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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF ALAMEDA**

9 SANTOS CORDOVA-VILLALTA, an  
individual, on behalf of himself, others  
10 similarly situated,

11 PLAINTIFF,

12 v.

13 MB JESSEE PAINTING INC., a California  
Corporation, and DOES 1 thru 50, inclusive,

14 DEFENDANTS.  
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**FILED**  
Superior Court of California  
County of Alameda

05/18/2023

Clad Fike, Executive Officer/Clerk of the Court

By: A. Linhares Deputy

CASE NO.: 23CV029452

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

1. Failure to Pay Overtime Wages In Violation of Labor Code § 510
2. Violations of Labor Code § 226(e)
3. Waiting Time Penalties Pursuant to Labor Code § 203
4. Violation of Business & Professions Code § 17200
5. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 256, 510, 558, 1197.1, 1198, 1771, 1774, 2802 as well as IWC Wage Order No. 16-2001

1 Plaintiff Santos Cordova-Villalta, an individual, on behalf of himself and others similarly  
2 situated, complains of Defendant MB Jessee Painting Inc. and the Doe Defendants  
3 (“Defendants”) and each of them, as follows:

4 **I.**

5 **INTRODUCTION AND FACTUAL BACKGROUND**

6 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of  
7 Plaintiff and the following classes and subclasses:

- 8 (1) all individuals who were employed by MB Jessee Painting Inc., any businesses  
9 known as and/or doing business as MB Jessee Painting, and any predecessor,  
10 merged, or related entities as a non-exempt, hourly employee or other similar  
11 position in California for one or more pay periods from September 16, 2018 and  
continuing into the present; (Class)<sup>1</sup>
- 12 (2) all individuals who were employed by MB Jessee Painting Inc., any businesses  
13 known as and/or doing business as MB Jessee Painting, and any predecessor,  
14 merged, or related entities as a non-exempt, hourly employee or other similar  
15 position in California for one or more pay periods from March 13, 2022 and  
continuing into the present; (Wage Statement Class)
- 16 (3) all individuals who were employed by MB Jessee Painting Inc., any businesses  
17 known as and/or doing business as MB Jessee Painting, and any predecessor, merged,  
18 or related entities in California as a non-exempt, hourly employee or other similar  
19 position and who worked a shift of more than eight (8) hours in a day and/or forty  
20 (40) hours in a week during a pay period from September 16, 2018 and continuing  
into the present (“Non-Exempt Overtime Subclass”);
- 21 (4) all individuals who were employed by MB Jessee Painting Inc., any businesses  
22 known as and/or doing business as MB Jessee Painting, and any predecessor, merged,  
23 or related entities for one or more pay periods in California as a non-exempt, hourly  
24 employee and who worked a shift of more than eight (8) hours in a day and/or forty  
25 (40) hours in a week during a period where they also received prevailing wage pay, a  
26 non-discretionary bonus, incentive payment/pay, shift differential, and/or a payment  
under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate  
Brush” from September 16, 2018 and continuing into the present; (“Incentive Pay  
Overtime Subclass”);

27 <sup>1</sup> Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and  
28 25 days or from April 6, 2020 to October 1, 2020. “Notwithstanding any other law, the statutes of limitations and  
repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”

Collectively, groups three (3) and four (4) may be referred to as the “Overtime Subclass” or “Overtime Subclasses.”

(5) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between September 16, 2018 and continuing into the present. (“General Late Payment Class”);

(6) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received prevailing wage pay, a non-discretionary bonus, incentive payment/pay, shift differential, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” and whose employment concluded at any time between September 16, 2018 and continuing into the present. (“Incentive Payment Late Payment Subclass”);

(7) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and who received sick pay in the same pay period and/or month that they also received prevailing wage pay, a non-discretionary bonus, incentive payment/pay, shift differential, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” and whose employment concluded at any time between September 16, 2018 and continuing into the present. (“Sick Pay Late Payment Subclass”).

Collectively, groups five (5), six (6), and seven (7) may be referred to as the “Late Payment Class.”

These Classes and Subclasses may all collectively be referred to herein as the “Class” where appropriate and for ease of reference.

2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

(1) all non-exempt, hourly employees who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any

predecessor, merged, or related entities in California at any point from March 13, 2022 and continuing into the present. (“Non-Exempt Aggrieved Employees”);

(2) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from March 13, 2022 and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);

(3) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received prevailing wage pay, a non-discretionary bonus, incentive payment/pay, shift differential, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” from March 13, 2022 and continuing into the present; (“Incentive Pay Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups two (2) and three (3) may be referred to as the “Overtime Aggrieved Employees.”

(4) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between March 13, 2022 and continuing into the present. (“General Late Payment Aggrieved Employees”);

(5) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received prevailing wage pay, a non-discretionary bonus, incentive payment/pay, shift differential, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” and whose employment concluded at any time between March 13, 2022 and continuing into the present. (“Incentive Payment Late Payment Aggrieved Employees”);

(6) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged,

1 or related entities for one or more pay periods in California as a non-exempt, hourly  
2 employee and who received sick pay in the same pay period and/or month that they  
3 they also received prevailing wage pay, a non-discretionary bonus, incentive  
4 payment/pay, shift differential, and/or a payment under the pay codes “PFP,”  
5 “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” and whose employment  
concluded at any time between March 13, 2022 and continuing into the present.  
6 (“Sick Pay Late Payment Aggrieved Employees”).

7 Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to  
8 as the “Late Payment Aggrieved Employees.”

9 Collectively, groups 1-6 may all collectively be referred to herein as aggrieved employees  
10 and/or all aggrieved employees where appropriate.

11 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendant  
12 MB Jessee Painting Inc, and any subsidiaries or affiliated companies and Does 1 through 50 (who  
13 include individuals acting on behalf an employer within the meaning of Labor Code § 558.1)  
14 within the State of California as a non-exempt, hourly employees either within the past year  
and/or between September 16, 2018 and continuing into the present.

15 4. Plaintiff is a former employee of Defendants, including Defendant MB Jessee  
16 Painting Inc., in Alameda County within the past year. At times throughout his employment with  
17 Defendants, including within the past year, Plaintiff, the Classes, and the aggrieved employees  
18 worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8) hours in a  
19 day, and worked shifts in excess of ten (10) hours in a day.

20 5. At times throughout his employment with Defendants since September 16, 2018  
21 and within the past year, Plaintiff, the Classes, and the aggrieved employees worked more than  
22 forty (40) hours per week.

23 6. Defendants hire employees to work within the state of California who are covered  
24 by California Industrial Welfare Commission Occupational Wage Order No. 16-2001. Based  
25 upon information and belief, Defendants classified Plaintiff, the Classes, and the aggrieved  
26 employees as non-exempt for the purposes of overtime, meal periods, and rest periods.

27 7. Plaintiff and the Wage Statement Class received at least one wage statement  
28 between one (1) year prior to the filing of this Complaint and continuing into the present.

1           8. Labor Code § 510 requires an employer to compensate an employee who works  
2 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight  
3 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular  
4 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate  
5 employees at no less than twice the regular rate of pay when an employee works more than  
6 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.  
7 In accordance with Labor Code § 1194, Plaintiff, the other Class Members, and the other  
8 aggrieved employees could not agree to work for a lesser wage.

9           9. In addition, Labor Code § 1197 states the California requirement that employees  
10 must be paid at least the minimum wage fixed by the Commission or by any applicable state or  
11 local law, and any payment of less than the minimum wage is unlawful.

12           10. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the  
13 standard conditions of labor fixed by the commission shall be the maximum hours of work and  
14 the standard conditions of labor for employees. The employment of any employee for longer  
15 hours than those fixed by the order or under conditions of labor prohibited by the order is  
16 unlawful.”

17           11. Labor Code § 1771 states that “Except for public works projects of one thousand  
18 dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a  
19 similar character in the locality in which the public work is performed, and not less than the  
20 general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this  
21 chapter, shall be paid to all workers employed on public works.”

22           12. Moreover, Labor Code § 1774 provides that “The contractor to whom the contract  
23 is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates  
24 of wages to all workmen employed in the execution of the contract.”

