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By **D. HERTZ**
DEPUTY CLERK

Attorneys for Plaintiff GERARDO JAQUEZ as an individual
and on behalf of all employees similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO**

GERARDO JAQUEZ, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

SITE SAFE TRAFFIC SAFETY AND
SIGNS, a California Corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. CU23-00940

**Amended as a matter of right, pursuant to
Labor Code Section 2699.3(a)(2)(c)**

FIRST AMENDED COMPLAINT

1. Violation of Labor Code §§ 204, 246, 510, 1194, 1198 (Failure to Pay All Wages and Sick Pay);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 226, (Failure to Keep Accurate Itemized Wage Statements);
5. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment);
6. Violation of Labor Code § 2802 (Failure to Reimburse for Necessary Expenditures);
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices); and
8. Violation of the Private Attorneys General Act, Labor Code sections 2698, et seq

DEMAND FOR JURY TRIAL

1 Plaintiff GERARDO JAQUEZ (hereinafter referred to as “Plaintiff”) on behalf of himself
2 and all others similarly situated, and as representative of the State of California and the Labor and
3 Workforce Development Agency (“LWDA”), based upon facts that either have evidentiary
4 support or are likely to have evidentiary support after a reasonable opportunity for further
5 investigation and discovery, complains and alleges as follows:

6 **INTRODUCTION**

7 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
8 represent (“Class” or “Class Members”). Class Members consist of all non-exempt, hourly-paid
9 employees currently and/or formerly employed by SITE SAFE TRAFFIC SAFETY AND SIGNS
10 in the State of California during the Class Period. The term “Class Period” is defined as four (4)
11 years prior to the filing of this Complaint through the date final judgment is entered. Plaintiff
12 reserves the right to amend this Complaint to reflect a different “Class Period” or “Class” as
13 further discovery is conducted.

14 2. Plaintiff, individually and on behalf of the class he seeks to represent, seeks relief
15 against SITE SAFE TRAFFIC SAFETY AND SIGNS (“Defendant”) for Defendant’s failure to
16 pay all wages due in violation of Labor Code Sections 204, 510 and 1194, including both regular
17 and overtime wages as well as paid sick leave in violation of Labor Code Section 246; failure to
18 provide meal periods or compensation in lieu thereof pursuant to Labor Code Sections 226.7 and
19 512, the applicable Industrial Welfare Commission Wage Orders, and Code of Regulations, Title
20 8, Section 11000 et seq.; failure to provide rest periods or compensation in lieu thereof pursuant
21 to Labor Code Sections 226.7 and 512, the applicable Industrial Welfare Commission Wage
22 Orders, and Code of Regulations, Title 8, Section 11000 et seq.; failure to provide accurate
23 itemized wage statements upon payment of wages pursuant to Labor Code Sections 226,
24 subdivision (a), 1174, and 1175; failure to reimburse for necessary expenditures pursuant to Labor
25 Code Section 2802; and failure to pay wages of terminated or resigned employees pursuant to
26 Labor Code Sections 201, 202, and 203.

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

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

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

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

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

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

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

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

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

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

1 7. Plaintiff further brings this action as a representative of the State of California and
2 the Labor and Workforce Development Agency (“LWDA”) to recover civil penalties pursuant to
3 the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*, for violations
4 of numerous Labor Code provisions, including, but not limited to, sections 201-203, 204, 226,
5 226.7, 246, 510, 512, 1174, 1194, 1198 and 2802, as well as violations of the applicable Wage
6 Order.

7 **JURISDICTION AND VENUE**

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

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

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

25 **THE PARTIES**

26 **A. Plaintiff**

27 11. Plaintiff, at all relevant times herein, was Defendant’s employee and was entitled
28 to compensation for all hours worked, including regular time and overtime compensation, and

penalties from Defendant. Plaintiff was employed by Defendant as a non-exempt, hourly paid employee during the Class Period. Specifically, Plaintiff worked for Defendant as a foreman from approximately 2018 to April 21, 2022 at different jobsites in Sacramento, Stanislaus, Modesto, Merced, San Francisco, Alameda, Yolo, Solano counties. Defendant's principal office is located at 630 Eubanks CT, Suite 200, Vacaville, California 95688. Each of the Class Members are identifiable, current and/or former similarly situated persons who were employed in non-exempt hourly positions in California by Defendant during the Class Period.

