16.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
16 the wrongful acts and violations of law asserted herein occurred within San Joaquin County, and
17 Defendants' obligation to pay wages arose in San Joaquin County pursuant to *Madera Police Officers*
18 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

19 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
20 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
21 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
22 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
23 ("LWDA") on approximately September 30, 2025. Plaintiff provided the facts and legal bases asserted
24 in this Complaint, including identifying the specific Labor Code sections at issue, within the notice to
25 the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff
26 also submitted the \$75.00 filing fee. The September 30, 2025, notice was also sent via certified mail to
27 Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice
28 correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the PAGA

1 and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved
2 Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.
3 App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but is not limited to the
4 following: all nonexempt employees who have worked, or continue to work, for Defendants in
5 California at any time from one September 30, 2024, to the present.

6 **PARTIES**

7 5. BONFILIO DAMIAN GARCIA is an individual over the age of eighteen (18) and is a
8 resident of the State of California.

9 6. On information and belief, Plaintiff alleges BAJA CONSTRUCTION SERVICES,
10 INC. is now and/or at all times mentioned in this Complaint was a California Corporation, and the
11 owner and operator of an industry, business and/or facility doing business in the State of California.

12 7. On information and belief, Plaintiff alleges ALEXANDRA LUNA is now and/or at
13 all times mentioned in this Complaint was an individual and the owner and operator of an industry,
14 business and/or facility doing business in the State of California. Plaintiff is informed and believes,
15 and thereupon alleges, that ALEXANDRA LUNA is an individual over the age of eighteen (18) and
16 is a resident of the State of California. Plaintiff further alleges that ALEXANDRA LUNA is an
17 owner, director, officer, and/or managing agent of BAJA CONSTRUCTION SERVICES, INC.
18 responsible for causing the violations outlined in the first through ninth causes of action. As such
19 ALEXANDRA LUNA is individually liable pursuant to California Labor Code section 558.

20 8. On information and belief, Plaintiff alleges RAUL LUNA is now and/or at all times
21 mentioned in this Complaint was an Individual and the owner and operator of an industry, business
22 and/or facility doing business in the State of California. Plaintiff is informed and believes, and
23 thereupon alleges, that RAUL LUNA is an individual over the age of eighteen (18) and is a resident
24 of the State of California. Plaintiff further alleges that RAUL LUNA is an owner, director, officer,
25 and/or managing agent of BAJA CONSTRUCTION SERVICES, INC. responsible for causing the
26 violations outlined in the first through ninth causes of action. As such RAUL LUNA is individually
27 liable pursuant to California Labor Code section 558.

9. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

10. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

12. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

14. Plaintiff brings the First through Tenth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who worked or continue to work for Defendants in California at any time between four (4) years prior to the filing of this Complaint to the present.

15. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) **Numerosity**: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above

1 stated class definition throughout the State of California during the applicable statute of
2 limitations, who were subjected to the policies and practices outlined in this Complaint.
3 As such, joinder of all members of the putative class is not practicable.

4 (b) Common Questions Predominate: Common questions of law and fact exist as to all
5 members of the putative class and predominate over questions that affect only individual
6 members of the class. These common questions of law and fact include, without
7 limitation, the following:

- 8 (1) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
9 class members were not paid all overtime wages owed;
- 10 (2) Whether Defendants paid Plaintiff and putative class members for all hours
11 worked;
- 12 (3) Whether Defendants failed to pay meal and rest period premiums for meal and
13 rest period violations;
- 14 (4) Whether Defendants failed to reimburse Plaintiff and putative class members for
15 the use of their personal cell phones for work purposes;
- 16 (5) Whether as a result of Defendants' policies and practices Plaintiff's and putative
17 class members received all wages, due and owing, at the time of their termination
18 or separation; and
- 19 (6) Whether Defendants provided Plaintiff's and putative class members with wage
20 statements that complied with Labor Code section 226.

