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FILED
Superior Court of California
County of Los Angeles
02/05/2024
David W. Slayton, Executive Officer / Clerk of Court
By: M. Rodriguez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

EFRAIN JIMENEZ CORNEJO,

Plaintiff,

v.

NATIONAL CONSTRUCTION RENTALS,
INC., and DOES 1 to 50,

Defendants.

Case No.: 23STCV06238

Hon. Joseph Lipner, Dept. 72

**SECOND AMENDED COMPLAINT FOR
DAMAGES, PENALTIES AND OTHER
RELIEF:**

- Individual Employment Law Claims**
- 1. Failure to Pay Overtime
 - 2. Failure to Pay Minimum Wages
 - 3. Meal Period Violations
 - 4. Rest Break Violations
 - 5. Failure to Pay Vested Vacation Benefits
 - 6. Failure to Allow Sick Time and Benefits
 - 7. Failure to Pay Wages for All Time Worked
 - 8. Failure to Provide Accurate Wage Statements
 - 9. Failure to Timely Pay Wages at Separation
 - 10. Failure to Produce Employment Records
 - 11. Failure to Pay Regular Rate of Pay
 - 12. Failure to Maintain Accurate Payroll Records
- UCL Claim**
- 13. Unfair Business Practices
- PAGA Claims**
- 14. Violation of Labor Laws Giving Rise to an Action Under the PAGA

INTRODUCTORY ALLEGATIONS

1. Plaintiff herein is Efrain Jimenez Cornejo (also referred to as “Plaintiff” and/or “Mr. Cornejo”). At all times herein, Mr. Cornejo was a resident of the County of Los Angeles, State of California.

2. From on or about June 9, 1991, Mr. Cornejo was hired to work at NATIONAL CONSTRUCTION RENTALS, INC., located at 15319 Chatsworth Street, Mission Hills, CA 91345, as a nonexempt employee. Plaintiff started as a yard sweeper and maintenance employee and continued to work in various capacities, including, but not limited to, distributing portable toilets and sinks, repairs, and cleaning portable toilets and bathrooms during most of his later years. He was weakened, worn down and hospitalized due to the work-related stress on or about 04/18/2022 and was unable to return to work thereafter.

3. Plaintiff brings this action against Defendants NATIONAL CONSTRUCTION RENTALS, INC. and DOES 1 through 50, and said Defendants’ parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively also referred to as “Defendants” or “Employer”). Defendants are in the business of construction material and equipment rentals, including fencing and porter potties. Plaintiff will seek to hold all owners, directors, officers and managing agents of his Employer personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1. The business entity Defendants were authorized to do business in the State of California.

4. Defendant business entities were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. As well, said entities were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist.

1 5. The Employer and its parent companies, subsidiaries, successors, owners, officers,
2 directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said
3 persons/individuals are joint employers for the following reasons: 1) Said entities/individuals
4 directly and/or indirectly exercised control over the wages, hours or working conditions of
5 employees; 2) Said entities/individuals had knowledge (either personally or through officers,
6 directors and/or managing agents) of the work employees were doing for them while
7 supposedly being employed by another entity/individual and failed to prevent the work from
8 occurring; and 3) Said entities retained or assumed a general right of control over hiring,
9 direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace
10 behavior of employees.

11 6. Each of the above-referenced Defendants had authority to set Employer's policies,
12 procedures, and practices as well as the authority to hire, transfer, promote, assign, reward,
13 discipline employees or to effectively recommend said actions. Defendants also had
14 responsibility to act on employee grievances and/or to effectively recommend actions on
15 employee grievances. Defendants also had the authority and/or responsibility to direct
16 Plaintiff's daily work activities. The exercise of said authority and responsibility by the above-
17 referenced individual Defendants required the use of their independent judgment.

18 7. At all times herein and for prior years, Defendants either employed individuals in
19 California and/or were involved in managing businesses and/or employees in California.
20 During those years, Defendants were provided with notifications from various governmental
21 agencies as well as various publications advising them of the requirements of the employment
22 laws referenced here. Accordingly, Defendants knew the obligations owed to employees/joint
23 employees under California law. As such, Defendants' failures to comply with the applicable
24 Labor Code sections, Industrial Wage Orders, regulations, and local laws as described here
25 were done willfully, intentionally and with knowledge of their illegality. Despite said
26 knowledge, said Defendants deliberately approved, established and/or implemented company-
27 wide policies, procedures and/or practices they knew violated California law as set forth here
28 and did so for the purpose of maximizing the profits of and/or their own personal gain

(monetary or otherwise) to the illegal detriment of employees, including Mr. Cornejo.