25           13. At times since September 16, 2018 and within the past year, Defendants paid  
26 Plaintiff, the Class, the Overtime Subclass, and the other aggrieved employees with non-  
27 discretionary bonuses, incentive payments, prevailing wages, non-discretionary performance pay,  
28 shift differentials, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or

“Prevailing Wage Rate Brush” and other compensation that was required to be included within the regular rate during the same workweek that they earned overtime wages, but failed to include such amounts when calculating and paying overtime wages in violation of Labor Code section 510.

14. At times from at least September 16, 2018 and within the past year, Defendant also failed to include additional compensation other than Plaintiff, the Class Members, the Overtime Subclass members, and the other aggrieved employees’ base rate, when calculating and paying overtime. For instance, for the pay period of December 11, 2022 to December 24, 2022, Defendant paid Plaintiff overtime wages based solely on his regular hourly base pay and failed to include the pay he earned under the pay code PFP when calculating and paying his overtime wages:

| Employee Pay Stub                                                  |  | Check number: DD6954 |       | Pay Period: 12/11/2022 - 12/24/2022 |            | Pay Date: 12/30/2022 |  |
|--------------------------------------------------------------------|--|----------------------|-------|-------------------------------------|------------|----------------------|--|
| Employee                                                           |  |                      |       |                                     |            |                      |  |
| Santos Roberto Cordova-Villalta, 1424 102nd Ave, Oakland, CA 94603 |  |                      |       |                                     |            |                      |  |
| Earnings and Hours                                                 |  | Qty                  | Rate  | Current                             | YTD Amount | Direct Deposit       |  |
| E1 Regular Earnings                                                |  | 80.00                | 28.00 | 2,240.00                            | 39,900.28  | Checking - *****6125 |  |
| E2 Overtime Earnings                                               |  | 0.33                 | 42.00 | 13.86                               | 1,084.44   | 1,836.88             |  |
| Cell Phone Usage Reimburse...                                      |  |                      |       | 6.92                                | 145.32     | Sick                 |  |
| Prevailing Wage Rate Brush ...                                     |  |                      |       |                                     | 1,390.52   | Accrued              |  |
| PFP                                                                |  |                      |       |                                     | 1,372.67   | Used                 |  |
|                                                                    |  | 80.33                |       | 2,260.78                            | 43,893.23  | Available            |  |
|                                                                    |  |                      |       |                                     |            | Current              |  |
|                                                                    |  |                      |       |                                     |            | YTD                  |  |
|                                                                    |  |                      |       |                                     |            | 2.68                 |  |
|                                                                    |  |                      |       |                                     |            | 32.52                |  |
|                                                                    |  |                      |       |                                     |            |                      |  |
| Taxes                                                              |  |                      |       | Current                             | YTD Amount | Memo                 |  |
| Medicare Employee Addl Tax                                         |  |                      |       | 0.00                                | 0.00       | Direct Deposit       |  |
| Federal Withholding                                                |  |                      |       | -142.00                             | -2,561.95  |                      |  |
| Social Security Employee                                           |  |                      |       | -140.17                             | -2,721.38  |                      |  |
| Medicare Employee                                                  |  |                      |       | -32.78                              | -638.45    |                      |  |
| CA - Withholding                                                   |  |                      |       | -84.08                              | -1,517.40  |                      |  |
| CA - Disability Employee                                           |  |                      |       | -24.87                              | -482.53    |                      |  |
|                                                                    |  |                      |       | -423.90                             | -7,920.07  |                      |  |
| Adjustments to Net Pay                                             |  |                      |       | Current                             | YTD Amount |                      |  |
| Manual Check                                                       |  |                      |       |                                     | -1,211.99  |                      |  |

| Direct Deposit       |  |         |      | Amount    |
|----------------------|--|---------|------|-----------|
| Checking - *****8125 |  |         |      | 1,836.88  |
| Sick                 |  | Accrued | Used | Available |
| Current              |  | 2.68    | 0.00 | 32.52     |
| YTD                  |  | 32.52   |      |           |

Memo

Direct Deposit

| Employee Pay Stub                                                  |      | Check number: |         | Pay Period: 12/31/2022 - 12/31/2022 |         | Pay Date: 12/31/2022 |      |           |
|--------------------------------------------------------------------|------|---------------|---------|-------------------------------------|---------|----------------------|------|-----------|
| Employee                                                           |      |               |         |                                     |         |                      |      |           |
| Santos Roberto Cordova-Villalta, 1424 102nd Ave, Oakland, CA 94603 |      |               |         |                                     |         |                      |      |           |
| Earnings and Hours                                                 | Qty  | Rate          | Current | YTD Amount                          | Sick    | Accrued              | Used | Available |
| PFP                                                                |      | 67.05         | 67.05   | 1,439.72                            | Current | 0.00                 | 0.00 | 32.52     |
| E1 Regular Earnings                                                |      |               |         | 39,900.28                           | YTD     | 32.52                |      |           |
| E2 Overtime Earnings                                               |      |               |         | 1,084.44                            |         |                      |      |           |
| Prevailing Wage Rate Brush ...                                     |      |               |         | 1,390.52                            |         |                      |      |           |
| Cell Phone Usage Reimburse...                                      |      |               |         | 145.32                              |         |                      |      |           |
|                                                                    | 0.00 |               | 67.05   | 43,900.28                           |         |                      |      |           |
| Taxes                                                              |      |               | Current | YTD Amount                          |         |                      |      |           |
| Medicare Employee Addl Tax                                         |      |               | 0.00    | 0.00                                |         |                      |      |           |
| Federal Withholding                                                |      |               | -5.03   | -2,660.98                           |         |                      |      |           |
| Social Security Employee                                           |      |               | -4.16   | -2,725.54                           |         |                      |      |           |
| Medicare Employee                                                  |      |               | -0.97   | -637.42                             |         |                      |      |           |
| CA - Withholding                                                   |      |               | -1.84   | -1,519.40                           |         |                      |      |           |
| CA - Disability Employee                                           |      |               | -0.74   | -483.57                             |         |                      |      |           |
|                                                                    |      |               | -12.84  | -7,932.91                           |         |                      |      |           |
| Adjustments to Net Pay                                             |      |               | Current | YTD Amount                          |         |                      |      |           |
| Manual Check                                                       |      |               | -54.21  | -1,266.20                           |         |                      |      |           |
| Net Pay                                                            |      |               | 0.00    | 34,761.17                           |         |                      |      |           |

15. At times from at least September 16, 2018 and within the past year, Defendant also failed to include additional compensation other than Plaintiff, the Class Members, the Overtime Subclass members, and the other aggrieved employees' base rate, when calculating and paying overtime. For example, the pay period of November 13, 2022 to November 28, 2022, Defendant failed to include the wages Plaintiff earned at his higher prevailing wage rate when calculating and paying his overtime wages:

| Earnings and Hours             | Qty   | Rate  | Current         | YTD Amount       | Direct Deposit       | Amount                 |
|--------------------------------|-------|-------|-----------------|------------------|----------------------|------------------------|
| E1 Regular Earnings            | 39.93 | 28.00 | 1,118.04        | 35,644.28        | Checking - *****8125 | 1,998.28               |
| E2 Overtime Earnings           | 0.30  | 42.00 | 12.60           | 1,081.34         |                      |                        |
| Prevailing Wage Rate Brush ... | 24.07 | 67.77 | 1,390.52        | 1,390.52         | Sick                 | Accrued Used Available |
| Cell Phone Usage Reimburse...  |       |       | 6.92            | 131.48           | Current              | 2.14 0.00 27.43        |
| PFP                            |       |       |                 | 1,372.67         | YTD                  | 32.52                  |
|                                | 64.30 |       | 2,528.08        | 39,600.29        |                      |                        |
| <b>Taxes</b>                   |       |       |                 |                  | <b>Memo</b>          |                        |
|                                |       |       |                 |                  | Direct Deposit       |                        |
| Medicare Employee Addl Tax     |       |       | 0.00            | 0.00             |                      |                        |
| Federal Withholding            |       |       | -201.00         | -2,320.95        |                      |                        |
| Social Security Employee       |       |       | -156.74         | -2,455.22        |                      |                        |
| Medicare Employee              |       |       | -36.65          | -574.20          |                      |                        |
| CA - Withholding               |       |       | -107.60         | -1,369.08        |                      |                        |
| CA - Disability Employee       |       |       | -27.81          | -435.60          |                      |                        |
|                                |       |       | -529.80         | -7,156.05        |                      |                        |
| <b>Adjustments to Not Pay</b>  |       |       |                 |                  |                      |                        |
| Manual Check                   |       |       |                 | -1,211.99        |                      |                        |
| <b>Net Pay</b>                 |       |       | <b>1,998.28</b> | <b>31,233.25</b> |                      |                        |

16. At times from September 16, 2018 and within the past year, Defendant failed to pay Plaintiff, the Class, and all aggrieved employees overtime wages at one and one-half times their regular rate and instead underpaid their overtime wages.

