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Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

Attorneys for Plaintiff and all Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF CONTRA COSTA

C23-01199

FERNANDO RAMOS, an individual; on
behalf of himself and all Aggrieved
Employees,

Plaintiffs,

v.

DAVIDON HOMES a California limited
partnership; DONALD CHAIKEN, an
individual; and
DOES 1-100, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES

1. Failure to Pay Regular and Minimum Wages (Labor Code §§ 1194, 1197, 1771, 221; IWC Wage Order 5);
2. Failure to Pay Overtime Wages (Labor Code §§ 510, 1194, 221; IWC Wage Order 5);
3. Failure to Provide Meal Periods (Labor Code §§ 226.7, 512; IWC Wage Order 5);
4. Failure to Authorize and Permit Rest Periods (Labor Code § 226.7; IWC Wage Order 5);
5. Failure to Reimburse Business Expenses (Labor Code §§ 2802, 2804; IWC Wage Order 5);
6. Failure to Provide Itemized Accurate Wage Statements (Labor Code § 226; IWC Wage Order 5);
7. Continuing Wages Penalty (Labor Code §§ 201, 202, 203, 203);
8. Failure to Provide Employment Records (Labor Code §§ 226(e) and 1198.5).
9. Unfair Competition (Bus. and Prof. Code § 17200, *et seq.*);

10. Private Attorneys General Act of 2004 (Labor Code §2698 *et seq.*);
11. Retaliation for Using Accrued Sick Days (Labor Code § 246.5);
12. Wrongful termination in Violation of Public Policy.

DEMAND FOR JURY TRIAL

Plaintiff FERNANDO RAMOS alleges as follows:

NATURE OF ACTION

1. Plaintiff FERNANDO RAMOS (“RAMOS” or “Plaintiff”), on behalf of himself and all other “Aggrieved Employees” (as defined herein), brings this action against Defendants DAVIDON HOMES., a California limited partnership (“DAVIDON HOMES”); DONALD CHAIKEN, an individual (“CHAIKEN”); and DOES 1-100, inclusive, (collectively “Defendants”), seeking damages, penalties, injunctive relief and restitution for: failure to pay regular and minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to reimburse business expenses, failure to provide itemized accurate wage statements, continuing wages penalty, failure to provide employment records, violations of California Business and Professions Code §17200, *et seq.*, violations of the Labor Code Private Attorneys General Act of 2004, retaliation for using accrued sick days, and wrongful termination in violation of public policy.

PRELIMINARY ALLEGATIONS

2. At all times herein mentioned Plaintiff has resided in the County of Contra Costa, within the State of California.

3. Defendant DAVIDON HOMES’s registered address is located in Contra Costa County, California. At all times relevant to this complaint, DAVIDON HOMES operated a home-building and property management business throughout Contra Costa County and surrounding areas in California.

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1 4. Plaintiff is informed, believes, and thereon alleges, that at all times herein
2 mentioned, Defendant CHAIKEN was an individual who conducts business in the County of
3 Contra Costa, California.

4 5. The true names and capacities of the Defendants sued herein as DOES 1 through
5 100 are unknown to Plaintiff, and therefore Plaintiff sues these Defendants by such fictitious
6 names. Plaintiff will amend this Complaint to allege their true names and capacities when
7 ascertained. Plaintiff is informed, believes, and on that basis alleges, that each of the
8 fictitiously named Defendants are responsible for the occurrences and injuries to Plaintiff as
9 herein alleged. Each reference in this Complaint to “Defendant,” “Defendants,” or a
10 specifically named Defendant refers to, and includes all Defendants sued under fictitious
11 names.

12 6. Plaintiff is informed, believes, and thereon alleges, that, at all times herein
13 mentioned, each of the Defendants sued herein were the agents and employees of each of the
14 remaining Defendants and were at all times acting within the purpose and scope of such
15 agency and employment.

16 7. Plaintiff is informed, believes, and thereon alleges, that CHAIKEN is the owner
17 and/or director and/or officer of DAVIDON HOMES and acted on behalf of DAVIDON
18 HOMES at all times relevant to this Complaint. Accordingly, CHAIKEN is individually liable
19 for the damages alleged in this action pursuant to Labor Code § 558.1 during all time periods
20 said statute was legally operative.

21 8. During the period of Plaintiff’s employment, Defendants conducted their
22 businesses in association with each other and shared control over the wages, hours and
23 working conditions of Plaintiff.

24 9. At all relevant times, Defendants were the “employers” of Plaintiff within the
25 meaning of all applicable state laws and statutes.

26 10. From approximately September 2019 until approximately December 2022,
27 Plaintiff was employed and worked for Defendants as a property maintenance supervisor in
28 Defendants’ home building business.

1 11. Defendants misclassified Plaintiff as an exempt salaried employee. Defendants
2 failed to pay Plaintiff the minimum salary threshold required for any valid exemption. Plaintiff
3 was also primarily engaged in non-exempt duties and did not meet duties test for any relevant
4 exemption. Despite Plaintiff not satisfying any overtime exemption, Defendants misclassified
5 Plaintiff as exempt from overtime, and Defendants violated numerous provisions of the law,
6 including but not limited to: failure to pay at least minimum wage for all hours worked, failure
7 to pay overtime for hours worked in excess of 8 hours in a day or 40 hours in a week, failure to
8 provide meal periods, failure to authorize and permit rest periods, failure to provide accurate
9 itemized wage statements, and failure to timely pay all wages owed upon termination, among
10 other legal violations.