B. Defendant

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a California corporation. Defendant provides road safety and traffic control services. On information and belief, Defendant was and/or is the employer of Plaintiff and Class during the Class Period. Plaintiff also alleges that Defendant is conducting business in good standing in California.

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

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

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the Defendant, and in performing the actions mentioned

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

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

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

ADMINISTRATIVE PREREQUISITE

18. On April 20, 2023, prior to filing this complaint, Plaintiff gave written notice by electronically filing the notice with the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA- 949895-23) and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code Section 2699.3.

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

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

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

GENERAL ALLEGATIONS

21. Plaintiff was employed as a foreman for Defendant from approximately 2018 to April 21, 2022.

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

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

20 24. Pursuant to Industrial Welfare Commission Order N 5-2001 Section 5 (a) each
21 workday an employee is required to report for work and does report, but is not put to work or is
22 furnished less than half said employee's usual or scheduled day's work, the employee shall be
23 paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor
24 more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the
25 minimum wage. Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions,*
26 *Inc.* (2007) 40 Cal. 4th 1094. In addition, failure to pay all reporting time pay due at the time of
27 employment termination may be the basis for waiting time penalties pursuant to Labor Code §
28 203.

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

6 26. During all, or a portion of the Class Period, Plaintiff and each member of the Class
7 was employed by Defendant in the State of California.

8 27. Plaintiff and Class Members were non-exempt employees covered under one or
9 more IWC Wage Order(s), and Labor Code Section 510, and/or other applicable Wage Orders,
10 regulations and statutes, and each Class Member was not subject to an exemption for executive,
11 administrative or professional employees, which imposed obligations on the part of Defendant to
12 pay Plaintiff and Class Members lawful overtime compensation.

13 28. Plaintiff and Class were covered by one or more IWC Wage Order(s), and Labor
14 Code Section 226.7 and other applicable Wage Orders, regulations and statutes which imposed
15 an obligation on the part of Defendant to pay Plaintiff and Class rest and meal period
16 compensation.

17 29. During the Class Period, Defendant was obligated to pay Plaintiff and Class
18 Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members
19 for all hours worked at the legally mandated wage rates, including all overtime wages.
20 Defendant regularly used a system of time rounding in a manner that resulted, over a period of
21 time, in failing to compensate Plaintiff and Class Members properly for all the time they have
22 actually worked, even though the realities of Defendant's operations are such that it is possible,
23 practical, and feasible to count and pay for work time to the minute. Defendant failed to
24 maintain a time recording system. Plaintiff and Class Members were required to fill out written
25 work order forms with their scheduled time despite the fact they actually worked more than
26 their scheduled time. Accordingly, Defendant frequently paid Plaintiff and Class Members
27 less than all their work time. Some of this unpaid work also should have been paid at the
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1 overtime rate. Throughout the Class Period, Plaintiff and Class Members were required to
2 work on-call shifts. However, Defendant has not compensated Plaintiff and Class Members for
3 the standby on-call time. Throughout the Class Period, Defendant also maintained a policy and
4 practice of requiring Plaintiff and Class Members to report for work but has not put them to
5 work. They were required to return home immediately or shortly after upon arrival at work. In
6 those occasions Defendant failed to pay Plaintiff and Class Members the reporting time pay of
7 half the usual scheduled day of work or at least two hours. Throughout the Class Period,
8 Defendant also maintained a policy and practice of requiring Plaintiff and Class Members to
9 perform work “off-the-clock”. Throughout the Class Period, Defendant required Plaintiff and
10 Class Members to watch training videos and tutorials, to read training materials outside their
11 scheduled shift time but failed to compensate them for that time. Throughout the Class Period,
12 Defendant also regularly required Plaintiff and Class Members to do pre-trip inspection and to
13 log their notes prior to driving to the jobsite location but failed to compensate for that time.
14 Defendant also required Plaintiff and Class Members to arrive to the jobsite at least one hour
15 earlier than their scheduled shift to do preparatory so that by the scheduled shift start time the
16 street or intersection is cleared and closed, the traffic cone is put down and the street is ready
17 for constructions works but failed to compensate for that time. Plaintiff and Class Members
18 were also required to receive and respond to work related calls and text messages from the
19 dispatcher regarding the next day job assignment location and start time after their scheduled
20 shift time. Defendant also failed to compensate Plaintiff and Class Members for the travel time
21 to different stores to purchase supplies and materials necessary to perform their work as well as
22 all travel time to jobsites. Additionally, throughout the Class Period, Plaintiff and Class
23 Members were required to spend about one hour after the end of their scheduled shift at home
24 to remove tools from the truck to their houses for theft protection, to clean out the truck, to
25 review the plan for the next day job assignment, to make sure the truck is loaded with all items
26 and materials necessary for the work and to call stores for the missing materials and items.
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1 Plaintiff and Class Members were not compensated for that time as well. Plaintiff and Class
2 Members also spent about two hours each Saturday to review the work orders forms, to prepare
3 job hazard analyst forms, to drive to FedEx location to send the filled-out paperwork to
4 Defendant's principal office for payroll. They were not compensated for that time. Lastly,
5 approximately from March 2020, Defendant required Plaintiff and Class Members to undergo
6 COVID pre-screening (temperature check) procedure prior to the start of their scheduled shifts
7 but failed to compensate for that time. In maintaining a practice of not paying all wages owed,
8 Defendant failed to maintain accurate records of the hours Plaintiff and Class Members
9 worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff
10 and Class Members worked.