21 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
22 class. The putative class also sustained damages arising out of Defendants' common
23 course of conduct in violation of the law as complained of herein. Plaintiff and all
24 members of the putative class were non-exempt employees who were not paid all
25 minimum wages owed, overtime wages owed, not paid for non-productive time, meal and
26 rest period premiums, as a result of Defendants' policies and practices resulting in
27 inaccurate wage statements that did not itemize the accurate minimum wages owed,
28 overtime wages owed, meal and rest period premiums, and sick leave wages.

1 Additionally, Defendants issued Plaintiff and all members of the putative class wage
2 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
3 each member of the putative class will have suffered the same type of harm and seek the
4 same type of recovery based on the same legal theories.

5 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
6 putative class. For all relevant times, Plaintiff resided in California and worked for
7 Defendants in California. Moreover, Plaintiff is an adequate representative of the
8 putative class as Plaintiff has no interests that are adverse to those of putative class
9 members. Additionally, Plaintiff has retained counsel who has substantial experience in
10 complex civil litigation and wage and hour matters.

11 (e) Superiority: A class action is superior to other available means for the fair and efficient
12 adjudication of the controversy since individual joinder of all members of the putative
13 class is impracticable. Class action treatment will permit a larger number of similarly
14 situated persons to prosecute their common claims in a single forum simultaneously,
15 efficiently, and without the unnecessary duplication of effort and expense that numerous
16 individual actions would engender. Further, as damages suffered by each individual
17 member of the class may be relatively small, the expenses and burden of the individual
18 litigation would make it difficult or impossible for individual members of the class to
19 redress the wrongs done to them, and an important public interest will be served by
20 addressing the matter as a class action. The cost to the court system of adjudication of
21 such individualized litigation would be substantial. Individualized litigation would also
22 present the potential for inconsistent or contradictory judgments.

23 16. Plaintiff is unaware of any difficulties that are likely to be encountered in the
24 management of this action that would preclude its maintenance as a class action.

25 GENERAL ALLEGATIONS

26 17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully
27 set forth herein.

1 18. Plaintiff began working for Defendants as a construction worker in 2020. Plaintiff
2 worked for Defendants up to November 5, 2024.

3 19. Defendants paid Plaintiff and similarly situated employees per job. Each evening,
4 Defendants' management, either Alexandra Luna, Gilberto (Last Name Unknown) or Nancy Lopez,
5 would text Plaintiff and similarly situated employees with job assignments and the amount that
6 Defendants would pay for completion of each job. The payment amounts varied per assignment and
7 sometimes even per day. For example, "washing windows" would sometimes be categorized as a
8 payment of \$50.00 and other days it would be categorized as a \$60.00 job per unit.

9 20. Defendants did not pay Plaintiff and similarly situated employees for all the hours that
10 they worked to complete their assignments. For example, Defendants failed to pay Plaintiff and
11 similarly situated employees for nonproductive time like waiting, meetings, travel, and rest breaks.

12 21. Plaintiff's and similarly situated employees' job duties included, but were not limited to,
13 cleaning apartments and office buildings, washing indoor and outdoor windows, and performing repairs
14 to windows.

15 22. Upon hire, Ms. Luna informed Plaintiff that every evening prior to a workday,
16 Defendants would send Plaintiff a text notifying him of the following day's schedule, assignments,
17 location of job or jobs, and the price that BCSI would pay for Plaintiff to complete a job. Plaintiff is
18 informed and believes that Defendants issued similar directions and communications to similarly
19 situated employees regarding their workdays. Defendants did not pay Plaintiff and similarly situated
20 employees per hour for each hour worked unless the assignment called for hourly pay.

21 23. During Plaintiff's employment, Defendants' management communicated daily with
22 Plaintiff via text on Plaintiff's personal cell phone. Plaintiff estimates that he received approximately
23 two to three texts from management every day. Plaintiff is informed and believes that Defendants
24 communicated with similarly situated employees via their personal phones for work related purposes.
25 Defendants did not provide Plaintiff and similarly situated employees with any reimbursement for the
26 use of their personal cell phones.