8. Additionally, based on requirements set forth in the Labor Code and the wage orders applicable to Defendants' business enterprise, at all times herein, Defendants knew it was necessary to possess, and Defendants did possess, a certain level of knowledge and skill in order to comply with the labor and employment laws applicable to their area of business. Said knowledge was vastly superior to that of Defendants' employees. Moreover, Defendants' employees depended on Defendants to know, record and/or track certain information to ensure California labor laws were followed. Such things include the dates and times worked by employees, when wages were owed to employees, the minimum, regular and overtime wages owed to employees, the number of rest and meal breaks the employees were entitled to, when rest and meal breaks were required to be provided, the information required to be accurately reported on employee wage statements, when employees should be paid their final wages, etc.

9. The facts linking the fictitiously designated Defendants with the causes of action alleged herein and/or the true names and capacities, whether individual, corporate, partnership, or otherwise of Defendants, DOES 1 through 50, are unknown to Plaintiff(s) at this time, who therefore sue said Defendants by such fictitious names and will seek to amend this Second Amended Complaint to show their true names and/or capacities when ascertained.

10. There is no legally recognized exemption or exception which excused Defendants; therefore, Defendants were without legal justification or excuse for failing to comply with laws.

FIRST CAUSE OF ACTION -- FAILURE TO PAY OVERTIME WAGES,
BY PLAINTIFF EFRAIN JIMENEZ CORNEJO AGAINST ALL DEFENDANTS

11. Plaintiff incorporates paragraphs 1 through 10 of this Second Amended Complaint.

12. Pursuant to Labor Code § 510 and the applicable Industrial Wage Orders, Defendants were required to pay Plaintiff as well as other non-exempt employees overtime pay as follows:

- a. For works in excess of 8 hours in one workday, no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 8 hours up to and including 12 hours in one workday.
- b. For work in excess of 12 hours in one workday, no less than twice the employee's

regular rate of pay.

- c. For work in excess of 40 hours in any one workweek, no less than one and one-half times the employee's regular rate of pay for all hours in excess of 40 hours.

13. At all times during the statute of limitations period applicable to this cause of action, Defendants, and each of them, willfully, knowingly, and intentionally failed to calculate and compensate Mr. Cornejo the overtime wages per Labor Code § 510 and/or applicable Industrial Wage Order. Specifically, Defendants unfairly rounded Mr. Cornejo's work hours and/or otherwise failed to include all the time Efrain Jimenez Cornejo worked in calculating the wages that were owed for each pay period. Thereby, Plaintiff was denied overtime wages.

14. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

SECOND CAUSE OF ACTION -- FAILURE TO PAY MINIMUM WAGES,
BY PLAINTIFF EFRAIN JIMENEZ CORNEJO AGAINST ALL DEFENDANTS

15. Plaintiff incorporates paragraphs 1 through 10 of this Second Amended Complaint.

16. At all times herein, pursuant to Labor Code § 1182.12, applicable Industrial Wage Orders, and local ordinances, Defendants were required to pay Mr. Cornejo and their other non-exempt employees at least the minimum hourly wage.

17. Defendants willfully, knowingly, and intentionally failed to calculate and compensate Mr. Cornejo the minimum wages for all the hours worked, including but not limited to time not included in wage statements due to unfair rounding practices, off the clock work and time Plaintiff was required to clock in/out for rest and/or meal breaks, etc.

18. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

THIRD CAUSE OF ACTION -- FAILURE TO PROVIDE MEAL PERIODS OR
PREMIUM PAY, BY PLAINTIFF EFRAIN JIMENEZ CORNEJO
AGAINST ALL DEFENDANTS

19. Plaintiff incorporates paragraphs 1 through 10 of this Second Amended Complaint.

20. At all times herein, pursuant to Labor Code § 512 and the applicable Wage Orders, an

1 employer may not employ an employee to work more than a five hours per day without
2 providing the employee with a thirty-minute meal break within the first five hours.