11 30. During the Class Period, Defendant was obligated to pay Plaintiff and Class
12 Members overtime compensation for all hours worked in excess of eight (8) hours of work in one
13 (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked in
14 excess of twelve (12) in one (1) day. However, often times Plaintiff and Class Members were
15 required to work overtime in excess of eight (8) hours per workday and in excess of forty (40)
16 hours per workweek but were not paid at the proper overtime rate of pay.

17 31. During the Class Period, Defendant was obligated to provide Plaintiff and Class
18 with a work-free meal period within the first five (5) hours of a shift when the workday was
19 longer than six (6) hours. Plaintiff and Class Members were entitled to a full, thirty (30) minute,
20 off-duty meal period when they worked in excess of six (6) hours within the first five (5) hours
21 of their shifts. Defendant regularly required Plaintiff and Class to work in excess of five
22 consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free
23 meal period for every five hours of work, or without compensating Plaintiff and Class for meal
24 periods that were not provided by the end of the fifth hour of work or tenth hour of work.
25 Plaintiff and Class Members were routinely not provided with timely, 30-minute off-duty meal
26 periods, and were not permitted and authorized to take uninterrupted meal periods. Defendant
27 did not adequately inform Plaintiff and Class of their right to take a meal period by the end of the
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1 fifth hour of work, or, for shifts greater than ten (10) hours, by the end of the tenth hour of work.
2 Moreover, Defendant did not have adequate written policies or practices providing meal periods
3 for Plaintiff and Class Members, nor did Defendant have adequate policies or practices regarding
4 the timing of meal periods or recording of meal periods. Defendant failed to keep a record of
5 meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to
6 Plaintiff and Class in compliance with California law.

7 32. Additionally, Defendant were obligated to provide Plaintiff and Class Members
8 with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each
9 day. Defendant prevented Plaintiff and Class Members from taking rest breaks throughout their
10 shifts. Plaintiff and Class Members were generally precluded from taking rest periods due to
11 Defendant's failure to maintain the rest break policy to provide relief and thereby allow Plaintiff
12 and Class Members the opportunity to take rest breaks. Moreover, Defendant did not have
13 adequate policies or practices permitting or authorizing rest periods for Plaintiff and Class, nor
14 did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant
15 did not schedule rest periods every 4 hours or a major fraction. Accordingly, Defendant's policy
16 and practice was for Plaintiff and Class to work through rest periods and to not authorize or permit
17 them to take any rest periods.

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

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

1 35. Labor Code § 246 (a) an employee who, on or after July 1, 2015, works in
2 California for the same employer for 30 or more days within a year from the commencement of
3 employment is entitled to paid sick days. Labor Code § 246 (i) requires employers to provide an
4 employee with written notice that sets forth the amount of paid sick leave available.

5 36. During the Class Period, Defendant maintained a policy and practice of failing to
6 provide Plaintiff and Class with paid sick leave as well as to provide a written notice of accrued
7 paid sick leave. On information and belief, Defendant's failure to provide an employee with
8 written notice that sets forth the amount of paid sick leave available was not a single, isolated
9 incident, but was instead part of Defendant's policy and practice that applied to Class.

