

Lilit Tunyan (SBN: 329351)

[ltunyan@tunyanlaw.com](mailto:ltunyan@tunyanlaw.com)

Artur Tunyan (SBN 349174)

[atunyan@tunyanlaw.com](mailto:atunyan@tunyanlaw.com)

**TUNYAN LAW, APC**

1336 Rossmoyne Avenue

Glendale, California 91207

Telephone: (323) 410-5050

Attorneys for Plaintiffs Isabel Rodriguez and Daniel Tovar

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE**

ISABEL RODRIGUEZ and DANIEL  
TOVAR, on behalf of themselves and all  
employees similarly situated,

Plaintiffs,

v.

ROY MILLER PAINTING, INC., a California  
Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 30-2023-01314830-CU-OE-CXC

**FIRST AMENDED COMPLAINT**

1. Violation of Labor Code §§ 204, 510, 1194, 1198 (Failure to Pay All Wages);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse for Necessary Expenditures);
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices).; and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, et seq

**DEMAND FOR JURY TRIAL**

1 Plaintiffs ISABEL RODRIGUEZ and DANIEL TOVAR (hereinafter referred to as  
2 “Plaintiffs”) on behalf of themselves and all other employees similarly situated, and as  
3 representative of the State of California and the Labor and Workforce Development Agency  
4 (“LWDA”), based upon facts that either have evidentiary support or are likely to have evidentiary  
5 support after a reasonable opportunity for further investigation and discovery, complain and allege  
6 as follows:

7 **INTRODUCTION**

8 1. This is a class action brought on behalf of Plaintiffs and the class they seek to  
9 represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid  
10 employees currently and/or formerly employed by ROY MILLER PAINTING, INC. in the State  
11 of California during the Class Period. The term “Class Period” is defined as four (4) years prior  
12 to the filing of this Complaint through the date final judgment is entered. Plaintiffs reserve the  
13 right to amend this Complaint to reflect a different “Class Period” or “Class” as further discovery  
14 is conducted.

15 2. Plaintiffs, individually and on behalf of the class they seek to represent, seek relief  
16 against ROY MILLER PAINTING, INC. (“Defendant”) for Defendant’s failure to pay all wages  
17 due in violation of Labor Code sections 204, 510 and 1194, including both regular and overtime  
18 wages; failure to provide meal periods or compensation in lieu thereof pursuant to Labor Code  
19 sections 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code  
20 of Regulations, Title 8, section 11000 et seq.; failure to provide rest periods or compensation in  
21 lieu thereof pursuant to Labor Code sections 226.7 and 512, the applicable Industrial Welfare  
22 Commission Wage Orders, and Code of Regulations, Title 8, section 11000 et seq.; failure to  
23 provide accurate itemized wage statements upon payment of wages pursuant to Labor Code  
24 sections 226, subdivision (a), 1174, and 1175; failure to reimburse for necessary expenditures  
25 pursuant to Labor Code Section 2802; and failure to pay wages of terminated or resigned  
26 employees pursuant to Labor Code sections 201, 202, and 203.

1           3.       Plaintiffs seek equitable remedies in the form of declaratory relief and injunctive  
2 relief, and relief under Business and Professions Code section 17200 et seq. for unfair business  
3 practices.

4           4.       At all relevant times herein, Defendant has consistently maintained and enforced  
5 against Plaintiffs and Class the following unlawful practices and policies:

6                   (a)     willfully refusing to pay Plaintiffs and Class for all hours worked,  
7 including both regular and overtime;

8                   (b)     willfully refusing to permit Plaintiffs and Class from taking meal periods  
9 or compensation in lieu thereof;

10                  (c)     willfully refusing to permit Plaintiffs and Class from taking rest periods  
11 or compensation in lieu thereof;

12                  (d)     willfully refusing to furnish to Plaintiffs and Class accurate itemized wage  
13 statements upon payment of wages;

14                  (e)     willfully refusing to compensate Plaintiffs and certain members of the  
15 Class wages due and owing at the time of Plaintiffs and Class Members'  
16 employment with Defendant ended; and

17                  (f)     willfully refusing to reimburse Plaintiffs and Class for necessary  
18 expenditures.

19           5.       On information and belief, Defendant was on actual and constructive notice of  
20 the improprieties alleged herein and intentionally refused to rectify their unlawful policies.  
21 Defendant's violations, as alleged above, during all relevant times herein were willful and  
22 deliberate.

23           6.       At all relevant times, Defendant was and is legally responsible for all of the  
24 unlawful conduct, policies, practices, acts and omissions as described in each and all of the  
25 foregoing paragraphs as the employer of Plaintiffs and Class. Further, Defendant is  
26 responsible for each of the unlawful acts or omissions complained of herein under the doctrine  
27 of "respondeat superior".  
28

7. Plaintiff further brings this action as a representative of the State of California and the Labor and Workforce Development Agency (“LWDA”) to recover civil penalties pursuant to the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*, for violations of numerous Labor Code provisions, including, but not limited to, sections 201-203, 204, 226, 226.7, 510, 512, 1174, 1194, and 2802, as well as violations of the applicable Wage Order.

## JURISDICTION AND VENUE

8. Venue is proper in this judicial district and in the County of Orange, California because Defendant maintained its location and/or transacted business in this county, the obligations and liability arise in this county, and work was performed by members of the proposed class made the subject of this action in this county.

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

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

## THE PARTIES

### A. Plaintiffs

1           11.     Plaintiffs, at all relevant times herein, were Defendant's employees and were  
2 entitled to compensation for all hours worked, including regular time and overtime compensation,  
3 and penalties from Defendant. Plaintiffs were employed by Defendant as non-exempt, hourly paid  
4 employees during the Class Period. Specifically, Plaintiffs worked as painters for Defendant from  
5 approximately July 2022 to October 2022 at Defendant's facility located at 1036 N. Lemon Street,  
6 Orange, California 92867. Each of the Class Members are identifiable, current and/or former  
7 similarly situated persons who were employed in non-exempt hourly positions in California by  
8 Defendant during the Class Period.

9           **B.     Defendant**

10           12.     Plaintiffs are informed and believe, and based thereon allege, that Defendant is a  
11 California corporation. Defendant provides painting, protective and decorative coating and  
12 furniture refinishing services in California. On information and belief, Defendant was and/or is  
13 the employer of Plaintiffs and Class during the Class Period. Plaintiffs also allege that Defendant  
14 is conducting business in good standing in California.

15           13.     Plaintiffs are ignorant of the true names, capacities, relationships and extent of  
16 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50,  
17 inclusive, but on information and belief alleges that these Defendants are legally responsible for  
18 the payment of overtime compensation, rest and meal period compensation, and wages to  
19 Plaintiffs and Class by virtue of their unlawful practices, and therefore sues these Defendants by  
20 such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities  
21 of each DOE Defendants when ascertained.

22           14.     Plaintiffs are informed and believe, and based thereon allege, that each Defendant  
23 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint  
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant  
25 are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as  
26 the employer and/or joint employer of Plaintiffs and Class.