27 24. Ms. Luna also notified Plaintiff that on some occasions, Defendants would require him to
28 travel to different jobs within one workday. Defendants told Plaintiff that Defendants would help him

1 with \$40.00 per week for the purchase of gas. Defendants did not notify Plaintiff that he should keep
2 track of his mileage and did not keep track of Plaintiff's mileage. Plaintiff is informed and believes that
3 Defendants had similar arrangements with similarly situated employees and Defendants did not keep
4 track of similarly situated employee's mileage driven for work purposes. Defendants did not reimburse
5 Plaintiff and similarly situated employees for all costs associated with the use of their cell phones and
6 vehicles for work purposes.

7 25. Defendants did not track the amount of time spent traveling between jobsites in a
8 workday. There were days that Plaintiff estimates that he spent two hours or more travelling between job
9 sites. He recalls one occasion when his first assigned job was in Tracy, his second assigned job was in
10 Oakland, and his third assigned job was in Redwood City, more than 86 miles in one workday.
11 Similarly situated employees were also assigned to different jobs within the same workday and were not
12 paid for the travel time.

13 26. Defendants usually required Plaintiff and similarly situated employees to start work every
14 Monday to Friday at 7:00 a.m. On occasion, Defendants would notify Plaintiff and similarly situated
15 employees that they would start at 8:00 a.m., depending on the location availability.

16 27. Plaintiff and similarly situated employees typically worked Monday to Friday, but also
17 worked weekends on numerous occasions. Plaintiff estimates that he worked approximately thirty (30)
18 Saturdays (six days in a week) per year. Defendants did not pay Plaintiff and similarly situated
19 employees overtime for every hour worked over forty (40) hours per week.

20 28. Plaintiff estimates that he worked over eight (8) hours per day approximately five to ten
21 days per month. Defendants did not pay Plaintiff and similarly situated employees overtime for hours
22 worked over eight (8) hours per day.

23 29. Neither Ms. Luna nor Ms. Lopez told Plaintiff to document his hours worked.
24 Defendants did not require Plaintiff and similarly situated employees to keep track of their hours and did
25 not keep track of Plaintiff's and similarly situated employees' hours worked.

26 30. Many of the job locations had property managers or site managers that would close the
27 buildings at 3:30 p.m. If Plaintiff and similarly situated employees started a job, but did not complete
28 the job, Defendants would deduct a portion of the promised pay for the incomplete job. Defendants did

1 not notify Plaintiff and similarly situated employees how much they would deduct from each incomplete
2 job.

3 31. Approximately two to three times per month, Plaintiff would arrive at an assigned
4 location but the apartment or building was not available for him to commence his job duties. If this
5 occurred, Plaintiff would be directed to go to a second job location and commence work on another job.
6 Plaintiff is informed and believes that this also happened to similarly situated employees. Defendants
7 did not pay Plaintiff and similarly situated employees any wages for attending the time they spent
8 traveling and attending the first assigned job even though they presented themselves ready to work.

9 32. At the end of each pay period, Defendants would provide Plaintiff and similarly situated
10 employees with a printout of all their assignments so that that they could verify that they were being
11 paid for their piece rate work. However, these printouts did not itemize the hours worked or the hourly
12 rates in effect for the work performed, including overtime hours worked, overtime rates of pay, pay for
13 non-productive time, or pay for rest periods.

14 33. Many times, Plaintiff would notice that he had not been paid the promised piece rate
15 amount. Plaintiff would then complain to Ms. Luna or to Gilberto, that he had not been paid as
16 promised. He soon realized that his complaints led to nowhere. Ms. Luna and Gilberto did not rectify
17 his paychecks. Plaintiff is informed and believes that similarly situated employees were also not paid the
18 promised piece rate amounts that was included in the printout of their assignments. Plaintiff is informed
19 and believes that these printouts issued to similarly situated employees also did not itemize the hours
20 worked or the hourly rates in effect for the work performed, including overtime hours worked, overtime
21 rates of pay, pay for non-productive time, or pay for rest periods.