11 12. Defendants had in place an unlawful scheme to avoid payment of all wages
12 owed to Plaintiff and other Aggrieved Employees. Defendants did not record, and did not
13 permit Plaintiff to accurately record, the starting or end times of his work periods, including
14 the starting and end times of meal periods. Defendants required Plaintiff to record only his
15 scheduled work hours onto a timesheet every two weeks, and meal period time entries that had
16 not been provided. Plaintiff is informed and believes that Defendants also failed to maintain
17 accurate records of time worked for the other Aggrieved Employees.

18 13. Defendants required Plaintiff Plaintiff to remain on-call at all times, prepared to
19 answer maintenance service calls on his company-provided cellphone outside of regular work
20 hours, including evenings and weekends. Defendants prohibited Plaintiff from recording his
21 on-call time as work hours and refused to pay Plaintiff for these on-call work hours.

22 14. Defendants also refused to pay Plaintiff for maintenance service calls received
23 outside of his regular work hours, unless the call resulted in Plaintiff performing a maintenance
24 service call visit. As a result, Defendants failed to compensate Plaintiff anything for service
25 calls that Plaintiff answered outside of his regular work hours, but which did not result in a
26 maintenance service call visit. Plaintiff is informed and believes that the other Aggrieved
27 Employees likewise were denied regular and overtime pay.

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1 15. Defendants required Plaintiff and other Aggrieved Employees to record meal
2 periods even if they were not provided, were frequently provided late, shorter than 30 minutes,
3 or interrupted by work. Further, rest periods were denied altogether. Defendants paid no
4 premium pay under Labor Code § 226.7(b) to Plaintiff and other Aggrieved Employees, even
5 when meal or rest period violations occurred.

6 16. Defendants required Plaintiff and other Aggrieved Employees to provide their
7 own tools and equipment. Defendants failed to reimburse Plaintiff and the other Aggrieved
8 Employees for such necessary business expenses incurred in the discharge of their work-
9 related duties.

10 17. Defendants failed to accurately itemize Plaintiff and other Aggrieved
11 Employees' hourly rates on wage statements and failed to accurately record the number of
12 hours Plaintiff and other Aggrieved Employees had worked in any given pay period.
13 Defendants also failed to compensate Plaintiff and other Aggrieved Employees meal or rest
14 period premiums for meal periods that were not provided and rest periods that were not
15 authorized and permitted. As such, Plaintiff's and other Aggrieved Employees' wage
16 statements were inaccurate.

17 18. Defendants also failed to pay Plaintiff and other Aggrieved Employees all of the
18 wages they were due upon their separation from Defendants' employment, including but not
19 limited to minimum wages, overtime, and meal and rest period premiums. Because of
20 Defendants' failure to pay all wages due at separation, Defendants had a continuing obligation
21 to pay ongoing wages for 30 days as a penalty. During the 30 days after the end of Plaintiff's
22 employment, Defendants failed to pay Plaintiff the ongoing wages penalty to which he was
23 entitled.

24 19. Defendants wrongfully terminated Plaintiff's employment in retaliation for
25 Plaintiff using accrued sick days.

26 20. On or about December 18, 2022, Plaintiff fell ill. Plaintiff visited his doctor, was
27 diagnosed with bronchitis, and was provided with a doctor's note placing him off work from
28

1 December 18, 2022, until December 21, 2022. Plaintiff provided this doctor's note to his
2 manager and informed him that he would be out on sick leave until December 21, 2022.

3 21. When Plaintiff returned to work on or about December 22, 2022, Plaintiff
4 discovered that his workload had increased dramatically. None of Plaintiff's work had been
5 reassigned to other maintenance technicians during his sick leave due to understaffing, and
6 additional duties and responsibilities had been added to his workload. Plaintiff's managers were
7 frustrated that Plaintiff had taken sick leave and informed him that he needed to work extra
8 hours until the backlog of work had been completed. Plaintiff complained that he was being
9 required to work overtime for no extra compensation and that he was being punished for taking
10 sick leave for being ill. His complaints were ignored.

11 22. Throughout the following week Defendants continued to pressure Plaintiff to
12 work additional hours without pay. Plaintiff had been previously approved for vacation from
13 December 30, 2022, until January 3, 2023, and was scheduled to return on January 4, 2023.
14 On December 29, 2022, Plaintiff reminded his manager that he had been approved for vacation
15 from December 30, 2022.

16 23. Later that day, Plaintiff's manager called Plaintiff into his office and fired him
17 in retaliation for Plaintiff using his accrued sick leave and for complaining of the retaliation he
18 suffered as a result.

19 24. At all times relevant to this action, Defendants were the joint employers of
20 Plaintiff and are accordingly jointly and severally liable for all wages, restitution, penalties and
21 attorney's fees and costs owed to Plaintiff.

22 **JURISDICTION AND VENUE**

23 25. Pursuant to Article VI, §10 of the California Constitution, subject matter
24 jurisdiction is proper in the Superior Court of California, County of Contra Costa, State of
25 California.