27           15.     Plaintiffs are informed and believe, and based thereon allege, that each Defendant  
28 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,

managing agent, and/or principal of the Defendant, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with permission and consent of the Defendant. Plaintiffs also allege the acts of each Defendant are legally attributable to the other Defendant.

16. Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendant sued herein was, at all times relevant hereto, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendant, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent, and knowledge, approval and/or ratification of the other Defendant.

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

#### **ADMINISTRATIVE PREREQUISITE**

18. On March 20, 2023, prior to filing this complaint, Plaintiffs gave written notice by electronically filing the notice with the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA- 943148-23), and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3.

19. A true and correct copy of Plaintiffs' letter sent to the LWDA and Defendant dated March 20, 2023, is attached hereto as "**Exhibit A**". As of the filing of this complaint, LWDA has not responded to the written notice.

20. Under Labor Code section 2699.3 subsection (a), a Plaintiffs may bring a cause of action under PAGA only after giving notice to the Labor Workforce Development Agency ("LWDA") and the employer of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

21. More than sixty-five (65) days have passed without notice from the LWDA.

Accordingly, all administrative prerequisites to filing this action have been fulfilled.

**GENERAL ALLEGATIONS**

22. Plaintiffs were employed as painters by Defendant from approximately July 2022 to October 2022.

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

24. Labor Code Section 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as regular paydays. Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Pursuant to Labor Code Section 204 (d) the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Plaintiffs and Class were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during Class period, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked.

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

1           26.     During all, or a portion of the Class Period, Plaintiffs and each member of the  
2 Class was employed by Defendant in the State of California.

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

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

11           29. During the Class Period, Defendant were obligated to pay Plaintiffs and Class  
12 Members for all hours worked. Defendant maintained a policy and practice of not paying for  
13 all the time Plaintiffs and Class worked. Often times Plaintiffs and Class missed hours or  
14 minutes worked on their paychecks. Throughout the Class period, Defendant also maintained a  
15 policy and practice of requiring Plaintiffs and Class to perform work “off-the-clock”. During  
16 the Class period Defendant required Plaintiffs and Class to clock out for meal periods but to  
17 continue working. In maintaining a practice of not paying all wages owed, Defendant failed to  
18 maintain accurate records of the hours Plaintiffs and Class worked.

19           30.     During the Class Period, Defendant were obligated to pay Plaintiffs and Class  
20 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one  
21 (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in  
22 excess of twelve (12) in one (1) day. However, often times Plaintiffs and Class Members were  
23 required to work overtime in excess of eight (8) hours per workday and in excess of forty (40)  
24 hours per workweek but were not paid at the proper overtime rate of pay.

25           31.     During the Class Period, Defendant were obligated to provide Plaintiffs and Class  
26 with a work-free meal period within the first five (5) hours of a shift when the workday was  
27 longer than six (6) hours. Plaintiffs and Class Members were entitled to a full, thirty (30)  
28

1 minute, off-duty meal period when they worked in excess of six (6) hours within the first five (5)  
2 hours of their shifts. However, Plaintiffs and Class Members were routinely not provided with  
3 timely, 30-minute off-duty meal periods, and were not permitted and authorized to take  
4 uninterrupted rest periods. Moreover, Defendant did not have adequate written policies or  
5 practices providing meal periods for Plaintiffs and Class, nor did Defendant have adequate  
6 policies or practices regarding the timing of meal periods. Plaintiffs and Class would often times  
7 miss their meal periods, have interrupted or short meal periods. In those occasions when  
8 Plaintiffs and Class had an opportunity to take their first meal periods, Defendant wrongfully  
9 required Plaintiffs and Class to combine their 30-minute first meal periods with their first rest  
10 periods and have 45- minute combined meal and rest breaks instead of taking separate meal  
11 periods and separate rest periods, and wrongfully deducted 45-minutes from Plaintiffs' and Class  
12 Members' hours. Accordingly, Defendant's policy and practice was to not provide meal periods  
13 to Plaintiffs and Class in compliance with California law.

14 32. Additionally, Defendant were obligated to provide Plaintiffs and Class Members  
15 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each  
16 day. Defendant prevented Plaintiffs and Class Members from taking rest breaks throughout their  
17 shifts. Plaintiffs and Class Members were generally precluded from taking rest periods due to  
18 Defendant' failure to maintain the rest break policy to provide relief and thereby allow Plaintiffs  
19 and Class Members the opportunity to take rest breaks. Moreover, Defendant did not have  
20 adequate policies or practices permitting or authorizing rest periods for Plaintiffs and Class, nor  
21 did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant  
22 did not schedule rest periods every 4 hours or a major fraction. Instead, Defendant wrongfully  
23 required Plaintiffs and Class to combine their 30-minute first meal periods with their first rest  
24 periods and to take combined 45-minute first meal and rest breaks instead of taking separate meal  
25 periods and separate rest periods, and wrongfully deducted 45-minutes from Plaintiffs' and Class  
26 Members' hours. Not only Defendant deprived Plaintiffs and Class of their right to take first rest  
27 periods during the timeframe required under California law but also refused to pay for rest periods  
28 by deducting 45 minutes of pay for combined meal periods and rest periods. Plaintiffs and Class

1 have never been authorized and taken their second and third rest periods. Accordingly,  
2 Defendant's policy and practice was for Plaintiffs and Class to work through rest periods and to  
3 not authorize or permit them to take any rest periods. Accordingly, Defendant's policy and  
4 practice were for Plaintiffs and Class to work through rest periods and to not authorize or permit  
5 them to take lawfully compliant rest periods. Further, Defendant did not maintain accurate records  
6 of employee work periods, and therefore Defendant cannot demonstrate that Plaintiffs and Class  
7 took rest periods during the middle of each work period. Accordingly, Defendant's policy and  
8 practice was to not authorize and permit Plaintiffs and Class to take rest periods in compliance  
9 with California law.

10 33. Further, due to the pressure from Defendant and failure to maintain an adequate  
11 policy, and in violation of Labor Code and applicable IWC Wage Orders, Plaintiffs was not  
12 authorized and permitted to take a second rest period, on shifts exceeding six hours of work,  
13 and/or third rest breaks, on shifts exceeding ten hours of work. *Brinker Restaurant Corp. v.*  
14 *Superior Court*, 53 Cal.4<sup>th</sup> 1004, 1030 (2012). "Employees are entitled to 10 minutes rest for  
15 shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours  
16 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."

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

21 35. Defendant also failed to indemnify Plaintiffs and Class Members all necessary  
22 expenditures incurred in direct discharge of their duties. During the course of employment,  
23 Plaintiffs and Class Members were required to incur various business expenses at their own cost,  
24 including usage of personal cell phones to download and use application to record their time as  
25 well as to respond to work related calls from their supervisors. Defendant failed to provide any  
26 reimbursement to Plaintiffs and Class Members for the cost of the uniforms.