3 21. Labor Code § 512 and the applicable Wage Order further provide that an employer may
4 not employ an employee for a work period of more than ten hours per day without providing
5 the employee with a second meal period of not less than 30 minutes. California law also
6 requires that for a meal period to qualify as a valid meal period under the law, the meal period
7 must be timely, off-duty, unrestricted, and uninterrupted.

8 22. At all times during the statute of limitations period applicable to this cause of action,
9 Defendants either deprived Mr. Cornejo of taking the meal period(s) required each workday
10 under California law, required Plaintiff to take his meal periods after their fifth hour of work,
11 restricted his meal periods, and/or interrupted his meal periods. As a result, Defendants were
12 required by Labor Code § 226.7 and/or the applicable IWC Wage Order to pay Plaintiff
13 “premium pay”, i.e., one (1) hour of pay at their regular rate of pay for each workday.

14 23. Nevertheless, during the time that Mr. Cornejo was employed by Defendants,
15 Defendants failed to provide meal periods and also failed to pay Plaintiff the premium pay.

16 24. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set
17 forth in the Prayer for Damages - “Individual Causes of Action for Labor Law Violations.”

18 **FOURTH CAUSE OF ACTION -- FAILURE TO PROVIDE REST PERIODS OR**
19 **PREMIUM PAY, BY PLAINTIFF EFRAIN JIMENEZ CORNEJO**
20 **AGAINST ALL DEFENDANTS**

21 25. Plaintiff incorporates paragraphs 1 through 10 of this Second Amended Complaint.

22 26. At all times herein, pursuant to the California Labor Code, the applicable Industrial
23 Wage Order, and/or applicable regulation, employers must authorize and permit employees to
24 take paid rest periods at the rate of 10 minutes net rest time per four hours or major fraction
25 thereof (unless the total work time is less than 3 ½ hours). So far as practical, the mandatory
26 rest breaks must be provided in the middle of each work period of the workday. And, the rest
27 break must be paid, timely, off-duty, unrestricted, and uninterrupted.

28 27. Mr. Cornejo regularly worked more than 6 hours a day, entitling him to two 10-minute

rest breaks -- one in the middle of his first work period of each workday and one in the middle of his second work period during each workday.

28. In violation of California law, Defendants either 1) deprived Mr. Cornejo of taking the rest periods required under California law, 2) required him to take his rest breaks too early or too late (even though it was practical for Plaintiff to take his rest breaks in the middle of each work period), 3) restricted the rest breaks and/or 4) interrupted the rest breaks.

29. In violation of Labor Code § 226.7, Defendants also failed to pay Mr. Cornejo one (1) hour of pay at his regular rate of pay for each workday that a rest break was not provided, was provided too early or too late, was on-duty, was restricted, and/or was interrupted.

30. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

FIFTH CAUSE OF ACTION – FAILURE TO PAY VESTED VACATION BENEFITS,

BY PLAINTIFF EFRAIN JIMENEZ CORNEJO AGAINST ALL DEFENDANTS

31. Plaintiff incorporates paragraphs 1 through 10 of this Second Amended Complaint.

32. As required by Labor Code § 227.3, unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.

33. Defendants have violated and continue to violate Labor Code § 227.3 by failing to pay Plaintiff his vested vacation time at the time of his separation from Defendants.

34. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

**SIXTH CAUSE OF ACTION – FAILURE TO PROVIDE/PERMIT USE OF/PAY OUT
ACCRUED SICK TIME, BY PLAINTIFF EFRAIN JIMENEZ CORNEJO
AGAINST ALL DEFENDANTS**

37. Plaintiff hereby incorporates paragraphs 1 through 10 of this Second Amended Complaint.

38. Pursuant to Labor Code §246, employers in California are required to provide employees with sick leave time that accrues at the rates mandated or other applicable law. An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date as set forth in the Code, whichever is later, subject to the use and accrual limitations set forth. Said Labor Code also requires employers to notify employees of the amount of their accrued sick leave either in their wage statements or in a separate writing provided on the designated pay date with the employee's payment of wages.

39. Pursuant to Labor Code § 233, employers are also required to permit employees to use accumulated sick time for any of the reasons specified in Labor Code § 246.5 including the following: diagnosis, care or treatment of an existing health condition of (or preventive care for) an employee or an employee's family member. Labor Code § 246.5 specifically prohibits an employer from denying employees the right to use accrued sick days or attempting to exercise their right to use accrued sick days.