10 37. Defendant also failed to indemnify Plaintiff and Class Members all necessary
11 expenditures incurred in direct discharge of their duties. During the Class Period, Defendant
12 wrongfully required Plaintiff and Class Members to pay expenses that they incurred in direct
13 discharge of their duties for Defendant without reimbursement. Plaintiff and Class Members were
14 required to use their personal cell phones to respond to and to make work related calls and to
15 receive work related text messages but were not reimbursed for the cost of the cell phone usage.
16 Defendant also failed to reimburse Plaintiff and Class Members for the mileage for all the travel
17 time to the jobsite locations as well for the travel time to different stores to purchase necessary
18 materials for work. Defendant also required Plaintiff and Class Members to purchase and wear
19 protective gear such as reflective vests, hard hats, ear plugs, safety glasses, steel toe boots, but
20 failed to compensate for that protective gear. Defendant failed to compensate Plaintiff and Class
21 Members for cleaning and maintenance of the protective gear as well. Plaintiff and Class were
22 also not provided per diem they were entitled to when they travelled for work as whole or the
23 portion of the per diem was spent by Defendant to provide housing to Plaintiff and Class while
24 Defendant had an obligation to provide both housing and per diem. Plaintiff and Class Members
25 incurred these substantial expenses as a direct result of performing their job duties for Defendant,
26 and Defendant has failed to indemnify Plaintiff and Class Members for these employment-related
27 expenses.
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1 38. Defendant continues to employ non-exempt, hourly-paid employees within
2 California.

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

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

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

20 42. During the Class Period, Defendant failed to furnish Plaintiff and Class with
21 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
22 wages earned (including correct hours worked, correct wages earned for hours worked, correct
23 overtime hours worked, correct wages for meal periods that were not provided in accordance
24 with California law, correct wages for rest periods that were not authorized and permitted to
25 take in accordance with California law). As a result of these violations of California Labor
26 Code § 226(a), Plaintiff and Class suffered injury because, among other things:
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- 1 (a) the violations led them to believe that they were not entitled to be paid
2 regular and overtime wages, meal period premium wages, and rest period
3 premium wages to which they were entitled, even though they were entitled;
4 (b) the violations led them to believe that they had been paid the overtime, meal
5 period premium, and rest period premium wages, even though they had not
6 been;
7 (c) the violations led them to believe they were not entitled to be paid overtime,
8 meal period premium, and rest period premium wages at the correct
9 California rate even though they were;
10 (d) the violations led them to believe they had been paid overtime, meal period
11 premium, and rest period premium wages at the correct California rate even
12 though they had not been;
13 (e) the violations hindered them from determining the amounts of overtime,
14 meal period premium, and rest period premium owed to them;
15 (f) in connection with their employment before and during this action, and in
16 connection with prosecuting this action, the violations caused them to have
17 to perform mathematical computations to determine the amounts of wages
18 owed to them, computations they would not have to make if the wage
19 statements contained the required accurate information;
20 (g) by understating the wages truly due them, the violations caused them to lose
21 entitlement and/or accrual of the full amount of Social Security, disability,
22 unemployment, and other governmental benefits;
23 (h) the wage statements inaccurately understated the wages, hours, and wages
24 rates to which Plaintiff and Class were entitled, and Plaintiff and Class were
25 paid less than the wages and wage rates to which they were entitled.
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1 Thus, Plaintiff and Class are owed the amounts provided for in California Labor Code §
2 226(e), including actual damages.

3 43. Defendant knew or should have known that Plaintiff and Class members were
4 entitled to receive accurate wage statements, which would include meal break premiums, and/or
5 rest break premiums, as required by Labor Code 226.

6 44. Defendant knew or should have known that Plaintiff and Class Members were
7 entitled to timely payment of all wages earned upon termination. Plaintiff and Class Members did
8 not receive payment of all wages, including but not limited to, meal and rest break premiums, in
9 violation of the Labor Code.