27 36. Defendant continues to employ non-exempt, hourly-paid employees within  
28 California.

1           37. Plaintiffs and Class Members primarily performed non-exempt work, often in  
2 excess of the maximum regular rate hours set forth in the applicable IWC Wage Order(s),  
3 regulations or statutes, and therefore entitled the Plaintiffs and Class Members to overtime  
4 compensation at the rate of one and a half times their regular rate of pay and, when applicable,  
5 double time compensation as set forth by the applicable IWC Wage Order(s), regulations and/or  
6 statutes.

7           38. During the Class Period, Defendant required Plaintiffs and Class Members to work  
8 regular hours, off the clock hours, and overtime hours without lawful compensation in violation  
9 of the applicable IWC Wage Order(s), regulations and statutes, and Defendant: (1) willfully failed  
10 and refused, and continue to fail and refuse to pay compensation for all hours worked, including  
11 lawful regular time and overtime compensation, to Class Members; and (2) willfully failed and  
12 refused, and continue to fail and refuse to pay due and owing wages promptly upon termination  
13 of employment to Plaintiffs and affected Class Members.

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

18           40. During the Class Period, Defendant failed to furnish Plaintiffs and Class with  
19 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net  
20 wages earned (including correct hours worked, correct wages earned for hours worked, correct  
21 overtime hours worked, correct wages for meal periods that were not provided in accordance  
22 with California law, correct wages for rest periods that were not authorized and permitted to  
23 take in accordance with California law). Additionally, Defendant included hours accrued as  
24 sick pay in the total number of hours worked in the wage statements. Most importantly,  
25 Defendant wrongfully stated all 9 digits of social security numbers of employees in their wage  
26 statements despite the requirement to include only 4 last digits. This is a blatant violation of  
27 the Labor Code requirements as well as California laws protecting the privacy rights of  
28

1 employees. As a result of these violations of California Labor Code § 226(a), Plaintiffs and  
2 Class suffered injury because, among other things:

- 3 (a) the violations led them to believe that they were not entitled to be paid  
4 minimum wages, overtime wages, meal period premium wages, and rest  
5 period premium wages to which they were entitled, even though they were  
6 entitled;
- 7 (b) the violations led them to believe that they had been paid the minimum,  
8 overtime, meal period premium, and rest period premium wages, even  
9 though they had not been;
- 10 (c) the violations led them to believe they were not entitled to be paid overtime,  
11 meal period premium, and rest period premium wages at the correct  
12 California rate even though they were;
- 13 (d) the violations led them to believe they had been paid overtime, meal period  
14 premium, and rest period premium wages at the correct California rate even  
15 though they had not been;
- 16 (e) the violations hindered them from determining the amounts of overtime,  
17 meal period premium, and rest period premium owed to them;
- 18 (f) in connection with their employment before and during this action, and in  
19 connection with prosecuting this action, the violations caused them to have  
20 to perform mathematical computations to determine the amounts of wages  
21 owed to them, computations they would not have to make if the wage  
22 statements contained the required accurate information;
- 23 (g) by understating the wages truly due them, the violations caused them to lose  
24 entitlement and/or accrual of the full amount of Social Security, disability,  
25 unemployment, and other governmental benefits;
- 26  
27  
28

- 1 (h) the wage statements inaccurately understated the wages, hours, and wages  
2 rates to which Plaintiffs and Class were entitled, and Plaintiffs and Class  
3 were paid less than the wages and wage rates to which they were entitled.

4 Thus, Plaintiffs and Class are owed the amounts provided for in California Labor Code §  
5 226(e), including actual damages.

6 41. Defendant knew or should have known that Plaintiffs and Class members were  
7 entitled to receive accurate wage statements, which would include meal break premiums, and/or  
8 rest break premiums as well as only 4 last digits of their social security numbers, as required by  
9 Labor Code 226.

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

14 **CLASS ALLEGATIONS**

15 43. Plaintiffs bring this action on behalf of themselves and all other similarly situated  
16 persons as a class action pursuant to Code of Civil Procedure section 382. The Class is composed  
17 of and defined as follows:

- 18 (a) All persons who are employed or have been employed by Defendant in the  
19 State of California, and who, within the four (4) years of the filing of this  
20 Complaint to the present, have worked as non-exempt employees and were not  
21 paid all wages owed, including but not limited to the legally requisite regular  
22 time rate, overtime rate and/or double-time rate as specifically described  
23 herein;
- 24 (b) All persons who are employed or have been employed by Defendant in the  
25 State of California, and who, within the four (4) years of the filing of this  
26 Complaint to the present, have worked as non-exempt employees and have not  
27 been provided a meal period for shifts in excess of five (5) hours within the  
28

1 first five (5) hours such shifts, and were not provided one (1) hour's pay for  
2 each day during which a lawful meal period was not provided;

3 (c) All persons who are employed or have been employed by Defendant in the  
4 State of California, and who, within the four (4) years of the filing of this  
5 Complaint to the present, have worked as non-exempt employees and have not  
6 been provided a rest period for every four (4) hours, or major fraction thereof,  
7 worked per day, and were not provided compensation of one (1) hour's pay for  
8 each day on which such rest period(s) was not provided;

9 (d) All persons who are employed or have been employed by Defendant in the  
10 State of California, and who, within the four (4) years of the filing of this  
11 Complaint to the present, have worked as non-exempt employees and have not  
12 been reimbursed expenditures in discharge of their duties;

13 (e) All persons who are employed or have been employed by Defendant in the  
14 State of California, and who, within the three (3) years of the filing of this  
15 Complaint to the present, have worked as non-exempt employees and have  
16 been terminated or resigned, and have not been paid wages pursuant to Labor  
17 Code section 203 and are owed restitution and waiting time penalties for  
18 unpaid wages;

19 (f) All persons who are employed or have been employed by Defendant in the  
20 State of California, and who, within the one (1) year of the filing of this  
21 Complaint to the present have worked as non-exempt employees and were not  
22 provided an accurate payroll record or wage statement as required under Labor  
23 Code sections 226 and 1174;

24 (g) All persons who are employed or have been employed by Defendant in the  
25 State of California, and who, within the four (4) years of the filing of this  
26 Complaint to the present, have worked as non-exempt employees and were  
27 subjected to unlawful and unfair business practices within the meaning of  
28

1 California's Unfair Competition Law and who suffered injury, including lost  
2 money, as a result of Defendant's unlawful and unfair business practices.

3 44. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or  
4 necessary to amend the definition of the Class. Plaintiffs will formally define and designate a  
5 class definition at such time when Plaintiffs seeks to certify the Class alleged in this Complaint.

6 45. This action has been brought and may be maintained as a class action pursuant to  
7 Code of Civil Procedure section 382 because there is a well-defined common interest of many  
8 persons and it is impractical to bring them all before the court.