40. Pursuant to Labor Code § 246 as well, an employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation. Defendants were also duty bound to provide Mr. Cornejo with written notice that sets forth the amount of paid sick leave available, or paid time off leave Defendants provided in lieu of sick leave, for use on either Mr. Cornejo's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the Plaintiff's payment of wages.

41. Defendants failed to confer Code compliant sick leave benefits to Plaintiff.

42. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

**SEVENTH CAUSE OF ACTION -- FAILURE TO PAY WAGES/
TIMELY PAY WAGES FOR ALL TIME WORKED,
BY PLAINTIFF EFRAIN JIMENEZ CORNEJO AGAINST ALL DEFENDANTS**

43. Plaintiff incorporates paragraphs 1 through 41, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, and 37, of this Second Amended Complaint.

44. At all times herein, pursuant to Labor Code § 200, wages in California include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Wages under Labor Code § 200 also include vested benefits such as premium pay for missed, untimely, on-duty, restricted and/or interrupted meal periods and/or rest breaks.

45. All non-exempt employees must be paid all earned wages within the timeframes set forth in Labor Code § 204.

46. Defendants, and each of them willfully, knowingly, and intentionally failed to pay Mr. Cornejo for all time worked whether or not reported and for unfairly rounded punch-in/out times. Defendants also illegally required Mr. Cornejo to clock out for rest and/or meal breaks that were legally required to be paid by Defendants and failed to pay for missed, untimely, short, on-duty, interrupted or restricted meal and/or rest breaks.

47. Since such wages were not paid, said wages were also not paid in accordance with the time frames set forth in Labor Code § 204.

48. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

**EIGHTH CAUSE OF ACTION -- FAILURE TO PROVIDE ACCURATE WAGE
STATEMENTS, BY PLAINTIFF EFRAIN JIMENEZ CORNEJO
AGAINST ALL DEFENDANTS**

49. Plaintiff incorporates paragraphs 1 through 48, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, 37, 42 and 43, of this Second Amended Complaint.

50. At all times herein, pursuant to Labor Code § 226(a), each time an employer pays wages to an employee, the employer is required to furnish the employee with an "accurate

itemized statement in writing” that itemizes the following: 1) gross wages earned; 2) total hours worked; 3) the number of piece-rate units earned and the applicable piece rates; 4) all deductions; 5) net wages earned; 6) the inclusive dates for which the employee is being paid; 7) name of the employee and only the last 4 digits of his/her social security number or employee I.D. number; 8) the name and address of the legal entity of the employer; and 9) all hourly rates in effect to the pay period and corresponding number of hours worked at each hourly rate.

51. Defendants violated Labor Code §226(a) by not providing Mr. Cornejo with Code compliant wage statements at all times relevant here.

52. As a result of the above statutory deficiencies in the wage statements provided to Mr. Cornejo, Plaintiff was not reasonably able to promptly and easily determine the information intended to be communicated to Mr. Cornejo by the Employer. A reasonable person would also have been unable to readily discern the above information without reference to other documents or information.

53. Plaintiff is entitled to recover the wages, damages, penalties, awards, and remedies set forth in the Prayer for Damages - “Individual Causes of Action for Labor Law Violations.”

NINTH CAUSE OF ACTION FOR FAILURE TO PAY WAGES

OWED AT TIME OF SEPARATIONBY PLAINTIFF EFRAIN JIMENEZ CORNEJO
AGAINST ALL DEFENDANTS

54. Plaintiff incorporates paragraphs 1 through 52, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, 37, 42, 43, 48 and 49, of this Second Amended Complaint.

55. Pursuant to Labor Code § 201, employers are required to immediately pay employees all wages due at the time employees are discharged. Additionally, pursuant to Labor Code § 202, if an employee gives at least 72-hours previous notice of their intent to quit/retire, the employer is required to pay the employee all wages due the time the employee quits/retires. Pursuant to Labor Code § 202, if an employee does not give 72-hours previous notice of their intention to quit/retire, the employer is required to pay the employee all wages due the employee within 72-hours of the time the employee leaves employment.