10 **CLASS ALLEGATIONS**

11 45. Plaintiff brings this action on behalf of himself and all other similarly situated
12 persons as a class action pursuant to Code of Civil Procedure Section 382. The Class is composed
13 of and defined as follows:

- 14 (a) All persons who are employed or have been employed by Defendant in the
15 State of California, and who, within the four (4) years of the filing of this
16 Complaint to the present, have worked as non-exempt employees and were not
17 paid all wages owed, including but not limited to the legally requisite regular
18 time rate, overtime rate and/or double-time rate as specifically described
19 herein;
- 20 (b) All persons who are employed or have been employed by Defendant in the
21 State of California, and who, within the four (4) years of the filing of this
22 Complaint to the present, have worked as non-exempt employees and have not
23 been provided a meal period for shifts in excess of five (5) hours within the
24 first five (5) hours such shifts, and were not provided one (1) hour's pay for
25 each day during which a lawful meal period was not provided;
- 26 (c) All persons who are employed or have been employed by Defendant in the
27 State of California, and who, within the four (4) years of the filing of this
28 Complaint to the present, have worked as non-exempt employees and have not

1 been provided a rest period for every four (4) hours, or major fraction thereof,
2 worked per day, and were not provided compensation of one (1) hour's pay for
3 each day on which such rest period(s) was not provided;

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

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

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

19 (g) All persons who are employed or have been employed by Defendant in the
20 State of California, and who, within the four (4) years of the filing of this
21 Complaint to the present, have worked as non-exempt employees and were
22 subjected to unlawful and unfair business practices within the meaning of
23 California's Unfair Competition Law and who suffered injury, including lost
24 money, as a result of Defendant's unlawful and unfair business practices.

25 46. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or
26 necessary to amend the definition of the Class. Plaintiff will formally define and designate a class
27 definition at such time when Plaintiff seeks to certify the Class alleged in this Complaint.
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1 47. This action has been brought and may be maintained as a class action pursuant to
2 Code of Civil Procedure Section 382 because there is a well-defined common interest of many
3 persons and it is impractical to bring them all before the court.

4 48. The Court should permit this action to be maintained as a class action pursuant to
5 Code of Civil Procedure Section 382 because:

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

1 impair or impede their ability to protect their interests, including
2 but not limited to the potential for exhausting the funds available
3 from those parties who are, or may be, responsible Defendant; and
4 (h) Defendant has acted or refused to act on grounds generally applicable to
5 Class, thereby making final injunctive relief appropriate with respect to
6 Class as a whole.

7 49. There is a well-defined community of interest in the litigation and Class is
8 readily ascertainable:

- 9 (a) Numerosity: The members of Class (and each subclass, if any) are so
10 numerous that joinder of all members would be unfeasible and impractical.
11 The membership of the entire Class is unknown to Plaintiff at this time,
12 however, the Class is estimated to be greater than 100 individuals and the
13 identity of such membership is readily ascertainable by inspection of
14 Defendant's records.
- 15 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
16 interests of each Class Member with whom there is a shared, well-defined
17 community of interest, and Plaintiff's claims (or defenses, if any) are typical
18 of all Class Members' claims as demonstrated herein.
- 19 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
20 the interests of each Class Member with whom there is a shared, well-
21 defined community of interest and typicality of claims, as demonstrated
22 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
23 Member. Plaintiff's attorneys, the proposed class counsel, are versed in the
24 rules governing class action discovery, certification, and settlement.
25 Plaintiff has incurred, and throughout the duration of this action, will
26 continue to incur costs and attorneys' fees that have been, are, and will be
27 necessarily expended for the prosecution of this action for the substantial
28

benefit of each class member.

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

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

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

50. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. Defendant's own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as

published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

**Failure to Pay All Wages for All Hours Worked and Sick Pay
(Against Defendant, DOES 1 through 50, and each of them)**

51. Plaintiff and Class Members re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

52. Labor Code Section 510, subdivision (a) states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee.”

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

54. Further, pursuant to Labor Code Section 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

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

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

57. During the Class Period, Defendant was obligated to pay Plaintiff and Class Members for all hours worked. However, Defendant failed to pay Plaintiff and Class Members for all hours worked at the legally mandated wage rates, including all overtime wages. Defendant