22 34. Initially, Defendants provided Plaintiff with soap to wash windows. Ms. Luna told
23 Plaintiff that they would be providing him with a company vehicle and with the equipment he required
24 to perform all job assignments.

25 35. However, during his employment, Defendants only provided Plaintiff with soap, files and
26 polish one or two times. Plaintiff requested supplies and equipment, but Defendants did not provide him
27 with supplies to perform his job duties. Plaintiff is informed and believes that Defendants did not
28 provide similarly situated employees with all supplies needed to perform their job duties.

1 36. Plaintiff estimates that every two months, he would purchase four (4) gallons of soap and
2 two boxes of putty knives costing approximately \$140.00. He also purchased sponges approximately
3 every fifteen (15) days in the amount of approximately \$8.00 bi-weekly. In addition, he purchased
4 polish, two different types of tape and files. He also used his own broom, vacuum, mops and sanding
5 machinery. Plaintiff is informed and believes that similarly situated employees purchased soap and
6 supplies to complete their duties and used their own tools such as brooms, vacuums, mops, and sanding
7 machinery for work related purposes. Defendants did not reimburse Plaintiff and similarly situated
8 employees for purchasing their own supplies and using their own tools for job related purposes.

9 37. Plaintiff also spent approximately thirty minutes per week washing soiled rags and
10 towels. Plaintiff is informed and believes that similarly situated employees also spent time washing rags
11 and towels to be used for work. Defendants did not pay Plaintiff and similarly situated employees for
12 the hours worked washing rags and towels, nor did they provide them with clean rags and towels on a
13 weekly basis.

14 38. In or about 2022, Plaintiff complained that Defendants were not paying Plaintiff enough
15 and he was not being provided with required supplies and equipment to perform all job duties. This
16 resulted in Defendants opting to pay him \$500.00 in cash and the rest in check per pay paycheck.

17 39. In or about the winter of 2023, Plaintiff again complained to Ms. Luna that he was not
18 being paid for all hours worked and that he was not being provided with all required equipment and
19 supplies. Ms. Luna sat with Plaintiff, heard his complaints, and promised to provide him with his own
20 car and with all necessary equipment.

21 40. Plaintiff continued to work approximately one more year waiting for Ms. Luna to fulfill
22 her promise. She did not provide him with a company vehicle nor with supplies and equipment to
23 perform his job duties.

24 41. Plaintiff continued to notice that his pay seemed to be decreasing, and his workload
25 continued the same. Plaintiff estimates that he complained to Ms. Luna in person approximately three to
26 five times regarding incorrect payments and unpaid reimbursements. He estimates that he complained
27 to Gabriel approximately ten times. He also estimates that he complained to Ms. Lopez an additional
28 nine to ten times.

1 42. In or about the end of October 2024, Defendants assigned Plaintiff to an apartment
2 complex to wash windows. The job required work from 7:00 a.m. to 1:00 p.m. but was qualified as "one
3 window." Plaintiff would only receive payment for one window per unit, approximately \$60.00, though
4 it required several hours of work. Plaintiff texted Defendants that he could not continue to travel to far
5 locations, buy his own supplies and work for so little pay per unit. Plaintiff is informed and believes
6 that similarly situated employees were subject to the same policy and practice where they worked many
7 hours and were paid only a set amount of money that did not pay them minimum wages for each hour
8 worked.

9 43. On or about November 4, 2024, Defendants provided Plaintiff with his schedule for the
10 following day. Defendants scheduled him to work at the same apartment complex for the same
11 promised pay amount of approximately \$60.00.

12 44. Plaintiff texted Defendants and notified them that he could not go on working for so little
13 pay while spending so much on travel and supplies.

14 45. The following day, Defendants texted Plaintiff to pick up his final paycheck. Defendants
15 terminated Plaintiff.