1 56. In violation of Labor Code §§ 201-202, Mr. Cornejo was not timely paid all wages due
2 at the time of his separation from Defendants even though said Defendants knew such payment
3 was owed and it was within said Defendants' control to make such payment in accordance with
4 Labor Code §§ 201-202. Plaintiff was not paid the overtime wages, regular time wages,
5 minimum wages, premium wages as well as vacation and accrued sick benefits that were owed
6 to them at the time of separation of Mr. Cornejo from Defendants. Defendants thereby willfully
7 violated Labor Code §§ 201-202 and the applicable IWC Wage Order(s).

8 57. Because Mr. Cornejo was not paid all the wages owed in accordance with the time
9 frames set forth in Labor Code §§ 201-202, pursuant to Labor Code § 203, Defendants were
10 required to pay Plaintiff his regular wages from the due date thereof at the same rate until paid,
11 up to a maximum of thirty (30) days of pay.

12 58. Plaintiff is entitled to recover the wages, damages, penalties, awards and remedies set
13 forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

14 **TENTH CAUSE OF ACTION -- FAILURE TO PROVIDE EMPLOYMENT**

15 **RECORDS, BY PLAINTIFF EFRAIN JIMENEZ CORNEJO**

16 **AGAINST ALL DEFENDANTS**

17 59. Plaintiff hereby incorporates paragraphs 1 through 10 of this Second Amended
18 Complaint.

19 60. At all times herein, pursuant to Labor Code § 226(b), employers are required to afford
20 their current and former employees the right to inspect or copy all records pertaining to their
21 employment upon reasonable notice.

22 61. Pursuant to Labor Code § 226(c), an employer who receives a written or oral request to
23 inspect or copy records must comply with the request as soon as practicable, but no later than
24 21 calendar days from the date of the request. Pursuant to Labor Code § 226(b), if the
25 employer provides copies of the records, the actual cost of reproduction may be charged to the
26 employee. Pursuant to Labor Code § 226(b), on two separate instances, on 12/7/2022 and
27 02/28/2023, Mr. Cornejo, through his legal counsel, (via written correspondence/certified letter
28 with return receipt) requested all records pertaining to Plaintiff's employment with Defendants.

1 The request was Code compliant and time sensitive. Defendants received the requested
2 production communications but failed to provide any documents in response.

3 62. Plaintiff is entitled to recover the damages, penalties, awards, and other remedies set
4 forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

5 **ELEVENTH CAUSE OF ACTION -- FAILURE TO PAY REGULAR RATE OF PAY,**
6 **BY PLAINTIFF EFRAIN JIMENEZ CORNEJO AGAINST ALL DEFENDANTS**

7 63. Plaintiff incorporates paragraphs 1 through 57, except for paragraphs 11, 14, 15, 18, 19,
8 24, 25, 30, 31, 34, 37, 42, 43, 48, 49, 53 and 54 of this Second Amended Complaint.

9 64. Defendants have failed and continue to fail to take into consideration the "regular rate
10 of pay," encompassing all nondiscretionary payments, not just hourly wages, in their
11 computation of premium pay for non-compliant meal, rest or recovery period under Labor
12 Code Section 226.7(c) and Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal5th 858.

13 65. Defendants have also failed and continues to fail to take into consideration the regular
14 rate of pay in their computation of overtime pay pursuant to Labor Code Section 510(a). Mr.
15 Jimenez received non-discretionary bonuses at all times relevant here and was denied the
16 appropriate adjustments to the wages based on the requisite regular rate analysis.

17 66. Plaintiff is entitled to recover the damages, penalties, awards, and other remedies set
18 forth in the Prayer for Damages - "Individual Causes of Action for Labor Law Violations."

19 **TWELFTH CAUSE OF ACTION -- FAILURE TO MAINTAIN ACCURATE**
20 **PAYROLL RECORDS, BY PLAINTIFF EFRAIN JIMENEZ CORNEJO**
21 **AGAINST ALL DEFENDANTS**

22 67. Plaintiff hereby incorporates paragraphs 1 through 10 of this Second Amended Complaint.

23 68. Defendants have failed and continue to fail record keeping practices in compliance with
24 Labor Code Sections 1174 (c) and (d), which in pertinent part provide: "(c) Keep a record
25 showing the names and addresses of all employees employed and the ages of all minors. (d)
26 Keep at a central location in the state or at the plants or establishments at which employees are
27 employed, payroll records showing the hours worked daily by and the wages paid to, and the
28 number of piece-rate units earned by, and any applicable piece rate paid to, employees

employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

69. It became evident after review of the payroll records and relevant data during the litigation that record keeping practices were lawfully deficient for computation of wages, premium and overtime wages, regular rate of pay adjustments, PTO benefits, and reporting requirements for the wage statements.