9 46. The Court should permit this action to be maintained as a class action pursuant to  
10 Code of Civil Procedure section 382 because:

- 11 (a) The questions of law and fact common to Class predominate over any  
12 question affecting only individual class members;
- 13 (b) A class action is superior to any other available method for the fair and  
14 efficient adjudication of the claims of the Class members;
- 15 (c) Class is so numerous that it is impractical to bring all members of the  
16 Class before the Court;
- 17 (d) Plaintiffs and Class Members will not be able to obtain effective and  
18 economic legal redress unless the action is maintained as a class action;
- 19 (e) There is a community of interest in obtaining appropriate legal and  
20 equitable relief for the common law and statutory violations and other  
21 improprieties and in obtaining adequate compensation for the damages  
22 and injuries which Defendant's actions have inflicted upon Class;
- 23 (f) There is a community of interest in ensuring that the combined assets and  
24 available insurance of the Defendant are sufficient to adequately  
25 compensate Class Members for the injuries sustained;
- 26 (g) Without class certification, the prosecution of separate actions by  
27 individual members of the Class would create a risk of:  
28

- 1 (1) Inconsistent or varying adjudications with respect to individual  
2 members of the Class which would establish an incompatible  
3 standard of conduct for Defendant; and/or  
4 (2) Adjudications with respect to the individual members which  
5 would, as a practical matter, be dispositive of the interests of other  
6 members not parties to the adjudications, or would substantially  
7 impair or impede their ability to protect their interests, including  
8 but not limited to the potential for exhausting the funds available  
9 from those parties who are, or may be, responsible Defendant; and  
10 (h) Defendant has acted or refused to act on grounds generally applicable to  
11 Class, thereby making final injunctive relief appropriate with respect to  
12 Class as a whole.

13 47. There is a well-defined community of interest in the litigation and Class is  
14 readily ascertainable:

- 15 (a) Numerosity: The members of Class (and each subclass, if any) are so  
16 numerous that joinder of all members would be unfeasible and impractical.  
17 The membership of the entire Class is unknown to Plaintiffs at this time,  
18 however, the Class is estimated to be greater than 50 individuals and the  
19 identity of such membership is readily ascertainable by inspection of  
20 Defendant's records.  
21 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect  
22 the interests of each Class Member with whom there is a shared, well-defined  
23 community of interest, and Plaintiffs' claims (or defenses, if any) are typical  
24 of all Class Members' claims as demonstrated herein.  
25 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect  
26 the interests of each Class Member with whom there is a shared, well-  
27 defined community of interest and typicality of claims, as demonstrated  
28

1           herein. Plaintiffs have no conflicts with or interests antagonistic to any  
2           Class Member. Plaintiffs' attorneys, the proposed class counsel, are versed  
3           in the rules governing class action discovery, certification, and settlement.  
4           Plaintiffs have incurred, and throughout the duration of this action, will  
5           continue to incur costs and attorneys' fees that have been, are, and will be  
6           necessarily expended for the prosecution of this action for the substantial  
7           benefit of each class member.

8           (d) Superiority: A Class Action is superior to other available methods for the  
9           fair and efficient adjudication of the controversy, including consideration of:

- 10                   1. The interests of the members of the Class in individually  
11                   controlling the prosecution or defense of separate actions;
- 12                   2. The extent and nature of any litigation concerning the  
13                   controversy already commenced by or against members of the  
14                   Class;
- 15                   3. The desirability or undesirability of concentrating the  
16                   litigation of the claims in the particular forum; and
- 17                   4. The difficulties likely to be encountered in the management of  
18                   a class action.

19           (e) Public Policy Considerations: The public policy of the State of California is  
20           to resolve the California Labor Code claims of many employees through a  
21           class action. Indeed, current employees are often afraid to assert their rights  
22           out of fear of direct or indirect retaliation. Former employees are also  
23           fearful of bringing actions because they believe their former employers  
24           might damage their future endeavors through negative references and/or  
25           other means. Class actions provide the class members who are not named in  
26           the complaint with a type of anonymity that allows for the vindication of  
27           the complaint with a type of anonymity that allows for the vindication of  
28

1                   their rights at the same time as their privacy is protected.

2           48.     Plaintiffs contemplate the eventual issuance of notice to the proposed members of  
3 the Class that would set forth the subject and nature of the instant action. Defendant's own  
4 business records may be utilized for assistance in the preparation and issuance of the  
5 contemplated notices. To the extent that any further notices may be required, Plaintiffs would  
6 contemplate the use of additional techniques and forms commonly used in class actions, such as  
7 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by  
8 other methods suitable to Class and deemed necessary and/or appropriate by the Court.

9                                   **FIRST CAUSE OF ACTION**

10                           **Failure to Pay All Wages for All Hours Worked**

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

12           49.     Plaintiffs and Class Members re-allege and incorporate by reference all preceding  
13 paragraphs of this First Amended Complaint as though fully set forth herein.

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

18           51.     Labor Code section 1194, subdivision (a) states: "Notwithstanding any agreement  
19 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal  
20 overtime compensation applicable to the employee is entitled to recover in a civil action the  
21 unpaid balance of the full amount of this minimum wage or overtime compensation, including  
22 interest thereon, reasonable attorney's fees, and costs of suit."

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

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

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

5           55. During the Class Period, Defendant was obligated to pay Plaintiffs and Class  
6 Members for all hours worked. However, Defendant failed to pay Plaintiffs and Class Members  
7 for all hours worked at the legally mandated wage rates. Often times Plaintiffs and Class missed  
8 hours or minutes worked on their paychecks. Throughout the Class period, Defendant also  
9 maintained a policy and practice of requiring Plaintiffs and Class to perform work “off-the-  
10 clock”. During the Class period Defendant required Plaintiffs and Class to clock out for meal  
11 periods but to continue working. In maintaining a practice of not paying all wages owed,  
12 Defendant failed to maintain accurate records of the hours Plaintiffs and Class worked.

13           56. Plaintiffs and Class Members were required to work overtime in excess of eight  
14 (8) hours per workday and in excess of forty (40) hours per workweek, but were not paid at the  
15 proper overtime rate of pay.

16           57. Labor Code Section 204 requires employers to pay employees all earned wages  
17 two times per month on days designated in advance by the employer as regular paydays.  
18 Pursuant to Labor Code Section 204 (a) labor performed between the 1st and 15th days,  
19 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the  
20 month during which the labor was performed, and labor performed between the 16th and the last  
21 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the  
22 following month. Pursuant to Labor Code Section 204 (d) the requirements of this section shall  
23 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if  
24 the wages are paid not more than seven calendar days following the close of the payroll period.  
25 Plaintiffs and Class were entitled to be paid twice a month at their regular rates, including all  
26 meal period premium wages owed, rest period premium wages owed, and wages owed for hours  
27 worked. However, during Class period, Defendant systematically failed and refused to pay the  
28 employees all wages due, and failed to pay those wages twice a month, in that employees were

not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked.

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

59. Pursuant to Labor Code section 1194.2(a) (which provides that in any action under Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members of Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully unpaid and interest thereon.