26 26. Pursuant to §§395 and 395.5 of the California Code of Civil Procedure, venue is
27 proper in the Superior Court of California for the County of Contra Costa, State of California,
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1 because this is where Plaintiff was employed, it is where the wrongful misconduct alleged
2 occurred, and it is where Defendants do business.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY REGULAR AND MINIMUM WAGES**

5 **[Cal. Labor Code §§ 1194, 1197, 558.1, and IWC Wage Order 5]**

6 **(Against All Defendants)**

7 27. Plaintiff re-alleges and incorporates into this cause of action each of the
8 preceding paragraphs.

9 28. During Plaintiff's employment with Defendants, Plaintiff was required,
10 suffered, and permitted to work regular and overtime hours by Defendants.

11 29. Defendants required Plaintiff to record only the total number of regular hours
12 worked in a shift and refused to allow Plaintiff to record all time that he had worked.
13 Defendants did not record or permit Plaintiff to accurately record the starting or end times of
14 his work periods, including the starting and end times of meal periods.

15 30. Defendants failed to accurately record the actual hours worked by Plaintiff on
16 each date Plaintiff performed work for Defendants.

17 31. Defendants failed to compensate Plaintiff at the applicable minimum wage rate
18 for all hours Plaintiff worked.

19 32. Defendants failed to compensate Plaintiff at his regular rate of pay for all hours
20 worked.

21 33. Based upon the days and hours Plaintiff worked during said time period,
22 Defendants, and each of them, are liable to Plaintiff for unpaid minimum and regular wages.

23 34. In addition, pursuant to Labor Code § 1194.2, Plaintiff is entitled to recover
24 liquidated damages in an amount equal to the minimum wages unlawfully unpaid.

25 35. In addition, Defendants are liable to Plaintiff for reasonable attorney's fees,
26 which are hereby demanded, in an amount to be proven according to law.

27 36. In addition, Defendants are liable to Plaintiff for costs of suit.

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1 37. CHAIKEN, while acting as owner, officer, director and/or managing agent of
2 DAVIDON HOMES caused said corporation to violate provisions of California Industrial
3 Welfare Commission (“IWC”) Wage Order 5 as well as California Labor Code § 1194 with
4 respect to Plaintiff. Therefore, pursuant to Labor Code § 558.1, CHAIKEN is jointly and
5 severally liable along with DAVIDON HOMES for unpaid regular and minimum wages,
6 liquidated damages, attorney’s fees, prejudgment interest and costs, pursuant to California
7 Labor Code § 1194.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME WAGES**

10 **[Cal. Labor Code §§ 510; 1194; 558.1, and IWC Wage Order 5]**

11 **(Against All Defendants)**

12 38. Plaintiff re-alleges and incorporates into this cause of action each of the
13 preceding paragraphs.

14 39. During Plaintiff’s employment with Defendants, Plaintiff was required,
15 suffered, and permitted to work overtime hours by Defendants.

16 40. During Plaintiff’s employment with Defendants, Plaintiff was required to
17 remain on-call at all times, prepared to answer service calls on his company-provided
18 cellphone outside of regular work hours. Despite this, Defendants failed to compensate
19 Plaintiff for this on-call work.

20 41. Based upon the days and hours Plaintiff worked during said time period,
21 pursuant to California Labor Code §§ 1194, and 510 Defendants, and each of them, did not pay
22 Plaintiff all overtime wages owed and are liable to Plaintiff for unpaid overtime compensation.

23 42. Pursuant to Labor Code § 204, Plaintiff was entitled to receive all wages owing,
24 on designated days, no less frequently than twice a month. Because Defendants failed timely to
25 pay Plaintiff all compensation legally owing, including overtime compensation, Defendants are
26 liable for prejudgment interest in an amount to be proven at trial.

27 43. In addition, Defendants are liable to Plaintiff for reasonable attorney’s fees,
28 which are hereby demanded, in an amount to be proven according to law.

1 44. In addition, Defendants are liable to Plaintiff for costs of suit.

2 45. CHAIKEN, while acting as owner, officer, director and/or managing agent of
3 DAVIDON HOMES, caused said corporation to violate provisions of California Industrial
4 Welfare Commission Wage Order 5 as well as California Labor Code §§ 1194, and 510 with
5 respect to Plaintiff. Therefore, pursuant to Labor Code § 558.1, CHAIKEN, is jointly and
6 severally liable along with DAVIDON HOMES for unpaid overtime wages, attorney's fees,
7 prejudgment interest and costs, pursuant to California Labor Code §§ 1194, and 510.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **[Cal. Labor Code §§ 226.7, 512, 558.1, and IWC Wage Order 5]**

11 **(Against All Defendants)**

12 46. Plaintiff re-alleges and incorporates into this cause of action each of the
13 preceding paragraphs.

14 47. Pursuant to Labor Code § 512, Labor Code § 226.7, and California Industrial
15 Welfare Commission Wage Order 5, Plaintiff was, each workday, entitled to one off-duty meal
16 period (no less than 30 minutes in duration) for every work period exceeding 5 hours.

17 48. Plaintiff was entitled to a first meal period no later than the end of his fifth hour
18 of work, and a second meal period no later than the end of his tenth hour of work.