70. Defendants’ wage statements do not accurately set forth all the hourly rates in effect to the pay period and/or the accurate corresponding number of hours worked at each hourly rate by Employees. The aggrieved employees were affected by said violations and none were provided the opportunity to examine their respective records at all times relevant here.

71. Plaintiff is entitled to recover the damages, penalties, awards, and other remedies set forth in the Prayer for Damages - “Individual Causes of Action for Labor Law Violations.”

THIRTEENTH CAUSE OF ACTION -- UNFAIR BUSINESS PRACTICES,

BY PLAINTIFF EFRAIN JIMENEZ CORNEJO AGAINST ALL DEFENDANTS

72. Plaintiff incorporates paragraphs 1 through 70, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, 37, 42, 43, 48, 49, 53, 54, 58, 59, 62, 63, 66, and 67 of this Second Amended Complaint.

73. Business and Professions Code §17200 provides as applicable “. . . [U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice”

74. Business and Professions Code §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties available under all other laws of this state.”

75. Business and Professions Code §17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

76. Defendants have engaged in unlawful business acts or practices, including those set

1 forth in the preceding paragraphs of the Complaint, and, thereby, have wrongfully deprived
2 Plaintiff from the minimum working standards and conditions under the California Labor Code,
3 the Code of Regulations and/or applicable IWC Wage Order(s), as set forth herein.

4 77. Defendants have also engaged in unfair business practices in California by practicing,
5 employing and utilizing the employment practices outlined in the preceding paragraphs,
6 including, but not limited to:

- 7 a. Requiring employees (including Plaintiff) to perform labor without paying/timely
8 paying them the requisite compensation (including regular wages, overtime
9 wages, minimum wages).
- 10 b. Not providing employees (including Plaintiff) with the requisite meal periods
11 and/or rest breaks or the applicable premium pay.
- 12 c. Not paying/timely paying employees (including Plaintiff) all the wages owed
13 them at the time of their separation from employment.
- 14 d. Not providing employees (including Plaintiff) with accurate wage statements.
- 15 e. Not providing employees with the seating required under the applicable IWO.

16 78. Defendants' use of such illegal and unfair practices constitutes an unfair business
17 practice, unfair competition and provides an unfair advantage over Defendants' competitors
18 who comply with the above-referenced employment laws and regulations.

19 79. Defendants have engaged in said unlawful and unfair business practices on a continuous
20 basis for many years up until the present time. As a result, Plaintiff has suffered injury in fact
21 and has lost money and/or property as described herein.

22 80. As a direct and proximate result, Defendants are required to pay restitution to restore
23 any and all monies withheld, acquired and/or converted by Defendants. If Defendants are not
24 enjoined from the conduct set forth above, Defendants will continue to practice, employ, and
25 utilize the employment practices outlined. Therefore, the court is requested to issue a
26 permanent injunction prohibiting Defendants from engaging in the foregoing conduct, and as
27 necessary, the court is requested to appoint a receiver.

81. Plaintiff is entitled in addition to an award of attorneys' fees and costs of suit on this cause of action pursuant to Code of Civil Procedure §1021.5.

82. Under California law, Plaintiff is entitled to penalties, awards, and remedies set forth in the Prayer for Damages - "Unfair Business Practices Cause of Action" are also being sought.

**FOURTEENTH CAUSE OF ACTION -- VIOLATION OF LABOR LAWS GIVING
RISE TO AN ACTION PURSUANT TO THE PRIVATE ATTORNEYS GENERAL
ACT (PAGA) -- BY PLAINTIFF EFRAIN JIMENEZ CORNEJO ON BEHALF OF
HIMSELF AND OTHER CURRENT AND FORMER AGGRIEVED EMPLOYEES
AGAINST ALL DEFENDANTS**

83. Plaintiff incorporates paragraphs 1 through 70, except for paragraphs 11, 14, 15, 18, 19, 24, 25, 30, 31, 34, 37, 42, 43, 48, 49, 53, 54, 58, 59, 62, 63, 66, and 67 of this Second Amended Complaint.