16 46. Defendants did not authorize and permit Plaintiff and similarly situated employees all
17 meal periods they were entitled to. Defendants did not direct Plaintiff and similarly situated employees
18 to take a thirty-minute break for each five hours worked. Plaintiff and similarly situated employees did
19 not regularly take thirty-minute duty free meal breaks. Many times, Plaintiff and similarly situated
20 employees did not take thirty (30) minute uninterrupted meal periods because of time sensitive job
21 duties that typically required them to continue working beyond the completion of the fifth hour of work
22 without a meal period.

23 47. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
24 all rest periods they were entitled to. Defendants did not direct Plaintiff and similarly situated
25 employees to take a ten-minute break for each four hours worked or major fraction thereof. Plaintiff and
26 similarly situated employees did not regularly take ten-minute breaks for each four hours worked.
27 Defendants did not provide uninterrupted ten (10) minute rest periods to Plaintiff and similarly situated
28 employees every four (4) hours or fraction of thereof. because of time sensitive job duties that prevented

1 them from taking their rest periods in a timely fashion. Further, Defendants did not provide separate
2 compensation to Plaintiff and similarly situated employees for rest breaks.

3 48. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
4 minimum wages, overtime wages, and meal and rest period premiums owed, the wage statements
5 Defendants issued were inaccurate. Specifically, Defendants did not accurately list total hours worked,
6 wages due, total missed meal and rest period premiums earned, accurate accrued sick hours, and the
7 corresponding rates of pay. Moreover, Defendants failed to provide Plaintiff and similarly situated
8 employees with the accurate accrual of sick hours since accrual of sick hours is based on the number of
9 hours worked.

10 49. As a further result of Defendants' failure to pay Plaintiff and similarly situated employees
11 for all regular and overtime hours worked, failure to pay for non-productive time, and failure to pay
12 meal and rest period premiums, Defendants failed to provide all final wages owed to Plaintiff and
13 similarly situated employees within twenty-four (24) hours of their termination or seventy-two (72)
14 hours of their resignation. To date, Defendants have not paid Plaintiff and similarly situated employees
15 all the minimum wages, overtime wages, meal and rest period premiums, and sick leave wages owed to
16 them.

17 50. BAJA CONSTRUCTION SERVICES, INC., identified RAUL LUNA as its Chief
18 Executive Officer, and ALEXANDRA LUNA as Secretary, and Chief Financial Officer, in its filing
19 from at least March 20, 2017, to present with the California Secretary of State. Plaintiff is informed and
20 believes that Mr. Luna and Ms. Luna were responsible for creating and electing to implement the payroll
21 and compensation policies and practices identified herein and/or that Mr. Luna and Ms. Luna were
22 aware of such policies and practices and ratified them.

23 51. On December 13, 2024, Plaintiff requested his personnel records pursuant to Labor Code
24 section 1198.5, including, but not limited to, time and wage records, and all records that show
25 compliance with Labor Code Section 226 (a)-(b): (1) gross wages earned, (2) total hours worked, (3) the
26 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
27 basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the
28 employee is paid, (7) the name of the employee and his or her social security number, except that by

January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. This request was forwarded by two methods: mailed to 1) 5255 Stevens Creek Blvd, Santa Clara, CA 95051; 2) 1596 Burrell Ct, San Jose, CA 95126; and emailed to 3) alex.luna@bajaconstructionservices.net.

52. Pursuant to Labor Code section 432, Plaintiff further requested all documents signed by Plaintiff, including any potential alternative dispute resolution agreements, arbitration agreements, or any other documents signed by Plaintiff regarding his employment with Defendant. Plaintiff further requested all documents relating to his accrual of sick leave pursuant to Labor Code section 247.5.

53. After receiving no response from Defendant, on January 15, 2025, Plaintiff sent a second letter to Defendant, again, requesting Plaintiff's personnel records and outlining the applicable California Labor Code sections. This request was mailed to 1) 5255 Stevens Creek Blvd, Santa Clara, CA 95051; 2) 1596 Burrell Ct, San Jose, CA 95126; and emailed to 3) alex.luna@bajaconstructionservices.net.