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

61. Pursuant to Labor Code sections 218.6 and 1194(a) and Civil Code section 3287, Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

62. Pursuant to Labor Code sections 218.5 and/or 1194, Class Members request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

## **SECOND CAUSE OF ACTION**

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

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

63. Plaintiffs and Class Members re-allege and incorporate by reference all preceding paragraphs of this First Amended Complaint as though fully set forth herein.

64. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less

1 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work  
2 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)  
3 minutes.

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

8 66. The defendant failed to schedule Plaintiffs and Class Members in a manner as to  
9 reasonably ensure that Plaintiffs and Class Members could take such meal periods within the  
10 statutory timeframe. As a result, Plaintiffs and Class were often forced to forego their meal  
11 periods, work during their meal periods and/or take meal periods after the fifth (5th) hour of their  
12 shifts. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiffs  
13 and Class Members in violation of Labor Code sections 226.7 and 512, and other regulations and  
14 statutes.

15 67. At all times relevant hereto, Plaintiffs and Class have worked more than five (5)  
16 hours in a workday.

17 68. At all times relevant hereto, Defendant failed to schedule Plaintiffs and Class  
18 Members in a manner so as to reasonably provide work-free meal periods in accordance with  
19 Labor Code sections 226.7 and 512.

20 69. By virtue of Defendant's failure to schedule Plaintiffs and Class Members in such  
21 a way as to provide a timely and/or work free meal period to Plaintiffs and Class Members,  
22 Plaintiffs and Class Members have suffered, and will continue to suffer, damages in an amount  
23 which is presently unknown, but which exceed the jurisdictional limits of this Court and which  
24 will be ascertained according to proof at trial.

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

1 **THIRD CAUSE OF ACTION**

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

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

4 71. Plaintiffs and Class Members re-allege and incorporate by reference all preceding  
5 paragraphs of this First Amended Complaint as though fully set forth herein.

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

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

13 74. During the Class Period, Defendant did not provide Plaintiffs and Class Members  
14 with a ten-minute rest period for every four (4) work hours or major fraction thereof. Therefore,  
15 Plaintiffs and Class Members were not provided lawful rest periods.

16 75. Defendant failed and/or refused to implement a policy by which Plaintiffs and  
17 Class Members could receive rest periods and/or work free rest periods. By and through its  
18 actions, Defendant intentionally and improperly denied rest periods to Plaintiffs and Class  
19 Members in violation of Labor Code sections 226.7 and 512.

20 76. At all times relevant hereto, Plaintiffs and Class have worked more than four (4)  
21 hours in a workday.

22 77. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiffs  
23 and Class Members, Plaintiffs and Class Members have suffered, and will continue to suffer,  
24 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of  
25 this Court and which will be ascertained according to proof at trial.

26 78. Plaintiffs, individually and on behalf of employees similarly situated, requests  
27 recovery of rest period compensation pursuant to Labor Code section 226.7 for the four (4) years  
28

1 prior to filing this Complaint, as well as the assessment of any statutory penalties against  
2 Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Provide Accurate Itemized Wage Statements**  
5 **(Against Defendant, DOES 1 through 50, and each of them)**

6 79. Plaintiffs and Class re-allege and incorporate by reference all preceding  
7 paragraphs of this First Amended Complaint as though fully set forth herein.

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

11 81. Labor Code section 226, subdivision (a) requires an employer to provide  
12 employees—either as a detachable part of the check, draft, or voucher paying the employee’s  
13 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage  
14 statement in writing showing

15 (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all  
16 deductions . . . , (5) net wages, (6) the inclusive dates of the period for which  
17 the employee is paid, (7) the name of the employee and only the last four  
18 digits of his or her social security number or an employee identification  
19 number other than a social security number, (8) the name and address of the  
20 legal entity that is the employer . . . , and (9) all applicable hourly rates in  
21 effect during the pay period and corresponding number of hours worked at  
22 each hourly rate by the employee . . . .

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

27 83. Plaintiffs are informed and believes that Defendant willfully and intentionally  
28 failed to make and/or keep records which accurately reflect the hours worked by Plaintiffs and

1 Class. Specifically, Plaintiffs believe that Defendant's records do not accurately reflect when  
2 Plaintiffs and Class worked during their meal and rest periods and/or took untimely meal periods  
3 or worked for hours not paid. Defendant also failed to include an hourly rate which is a blatant  
4 violation of the Labor Code.

5 84. Labor Code section 226, subdivision (e) provides that if an employer knowingly  
6 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,  
7 the total hours worked by the employee and the applicable hourly overtime rates, causing the  
8 employee injury, then the employee is entitled to recover the greater of all actual damages or  
9 fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each  
10 subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiffs is informed and believes  
11 that Defendant willfully failed to make or keep accurate records for Plaintiffs and Class.

12 85. Plaintiffs are informed and believe that Defendant's failure to keep accurate  
13 payroll records, as described above, violated Labor Code section 1174, subdivision (d) and  
14 section 226, subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code  
15 section 2699, subdivision (f)(2), Plaintiffs and Class are entitled to penalties of \$100.00 and for  
16 the initial violation and \$200.00 for each subsequent violation for every pay period during which  
17 these records and information were not kept by Defendant.

18 86. Plaintiffs are informed and believe that Defendant's failure to keep and maintain  
19 accurate records and information, as described above, was willful, and Plaintiffs and Class are  
20 entitled to statutory penalties pursuant to Labor Code section 1174.5.

## 21 **FIFTH CAUSE OF ACTION**

### 22 **Failure to Pay Wages upon Termination of Employment**

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

24 87. Plaintiffs and Class re-allege and incorporate by reference all preceding  
25 paragraphs of this First Amended Complaint as though fully set forth herein.

26 88. Plaintiffs' employment with Defendant ended in or about October 2022. Plaintiffs  
27 and certain Class who ended their employment with Defendant during the Class Period, were  
28 entitled to be promptly paid for all hours worked, including lawful regular time compensation,

overtime compensation, double-time compensation, and other premiums, as required by Labor Code sections 201 through 203. Plaintiffs are also entitled to meal period and rest period premium pay in accordance with Labor Code sections 226 and 226.7.

89. Plaintiffs and Class were not compensated for their unlawful and/or missed meal periods and/or rest periods, and were not paid proper regular time compensation, overtime compensation or double-time compensation in accordance with law as a result of Defendant's illegal rounding practice.

90. To date, Plaintiffs and Class Members who ended their employment with Defendant during the Class Period have not been compensated for all hours worked.

91. Plaintiffs and the affected Class Members seek the payment of penalties pursuant to Labor Code section 203, according to proof.

92. Plaintiffs are also entitled to attorneys' fees and costs, pursuant to Labor Code section 1194, and prejudgment interest.

#### **SIXTH CAUSE OF ACTION**

##### **Failure to Reimburse for Necessary Business Expenditures**

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

93. Plaintiffs and Class re-allege and incorporate by reference all the above paragraphs of this First Amended Complaint as if fully alleged herein.