84. Plaintiff brings this cause of action pursuant to the Private Attorneys General Act (Labor Code §2699) on behalf of himself and all aggrieved employees as described as follows: All current and former employees of Defendants who were either 1) classified as non-exempt employees or 2) should have been classified as non-exempt employees who worked for Defendants at any time during the following time period: One year before the date that the PAGA Notice Letter was filed with the LWDA to the present and continuing until the unlawful employment practices are stopped or a judgment is obtained.

PAGA Claims Filed with the LWDA

85. Plaintiff has exhausted all statutory prerequisites to filing a Private Attorneys General Action in this matter by providing written notice to the Labor and Workforce Development Agency on or about March 2, 2023, and November 30, 2023 (Amended PAGA Notice) that Defendants had violated and were continuing to violate provisions of the California Labor Code. Pursuant to the PAGA, said filing resulted in a tolling of the applicable statute of limitation(s).

86. At least sixty-five days has passed since Plaintiff provided said written notices (by online submission to the Labor and Workforce Development Agency and by certified mail to

Defendants) that Defendants had violated and continued to violate provisions of the California Labor Code. Plaintiff has not received notice from the LWDA that it intends to prosecute an action against Defendants. Therefore, as statutorily permitted by Labor Code § 2699.3, Plaintiff has the right to commence a Private Attorneys General Action (PAGA) pursuant to Labor Code § 2699

COUNT ONE – MISSCLASSIFICATION OF EMPLOYEES AS EXEMPT

EMPLOYEES

Employees were Non-Exempt Employees, Not Exempt Employees

87. At all times that some of the aggrieved employees encompassed by Plaintiff's PAGA Notice Letter provided work for Defendants, they were non-exempt employees (even though they were labeled as exempt employees) for the following reasons:

- a. They were either not paid a salary or the salary they were paid was not at least twice the minimum wage for full-time employment.
- b. Their primary duties did not consist of administrative, executive, or professional tasks.
- c. Their job duties did not involve the use of discretion or independent judgment.
- d. Other reasons set forth in the applicable Industrial Wage Order.

88. Misclassifying aggrieved employees encompassed by Plaintiff's PAGA Notice Letter as exempt employees was done willfully by Defendants for the purpose of maximizing the business profits of COMMUNITY VALLEY HOMES, INC. as well as the personal assets of MARY MARTIN and HARRY FORD to the illegal detriment of said employees. This was accomplished by depriving said employees of employment benefits that employers owe to employees/non-exempt employees (but not exempt employees) under California law including the following: Reimbursement of business expenses under Labor Code §2802, overtime wages, legally compliant rest breaks and meal periods, legally complaint and accurate wage statements, etc.

89. As applicable under California law, Plaintiff (on behalf of the LWDA and other similarly aggrieved employees) is entitled to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled

“PAGA Cause of Action.”

COUNT TWO – FAILURE TO PAY OVERTIME WAGES

90. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other similarly aggrieved employees) is entitled to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT THREE – FAILURE TO PAY MINIMUM WAGES

91. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other similarly aggrieved employees) is entitled to recover the penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT FOUR – FAILURE TO PROVIDE MEAL PERIODS/PREMIUM PAY

92. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other similarly aggrieved employees) is entitled to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT FIVE – FAILURE TO PROVIDE REST BREAKS/PREMIUM PAY

93. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other similarly aggrieved employees) is entitled to recover the damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT SIX – FAILING TO PAY/TIMELY PAY

WAGES FOR ALL TIME WORKED

94. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other similarly aggrieved employees) is entitled to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT SEVEN – FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

95. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other similarly aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT EIGHT – FAILURE TO PAY WAGES OWED AT SEPARATION

96. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other similarly aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT NINE - FAILURE TO PROVIDE SEATING

97. Defendants have adopted and continue to adopt a custom and practice of failing to provide their current and former employees, including Mr. Cornejo, with 1) suitable seating when the nature of the employees’ work reasonably permits use of seats; and 2) suitable seating in reasonable proximity to employees’ work areas for use by employees when a) they are not engaged in active duty, b) their work requires standing, and c) such seats would not interfere with the performance of their duties. Defendants refused and continue to refuse to provide such seating for the employees, and as a consequence are in violation thereof under California law.

98. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT TEN – FAILURE TO PROVIDE VACATION TIME

99. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT ELEVEN – FAILURE TO COMPLY WITH SICK LEAVE LAWS

100. As applicable under California law, Plaintiff (on behalf of the LWDA, himself, and

other
aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT TWELVE – FAILURE TO PAY REGULAR RATE OF PAY

101. For Defendants failure to pay regular rate of pay as alleged in the Eleventh Cause of Action, and as applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT THIRTEEN – FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS

102. For Defendants failure to maintain accurate payroll records as alleged in the Twelfth Cause of Action, and as applicable under California law, Plaintiff (on behalf of the LWDA, himself, and other aggrieved employees) seeks to recover the penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

PRAYER FOR DAMAGES, AWARDS AND OTHER RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them:

Individual Causes of Action for Labor Law Violations

1. Unpaid/underpaid wages (including but not limited to regular wages, overtime wages, vacation and sick leave benefits, and/or minimum wages) owed to Plaintiff for \$75,000 or in an amount as proven at the time of the trial.
2. All premium pay/wages owed to Plaintiff for untimely, missed, or interrupted meal periods and/or rest breaks for \$75,000 or in an amount as proven at the time of the trial.
3. Continuing wages to the fullest extent under Labor Code § 203 in the amount of \$5,000 or in an amount as proven at the time of the trial.
4. All statutory penalties under the Labor Code for an individual employee to recover from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s)

- 1 and/or applicable local laws/ordinances which were violated with respect to Plaintiff's
2 employment as alleged herein, in the amount of \$15,000 or in an amount as proven.
- 3 5. All liquidated damages in the amount of \$15,000 or in an amount as proven.
- 4 6. All equitable relief permitted under California law, according to proof.
- 5 7. Attorney's fees to the fullest extent permitted under California law, according to proof.
- 6 8. Costs to the fullest extent permitted under California law.
- 7 9. Prejudgment and post-judgment interest to the fullest extent under California law.
- 8 10. Post-judgment interest, as applicable, under California law.
- 9 11. For such further relief as the court deems just and proper.

10 **Unfair Business Practices Cause of Action**

- 11 1. Full restitution of all monies withheld, acquired and/or converted by Defendants by
12 means of unlawful and/or unfair business practices prohibited by Bus. & Prof. Code §
13 17200, in the amount of \$75,000 or in an amount as proven at the time of the trial.
- 14 2. A preliminary and permanent injunction prohibiting Defendants from engaging in the
15 unlawful and/or unfair employment practices complained of herein.
- 16 3. The appointment of a receiver to establish the total monetary relief sought.
- 17 4. Attorneys' fees and costs to the fullest extent permitted under California law.
- 18 5. Prejudgment and post-judgment interest as permitted under California law.
- 19 6. Post-judgment interest if applicable, to the fullest extent permitted under California law.
- 20 7. For such further relief as the court deems just and proper.

21 **PAGA Cause of Action**

- 22 1. All civil penalties and/or other penalties and remedies recoverable under the PAGA for
23 violations of the Labor Code, applicable Industrial Wage Order(s) and/or applicable
24 regulation, local law/ordinance, in the amount of \$2,500,000. To the extent required by
25 the PAGA, the civil penalties recovered on behalf of all aggrieved employees shall be
26 distributed seventy-five percent (75%) to the LWDA and the remaining twenty-five
27 percent (25%) distributed to Plaintiff and all similarly aggrieved employees.
- 28 2. Attorneys' fees and/or costs to the full extent permitted under the PAGA, the Labor Code,

- 1 the applicable Industrial Wage Order and/or other applicable California law.
- 2 3. Prejudgment interest to the fullest extent permitted under California law.
- 3 4. Post-judgment interest if applicable, to the fullest extent permitted by California law.
- 4 5. For such further relief as the court deems just and proper.

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6 DATED: February 5, 2024 MOORADIAN LAW, APC

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Zorik Mooradian

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By: _____

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Zorik Mooradian

Nanor Kamberian

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Attorneys for Plaintiff Efrain Jimenez Cornejo

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DEMAND FOR A JURY TRIAL

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Plaintiff, Efrain Jimenez Cornejo, hereby demands a jury trial in the within matter.

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DATED: February 5, 2024 MOORADIAN LAW, APC

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Zorik Mooradian

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By: _____

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Zorik Mooradian

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Nanor C. Kamberian

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Attorneys for Plaintiff Efrain Jimenez Cornejo

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