19 49. During Plaintiff's employment with Defendants, Plaintiff had to record his meal
20 periods even if were frequently provided late, shorter than 30 minutes, interrupted by work, or
21 they were not provided at all.

22 50. Defendants failed to pay Plaintiff one extra hour of pay for each day Plaintiff
23 did not receive all legally required meal periods.

24 51. As a result, Defendants, and each of them, are liable for unpaid compensation
25 pursuant to California Labor Code § 226.7(b).

26 52. Because Defendants failed to timely pay Plaintiff all compensation legally
27 owing, including compensation for meal periods not received, Defendants are liable for
28 prejudgment interest in an amount to be proven at trial.

1 53. CHAIKEN, while acting as owner, officer, director and/or managing agent of
2 DAVIDON HOMES caused said corporation to violate provisions of California Industrial
3 Welfare Commission Wage Order 5 as well as California Labor Code §§ 512 and 226.7 with
4 respect to Plaintiff. Therefore, pursuant to Labor Code § 558.1, CHAIKEN is jointly and
5 severally liable along with DAVIDON HOMES for meal period premium pay, damages,
6 prejudgment interest and costs, pursuant to California Labor Code §§ 512 and 226.7.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

9 **[Cal. Labor Code §§ 226.7, 558.1, and IWC Wage Order 5]**

10 **(Against All Defendants)**

11 54. Plaintiff re-alleges and incorporates into this cause of action each of the
12 preceding paragraphs.

13 55. Pursuant to Labor Code § 226.7, and California Industrial Welfare Commission
14 Wage Order 5, Plaintiff was, each workday, entitled to one off-duty rest period (no less than 10
15 minutes in duration) for every 4 hours worked, or major fraction thereof. Defendants, and each
16 of them, contrary to law, did not authorize and permit Plaintiff to take the off-duty rest periods
17 to which he was entitled and also did not pay Plaintiff one extra hour of pay for each day that
18 Plaintiff did not receive all legally required rest periods.

19 56. During Plaintiff's employment with Defendants, rest periods were interrupted
20 by work, not provided, or denied altogether.

21 57. As a result, Defendants, and each of them, are liable for unpaid compensation
22 pursuant to Labor Code § 226.7(b).

23 58. Because Defendants failed timely to pay Plaintiff all compensation legally
24 owing, including compensation for rest periods not received, Defendants are liable for
25 prejudgment interest in an amount to be proven at trial.

26 59. CHAIKEN, while acting as owner, officer, director and/or managing agent of
27 DAVIDON HOMES caused said corporation to violate provisions of California Industrial
28 Welfare Commission Wage Order 5 as well as California Labor Code § 226.7 with respect to

1 Plaintiff. Therefore, pursuant to Labor Code § 558.1, CHAIKEN is jointly and severally liable
2 along with DAVIDON HOMES for rest period premium pay, damages, prejudgment interest
3 and costs, pursuant to California Labor Code §§ 512 and 226.7.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO INDEMNIFY OR REIMBURSE BUSINESS EXPENSES**

6 **[Cal. Labor Code §§ 2802, 2804 and IWC Wage Order 5]**

7 **(Against All Defendants)**

8 60. Plaintiff re-alleges and incorporates into this cause of action each of the
9 preceding paragraphs.

10 61. Pursuant to Labor Code § 2802(a), Plaintiff was entitled to indemnification or
11 reimbursement for “all necessary expenditures or losses incurred in direct consequence of the
12 discharge of his or her duties.”

13 62. Defendants systematically required Plaintiff to incur necessary business
14 expenses on Defendants’ behalf.

15 63. Defendants required Plaintiff and other Aggrieved Employees to provide their
16 own tools. Defendants failed to reimburse such expenses to Plaintiff and other Aggrieved
17 Employees, and thus failed to comply with Labor Code § 2802(a).

18 64. Defendants systematically failed to indemnify or reimburse Plaintiff for these
19 expenses incurred on Defendants’ behalf.

20 65. Defendants’ conduct violates IWC Wage Order 5 and California Labor Code
21 section 2802.

22 66. Plaintiff has suffered damages in amounts to be proven at trial and is entitled to
23 all appropriate remedies provided by the California Labor Code and the Industrial Welfare
24 Commission Wage Orders, including unpaid wages, liquidated damages, and civil penalties.

25 67. In addition, pursuant to Labor Code § 2802 (c), Defendants are liable to Plaintiff
26 for reasonable attorney’s fees and costs, which are hereby demanded, in an amount to be
27 proven at trial.