94. California Labor Code §2802, states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

95. Plaintiffs and Class were not reimbursed by Defendant for necessary expenditures as a direct consequence of the discharge of their duties. Specifically, Plaintiffs and Class Members were required to incur various business expenses at their own cost, including for usage of personal cell phones to download and use application to record their time as well as to respond to work related calls from their supervisors. Defendant failed to provide any reimbursement to Plaintiffs and Class Members for the purchase of uniforms.

96. Defendant knowingly, willingly and intentionally attempted to offset the cost of

1 doing business on the Plaintiffs and Class.

2 97. Defendant had a corporate practice and policy of requiring Plaintiffs and Class to  
3 shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiffs and  
4 Class for necessary expenditures, specifically requiring Plaintiffs and Class to use their personal  
5 cell phones.

6 98. Accordingly, Plaintiffs and Class are entitled to an award of "necessary  
7 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's  
8 fees and interest.

9 **SEVENTH CAUSE OF ACTION**

10 **Unfair Business Practices**

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

12 99. Plaintiffs and Class re-allege and incorporate by reference all preceding  
13 paragraphs of this First Amended Complaint as though fully set forth herein.

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

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

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

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

1 Labor Code sections 201-204, 226, 226.7, 510, 512, 1174, 1197, 1198 and 2802 as well as other  
2 statutes.

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

6 105. The acts and practices described above constitute unfair, unlawful and fraudulent  
7 business practices, and unfair competition, within the meaning of Business and Professions Code  
8 section 17200 et seq. Among other things, the acts and practices have forced Plaintiffs and other  
9 similarly situated employees to labor for many consecutive hours without receiving the meal and  
10 rest periods and overtime compensation to which they are entitled by law, while enabling  
11 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

12 106. As a result of Defendant's acts, Plaintiffs and Class Members have suffered injury  
13 in fact in being denied their statutorily entitled meal and rest periods and full compensation for  
14 hours worked.

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

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

22 109. Business and Professions Code section 17203 provides that the Court may restore  
23 to any person in interest any money or property that may have been acquired by means of such  
24 unfair competition. Plaintiffs and Class are entitled to restitution pursuant to Business and  
25 Professions Code section 17203 for all wages and payments unlawfully withheld from employees,  
26 including the fair value of the meal and rest periods taken away from them during the four-year  
27 period prior to the filing of this Complaint, as well as for all expenses or losses incurred by  
28

1 Plaintiffs and Class in direct consequence of the discharge of his or her duties, or of his or her  
2 obedience to the directions of the employer.

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

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

12 112. Plaintiffs herein takes upon themselves enforcement of these laws and lawful  
13 claims. There is a financial burden involved in pursuing this action. The action is seeking to  
14 vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by  
15 forcing her to pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate  
16 pursuant to Code of Civil Procedure section 1021.5 and otherwise.

17 **EIGHTH CAUSE OF ACTION**

18 **Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.***

19 **(Against Defendants, DOES 1 through 50, and each of them)**

20 113. Plaintiffs re-allege and incorporate by reference all preceding paragraphs herein,  
21 as if fully alleged herein.

22 114. Plaintiffs seek recovery of penalties under the Labor Code Private Attorney  
23 General Act of 2004 (“PAGA.”) (Labor Code sections 2698 *et seq.*)

24 115. PAGA permits an “aggrieved employee” to recover penalties on behalf of  
25 himself/herself and other employees subject to violations of the Labor Code, including violations  
26 of sections 201-204, 226, 226.7, 510, 512, 1174, 1194, and 2802, as well as the applicable Wage  
27 Order.

28 116. Plaintiffs are informed and believe Defendant at all relevant times employed one

1 or more employees.

2 117. For those code sections that provide for the recovery of civil penalties, Plaintiffs  
3 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor  
4 Code that do not specifically provide for civil penalties, Plaintiffs will seek civil penalties of one  
5 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation  
6 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each  
7 subsequent violation pursuant to Labor Code section 2699, subdivision (f).

8 118. Section 2699, subdivision (a) provides that civil penalties may be “recovered  
9 through a civil action brought by an aggrieved employee on behalf of himself or herself and other  
10 current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),  
11 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an  
12 award of reasonable attorneys’ fees and costs.

13 119. The State of California, Plaintiff and aggrieved employees are, therefore, entitled  
14 to civil penalties, attorneys’ fees and costs, according to proof.

15  
16 **PRAYER FOR RELIEF**

17 Plaintiffs, individually, and on behalf of all others similarly situated only with respect  
18 to the class claims, pray for relief and judgment against Defendant as follows:

19 **Class Certification**

20 1. That this action be certified as a class action with respect to the First, Second,  
21 Third, Fourth, Fifth, Sixth and Seventh Causes of Action;

22 2. That Plaintiffs be appointed as the representative of the Class; and

23 3. That counsel for Plaintiffs be appointed as Class Counsel.

24 **As to the First Cause of Action**

25 4. That the Court declare, adjudge and decree that Defendant violated California  
26 Labor Code §§ 204, 510, 1194, 1198 and applicable IWC Wage Orders by willfully failing  
27 to pay all wages due;  
28

- 1           5. For general unpaid wages as may be appropriate;
- 2           6. For pre-judgment interest on any unpaid compensation commencing from the
- 3 date such amounts were due;
- 4           7. For liquidated damages;
- 5           8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 6 California Labor Code § 1194(a); and,
- 7           9. For such other and further relief as the Court may deem equitable and
- 8 appropriate.

9                                   As to the Second Cause of Action

- 10           10. That the Court declare, adjudge and decree that Defendant violated California
- 11 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
- 12           11. For unpaid meal period premium wages as may be appropriate;
- 13           12. For pre-judgment interest on any unpaid compensation commencing from the
- 14 date such amounts were due;
- 15           13. For reasonable attorneys' fees under California Code of Civil Procedure §
- 16 1021.5, and for costs of suit incurred herein; and
- 17           14. For such other and further relief as the Court may deem equitable and
- 18 appropriate.

19                                   As to the Third Cause of Action

- 20           15. That the Court declare, adjudge and decree that Defendant violated California
- 21 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
- 22           16. For unpaid rest period premium wages as may be appropriate;
- 23           17. For pre-judgment interest on any unpaid compensation commencing from the
- 24 date such amounts were due;
- 25           18. For reasonable attorneys' fees under California Code of Civil Procedure §
- 26 1021.5, and for costs of suit incurred herein; and
- 27
- 28

1           19. For such other and further relief as the Court may deem equitable and  
2 appropriate.

3                           As to the Fourth Cause of Action

4           20. That the Court declare, adjudge and decree that Defendant violated the record  
5 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders,  
6 and willfully failed to provide accurate itemized wage statements thereto;

7           21. For penalties and actual damages pursuant to California Labor Code § 226(e);

8           22. For injunctive relief to ensure compliance with this section, pursuant to  
9 California Labor Code § 226(h);

10          23. For reasonable attorneys' fees and for costs of suit incurred herein; and

11          24. For such other and further relief as the Court may deem equitable and  
12 appropriate.