54. After receiving no response from Defendant, on February 4, 2025, Plaintiff sent a third letter to Defendant, again, requesting Plaintiff's personnel records and outlining the applicable California Labor Code sections. This request was mailed to 1) 5255 Stevens Creek Blvd, Suite 225, Santa Clara, CA 95051; 2) 1596 Burrell Ct, San Jose, CA 95126; and emailed to 3) alex.luna@bajaconstructionservices.net.

55. After receiving no response from Defendant, on March 27, 2025, Plaintiff sent a fourth letter to Defendant, again, requesting Plaintiff's personnel records and outlining the applicable California Labor Code sections. This request was mailed to 1) 5255 Stevens Creek Blvd, Suite 225, Santa Clara, CA 95051; 2) 1596 Burrell Ct, San Jose, CA 95126; and emailed to 3) alex.luna@bajaconstructionservices.net; and 4) nancy.lopez@bajaconstructionservices.net.

56. Despite the above efforts to obtain Plaintiff's personnel file, Plaintiff still has not received the requested documents from Defendant.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY OVERTIME WAGES**
4 **(As to all Defendants)**

5 57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as though fully
6 set forth herein.

7 58. During the period Plaintiff was employed by Defendants, Defendants were required to
8 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
9 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
10 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 16, section*
11 *(3)(A); Cal. Lab. Code §§ 510, 1194.*

12 59. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
13 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
14 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
15 worked at the regular rate of pay.

16 60. Plaintiff and similarly situated employees were not exempt from overtime protections
17 under the California Wage Orders and Labor Code.

18 61. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the
19 section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth
20 here in full.

21 **SECOND CAUSE OF ACTION**
22 **FAILURE TO PAY MINIMUM WAGES**
23 **(As to all Defendants)**

24 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
25 set forth herein.

26 63. For the period preceding the filing of this Complaint, Defendants were required to
27 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
28 every hour worked. *See MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code §*
1194.

1 64. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
2 obligation to pay the minimum wage for each hour worked but failed to do so.

3 65. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
5 the extent pertinent as if set forth here in full.

6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PAY ALL HOURS WORKED**
8 **(As to all Defendants)**

9 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as though fully
10 set forth herein.

11 67. The law requires that the employer pay employees for all their hours worked. This is
12 based on contract principles between what the employer and employee agreed to.

13 68. Labor Code section 223 states that "[w]here any statute or contract requires an employer
14 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage"

15 69. Labor Code section 226.2 states "[e]mployees shall be compensated for rest and recovery
16 periods and other nonproductive time separate from any piece-rate compensation."

17 70. Plaintiff and similarly situated employees were not asked to track their hours worked.
18 Defendants did not track Plaintiff's and similarly situated employees' hours worked. Due to
19 Defendants' practice, Plaintiff and similarly situated employees were deprived of wages.

20 71. Further, when paying by the job, Defendants failed to pay Plaintiff and similarly situated
21 employees for non-productive time like waiting, meetings, travel, and rest breaks.

22 72. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
23 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
24 the extent pertinent as if set forth here in full.

25 **FOURTH CAUSE OF ACTION**
26 **FAILURE TO PAY NON-PRODUCTIVE TIME**
27 **(As to all Defendants)**

28 73. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 72 as though fully
set forth herein.

74. Labor Code section 226.2 requires employers to separately compensate piece rate employees for rest and recovery periods as well as any other nonproductive time at rate that is the higher of an average hourly rate or the applicable minimum wage. Defendants completely failed to pay Plaintiff and similarly situated employees any compensation for rest and recovery periods and other non-productive time as outlined above.

FIFTH CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

77. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

79. California Labor Code section 512 and Wage Order No. 16 section 10(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

1 to allow Plaintiff and similarly situated employees to take their second meal period before the
2 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
3 rights to all meal periods throughout their employment.

4 81. Defendants further failed to pay Plaintiff and similarly situated employees the
5 applicable meal period premiums for any such missed meal periods.