17. At times from September 16, 2018 and within the past year, Plaintiff alleges that Defendants maintained a policy and practice of paying Plaintiff, the Class, and the other aggrieved employees their overtime wages at the rate of one and one-half times their hourly base rate and instead of at the rate of one-and-a half of their base rate (or their base rate plus .5x their overtime rate). As a result, of Defendants failure to include non-discretionary bonuses, incentive payments, prevailing wages, non-discretionary performance pay, shift differentials, and/or a payment under the pay codes "PFP," "Prevailing Wage Rate," or "Prevailing Wage Rate Brush" and other compensation that was required to be included within the regular rate, Defendants failed to pay Plaintiff, the Class, and the aggrieved employees all overtime wages at the rates required by Labor Code § 510. Further, by failing to pay Plaintiff, the Class, and the aggrieved employees overtime pay at both the minimum rates required under California law and the prevailing wage rates, Defendants violated Labor Code §§ 1771 and 1774.

1           18. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to  
2 be violated...any provision regulating hours and days of work in any order of the Industrial  
3 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,  
4 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was  
5 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each  
6 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
7 period for which the employee was underpaid in addition to an amount sufficient to recover  
8 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected  
9 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only  
10 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and  
11 not any underpaid wages.

12           19. As to Plaintiff, the Wage Statement Class, and the aggrieved employees,  
13 Defendants also failed to provide accurate itemized wage statements in accordance with Labor  
14 Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time  
15 of each payment to furnish an itemized wage statement in writing showing:

- 16           (1) gross wages earned;  
17           (2) total hours worked by the employee;  
18           (3) the number of piece-rate units earned and any applicable piece rate if the  
19           employee is paid on a piece rate;  
20           (4) all deductions, provided that all deductions made on written orders of the employee  
21           may be aggregated and shown as one item;  
22           (5) net wages earned;  
23           (6) the inclusive dates of the period for which the employee is paid;  
24           (7) the name of the employee and only the last four digits of his or her social security  
25           number or an employee identification number other than a social security number;  
26           (8) the name and address of the legal entity that is the employer...;  
27           (9) all applicable hourly rates in effect during the pay period and the corresponding  
28           number of hours worked at each hourly rate by the employee...

23           20. Similarly, Labor Code § 226(e) provides:

- 24           (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an  
25           employer to comply with subdivision (a) is entitled to recover the greater of all actual  
26           damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and  
27           one hundred dollars (\$100) per employee for each violation in a subsequent pay period,  
28           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.  
              (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the  
              employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

21. At times between March 13, 2022 and continuing into the present, Defendant issued wage statements to Plaintiff, the Wage Statement Class, and the aggrieved employees that did not contain either an employee identification number nor the last four digits of their social security number in violation of Labor Code § 226(a)(7).

22. At times between March 13, 2022 and continuing into the present, Defendants also issued itemized wage statements to Plaintiff, the Wage Statement Class, and the other aggrieved employees that did not include the gross wages earned, in part, due to Defendants' policy and practice of including expense reimbursement associated with cell phones in the wage category and failing to separate out this reimbursement from the wages:

| Earnings and Hours             |       |       |          |            | Direct Deposit       |  |  |          |
|--------------------------------|-------|-------|----------|------------|----------------------|--|--|----------|
|                                | Qty   | Rate  | Current  | YTD Amount | Checking - *****5125 |  |  | Amount   |
| E1 Regular Earnings            | 39.93 | 28.00 | 1,118.04 | 35,044.28  |                      |  |  | 1,998.28 |
| E2 Overtime Earnings           | 0.30  | 42.00 | 12.60    | 1,081.34   |                      |  |  |          |
| Prevailing Wage Rate Brush ... | 24.07 | 67.77 | 1,390.52 | 1,390.52   |                      |  |  |          |
| Cell Phone Usage Reimburse...  |       |       | 8.92     | 131.48     |                      |  |  |          |
| PFP                            |       |       |          | 1,372.87   |                      |  |  |          |
|                                | 64.30 |       | 2,528.08 | 38,600.29  |                      |  |  |          |
| Taxes                          |       |       |          |            | Memo                 |  |  |          |
|                                |       |       | Current  | YTD Amount | Direct Deposit       |  |  |          |
| Medicare Employee Addl Tax     |       |       | 0.00     | 0.00       |                      |  |  |          |
| Federal Withholding            |       |       | -201.00  | -2,320.95  |                      |  |  |          |
| Social Security Employee       |       |       | -156.74  | -2,465.22  |                      |  |  |          |
| Medicare Employee              |       |       | -36.65   | -674.20    |                      |  |  |          |
| CA - Withholding               |       |       | -107.60  | -1,369.08  |                      |  |  |          |
| CA - Disability Employee       |       |       | -27.81   | -435.60    |                      |  |  |          |
|                                |       |       | -529.80  | -7,155.05  |                      |  |  |          |
| Adjustments to Net Pay         |       |       |          |            |                      |  |  |          |
|                                |       |       | Current  | YTD Amount |                      |  |  |          |
| Manual Check                   |       |       |          | -1,211.99  |                      |  |  |          |
| Net Pay                        |       |       | 1,998.28 | 31,233.25  |                      |  |  |          |

23. At times between March 13, 2022 and continuing into the present, as a result of Defendants' common policy and practice of improperly including payments associated with cell

phone expense reimbursement as a wage, Defendants misreported the amount of net wages on Plaintiff, the Class, and the aggrieved employees itemized wage statements. This practice violated Labor Code §§ 226(a)(1) and (5).

24. At times between March 13, 2020 and continuing into the present, due to Defendants' mischaracterization of expense reimbursement as a wage, the Wage Statement Class, and the aggrieved employees were also issued W-2s that reflected incorrect wage amounts and were forced to pay additional wage related taxes on non-taxable income. Such practices violated Labor Code § 2802 in that it caused a loss to the aggrieved employees in the normal discharge of their job duties.

25. At times between March 13, 2022 and continuing into the present, Defendants also issued numerous wage statements to Plaintiff, the Wage Statement Class, and the aggrieved employees, including but not limited to wage statements with payments under the paycode "PFP," that incorrectly identified their net pay as being "0.00"—examples below:

| Earnings and Hours            | Qty | Rate  | Current        | YTD Amount        | Sick    | Accrued | Used | Available |
|-------------------------------|-----|-------|----------------|-------------------|---------|---------|------|-----------|
| PFP                           |     | 64.24 | 64.24          | 64.24             | Current | 0.00    | 0.00 | 32.52     |
|                               |     |       |                |                   | YTD     | 32.52   |      |           |
| <b>Taxes</b>                  |     |       | <b>Current</b> | <b>YTD Amount</b> |         |         |      |           |
| Medicare Employee Addl Tax    |     |       | 0.00           | 0.00              |         |         |      |           |
| Federal Withholding           |     |       | -4.82          | -4.82             |         |         |      |           |
| Social Security Employee      |     |       | -3.98          | -3.98             |         |         |      |           |
| Medicare Employee             |     |       | -0.93          | -0.93             |         |         |      |           |
| CA - Withholding              |     |       | -1.99          | -1.99             |         |         |      |           |
| CA - Disability Employee      |     |       | -0.58          | -0.58             |         |         |      |           |
|                               |     |       | -12.30         | -12.30            |         |         |      |           |
| <b>Adjustments to Net Pay</b> |     |       | <b>Current</b> | <b>YTD Amount</b> |         |         |      |           |
| Manual Check                  |     |       | -51.94         | -51.94            |         |         |      |           |
| <b>Net Pay</b>                |     |       | <b>0.00</b>    |                   |         |         |      |           |