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68. CHAIKEN, while acting as owner, officer, director and/or managing agent of DAVIDON HOMES caused said corporation to violate provisions of California Industrial Welfare Commission Wage Order 5 as well as California Labor Code § 2802 with respect to Plaintiff. Therefore, pursuant to Labor Code § 558.1, CHAIKEN is jointly and severally liable along with DAVIDON HOMES for all expense reimbursements, damages, attorney's fees, prejudgment interest and costs, pursuant to California Labor Code §§ 512 and 226.7.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ITEMIZED ACCURATE WAGE STATEMENTS

[Cal. Labor Code §§ 226, 558.1, and IWC Wage Order 5]

(Against All Defendants)

69. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

70. Defendants were obligated by California Labor Code § 226, and California Industrial Welfare Commission Wage Order 5, to keep accurate records of Plaintiff's days and hours worked and to provide Plaintiff, each time Plaintiff was paid, an accurate statement of (among other things), meal and rest period premium pay for meal and rest periods not provided, the total hours Plaintiff worked in the applicable pay period, and total gross wages earned. Each and every pay period, Defendants knowingly and intentionally failed to provide Plaintiff with accurate wage statements. As a result, Plaintiff was denied the accurate wage statements to which Plaintiff was legally entitled and Plaintiff cannot promptly and easily determine the exact hours Plaintiff worked during each pay period. In addition, Plaintiff will incur costs attempting to obtain information which Defendants should have provided in accurate pay statements.

71. Accordingly, Plaintiff is entitled to the penalty specified in Labor Code §226(e) up to \$4,000.00.

72. In addition, Defendants are liable to Plaintiff for reasonable attorney's fees, costs, and interest, which are hereby demanded, in an amount to be proven according to law.

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1 73. CHAIKEN, while acting as owner, officer, director and/or managing agent of
2 DAVIDON HOMES, caused said corporation to violate provisions of California Industrial
3 Welfare Commission Wage Order 5 as well as California Labor Code § 226 with respect to
4 Plaintiff. Therefore, pursuant to Labor Code § 558.1, CHAIKEN is jointly and severally liable
5 along with DAVIDON HOMES for penalties, attorney’s fees, prejudgment interest and costs,
6 pursuant to California Labor Code § 226.

7 **SEVENTH CAUSE OF ACTION**

8 **CONTINUING WAGES PENALTY**

9 **[Cal. Labor Code §§ 201, 202, 203, and 558.1]**

10 **(Against All Defendants)**

11 74. Plaintiff re-alleges and incorporates into this cause of action each of the
12 preceding paragraphs.

13 75. Pursuant to Labor Code § 201 and § 202, upon termination of his employment,
14 Plaintiff was entitled to receive timely payment of all earned wages, including regular wages,
15 overtime compensation and compensation for meal and rest periods not received. Because
16 Defendants failed to pay such wages, Plaintiff is entitled to continuing wages set forth in
17 California Labor Code § 203.

18 76. CHAIKEN, while acting as owner, officer, director and/or managing agent of
19 DAVIDON HOMES caused said corporation to violate provisions of California Industrial
20 Welfare Commission Wage Order 5 as well as California Labor Code § 203 with respect to
21 Plaintiff. Therefore, pursuant to Labor Code § 558.1, CHAIKEN is jointly and severally liable
22 along with DAVIDON HOMES for the continuing wages penalties, attorney’s fees,
23 prejudgment interest and costs, pursuant to California Labor Code § 203.

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1 **EIGHT CAUSE OF ACTION**

2 **FAILURE TO PROVIDE EMPLOYMENT RECORDS**

3 **[Violation of California Labor Code §§ 226(f) and 1198.5(k)]**

4 **(On Behalf of Plaintiff Individually Against All Defendants and DOES 1 through 100)**

5 77. Plaintiff re-alleges and incorporates into this cause of action each of the
6 preceding paragraphs.

7 78. On March 15, 2023, Plaintiff's legal counsel made a written request to
8 Defendant DAVIDON HOMES for employment records pursuant to Labor Code §§226(b) and
9 1198.5. This request was sent to DAVIDON HOMES via U.S. Certified Mail, at the address
10 listed on Plaintiff's wage statements, as well as the address registered with the California
11 Secretary of State.

12 79. Pursuant to Labor Code §§226(b) and 1198.5, these records were due within 21
13 and 30 days of the request, respectively. To date, DAVIDON HOMES has not provided any of
14 the responsive records.

15 80. Pursuant to Labor Code §226(f), Plaintiff is entitled to receive a penalty in the
16 sum of \$750.00 due to Defendants' failure to timely respond to Plaintiff's request for
17 employment records within 21 days of such request pursuant to Labor Code §226(c).

18 81. Pursuant to Labor Code §1198.5(k), Plaintiff is also entitled to receive a second
19 penalty in the sum of \$750.00 for failure to timely respond to this request within 30 days.

20 82. Plaintiff is entitled to reasonable attorney's fees and costs, which are hereby
21 demanded, in an amount to be proved according to law.

22 **NINTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **[Cal. Bus. & Prof. Code §§ 17200-17208]**

25 **(Against All Defendants)**

26 83. Plaintiff re-alleges and incorporates into this cause of action each of the
27 preceding paragraphs.

28 84. Defendants, and each of them, are "persons" as defined by Business and

1 Professions Code § 17201.

2 85. By this cause of action, Plaintiff seeks to enforce important rights affecting the
3 public interest. Plaintiff sues for his own interests as a former employee of Defendants and as
4 a party harmed by Defendants' unfair business practices.

5 86. Plaintiff has suffered injuries-in-fact and have lost money as a result of
6 Defendants' unfair competition alleged herein.

7 87. Defendants have previously or continue to engage in unlawful, unfair, and/or
8 fraudulent business practices in violation of California Business and Professions Code
9 §17200, *et seq.*

10 88. Defendants, and each of them, have personally and intentionally participated
11 in, assisted, and/or conspired to commit these unlawful, unfair, and fraudulent business
12 practices.