6 82. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **SIXTH CAUSE OF ACTION**
10 **REST PERIOD VIOLATIONS**
11 **(As to all Defendants)**

12 83. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 82 as though fully
13 set forth herein.

14 84. An employer must provide an employee a rest period in accordance with the
15 applicable Wage Order and California Labor Code section 226.7.

16 85. California Labor Code section 226.7 and Wage Order No. 16, section 11(A) require
17 an employer to provide a rest period of not less than ten (10) minutes for each work period of more
18 than four (4) hours or a major fraction thereof.

19 86. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
20 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
21 they worked more than four (4) hours or a major fraction thereof.

22 87. Defendants further failed to pay Plaintiff and similarly situated employees the
23 applicable rest period premiums for any such missed rest periods.

24 88. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
25 employees have been damaged as stated in the section below entitled "DAMAGES," which is
26 incorporated here to the extent pertinent as if set forth here in full.
27
28

SEVENTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

89. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 88 as though fully set forth herein.

90. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

91. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked due to Defendants' piece rate pay policy that resulted in off-the-clock work and due to meal and rest period policies. Plaintiff and similarly situated employees were not able to promptly and easily determine his total hours worked from their paystubs alone. Additionally, Plaintiff and

1 similarly situated employees suffered confusion over whether they received all wages owed and were
2 prevented from effectively challenging information on their wage statements.

3 92. Plaintiff also requested his personnel files and copies of his pay from Defendant.
4 Defendant failed to provide them within the statutory time under Labor Code section 226.

5 93. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
6 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
7 the extent pertinent as if set forth here in full.

8 **EIGHTH CAUSE OF ACTION**
9 **WAITING TIME PENALTIES**
10 **(As to all Defendants)**

11 94. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 93 as though fully
12 set forth herein.

13 95. An employer must pay an employee who is terminated all unpaid wages immediately
14 upon termination. *See* Cal. Lab. Code § 201.

15 96. An employer must pay an employee who resigns all unpaid wages within seventy-two
16 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

17 97. Plaintiff and similarly situated employees did not receive all wages, including minimum
18 and overtime wages and meal and rest period premiums, or all sick leave pay owed at their termination
19 or within the required time after their separation from employment.

20 98. An employer who willfully fails to pay an employee wages in accordance with California
21 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
22 days. *See* Cal. Lab. Code § 203.

23 99. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
24 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
25 and similarly situated employees were not being paid minimum wages for all the hours worked, for off-
26 the-clock work, overtime wages, meal and rest period premiums, nor being reimbursed for the use of his
27 personal cell phone, supplies and vehicle. Such conduct shows Defendants had knowledge of earned,
28 but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages
owed.

1 100. As a proximate result of the Defendants' conduct, Plaintiff and similarly situated
2 employees have been damaged and deprived of wages and thereby seek the daily rate of pay multiplied
3 by thirty (30) days for Defendants' failure to pay all wages due.

4 **NINTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE EXPENSES**
6 **(As to all Defendants)**

7 101. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 100 as though
8 fully set forth herein.

9 102. California Labor Code section 2802(a) states that "An employer shall indemnify his or
10 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
11 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
12 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
13 unlawful."

14 103. Defendants required Plaintiff and similarly situated employees to use their cell phone and
15 vehicle but failed to reimburse them for such use. Defendants failed to reimburse Plaintiff and similarly
16 situated employees for the supplies and tools that they bought to use for work purposes. Also,
17 Defendants failed to require Plaintiff and similarly situated employees to document their mileage used
18 while performing job duties for Defendant and did not reimburse them for their mileage.

19 104. In addition, Defendant required Plaintiff and similarly situated employees to purchase
20 supplies, like soaps, polishes, brushes, sand paper, putty knives and towels to perform required job
21 duties but did not reimburse them.

22 105. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
23 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
24 the extent pertinent as if set forth here in full.