| Earnings and Hours             | Qty  | Rate  | Current        | YTD Amount        | Sick    | Accrued | Used | Available |
|--------------------------------|------|-------|----------------|-------------------|---------|---------|------|-----------|
| PFP                            |      | 67.05 | 67.05          | 1,439.72          | Current | 0.00    | 0.00 | 32.52     |
| E1 Regular Earnings            |      |       |                | 39,000.28         | YTD     | 32.52   |      |           |
| E2 Overtime Earnings           |      |       |                | 1,094.44          |         |         |      |           |
| Prevailing Wage Rate Brush ... |      |       |                | 1,390.52          |         |         |      |           |
| Cell Phone Usage Reimburse...  |      |       |                | 145.32            |         |         |      |           |
|                                | 0.00 |       | 67.05          | 43,000.28         |         |         |      |           |
| <b>Taxes</b>                   |      |       | <b>Current</b> | <b>YTD Amount</b> |         |         |      |           |
| Medicare Employee Addl Tax     |      |       | 0.00           | 0.00              |         |         |      |           |
| Federal Withholding            |      |       | -5.03          | -2,600.98         |         |         |      |           |
| Social Security Employee       |      |       | -4.16          | -2,725.54         |         |         |      |           |
| Medicare Employee              |      |       | -0.97          | -637.42           |         |         |      |           |
| CA - Withholding               |      |       | -1.94          | -1,519.40         |         |         |      |           |
| CA - Disability Employee       |      |       | -0.74          | -483.57           |         |         |      |           |
|                                |      |       | -12.84         | -7,932.91         |         |         |      |           |
| <b>Adjustments to Net Pay</b>  |      |       | <b>Current</b> | <b>YTD Amount</b> |         |         |      |           |
| Manual Check                   |      |       | -54.21         | -1,266.20         |         |         |      |           |
| <b>Net Pay</b>                 |      |       | <b>0.00</b>    | <b>34,761.17</b>  |         |         |      |           |

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| Earnings and Hours            | Qty  | Rate   | Current        | YTD Amount        | Sick    | Accrued | Used | Available |
|-------------------------------|------|--------|----------------|-------------------|---------|---------|------|-----------|
| PFP                           |      | 151.32 | 151.32         | 1,372.67          | Current | 0.00    | 0.00 | 25.29     |
| E1 Regular Earnings           |      |        |                | 34,526.24         | YTD     | 32.52   |      |           |
| E2 Overtime Earnings          |      |        |                | 1,045.74          |         |         |      |           |
| Cell Phone Usage Reimburse... |      |        |                | 124.58            |         |         |      |           |
|                               | 0.00 |        | 151.32         | 37,072.21         |         |         |      |           |
| <b>Taxes</b>                  |      |        | <b>Current</b> | <b>YTD Amount</b> |         |         |      |           |
| Medicare Employee Addl Tax    |      |        | 0.00           | 0.00              |         |         |      |           |
| Federal Withholding           |      |        | -11.35         | -2,119.95         |         |         |      |           |
| Social Security Employee      |      |        | -9.38          | -2,298.48         |         |         |      |           |
| Medicare Employee             |      |        | -2.20          | -637.55           |         |         |      |           |
| CA - Withholding              |      |        | -4.39          | -1,281.48         |         |         |      |           |
| CA - Disability Employee      |      |        | -1.68          | -407.79           |         |         |      |           |
|                               |      |        | -28.98         | -6,625.25         |         |         |      |           |
| <b>Adjustments to Net Pay</b> |      |        | <b>Current</b> | <b>YTD Amount</b> |         |         |      |           |
| Manual Check                  |      |        | -122.34        | -1,211.99         |         |         |      |           |
| <b>Net Pay</b>                |      |        | <b>0.00</b>    | <b>29,234.97</b>  |         |         |      |           |

26. At times between March 13, 2022 and continuing into the present, based upon information and belief, Defendants also failed to include the pay under the pay code PFP on Plaintiff, the Wage Statement Class, and the other aggrieved employees wage statements and instead included it on a separate wage statement rendering it impossible from Plaintiff, the Wage Statement Class, and the other aggrieved employees to determine from their wage statement alone all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a)(9). In addition, to the extent that Defendant contends that PFP or the Prevailing Wage Pay includes overtime wages, Defendants failed to include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a)(9).

27. At times between March 13, 2022 and continuing into the present, due to Defendants' failure to pay Plaintiff, the Wage Statement Class, and all aggrieved employees all overtime wages, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Itemized Wage Statement, and all aggrieved employees.

28. Plaintiff, the Wage Statement Class, and the aggrieved employees also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily

1 and easily determine from the wage statements themselves the information required to be set forth  
2 by Section 226(a), the information provided by Defendants was confusing and inaccurate.

3 29. In addition, Plaintiff, the Wage Statement Class, and the aggrieved employees  
4 were unable to determine at all the total hours worked by the employee, the gross wages earned,  
5 the net wages earned, and all applicable hourly rates in effect during the pay period and the  
6 corresponding number of hours worked at each hourly rate by the employee for the reasons  
7 discussed above.

8 30. Defendants also knowingly and intentionally failed to pay Plaintiff, the Class, and  
9 the Wage Statement Class all overtime wages. Moreover, Plaintiff and the Wage Statement Class  
10 also suffered legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable  
11 to readily and easily determine from the wage statements themselves the information required to  
12 be set forth by Section 226(a), the information provided by Defendants was confusing and  
13 inaccurate, Plaintiff, the Wage Statement Class, and the aggrieved employees were unable to  
14 determine at all the total hours worked by the employee, the gross wages earned, the net wages  
15 earned, and all applicable hourly rates in effect during the pay period and the corresponding  
16 number of hours worked at each hourly rate by the employee for the reasons discussed above. In  
17 addition, Plaintiff, the Wage Statement Class, and the aggrieved employees could not determine  
18 from the wage statement alone the last four digits of their social security number of an employee  
19 identification number.

20 31. In addition, Labor Code § 1198 provides that “the maximum hours of work and the  
21 standard conditions of labor fixed by the commission shall be the maximum hours of work and  
22 the standard conditions of labor for employees. The employment of any employee for longer  
23 hours than those fixed by the order or under conditions of labor prohibited by the order is  
24 unlawful.”

25 32. Labor Code § 246 requires employer to calculate sick leave pay based upon one of  
26 the following formulas:  
27  
28

1 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the  
2 regular rate of pay for the workweek in which the employee uses paid sick time, whether  
3 or not the employee actually works overtime in that workweek.

4 (2) Paid sick time for nonexempt employees shall be calculated by dividing the  
5 employee's total wages, not including overtime premium pay, by the employee's total  
6 hours worked in the full pay periods of the prior 90 days of employment.

7 (3) Paid sick time for exempt employees shall be calculated in the same manner as the  
8 employer calculates wages for other forms of paid leave time.

9 Lab. Code § 246.

10 33. Throughout Plaintiff, the Late Payment Class, and the aggrieved employees'  
11 employment, Defendants failed to include the prevailing wage pay, a non-discretionary bonus,  
12 incentive payment/pay, shift differential, and/or a payment under the pay codes "PFP,"  
13 "Prevailing Wage Rate," or "Prevailing Wage Rate Brush" when calculating and paying sick pay.  
14 *See Wood v. Kaiser Found. Hosps.*, No. D079528, 2023 WL 2198664, at \*12 (Cal. Ct. App. Feb.  
15 24, 2023).