13 89. Defendants, and each of them, have profited from these unlawful, unfair, and
14 fraudulent business practices at the expense of Plaintiff, at the expense of law-abiding
15 businesses, at the expense of Defendants' current and former employees, and at the expense of
16 the public.

17 90. As a direct and proximate result of Defendants' unfair and unlawful business
18 practices as alleged herein, Plaintiff has sustained injury and damages, including unpaid
19 minimum wages, unpaid overtime wages, unpaid meal and rest period premium pay, in an
20 amount to be established at trial.

21 91. Defendants, and each of them, should therefore be ordered to immediately
22 cease from engaging in the unlawful, unfair, and fraudulent conduct alleged herein and restore
23 as restitution to Plaintiff those amounts accrued during the relevant claim period, and not
24 otherwise awarded in connection with the previous causes of action, as follows:

- 25 a) Unpaid minimum wage compensation required by California law, in an amount
26 to be proven at trial;
- 27 b) Unpaid overtime compensation required by California law, in an amount to be
28 proven at trial;

- 1 c) Unpaid compensation for meal periods not received in accordance with
2 California law, in an amount to be proven at trial; and
3 d) Unpaid compensation for rest periods not received in accordance with
4 California law, in an amount to be proven at trial.

5 92. Plaintiff seeks restitution of all wages due from all Defendants in an amount to
6 be proven at trial, an injunction prohibiting Defendants from engaging in the unlawful, unfair,
7 and fraudulent conduct alleged herein, and attorneys' fees, costs and interest.

8 **TENTH CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT 2004 ("PAGA")**

10 **[Violation of Cal. Labor Code § 2698, et seq.]**

11 **(On Behalf of Plaintiff and all Aggrieved Employees,**

12 **Against All Defendants)**

13 93. Plaintiff re-alleges and incorporates into this cause of action each of the
14 preceding paragraphs.

15 94. The Private Attorneys General Act 2004 (California Labor Code §§ 2698, et
16 seq.) ("PAGA") expressly establishes that any provision of the California Labor Code which
17 provides for a civil penalty to be assessed and collected by the LWDA, or any of its
18 departments, divisions, commissions, boards, agencies or employees for a violation of the
19 California Labor Code, may be recovered through a civil action brought by an aggrieved
20 employee on behalf of herself or himself, and other current or former employees.

21 95. As reflected in Plaintiff's notice to the LWDA, filed on March 6, 2023, the
22 "Aggrieved Employees" are all of Defendants current and former employees in California, who
23 worked for Defendants at any time beginning one year from the filing of Plaintiff's LWDA
24 notice.

25 96. Plaintiff and the other Aggrieved Employees are "aggrieved employees" as
26 defined by California Labor Code section 2699(c), in that they are all current or former
27 employees of Defendants, and one or more of the alleged violations were committed against
28 them.

1 97. Pursuant to California Labor Code section 2699, Plaintiff, in a representative
2 capacity on behalf of all Aggrieved Employees, requests and is entitled to recover from
3 Defendants and each of them, civil penalties according to proof, interest, attorneys' fees and
4 costs.

5 98. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties
6 recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%)
7 to the Labor and Workforce Development Agency for the enforcement of labor laws and
8 education of employers and employees about their rights and responsibilities and twenty-five
9 percent (25%) to the aggrieved employees.

10 99. As described in greater detail *supra*, at all times relevant to this action,
11 Defendants devised, formulated, implemented, and enforced, the following policies and
12 procedures in violation of California Law, including but not limited to the provisions of the
13 California Labor Code and California Industrial Welfare Commission Wage Order 5, which
14 give rise to PAGA civil penalties under California Labor Code § 2698, *et seq.*:

15 **Civil Penalties for Failure to Pay Minimum Wages**

16 100. Through their policies and practices, Defendants failed to pay Plaintiff and the
17 other Aggrieved Employees at least the applicable minimum wage for all hours, in violation of
18 Labor Code §§ 1194, 1197, 1191.1, and 1199, and IWC Wage Order 5.

19 **Civil Penalties for Failure to Pay Overtime**

20 101. While employed by Defendants, Plaintiff and the other Aggrieved Employees
21 were required, suffered and permitted to work overtime hours.

22 102. Through their policies and practices, Defendants failed to pay Plaintiff and the
23 other Aggrieved Employees overtime pay, in violation of Labor Code §§510, 1194, 1198, and
24 IWC Wage Order 5.

25 **Civil Penalties for Failure to Provide Meal Periods**

26 103. Through their policies and practices, Defendants failed to provide Plaintiff and
27 the other Aggrieved Employees with legally compliant meal periods, in violation of Labor
28 Code §§226.7, 512, and IWC Wage Order 5.

1 **Civil Penalties for Failure to Authorize and Permit Rest Periods**

2 104. Through their policies and practices, Defendants failed to authorize and permit
3 Plaintiff and the other Aggrieved Employees to take legally compliant rest periods, in violation
4 of Labor Code §§226.7, and IWC Wage Order 5.