25 **TENTH CAUSE OF ACTION**
26 **UNFAIR COMPETITION**
27 **(As to BAJA CONSTRUCTION SERVICES, INC., and DOES 1 to 100)**

28 106. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 105 as though
fully set forth herein.

107. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

108. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter.

109. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

110. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, 245 *et seq.*, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

ELEVENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

111. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 110 as though fully set forth herein.

112. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)
- Violation of Labor Code § 226.2 (Failure to Pay Non-Productive Time)

113. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

114. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

115. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;

- 1 b. Interest for the wages due pursuant to California Labor Code section 1194;
2 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
3 Code section 1194;
- 4 3. As to the Second Cause of Action:
- 5 a. Wages in an to be proven at trial;
6 b. Interest for the wages due pursuant to California Labor Code section 1194;
7 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
8 Code section 1194;
9 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 10 4. As to the Third Cause of Action:
- 11 a. Wages in an amount to be proven at trial;
12 b. Attorney's fees, costs and interest pursuant to California Labor Code section
13 218.5;
- 14 5. As to the Fourth Cause of Action:
- 15 a. All wages earned and owing to be proven at trial;
16 b. Interest, attorneys' fees, and costs pursuant to Labor Code section 218.5 and
17 218.6
- 18 6. As to the Fifth Cause of Action:
- 19 a. Wages in the amount to be proven at trial;
20 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
21 section 1021.5;
- 22 7. As to the Sixth Cause of Action:
- 23 a. Wages in the amount to be proven at trial;
24 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
25 section 1021.5;
- 26 8. As to the Seventh Cause of Action:
- 27 a. Penalties as provided for in Labor Code section 226, including the greater of all
28 actual damages or fifty dollars (\$50.00) for the initial pay period in which the

violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

b. \$750 penalty for failing to provide the records;

c. Injunctive relief;

d. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226;

9. As to the Ninth Cause of Action:

a. Reimbursement of expenses in an amount to be proven at trial;

b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

10. As to the Eleventh Cause of Action:

a. For civil penalties as provided in the Labor Code for each enumerated violation;

b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;

c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

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- 1 11. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

7 Dated: December 15, 2025

Shimoda & Rodriguez Law, PC

8
9 By: _____


Galen J. Shimoda
Justin P. Rodriguez
Renald Konini
Austin D. Sork
Attorney for Plaintiff

1 *Garcia v. Baja Construction Services, Inc., et al.*
2 *San Joaquin County Superior Court, Case Number STK-CV-UOE-2025-8456*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On January 9, 2026, I served the following documents on the party below:

9 • **FIRST AMENDED COMPLAINT FOR DAMAGES**

10 Cynthia Flynn (SBN 274206) 11 Orchid Farinpour (SBN 274442) 12 Maryam Maleki (SBN 283189) 13 HACKLER FLYNN & ASSOCIATES, APC 14 479 South Marengo Avenue 15 Pasadena, CA 91101 16 Phone: (323) 247-7030 17 Facsimile: (323) 319-9242 18 Email: cindy@hacklerflynnlaw.com 19 orchid@hacklerflynnlaw.com 20 maryam@hacklerflynnlaw.com 21 mimi@hacklerflynnlaw.com 22 schirin@hacklerflynnlaw.com	
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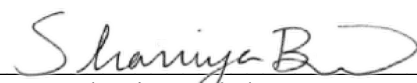
23 [] [By Mail] I am familiar with my employer's practice for the collection and
24 processing of correspondence for mailing with the United States Postal
25 Service and that each day's mail is deposited with the United States Postal
26 Service that same day in the ordinary course of business. On the date set
27 forth above, I served the aforementioned document(s) on the parties in
28 said action by placing a true copy thereof enclosed in a sealed envelope
with postage thereon fully prepaid, for collection and mailing on this date,
following ordinary business practices, at Salt Lake City, Utah, addressed
as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

29 I declare under penalty of perjury under the laws of the State of California that the foregoing
30 is true and correct, and that this declaration was executed on January 9, 2026, at Salt Lake City,
31 Utah.

32 
Shaniya Baird