16 34. Further, as a result when Plaintiff, the Late Payment Class, and the Late Payment  
17 Aggrieved Employees employment ended, they left their employment without having received  
18 compensation for all of their sick pay that they were owed under Labor Code § 246 and resulting  
19 in a violation of Labor Code §§ 201-203. As a result of Defendant's underpayment of sick pay,  
20 Plaintiff, the Late Payment Class, and the Late Payment Aggrieved Employees experienced a  
21 violation of Labor Code §§ 201-202 upon separation from Defendant. *See Powell v. Walmart*  
22 *Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at \*6 (S.D. Cal. Feb. 2, 2021)  
23 (denying a motion to dismiss claims under Labor Code section 203 based upon the employer's  
24 alleged failure to include incentive pay when calculating and paying sick pay); *accord Flores v.*  
25 *Dart Container Corp.*, No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at \*7 (E.D.  
26 Cal. May 27, 2020).

27 35. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in  
28 any employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(a), “Labor  
2 performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for  
3 between the 16th and the 26th day of the month during which the labor was performed, and labor  
4 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for  
5 between the 1st and 10th day of the following month. Labor Code § 204 also requires for  
6 employees paid on a bi-weekly and/or weekly basis that “[a]ll wages...earned by any person in  
7 any employment are due and payable twice during each calendar month, on days designated in  
8 advance by the employer as the regular paydays.”

9 36. Due to Defendants’ failure to pay Plaintiff, the Class, and all aggrieved employees  
10 all overtime wages and sick pay (including at the correct rate), Defendants failed to timely pay  
11 Plaintiff, and the aggrieved employees all wages owed within the time constraints required by  
12 Labor Code § 204 on a regular and consistent basis.

13 37. Labor Code § 210 provides that “in addition to, an entirely independent and apart  
14 from, any other penalty provided in this article, every person who fails to pay the wages of each  
15 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For  
16 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For  
17 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for  
18 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of  
19 the faulty compensation policies and practices described in detail above and Defendants’ failure  
20 to pay Plaintiff all aggrieved employees within the time constraints of Labor Code section 204,  
21 the State of California is entitled to recover penalties under Labor Code § 210 through PAGA.  
22 *See Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157.*

23 38. Under Labor Code §§ 201-202, an employer must provide an employee wages at  
24 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §  
25 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is  
26 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30  
27 days.  
28

1           39. Defendants failed to Plaintiff, the Late Payment Class, and the other Late Payment  
2 Aggrieved Employees any wages whatsoever within the time constraints of Labor Code section  
3 201-202. Moreover, as described in detail above, Defendants failed to pay Plaintiff, the Late  
4 Payment Class, and the aggrieved employees whose employment concluded all wages owed,  
5 including but not limited to overtime wages and sick pay (including at the correct rates) within  
6 time constraints proscribed in Labor Code §§ 201-202. Thus, as result of Defendants' faulty  
7 policies described above, Plaintiff, the Late Payment Class, and the Late Payment Aggrieved  
8 Employees left their employment with Defendants without being compensated for each and every  
9 hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203, and 256.

10           40. Labor Code § 256 provides for "a civil penalty in an amount not exceeding 30  
11 days' pay as waiting time under the terms of Section 203. The California Supreme Court and  
12 California Court of Appeal have both specifically recognized the ability of an aggrieved  
13 employee to recover civil penalties under Labor Code § 256 for a defendant's willful violation of  
14 Labor Code § 201 and 202 under PAGA. In *Iskanian v. CLS Transportation Los Angeles, LLC*,  
15 59 Cal.4th 348, 381 (2014), the California Supreme Court acknowledged that PAGA penalties for  
16 the untimely payment of wages included the 30 days of pay as waiting time pursuant to Labor  
17 Code § 256. *See also Esparza v. KS Industries, L.P.* 13 Cal.App.5th 1228, 1242 (2017)  
18 (explaining that the Labor Code § 256 penalties only exist if the employer's failure to timely pay  
19 wages upon separation was willful is a "civil penalty").

20           41. Separate and independent of the foregoing, Defendant also failed to pay Plaintiff,  
21 the Late Payment Class Members, and the Late Payment Aggrieved Employees whose  
22 employment concluded any wages within the time constraints provided by Labor Code §§ 201-  
23 203. This may include but is not limited to, because of Defendant's policy and practice of  
24 processing final pay checks at the same time as all employees pay checks.

25           42. Plaintiff filed his PAGA Notice online with the Labor Workforce Development  
26 Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and  
27 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*  
28 As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor

1 Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from  
2 the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the  
3 postmark date of the PAGA notice. Plaintiff is therefore, entitled to proceed with a civil action  
4 pursuant to Labor Code § 2699.

## 5 **II.**

### 6 **JURISDICTION AND VENUE**

7 43. This Court has subject matter jurisdiction over all causes of action asserted herein  
8 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure  
9 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,  
10 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the  
11 laws of the State of California or is subject to adjudication in the courts of the State of California.

12 44. This Court has personal jurisdiction over Defendant MB Jessee Painting Inc.  
13 because Defendant has caused injuries in the County of Alameda and State of California through  
14 their acts, and by their violation of the California Labor Code and California law in Alameda  
15 County.

16 45. During the statutory period applicable to the claims at issue in this action,  
17 Defendant MB Jessee Painting Inc.'s principal place of business was located at 1552 BEACH  
18 STREET, SUITE G OAKLAND, CA 94608.

19 46. Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
20 Civil Procedure §395. Defendants operates within California and do business within Alameda  
21 County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Classes within  
22 the State of California and the County of Alameda.

23 47. This case should be classified as complex according to Rule 3.400 of the  
24 California Rules of Court, and assigned to a complex litigation judge and department, as it will  
25 involve substantial documentary evidence, and is likely to involve extensive motion practice  
26 raising difficult or novel issues that will be time-consuming to resolve and would require  
27 substantial post judgment judicial supervision.

## 28 **III.**

1 **PARTIES**

2 **A. PLAINTIFF**

3 48. Plaintiff Santos Cordova-Villalta is a former employee of Defendants who worked  
4 for Defendants in Alameda County.

5 49. Plaintiff and the Class were regularly required to:

6 a. Work overtime hours without receiving the proper amount of  
7 compensation;

8 b. Work without being provided an accurate itemized wage statement that  
9 include an employee identification number or only the last four digits of the employee's social  
10 security number or accurately indicate the gross wages earned, total hours worked by the  
11 employee, the net wages earned, as well as all applicable hourly rates in effect during the pay  
12 period and the corresponding number of hours worked at each hourly rate by the employee;

13 c. Were deprived of wages that Defendants knew were due and owing, yet  
14 failed to pay at the time of termination and/or within 72 hours of resignation for those former  
15 employees who did not provide advance notice;

16 d. Were deprived of sick pay at the proper rates;

17 e. Were not paid all wages upon termination and/or within 72 hours of  
18 resignation if they did not provide notice;

19 **B. DEFENDANTS**

20 50. Defendant MB Jessee Painting Inc. is a California corporation, with a current  
21 principal place of business of 1552 BEACH STREET, SUITE G OAKLAND, CA 94608. Upon  
22 information and belief, Defendant employed Plaintiff and the Classes within California and in  
23 Alameda County, including in Oakland, California. Defendant has done and does business  
24 throughout the State of California and in Alameda County.

25 51. The true names and capacities, whether individual, corporate, associate, or  
26 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to  
27 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure  
28 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants

1 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred  
2 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
3 capacities of the Defendants designated hereinafter as DOES when such identities become  
4 known.

5 52. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
6 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
7 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are  
8 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the  
9 employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

#### 10 IV.

#### 11 CLASS ACTION ALLEGATIONS

12 53. Plaintiff brings this action on behalf of himself and all others similarly situated as  
13 a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a  
14 Class and Subclasses composed of and defined as follows:

- 15
- 16 (1) all individuals who were employed by MB Jessee Painting Inc., any businesses  
17 known as and/or doing business as MB Jessee Painting, and any predecessor,  
18 merged, or related entities as a non-exempt, hourly employee or other similar  
19 position in California for one or more pay periods from September 16, 2018 and  
20 continuing into the present; (Class)<sup>2</sup>
- 21 (2) all individuals who were employed by MB Jessee Painting Inc., any businesses  
22 known as and/or doing business as MB Jessee Painting, and any predecessor,  
23 merged, or related entities as a non-exempt, hourly employee or other similar  
24 position in California for one or more pay periods from March 13, 2022 and  
25 continuing into the present; (Wage Statement Class)
- 26 (3) all individuals who were employed by MB Jessee Painting Inc., any businesses  
27 known as and/or doing business as MB Jessee Painting, and any predecessor, merged,  
28 or related entities in California as a non-exempt, hourly employee or other similar  
position and who worked a shift of more than eight (8) hours in a day and/or forty

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<sup>2</sup> Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020."