1 regularly used a system of time rounding in a manner that resulted, over a period of time, in
2 failing to compensate Plaintiff and Class Members properly for all the time they have actually
3 worked, even though the realities of Defendant's operations are such that it is possible, practical,
4 and feasible to count and pay for work time to the minute. Defendant failed to maintain a time
5 recording system. Plaintiff and Class Members were required to fill out written work order forms
6 with their scheduled time despite the fact they actually worked more than their scheduled time.
7 Accordingly, Defendant frequently paid Plaintiff and Class Members less than all their work
8 time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the
9 Class Period, Plaintiff and Class Members were required to work on-call shifts. However,
10 Defendant has not compensated Plaintiff and Class Members for the standby on-call time.
11 Throughout the Class Period, Defendant also maintained a policy and practice of requiring
12 Plaintiff and Class Members to report for work but has not put them to work. They were required
13 to return home immediately or shortly after upon arrival at work. In those occasions Defendant
14 failed to pay Plaintiff and Class Members the reporting time pay of half the usual scheduled day
15 of work or at least two hours. Throughout the Class Period, Defendant also maintained a policy
16 and practice of requiring Plaintiff and Class Members to perform work "off-the-clock".
17 Throughout the Class Period, Defendant required Plaintiff and Class Members to watch training
18 videos and tutorials, to read training materials outside their scheduled shift time but failed to
19 compensate them for that time. Throughout the Class Period, Defendant also regularly required
20 Plaintiff and Class Members to do pre-trip inspection and to log their notes prior to driving to the
21 jobsite location but failed to compensate for that time. Defendant also required Plaintiff and
22 Class Members to arrive to the jobsite at least one hour earlier than their scheduled shift to do
23 preparatory so that by the scheduled shift start time the street or intersection is cleared and
24 closed, the traffic cone is put down and the street is ready for constructions works but failed to
25 compensate for that time. Plaintiff and Class Members were also required to receive and respond
26 to work related calls and text messages from the dispatcher regarding the next day job
27 assignment location and start time after their scheduled shift time. Defendant also failed to
28 compensate Plaintiff and Class Members for the travel time to different stores to purchase

1 supplies and materials necessary to perform their work as well as all travel time to jobsites.
2 Additionally, throughout the Class Period, Plaintiff and Class Members were required to spend
3 about one hour after the end of their scheduled shift at home to remove tools from the truck to
4 their houses for theft protection, to clean out the truck, to review the plan for the next day job
5 assignment, to make sure the truck is loaded with all items and materials necessary for the work
6 and to call stores for the missing materials and items. Plaintiff and Class Members were not
7 compensated for that time as well. Plaintiff and Class Members also spent about two hours each
8 Saturday to review the work orders forms, to prepare job hazard analyst forms, to drive to FedEx
9 location to send the filled-out paperwork to Defendant's principal office for payroll. They were
10 not compensated for that time. Lastly, approximately from March 2020, Defendant required
11 Plaintiff and Class Members to undergo COVID pre-screening (temperature check) procedure
12 prior to the start of their scheduled shifts but failed to compensate for that time. In maintaining a
13 practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours
14 Plaintiff and Class Members worked. In doing so, Defendant also failed to maintain accurate
15 records of the hours Plaintiff and Class Members worked.

16 58. Plaintiff and Class Members were required to work overtime in excess of eight
17 (8) hours per workday and in excess of forty (40) hours per workweek, but were not paid at the
18 proper overtime rate of pay.

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

1 meal period premium wages owed, rest period premium wages owed, and wages owed for hours
2 worked. However, during Class period, Defendant systematically failed and refused to pay the
3 employees all wages due, and failed to pay those wages twice a month, in that employees were
4 not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods
5 not authorized and permitted by Defendant, and all wages for all hours worked.

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

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

16 62. That calculation of individual damages for Class Members may at some point be
17 required does not foreclose the possibility of taking common evidence on questions regarding
18 their entitlement to overtime compensation. *Collins v. Rocha* (1972) 7 Cal.3d 232; *Hypolite v.*
19 *Carleson* (1975) 52 Cal.App.3d 566; *Employment Development Dept. v. Superior Court* (1981)
20 30 Cal.3d 256).

21 63. Pursuant to the relevant Industrial Welfare Commission Order Section 5 (a) each
22 workday an employee is required to report for work and does report, but is not put to work or is
23 furnished less than half said employee's usual or scheduled day's work, the employee shall be
24 paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor
25 more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the
26 minimum wage. Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions,*
27 *Inc.* (2007) 40 Cal. 4th 1094. In addition, failure to pay all reporting time pay due at the time of
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1 employment termination may be the basis for waiting time penalties pursuant to Labor Code §
2 203.