5 **Civil Penalties for Failure to Indemnify or Reimburse Business Expenses**

6 105. Through their policies and practices, Defendants failed to indemnify or
7 reimburse Plaintiff and the other Aggrieved Employees for necessary business expenses
8 incurred in the discharge of their work duties, in violation of Labor Code §2802, and IWC
9 Wage Order 5.

10 **Civil Penalties for Failure to Provide Compliant Wage Statements**

11 106. Through their policies and practices, Defendants failed to provide Plaintiff and
12 the other Aggrieved Employees accurate itemized wage statements in violation of California
13 Labor Code section 226.

14 **Civil Penalties for Failure to Timely Pay Wages Upon Separation**

15 107. Through their policies and practices, Defendants failed to timely pay Plaintiff
16 and the other Aggrieved Employees all wages due upon separation from their employment in
17 violation of California Labor Code sections 201, 202, and 203.

18 108. Further, even though Defendants failed to timely pay employees all wages due
19 upon separation, Defendants also failed to pay Plaintiff and the other Aggrieved Employees
20 continuing wages under Labor Code section 203.

21 **Civil Penalties for Violations of IWC Wage Order 5**

22 109. Labor Code section 1199(c) makes it a misdemeanor, punishable by monetary
23 fine, for employers that, among other things, violate the provisions of the IWC Wage Orders.
24 As described herein, Defendant violated the Wage Order 5 in many respects, including without
25 limitation the failure to pay overtime, the failure to provide legally compliant meal periods,
26 failure to authorize and permit rest periods, and the failure to reimburse business expenses.

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1 **Exhaustion of Administrative Remedies under PAGA**

2 110. On or about March 6, 2023, pursuant to Labor Code § 2699.3, Plaintiff filed
3 notice with California’s Labor and Workforce Development Agency (“LWDA”) and posted by
4 certified mail to Defendants notice of the specific provisions of the Labor Code that have been
5 violated, including the facts and theories to support the violations.

6 111. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
7 claims within sixty-five (65) days.

8 112. Thus, Plaintiff has exhausted administrative remedies under PAGA’s Labor
9 Code § 2699.3(a)(2)(A).

10 113. Pursuant to Labor Code Section 2698 et seq., Plaintiff, in a representative
11 capacity, is entitled to recover civil penalties in connection with himself, and in connection
12 with each and every Aggrieved Employee of Defendants, for each and every pay period in
13 which a Labor Code violation or applicable IWC Wage Order violation occurred, in an amount
14 according to proof at trial.

15 Plaintiff and the other Aggrieved Employees are also entitled to reasonable attorney’s
16 fees and costs pursuant to Labor Code §§ 2699(g), and any other applicable statute, which are
17 hereby demanded, in an amount to be proven at trial.

18 **ELEVENTH CAUSE OF ACTION**

19 **RETALIATION FOR USING ACCRUED SICK DAYS**

20 **[Cal. Labor Code § 246.5]**

21 **(Against All Defendants)**

22 114. Plaintiff re-alleges and incorporates into this cause of action each of the
23 preceding paragraphs.

24 115. Pursuant to Labor Code § 246.5(a)(1), employers must allow eligible employees
25 to use accrued sick leave for the “[d]iagnosis, care, or treatment of an existing health condition
26 of, or preventive care for, an employee or an employee’s family member.”

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116. An employer may not discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for attempting to use or using accrued sick days. (Lab. Code, § 246.5(c)(1).)

117. Pursuant to Labor Code § 246.5(c)(2), there shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

(A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.

(B) The cooperation of an employee with an investigation or prosecution of an alleged violation of this article.

(C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

118. As alleged in greater detail *supra*, Plaintiff used accrued sick leave for the “[d]iagnosis, care, or treatment of an existing health condition of, or preventive care” and was terminated as a result. Defendants retaliated against Plaintiff by terminating him from his employment as a result.

119. Plaintiff has suffered damages in amounts to be proven at trial and is entitled to all appropriate remedies provided by the California Labor Code, including injunctive relief, restitution of unpaid wages, and civil penalties.

120. In addition, Defendants are liable to Plaintiff for reasonable attorney's fees and costs, which are hereby demanded, in an amount to be proven at trial.

TWELTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against All Defendants)

121. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

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1 122. A California employee may bring a cause of action for wrongful termination in
2 violation of public policy if an employer discharges him for a reason that violates fundamental
3 public policy. *See Tameny v. Atlantic Richfield Co.*, 27 Cal.3d 167, 170 (1980) (“when an
4 employer’s discharge of an employee violates fundamental principles of public policy, the
5 discharged employee may maintain a tort action and recover damages traditionally available in
6 such actions.”).

7 123. The provisions of the California Labor Code and the IWC Wage Orders
8 constitute fundamental public policy.

9 124. Defendants wrongfully terminated Plaintiff in retaliation for Plaintiff using his
10 accrued sick leave and complaining that he was being forced to work overtime without pay.

11 125. As a direct and proximate result of Defendants’ wrongful termination of
12 Plaintiff, Plaintiff has suffered and continued to suffer damages, including without limitation,
13 past and future lost income, emotional distress, anxiety, humiliation, and other mental and
14 physical suffering.

15 126. Defendants’ wrongful termination of Plaintiff was a substantial factor in causing
16 this harm to Plaintiff.