(40) hours in a week during a pay period from September 16, 2018 and continuing into the present (“Non-Exempt Overtime Subclass”);

(4) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received prevailing wage pay, a non-discretionary bonus, incentive payment/pay, shift differential, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” from September 16, 2018 and continuing into the present; (“Incentive Pay Overtime Subclass”);

(5) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between September 16, 2018 and continuing into the present. (“General Late Payment Class”);

(6) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received prevailing wage pay, a non-discretionary bonus, incentive payment/pay, shift differential, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” and whose employment concluded at any time between September 16, 2018 and continuing into the present. (“Incentive Payment Late Payment Subclass”);

(7) all individuals who were employed by MB Jessee Painting Inc., any businesses known as and/or doing business as MB Jessee Painting, and any predecessor, merged, or related entities for one or more pay periods in California as a non-exempt, hourly employee and who received sick pay in the same pay period and/or month that they they also received prevailing wage pay, a non-discretionary bonus, incentive payment/pay, shift differential, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” and whose employment concluded at any time between September 16, 2018 and continuing into the present. (“Sick Pay Late Payment Subclass”).

Collectively, groups five (5), six (6), and seven (7) may be referred to as the “Late Payment Class.”

1           These Classes and Subclasses may all collectively be referred to herein as the “Class”  
2 where appropriate and for ease of reference.

3           54.     Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to  
4 amend or modify the class description with greater specificity, by division into subclasses, or by  
5 limitation to particular issues.

6           55.     This action has been brought and may properly be maintained as a class action  
7 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined  
8 community of interest in the litigation and the Proposed Classes are easily ascertainable.

9           **A. Numerosity**

10          56.     The potential members of the Proposed Classes as defined are each so numerous  
11 that joinder of all the members of the Proposed Classes is impracticable. While the precise  
12 number of proposed Class Members in each Class has not been determined at this time, Plaintiff  
13 is informed and believes that Defendants currently employ, and during the relevant time periods  
14 employed to be more than 50 members or more of the Proposed Class and Subclasses at any  
15 given time and there are believed to be more than 100 Class Members.

16          57.     Plaintiff alleges that Defendants’ employment records would provide information  
17 as to the number and location of all Proposed Class members. Joinder of all members of the  
18 Proposed Class and Subclasses is not practicable.

19           **B. Commonality**

20          58.     There are questions of law and fact common to the Proposed Classes<sup>3</sup> that  
21 predominate over any questions affecting only individual Proposed Class Members. These  
22 common questions of law and fact include, without limitation:

23           a.     Whether Defendants failed to pay wages and/or overtime compensation  
24 and at the correct rate as required by Labor Code § 510 to the Class and the Overtime Subclass

25           b.     Whether Defendants violated Labor Code § 226(a) and (e) by failing to  
26 provide an accurate itemized wage statements that included an employee id number or only the

27 \_\_\_\_\_  
28 <sup>3</sup> Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 last four digits of an employees social security number, or that accurately indicate, the gross  
2 wages earned, all deductions from wages, the net wages earned, as well as all applicable hourly  
3 rates in effect during the pay period and the corresponding number of hours worked at each  
4 hourly rate by the employee to the Wage Statement Class;

5 c. Whether Defendants violated §§ 201-203 of the Labor Code by failing to  
6 pay compensation due and owing at the time that the Late Payment Class' employment with  
7 Defendants concluded;

8 d. Whether Defendants violated § 17200 et seq. of the Business & Professions  
9 Code by engaging in the acts previously alleged against the Unfair Competition Class;

### 10 **C. Typicality**

11 59. The claims of Plaintiff are typical of the claims of the Proposed Class and  
12 Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries  
13 and damages arising out of and caused by Defendants' common course of conduct in violation of  
14 laws, regulations that have the force and effect of law, and statutes as alleged herein.

### 15 **D. Adequacy of Representation**

16 60. Plaintiff will fairly and adequately represent and protect the interests of the  
17 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is  
18 competent and experienced in litigating large employment class actions, and have the financial  
19 resources to litigate the claims at issue.

### 20 **E. Superiority of Class Action**

21 61. A class action is superior to other available means for the fair and efficient  
22 adjudication of this controversy. Individual joinder of all Proposed Class Members is not  
23 practicable, and questions of law and fact common to the Proposed Class predominate over any  
24 questions affecting only individual members of the Proposed Class. Each member of the  
25 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal  
26 policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to  
27 provide rest periods, and failing to provide accurate itemized wage statements.

62. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

**V.**

**FIRST CAUSE OF ACTION**  
**FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**  
**LABOR CODE §§ 510, 1194, and 1199**  
**[Against All Defendants by Plaintiff, the Class, and the Overtime Subclasses]**

63. Plaintiff, on behalf of himself, the Class, and the Overtime Subclasses realleges and incorporates by reference all previous paragraphs.

64. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff, the Class, and the Overtime Subclass could not agree to work for a lesser wage.

65. In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

66. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

67. At times since September 16, 2018 and within the past year, Defendant paid Plaintiff, the Class, and the Overtime Subclass with

68. non-discretionary bonuses, incentive payments, prevailing wages, non-discretionary performance pay, shift differentials, and/or a payment under the pay codes “PFP,” “Prevailing Wage Rate,” or “Prevailing Wage Rate Brush” and other compensation that was required to be included within the regular rate during the same workweek that they earned overtime wages, but failed to include such amounts when calculating and paying overtime wages in violation of Labor Code section 510.

69. At times since September 16, 2018 and within the past year, Defendant also failed to include additional compensation other than Plaintiff, the Class Members, and the Overtime Subclass members' base rate, when calculating and paying overtime.

70. At times since September 16, 2018 and within the past year, Defendant failed to pay Plaintiff, the Class, and the Overtime Subclass overtime wages at one and one-half times their regular rate and instead underpaid their overtime wages.

71. Defendants conduct, as described above was willful.

72. As a result of the unlawful acts of Defendants, Plaintiff, the Class, and the Overtime Subclasses have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

## VI.

## SECOND CAUSE OF ACTION

## VIOLATIONS OF LABOR CODE § 226(e)

**[Against all Defendants on behalf of Plaintiff and the Wage Statement Class]**

73. Plaintiff, on behalf of himself and the Wage Statement Class, realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

74. From at least one (1) year prior to the filing of this action and continuing into the present, Defendants knowing and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Wage Statement Class in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (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;
- (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 only 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...;
- (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...

75. Similarly, Labor Code § 226(e) provides:

(e) (1) 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.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

76. At times between March 13, 2022 and continuing into the present, Defendant issued wage statements to Plaintiff and the Wage Statement Class that did not contain either an employee identification number nor the last four digits of their social security number in violation of Labor Code § 226(a)(7).