13                           As to the Fifth Cause of Action

14          25. That the Court declare, adjudge and decree that Defendant violated California  
15 Labor Code §§ 201, 202 and 203 by willfully failing to pay all compensation and accrued  
16 vacation owed at the time of termination of the employment;

17          26. For statutory wage penalties pursuant to California Labor Code § 203 for former  
18 employees who have left Defendant's employ;

19          27. For pre-judgment interest on any unpaid wages from the date such amounts were  
20 due;

21          28. For reasonable attorneys' fees and for costs of suit incurred herein; and

22          29. For such other and further relief as the Court may deem equitable and  
23 appropriate.  
24

25                           As to the Sixth Cause of Action

26          30. That the Court declare, adjudge and decree that Defendant violated Labor Code §  
27 2802 and the IWC Wage Orders;  
28

1           31. For general unpaid wages and reimbursement of business expenses as may be  
2 appropriate;

3           32. For pre-judgment interest on any unpaid compensation commencing from the  
4 date such amounts were due;

5           33. For reasonable attorneys' fees and for costs of suit incurred herein; and

6           34. For such other and further relief as the Court may deem equitable and  
7 appropriate.

8                           As to the Seventh Cause of Action

9           35. That the Court declare, adjudge and decree that Defendant violated California  
10 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked  
11 (including minimum and overtime wages), failing to provide meal periods, failing to  
12 maintain accurate records of meal periods, failing to authorize and permit rest periods, and  
13 failing to maintain accurate records of all hours worked and meal periods, failing to furnish  
14 accurate wage statements, and failing to indemnify necessary business expenses;

15           36. For restitution of unpaid wages to Plaintiffs and all Class Members and  
16 prejudgment interest from the day such amounts were due and payable;

17           37. For the appointment of a receiver to receive, manage and distribute any and all  
18 funds disgorged from Defendant and determined to have been wrongfully acquired by  
19 Defendant as a result of violations of California Business & Professions Code §§ 17200 *et*  
20 *seq.*;

21           38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
22 California Code of Civil Procedure § 1021.5;

23           39. For injunctive relief to ensure compliance with this section, pursuant to  
24 California Business & Professions Code §§ 17200, *et seq.*; and,

25           40. For such other and further relief as the Court may deem equitable and  
26 appropriate.  
27  
28

1 As to the Eighth Cause of Action

2 41. That the Court declare, adjudge and decree that Defendants violated the  
3 California Labor Code by failing to pay wages for all hours worked, failing to provide meal  
4 periods, failing to maintain accurate records of meal periods, failing to authorize and permit  
5 rest periods, failing to maintain accurate records of all hours worked and meal periods,  
6 failing to indemnify necessary business expenses, failing to pay final wages at termination,  
7 and failing to furnish accurate wage statements;

8 42. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all  
9 other applicable Labor Code provisions;

10 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
11 California Labor Code § 2699;  
12

13 As to all Causes of Action

14 44. For any additional relief that the Court deems just and proper.  
15

16  
17 Dated: May 25, 2023

**TUNYAN LAW, APC**

18  
19   
20

21 Lilit Tunyan

22 Attorneys for Plaintiffs Isabel Rodriguez  
23 and Daniel Tovar  
24  
25  
26  
27  
28

1 **DEMAND FOR JURY TRIAL**

2

3

4 Plaintiffs Isabel Rodriguez and Daniel Tovar hereby demand a jury trial on all issues so

5 triable.

6

7

8 Dated: May 25, 2023

**TUNYAN LAW, PAC**

9

10 

11 \_\_\_\_\_  
Lilit Tunyan

12

13 Attorneys for Plaintiffs Isabel Rodriguez and

14 Daniel Tovar

15

16

17

18

19

20

21

22

23

24

25

26

27

28

# **Exhibit “A”**



---

Lilit Tunyan, Esq.  
1336 Rossmoyne Avenue,  
Glendale, CA 91207  
Tel: (323) 410-5050  
[ltunyan@tunyanlaw.com](mailto:ltunyan@tunyanlaw.com)

March 20, 2023

**VIA ONLINE SUBMISSION**

Labor & Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612  
[PAGAFilings@dir.ca.gov](mailto:PAGAFilings@dir.ca.gov)

**VIA CERTIFIED MAIL**

**Return Receipt Requested**

Roy Miller  
Agent for Service of Process for  
Roy Miller Painting, Inc.  
811 E. Emerson Avenue  
Orange, CA 92865

**VIA CERTIFIED MAIL**

**Return Receipt Requested**

Roy Miller Painting, Inc.  
1036 N. Lemon Street  
Orange, CA 92867

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

Re: *Isabel Rodriguez, et al. v. Roy Miller Painting, Inc.*

To Whom It May Concern:

Please be advised that my office has been retained by Isabel Rodriguez and Daniel Tovar ("Plaintiffs") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Labor Code §§ 2699, *et seq.*) against their former employer Roy Miller Painting, Inc. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiffs allege Defendant engaged in with respect to Plaintiffs and all of Defendant's aggrieved employees.

Plaintiffs wish to pursue a PAGA representative action on behalf of themselves as aggrieved employees, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiffs and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

### **Factual Background Regarding Plaintiffs’ Employment with Defendant**

Defendant owns and operates an industry, business, and establishment within the State of California, including Orange County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiffs Isabel Rodriguez and Daniel Tovar worked for Defendant as painters from approximately July 2022 to October 2022, primarily in Orange County. Defendant classified Plaintiffs as non-exempt from overtime. During the time period that Plaintiffs were employed by Defendant, Plaintiffs typically worked 5 days per week, and between 8 to 10 hours each workday.

Throughout Plaintiffs' employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiffs' experience working for Defendant was typical and illustrative.

### **Failure to Pay for All Hours Worked, Including Overtime**

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiffs and the Aggrieved Employees for all hours worked (including minimum

wages, straight time wages and overtime wages). Throughout the statutory period, Defendant maintained a policy and practice of not paying for all the time Plaintiffs and the Aggrieved Employees worked. Often Plaintiffs and the Aggrieved Employees missed hours or minutes worked on their paychecks. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiffs and the Aggrieved Employees to perform work “off-the-clock”. During the statutory period Defendant required Plaintiffs and the Aggrieved Employees to clock out for meal periods but to continue working. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

### **Failure to Provide Meal Periods**

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiffs and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Plaintiffs and the Aggrieved Employees would often times miss their meal periods, have interrupted or short meal periods. In those occasions when Plaintiffs and the Aggrieved Employees had an opportunity to take their first meal periods, Defendant wrongfully required Plaintiffs and the Aggrieved employees to combine their 30-minute first meal periods with their first rest periods and have 45-minute combined meal and rest breaks instead of taking separate meal periods and separate rest periods, and wrongfully deducted 45-minutes from Plaintiffs’ and the Aggrieved Employees’

hours. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

### **Failure to Authorize and Permit Rest Periods**

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiffs and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiffs and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not schedule rest periods every 4 hours or a major fraction. Instead, Defendant wrongfully required Plaintiffs and the Aggrieved employees to combine their 30-minute first meal periods with their first rest periods and to take combined 45-minute first meal and rest breaks instead of taking separate meal periods and separate rest periods, and wrongfully deducted 45-minutes from Plaintiffs' and the Aggrieved Employees' hours. Not only Defendant deprived Plaintiffs and the Aggrieved Employees of their right to take first rest periods during the timeframe required under California law but refused to pay for rest periods by deducting 45 minutes of pay for combined meal periods and rest periods. Plaintiffs and the Aggrieved Employees have never been authorized and taken their second and third rest periods. Accordingly, Defendant's policy and practice was for Plaintiffs and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