17 127. As alleged herein, Defendants’ conduct was outrageous and willful, and
18 Defendants acted towards Plaintiff with malice, oppression, fraud and with reckless and
19 conscious disregard for Plaintiff’s rights and for his physical and mental health. Such unlawful
20 actions were taken by and/or ratified by Defendants’ managing agents, including CHAIKEN,
21 the owner of DAVIDON HOMES. Accordingly, Plaintiff is entitled to an award of punitive
22 damages.

23 128. Plaintiff is permitted to recover his attorney’s fees in connection with his
24 wrongful termination cause of action pursuant to Code of Civil Procedure §1021.5. Plaintiff’s
25 action seeks to enforce an important right affecting the public interest, including the right to
26 use accrued sick leave, to be free from retaliation for doing so, and to be free to complain
27 about illegal working conditions and an employer’s failure to pay all wages owed. Plaintiff’s
28 action seeks to confer a significant benefit, not only to himself, but to the public and/or a large

1 group of individuals. Further, the importance and the burden of private enforcement of these
2 rights makes an award of attorney's fees necessary and appropriate.

3 **PRAYER**

4 WHEREFORE Plaintiff prays judgment be entered against Defendants, and each of them,
5 as follows:

6 **ON THE FIRST CAUSE OF ACTION**

- 7 1. For unpaid wage compensation pursuant to California Labor Code § 1194 in an
8 amount to be proven at trial;
9 2. For liquidated damages equal to unpaid minimum wage pursuant to Labor Code
10 1194.2; and
11 3. For attorney's fees, costs, and interest.

12 **ON THE SECOND CAUSE OF ACTION**

- 13 4. For unpaid overtime compensation pursuant to California Labor Code § 1194 in
14 an amount to be proven at trial;
15 5. For restitution of unpaid overtime compensation owing pursuant to California law
16 in an amount to be proven at trial; and
17 6. For attorney's fees, costs, and interest.

18 **ON THE THIRD CAUSE OF ACTION**

- 19 7. For compensation for meal periods not received pursuant to Labor Code § 226.7
20 in an amount to be proven at trial; and
21 8. For restitution of unpaid compensation for meal periods not received pursuant to
22 California law in an amount to be proven at trial;

23 **ON THE FOURTH CAUSE OF ACTION**

- 24 9. For compensation for rest periods not received pursuant to Labor Code § 226.7 in
25 an amount to be proven at trial;
26 10. For restitution of unpaid compensation for rest periods not received pursuant to
27 California law in an amount to be proven at trial.

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ON THE FIFTH CAUSE OF ACTION

11. For damages equal to the unreimbursed business expenses owed pursuant to California Labor Code § 2802; and
12. For attorney's fees, costs, and interest.

ON THE SIXTH CAUSE OF ACTION

13. For the penalty specified in Labor Code § 226(e) in an amount to be proven at trial of \$4,000.00; and
14. For attorney's fees, costs, and interest.

ON THE SEVENTH CAUSE OF ACTION

15. For the penalty specified in Labor Code § 203 in an amount to be proven at trial.

ON THE EIGHTH CAUSE OF ACTION

16. For the penalty specified in Labor Code § 226(f) in the sum of \$750;
17. For the penalty specified in Labor Code § 1198.5(f) in the sum of \$750;
18. For attorney's fees, costs, and interest; and
19. For such other and further relief as the court may deem just and proper.

ON THE NINTH CAUSE OF ACTION

20. For restitution of wages under Business & Professions Code §§ 17200, *et seq.*;
21. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business & Professions Code §§ 17200, *et seq.*; and
22. For attorney's fees, costs, and interest.

ON THE TENTH CAUSE OF ACTION

23. For civil penalties, attorney's fees, and costs pursuant to California Labor Code sections 2698 *et seq.*; and
24. For such other and further relief as the court may deem just and proper.

ON THE ELEVENTH CAUSE OF ACTION

25. For past and future wage loss;
26. For damages for emotional distress, pain, and suffering, according to proof;
27. For punitive damages, according to proof;

1 28. For pre- and post-judgment interest on the damages awarded; and

2 29. For attorney's fees and costs.

3 **ON THE TWELTH CAUSE OF ACTION**

4 30. For past and future wage loss;

5 31. For damages for emotional distress, pain, and suffering, according to proof;

6 32. For punitive damages, according to proof;

7 33. For pre-and post-judgment interest on the damages awarded; and

8 34. For attorney's fees and costs.

9 **ON ALL CAUSES OF ACTION**

10 35. For attorney's fees, as allowable by statute;

11 36. For penalties, as allowable by statute;

12 37. For pre-judgment interest according to proof and as allowable by statute;

13 38. For costs of suit incurred; and

14 39. For such further relief as the Court deems proper.

15
16 Dated: May 18, 2023

MOLTENI EMPLOYMENT LAW
THE BYRNE LAW GROUP

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19 
Cristina Molteni

Adrian C. Byrne

20 *Attorneys for Plaintiff, and all Aggrieved*
21 *Employees*

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all Aggrieved Employees, hereby demands a trial by a jury.

Dated: May 18, 2023

MOLTENI EMPLOYMENT LAW
THE BYRNE LAW GROUP



Cristina Molteni
Adrian C. Byrne
Attorneys for Plaintiff and all Aggrieved Employees