3 64. Labor Code § 246 (a) an employee who, on or after July 1, 2015, works in
4 California for the same employer for 30 or more days within a year from the commencement of
5 employment is entitled to paid sick days. Labor Code § 246 (i) requires employers to provide an
6 employee with written notice that sets forth the amount of paid sick leave available.

7 65. During the Class Period, Defendant maintained a policy and practice of failing to
8 provide Plaintiff and Class with paid sick leave as well as to provide a written notice of accrued
9 paid sick leave. On information and belief, Defendant's failure to provide an employee with
10 written notice that sets forth the amount of paid sick leave available was not a single, isolated
11 incident, but was instead part of Defendant's policy and practice that applied to Class.

12 66. Pursuant to Labor Code Sections 218.6 and 1194(a) and Civil Code Section 3287,
13 Class Members seek recovery of pre-judgment interest on all amounts recovered herein.

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

16 **SECOND CAUSE OF ACTION**

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

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

19 68. Plaintiff and Class Members re-allege and incorporate by reference all preceding
20 paragraphs of this complaint as though fully set forth herein.

21 69. Labor Code Sections 226.7 and 512 provide that no employer shall employ any
22 person for a work period of more than five (5) hours without providing a meal period of not less
23 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
24 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
25 minutes.

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

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

72. At all times relevant hereto, Plaintiff and Class have worked more than five (5) hours in a workday.

73. At all times relevant hereto, Defendant failed to schedule Plaintiff and Class Members in a manner so as to reasonably provide work-free meal periods in accordance with Labor Code Sections 226.7 and 512.

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

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

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods or Compensation in Lieu Thereof

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

76. Plaintiff and Class Members re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

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

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

8 79. During the Class Period, Defendant did not provide Plaintiff and Class Members
9 with a ten-minute rest period for every four (4) work hours or major fraction thereof. Therefore,
10 Plaintiff and Class Members were not provided lawful rest periods.

11 80. Defendant failed and/or refused to implement a policy by which Plaintiff and Class
12 Members could receive rest periods and/or work free rest periods. By and through its actions,
13 Defendant intentionally and improperly denied rest periods to Plaintiff and Class Members in
14 violation of Labor Code Sections 226.7 and 512.

15 81. At all times relevant hereto, Plaintiff and Class have worked more than four (4)
16 hours in a workday.

17 82. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
18 and Class Members, Plaintiff and Class Members have suffered, and will continue to suffer,
19 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of
20 this Court and which will be ascertained according to proof at trial.

21 83. Plaintiff, individually and on behalf of employees similarly situated, requests
22 recovery of rest period compensation pursuant to Labor Code Section 226.7 for the four (4) years
23 prior to filing this Complaint, as well as the assessment of any statutory penalties against
24 Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

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FOURTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

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

84. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

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

86. Throughout the Class Period, Defendant failed to maintain accurate time records and falsified Plaintiff's and Class Members' time records. Plaintiff and Class were only required to input their scheduled start and end time on a handwritten work order form. Plaintiff and Class Members were not required to record their meal periods. Defendant refused to permit Plaintiff and Class to record their actual time by requiring to input not more than scheduled time in a single day, despite the fact that Plaintiff and Class regularly worked in excess of the scheduled time, depriving Plaintiff and Class of wages, including overtime wages.

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

1 88. Labor Code Section 226, subdivision (a) requires an employer to provide
2 employees—either as a detachable part of the check, draft, or voucher paying the employee’s
3 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
4 statement in writing showing

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

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

17 90. Plaintiff is informed and believes that Defendant willfully and intentionally failed
18 to make and/or keep records which accurately reflect the hours worked by Plaintiff and Class.
19 Specifically, Plaintiff believes that Defendant’s records do not accurately reflect actual hours
20 worked, when Plaintiff and Class worked during their meal and rest periods and/or took untimely
21 meal periods or worked for hours not paid.

22 91. Labor Code Section 226, subdivision (e) provides that if an employer knowingly
23 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
24 the total hours worked by the employee and the applicable hourly overtime rates, causing the
25 employee injury, then the employee is entitled to recover the greater of all actual damages or
26 fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each
27 subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes
28 that Defendant willfully failed to make or keep accurate records for Plaintiff and Class.