77. At times between March 13, 2022 and continuing into the present, Defendants also issued itemized wage statements to Plaintiff and the Wage Statement Class that did not

include the gross wages earned, in part, due to Defendants' policy and practice of including expense reimbursement associated with cell phones in the wage category and failing to separate out this reimbursement from the wages:

| Earnings and Hours             | Qty   | Rate  | Current  | YTD Amount | Direct Deposit       | Amount                 |
|--------------------------------|-------|-------|----------|------------|----------------------|------------------------|
| E1 Regular Earnings            | 39.93 | 28.00 | 1,118.04 | 35,644.28  | Checking - *****6125 | 1,998.28               |
| E2 Overtime Earnings           | 0.30  | 42.00 | 12.60    | 1,081.34   |                      |                        |
| Prevailing Wage Rate Brush ... | 24.07 | 57.77 | 1,390.52 | 1,390.52   | Sick                 | Accrued Used Available |
| Cell Phone Usage Reimburse...  |       |       | 8.92     | 131.48     | Current              | 2.14 0.00 27.43        |
| PFP                            |       |       |          | 1,372.87   | YTD                  | 32.52                  |
|                                | 64.30 |       | 2,528.08 | 39,600.29  | Memo                 |                        |
| Taxes                          |       |       | Current  | YTD Amount | Direct Deposit       |                        |
| Medicare Employee Addl Tax     |       |       | 0.00     | 0.00       |                      |                        |
| Federal Withholding            |       |       | -201.00  | -2,320.95  |                      |                        |
| Social Security Employee       |       |       | -156.74  | -2,455.22  |                      |                        |
| Medicare Employee              |       |       | -36.65   | -674.20    |                      |                        |
| CA - Withholding               |       |       | -107.60  | -1,369.08  |                      |                        |
| CA - Disability Employee       |       |       | -27.81   | -435.60    |                      |                        |
|                                |       |       | -529.80  | -7,155.05  |                      |                        |
| Adjustments to Net Pay         |       |       | Current  | YTD Amount |                      |                        |
| Manual Check                   |       |       |          | -1,211.99  |                      |                        |
| Net Pay                        |       |       | 1,998.28 | 31,233.25  |                      |                        |

78. At times between March 13, 2022 and continuing into the present, as a result of Defendants' common policy and practice of improperly including payments associated with cell phone expense reimbursement as a wage, Defendants misreported the amount of net wages on Plaintiff, and the Wage Statement Class' itemized wage statements. This practice violated Labor Code §§ 226(a)(1) and (5).

79. At times between March 13, 2020<sup>4</sup> and continuing into the present, due to Defendants' mischaracterization of expense reimbursement as a wage and the Wage Statement Class, were also issued W-2s that reflected incorrect wage amounts and were forced to pay additional wage related taxes on non-taxable income. Such practices violated Labor Code § 2802 in that it caused a loss to the Class in the normal discharge of their job duties.

80. At times between March 13, 2022 and continuing into the present, Defendants also issued numerous wage statements to Plaintiff and the Wage Statement Class, including but not limited to wage statements with payments under the paycode "PFP," that incorrectly identified their net pay as being "0.00."

81. At times between March 13, 2022 and continuing into the present, based upon information and belief, Defendants also failed to include the pay under the pay code PFP on

<sup>4</sup> The class members are entitled to actual damages for this period caused by Defendants misreporting of their expense reimbursement as wages.

1 Plaintiff and the Wage Statement Class Members' wage statements and instead included it on a  
2 separate wage statement rendering it impossible from Plaintiff and the Wage Statement Class  
3 Members to determine from their wage statement alone all applicable hourly rates in effect during  
4 the pay period and the corresponding number of hours worked at each hourly rate by the  
5 employee in violation of Labor Code § 226(a)(9). In addition, to the extent that Defendant  
6 contends that PFP or the Prevailing Wage Pay includes overtime wages, Defendants failed to  
7 include all applicable hourly rates in effect during the pay period and the corresponding number  
8 of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a)(9).

9 82. At times between March 13, 2022 and continuing into the present, due to  
10 Defendants' failure to pay Plaintiff and the Wage Statement Class all overtime wages, the wage  
11 statements issued by Defendants do not indicate the correct amount of gross wages earned, the  
12 total hours worked, the net wages earned, all applicable hourly rates in effect during the pay  
13 period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have  
14 violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Wage Statement  
15 Class.

16 83. Plaintiff and the Wage Statement Class also suffered legal "injury" for purposes of  
17 Labor Code section 226(e) insofar as they were unable to readily and easily determine from the  
18 wage statements themselves the information required to be set forth by Section 226(a), the  
19 information provided by Defendants was confusing and inaccurate.

20 84. In addition, Plaintiff and the Wage Statement Class were unable to determine at all  
21 the total hours worked by the employee, the gross wages earned, the net wages earned, and all  
22 applicable hourly rates in effect during the pay period and the corresponding number of hours  
23 worked at each hourly rate by the employee for the reasons discussed above.

24 85. Defendants also knowingly and intentionally failed to pay Plaintiff, the Class, and  
25 the Wage Statement Class all overtime wages. Moreover, Plaintiff and the Wage Statement Class  
26 also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable  
27 to readily and easily determine from the wage statements themselves the information required to  
28 be set forth by Section 226(a), the information provided by Defendants was confusing and

1 inaccurate, Plaintiff and the Wage Statement Class were unable to determine at all the total hours  
2 worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly  
3 rates in effect during the pay period and the corresponding number of hours worked at each  
4 hourly rate by the employee for the reasons discussed above. In addition, Plaintiff and the Wage  
5 Statement Class could not determine from the wage statement alone the last four digits of their  
6 social security number of an employee identification number.

7 86. Moreover, Defendants undeniably knew when paying that the wage statements it  
8 issued did not include the gross wages earned, the net wages earned, and all applicable hourly  
9 rates in effect during the pay period and the corresponding number of hours worked at each  
10 hourly rate by the employee and an employee identification number for the reasons discussed  
11 above. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that  
12 the defendant knowingly and intentionally violated Labor Code § 226 because the “[d]efendant  
13 knew that it was not providing total hours worked to plaintiff or other employees paid on  
14 commission” even though it believed that employees paid solely on commission or commission  
15 and salary “are exempt and therefore we do not record hours on a wage statement.”).

16 87. Defendants also failed to both comply with and create a policy that complied with  
17 Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when  
18 determining whether or not an employer’s violation of Labor Code § 226(a) was knowing and  
19 intentional, “the relevant factor [is] whether the employer, prior to an alleged violation, has  
20 adopted and is in compliance with a set of policies, procedures, and practices that fully comply  
21 with this section.” Accordingly, Defendants’ conduct was knowing and intentional within the  
22 meaning of Labor Code § 226(e).

23 88. An employee suffering injury as a result of a knowing and intentional failure by an  
24 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual  
25 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one  
26 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding  
27 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and  
28 reasonable attorneys’ fees. *See Lab. Code § 226(e)*. Plaintiff and the Wage Statement Class seek

1 penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to  
2 recovery of such amounts, attorneys' fees, and costs.

3 **VII.**

4 **THIRD CAUSE OF ACTION**

5 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203**  
6 **[Against all Defendants on behalf of Plaintiff, the Class, and the Late Payment Class]**

7 89. Plaintiff on behalf of himself and the Late Payment Class re-alleges and  
8 incorporates by reference each and every allegation set forth in the preceding paragraphs.

9 90. Sections 201 and 202 of the California Labor Code requires Defendants to pay all  
10 compensation due and owing to former employees in the Class during the actionable period for  
11 this cause of action, at or around the time that their employment is terminated.

12 91. Section 203 of the California Labor Code provides that if an employer willfully  
13 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201  
14 and 202, then the employer is liable for penalties in the form of continued compensation up to  
15 thirty (30) workdays.

16 92. As described in detail above, Defendants failed to pay Plaintiff and the other Class  
17 Members whose employment concluded all wages owed, including but not limited to failing to  
18 pay wages, including but not limited to overtime wages, within the time constraints proscribed in  
19 Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants'  
20 faulty policies described above, Plaintiff, the Class, and the Late Payment Class left their  
21 employment with Defendants without being compensated for each and every hour worked at the  
22 appropriate rate in violation of Labor Code §§ 201, 202, and 203.

23 93. At the time of Plaintiff, the other members of the Late Payment Class' separation  
24 from Defendants, the sums were certain and known to Defendants.

25 94. As a result, Defendants are liable to Plaintiff, the Class, and the Late Payment  
26 Class who are no longer employed by Defendants for waiting time penalties amounting to thirty  
27 (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203.  
28 See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an  
employee to recover waiting time penalties).