### **Failure to Maintain Accurate Records of Hours Worked**

Plaintiffs seek penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and the Aggrieved Employees. Additionally, Defendant included hours accrued as sick pay in the total number of hours worked in the wage statements.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

### **Failure to Reimburse and Indemnify Expenses**

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiffs and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included usage of personal cell phones to download and use application to record their time as well as to respond to work related calls from their supervisors. Plaintiffs and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiffs and the Aggrieved Employees for these employment-related expenses.

### **Failure to Timely Pay All Wages at Termination**

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiffs and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiffs and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

### **Failure to Furnish Accurate Itemized Wage Statements**

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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 (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. An employee is presumed to suffer an injury if this information is missing. Labor Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Labor Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendant included hours accrued as sick pay in the total number of hours worked in the wage statements. Most importantly, Defendant wrongfully stated all 9 digits of social security numbers of employees in their wage statements despite the requirement to include only 4 last digits. This is a blatant violation of the Labor Code requirements as well as California laws protecting privacy rights of employees.

As a result of Defendant violating Labor Code § 226, Plaintiffs and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

### **Failure to Pay All Earned Wages Twice Per Month**

Based on its failure to pay Plaintiffs and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Labor Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiffs and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

### **Action for Civil Penalties Under PAGA**

In light of the above, Plaintiffs allege that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;

4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiffs seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiffs have placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

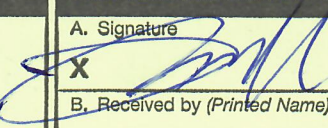
The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiffs becomes aware of additional compensation owed or losses incurred by Plaintiffs or by any other aggrieved employee of Defendant or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

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



**Lilit Tunyan, Esq.**  
**Partner**  
**TUNYAN LAW, APC**

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                  |                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>                                                                                                                                                                                                                                                                       |  | <p>A. Signature </p> <p><input checked="" type="checkbox"/> Agent<br/><input type="checkbox"/> Addressee</p>                                                                                                     |                                     |
| <p>1. Article Addressed to:</p> <p>ROY MILLER PAINTING INC<br/>1036 N. LEMON ST.<br/>ORANGE, CA 92867</p>                                                                                                                                                                                                                                                                                                                                                                                       |  | <p>B. Received by (Printed Name)</p>                                                                                                                                                                                                                                                               | <p>C. Date of Delivery<br/>3/22</p> |
| <p>2. Article Number (Transfer from service label)</p> <p>9590 9402 8037 2349 8176 20</p>                                                                                                                                                                                                                                                                                                                                                                                                       |  | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p>                                                                                                                                            |                                     |
| <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature<br/><input type="checkbox"/> Adult Signature Restricted Delivery<br/><input type="checkbox"/> Certified Mail®<br/><input type="checkbox"/> Certified Mail Restricted Delivery<br/><input type="checkbox"/> Collect on Delivery<br/><input type="checkbox"/> Collect on Delivery Restricted Delivery<br/><input type="checkbox"/> Insured Mail<br/><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p> |  | <p><input type="checkbox"/> Priority Mail Express®<br/><input type="checkbox"/> Registered Mail™<br/><input type="checkbox"/> Registered Mail Restricted Delivery<br/><input type="checkbox"/> Signature Confirmation™<br/><input type="checkbox"/> Signature Confirmation Restricted Delivery</p> |                                     |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

| USPS TRACKING#                                         |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>SANTA CLARITA, CA 913</p> <p>25 MAR 2023 PM 3 L</p> | <p>First-Class Mail<br/>Postage &amp; Fees Paid<br/>USPS<br/>Permit No. G-10</p>                                                                                                                                                                                                                                                                                                                                            |
| <p>9590 9402 8037 2349 8176 20</p>                     |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>United States<br/>Postal Service</p>                | <p>• Sender: Please print your name, address, and ZIP+4® in this box•</p> <div style="border: 1px solid black; padding: 10px; text-align: center;">  <p><b>TUNYAN LAW, APC</b><br/>1336 Rossmoyne Ave.<br/>Glendale, CA 91207</p> </div> <p>UNC</p>  |

**From:** [noreply@salesforce.com](mailto:noreply@salesforce.com) on behalf of [LWDA DO NOT REPLY](#)  
**To:** [ltunyan@tunyanlaw.com](mailto:ltunyan@tunyanlaw.com)  
**Subject:** Thank you for submission of your PAGA Case.  
**Date:** Monday, March 20, 2023 12:41:03 PM

---

3/20/2023

LWDA Case No. LWDA-CM-943148-23  
Law Firm : Tunyan Law, APC  
Plaintiff Name : Isabel Rodriguez, Daniel Tovar  
Employer: Roy Miller Painting, Inc.  
Filing Fee : \$75.00  
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 ) ss  
4 COUNTY OF LOS ANGELES )

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18  
6 and not a party to the within action; my business address is 1336 Rossmoyne Avenue  
7 Glendale, California 91207. On May 25, 2023, I served the foregoing document described as:

8 On the date indicated below, I served the document described as: **FIRST AMENDED**  
9 **COMPLAINT** on the interested parties in this action by sending a true copy thereof to  
10 interested parties as follows and as stated on the attached service list:

11 Greg S. Labate  
12 [glabate@sheppardmullin.com](mailto:glabate@sheppardmullin.com)  
13 Molly Brooks  
14 [MBrooks@sheppardmullin.com](mailto:MBrooks@sheppardmullin.com)  
15 Seana Pierce  
16 [SPierce@sheppardmullin.com](mailto:SPierce@sheppardmullin.com)  
17 Tomi Oshita  
18 [toshita@sheppardmullin.com](mailto:toshita@sheppardmullin.com)  
19 **Sheppard, Mullin, Richter & Hampton, LLP**  
20 650 Town Center Drive, 10th Floor  
21 Costa Mesa, California 92626-1993  
22 Telephone: 714-513-5100  
23 Facsimile: 714-513-5130

24 *Attorneys for Defendant Roy Miller Painting, Inc.*

25 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale,  
26 California, by e-mail delivery on the parties listed herein at their most recent known  
27 e-mail address or e-mail of record in this action.

28 [✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic  
service, I caused the documents to be sent to the persons at the electronic service addresses  
listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is  
true and correct.

Executed on May 25, 2023 at Glendale, California.

Lilit Tunyan

Name



Signature