**VIII.**  
**FOURTH CAUSE OF ACTION**  
**UNFAIR COMPETITION PURSUANT TO**  
**BUSINESS & PROFESSIONS CODE § 17200**  
**[Against all Defendants on behalf of Plaintiff and the Class]**

95. Plaintiff, on behalf of himself and the Class realleges and incorporates by reference all previous paragraphs.

96. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

97. Defendants have engaged in unlawful and unfair business practices that violate fundamental public policies of the state of California and the United States of America. As a result of its unlawful and unfair business practices, Defendants have forced employees to work under substandard and unlawful conditions in an effort to gain a competitive advantage over law-abiding employers who comply with California’s Labor Code.

98. Defendants have violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

99. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in violation of § 17200 et seq. of the Business & Professions Code.

100. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care, should have known that the conduct was unlawful. As such it is a violation of § 17200 et seq. of the Business & Professions Code.

101. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the Class, others similarly situated, other businesses, and the general public have been damaged in a sum as may be proven.

102. As part of their claims against Defendant, Plaintiffs seek not only the unpaid wages, but also the market value of the loss of the statutory protections and the cost to other employers of providing proper pay, breaks, and complying with the California Labor Code provisions identified herein. See e.g. *Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162 (2015).

103. Unless restrained, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendants, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the Proposed Classes the money Defendants have unlawfully failed to pay.

#### IX.

#### **FIFTH CAUSE OF ACTION**

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 256, 510, 558, 1197.1, 1198, 1771, 1774, 2802 as well as IWC Wage Order No. 16-2001**

104. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

105. Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from

1 the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the  
2 postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with  
3 a civil action pursuant to Labor Code § 2699.

4 106. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code  
5 § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226,  
6 226.3, 256, 510, 558, 1197.1, 1198, 1771, 1774, 2802 as well as IWC Wage Order No. 16-2001

7 107. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and  
8 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of  
9 trial subject to the following formula unless a civil penalty is already proscribed under the Labor  
10 Code:

11 \$100 for the initial violation per employee per pay period; and

12 \$200 for each subsequent violation per employee per pay period.

13 108. These penalties will be allocated 75% to the Labor Workforce Development  
14 Agency and 25% to the affected employees. These penalties may be stacked separately for each  
15 of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business*  
16 *Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get  
17 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated  
18 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of  
19 PAGA penalties to award); *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017)  
20 ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section  
21 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section  
22 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations  
23 of Labor Code §§ 226(a) and 226(e)); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM  
24 (JCGx) 2012 U.S.Dist. LEXIS 86975, at \*59, fn. 77 (C.D.Cal. June 22, 2012) (holding that  
25 although the plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be  
26 'stacked,' *i.e.*, multiple PAGA penalties can be assessed for the same pay period for different  
27 Labor Code violations."); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO)  
28 2010 U.S. Dist. LEXIS 81128, at \*17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-

1 cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at \* 2-3 (E.D. Cal.  
2 Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS  
3 54110, 2010 WL 1838726, at \* 2-6 (N.D. Cal. May 5, 2010).

4 109. There is currently a split of authority regarding which PAGA penalties apply to  
5 violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355  
6 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific*  
7 *Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to  
8 a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates  
9 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred  
10 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars  
11 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to  
12 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)  
13 of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other  
14 aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it  
15 applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or  
16 2699 penalties for Defendant’s violations of Labor Code § 226(a).

17 110. Labor Code § 210 provides that “in addition to, an entirely independent and apart  
18 from, any other penalty provided in this article, every person who fails to pay the wages of each  
19 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For  
20 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For  
21 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for  
22 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

23 111. As a result of the faulty compensation policies and practices described in detail  
24 above, the State of California is entitled to recover penalties under Labor Code § 210 through  
25 PAGA.

26 112. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or  
27 causes to be violated...any provision regulating hours and days of work in any order of the  
28 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial

1 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the  
2 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For  
3 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
4 period for which the employee was underpaid...” Based upon the above factual allegations  
5 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees  
6 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under  
7 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

8 113. Labor Code § 1197.1 authorizes employees who are paid less than the minimum  
9 fixed by an applicable state or local law, or by an order of the commission a civil penalty,  
10 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is  
11 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay  
12 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the  
13 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay  
14 period for which the employee is underpaid regardless of whether the initial violation is  
15 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all  
16 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and  
17 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil  
18 penalties for violations of Labor Code § 1197.1.

19 114. Labor Code § 256 serves as the civil default penalty for a violation of Labor Code  
20 section 203 under PAGA and provides for “a civil penalty in an amount not exceeding 30 days’  
21 pay as waiting time under the terms of Section 203. *See Iskanian v. CLS Transportation Los*  
22 *Angeles, LLC*, 59 Cal.4th 348, 381 (2014); *see also Esparza v. KS Industries, L.P.* 13 Cal.App.5th  
23 1228, 1242 (2017) (explaining that the Labor Code § 256 penalties only exist if the employer’s  
24 failure to timely pay wages upon separation was willful is a “civil penalty”).

25 115. As described in detail above, Defendants willfully failed to pay Plaintiff and other  
26 aggrieved employees whose employment concluded all wages owed, including but not limited to  
27 overtime wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of  
28 their termination/separation. Thus, as result of Defendants’ faulty policies described above,

1 Plaintiff and all aggrieved employees left their employment with Defendants without being  
2 compensated for each and every hour worked at the appropriate rate in violation of Labor Code  
3 §§ 201, 202, 203, and 256.

4 **RELIEF REQUESTED**

5 **WHEREFORE**, Plaintiff prays for the following relief:

6 1. An Order that this action may proceed and be maintained as a Class Action on  
7 behalf of the Classes;

8 2. For compensatory damages in the amount of unpaid overtime wages not paid to  
9 Plaintiff, each Class Member from September 16, 2018 and continuing into the present as may be  
10 proven;

11 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code  
12 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs  
13 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not  
14 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized  
15 wage statements issued to Plaintiff and the Wage Statement Class from March 13, 2022 and  
16 continuing into the present as may be proven;

17 4. An award to Plaintiff and the Late Payment Class of waiting time penalties in the  
18 amount of up to 30 days' wages;

19 5. For restitution for unfair competition pursuant to Business & Professions Code  
20 § 17200 to Plaintiff and the Class for actions, including disgorgement of profits, in an amount as  
21 may be proven;

22 6. An order enjoining Defendant and its agents, servants, and employees, and all  
23 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class  
24 Members proper compensation for overtime hours worked and prevailing wages;

25 7. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved  
26 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226,  
27 226.3, 256, 510, 558, 1197.1, 1198, 1771, 1774, 2802 as well as IWC Wage Order No. 16-2001;

28 8. An award of prejudgment and post judgment interest;

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- 9. An award providing for payment of costs of suit;
- 10. An award of attorneys' fees; and
- 11. Such other and further relief as this Court may deem proper and just.

DATED: May 18, 2023

WINSTON LAW GROUP, P.C.

By: David Winston  
DAVID S. WINSTON  
Attorneys for Plaintiff, the Proposed  
Classes, and the aggrieved employees

(PROOF OF SERVICE)  
[CCP 1013(a)(3)]  
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1880 Century Park East, Suite 511, Los Angeles, California 90067.

On **May 18, 2023**, I served all interested parties in this action the following documents described as on the persons below as follows: **FIRST AMENDED CLASS ACTION COMPLAINT**

Ms. Michelle Ferber, Esq.  
mferber@ferberlaw.com  
Mr. Jon Babione, Esq.  
jbabione@ferberlaw.com  
Mr. Adam Arce, Esq.  
aarce@ferberlaw.com  
FERBER LAW, P.C.  
2603 Camino Ramon, Suite 385  
San Ramon, CA 94583

Attorneys for Defendants **MB JESSEE PAINTING INC.**

Assistants to be served:  
Christine Pierce  
cpierce@ferberlaw.com

**[XX] (BY EMAIL OR ELECTRONIC TRANSMISSION):** Pursuant Code of Civil Procedure § 1010.6 and to an agreement to accept electronic service via e-mail, I caused the document to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on **May 18, 2023**, at Los Angeles, California.

  
\_\_\_\_\_  
Angie Madrid