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

93. Plaintiff is informed and believes that Defendant's failure to keep and maintain accurate records and information, as described above, was willful, and Plaintiff and Class are entitled to statutory penalties pursuant to Labor Code Section 1174.5.

FIFTH CAUSE OF ACTION

Failure to Pay Wages upon Termination of Employment
(Against Defendant, DOES 1 through 50, and each of them)

94. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

95. Plaintiff's employment with Defendant ended on or about April 21, 2022. Plaintiff and certain Class who ended their employment with Defendant during the Class Period, were entitled to be promptly paid for all hours worked, including lawful regular time compensation, overtime compensation, double-time compensation, and other premiums, as required by Labor Code Sections 201 through 203. Plaintiff is also entitled to meal period and rest period premium pay in accordance with Labor Code Sections 226 and 226.7.

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

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

98. Plaintiff and the affected Class Members seek the payment of penalties pursuant to Labor Code Section 203, according to proof.

1 99. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code
2 Section 1194, and prejudgment interest.

3 **SIXTH CAUSE OF ACTION**

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

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

6 100. Plaintiff and Class re-allege and incorporate by reference all the above paragraphs
7 of this complaint as if fully alleged herein.

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

11 102. Plaintiff and Class were not reimbursed by Defendant for necessary expenditures
12 as a direct consequence of the discharge of their duties.

13 103. Defendant knowingly, willingly and intentionally attempted to offset the cost of
14 doing business on the Plaintiff and Class.

15 104. Defendant had a corporate practice and policy of requiring Plaintiff and Class to
16 shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiff and
17 Class for necessary expenditures, specifically requiring Plaintiff and Class to use their personal
18 cell phones, vehicles for work and to purchase tools.

19 105. Accordingly, Plaintiff and Class are entitled to an award of "necessary
20 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's
21 fees and interest.

22 **SEVENTH CAUSE OF ACTION**

23 **Unfair Business Practices**

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

25 106. Plaintiff and Class re-allege and incorporate by reference all preceding paragraphs
26 of this complaint as though fully set forth herein.

27 107. Business and Professions Code Section 17200 et seq. (also referred to herein as
28 the "Unfair Business Practices Act" or "Unfair Competition Law") prohibits unfair competition

1 in the form of any unlawful, unfair or fraudulent business act or practice.

2 108. Business and Professions Code Section 17204 allows “a person who has suffered
3 injury in fact and has lost money or property as a result of the unfair competition” to prosecute a
4 civil action for violation of the Unfair Competition Law (“UCL”).

5 109. Labor Code Section 90.5, subdivision (a) states that it is the public policy of
6 California to vigorously enforce minimum labor standards in order to ensure employees are not
7 required to work under substandard and unlawful conditions, and to protect employers who
8 comply with the law from those who attempt to gain competitive advantage at the expense of their
9 workers by failing to comply with minimum labor standards.

10 110. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
11 years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as
12 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
13 business practices and acts described in this Complaint including but not limited to violations of
14 Labor Code Sections 201-204, 210, 226.3, 246, 558, 1174.5, 1197.1, 2802, 2699(f)(2) as well as
15 other statutes.

16 111. The violations of these laws and regulations, as well as of the fundamental
17 California public policies protecting workers, serve as unlawful predicate acts and practices for
18 purposes of Business and Professions Code Section 17200 et seq.

19 112. The acts and practices described above constitute unfair, unlawful and fraudulent
20 business practices, and unfair competition, within the meaning of Business and Professions Code
21 Section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
22 similarly situated employees to labor for many consecutive hours without receiving the meal and
23 rest periods and overtime compensation to which they are entitled by law, while enabling
24 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

25 113. As a result of Defendant’s acts, Plaintiff and Class Members have suffered injury
26 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
27 hours worked.

1 114. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
2 and Class have suffered lost wages in an amount to be proven at trial.

3 115. Business and Professions Code Section 17203 provides that a court may make
4 such orders or judgments as may be necessary to prevent the use or employment by any person
5 of any practice which constitutes unfair competition. Injunctive relief is necessary and
6 appropriate to prevent Defendant from repeating its unlawful, unfair and fraudulent business acts
7 and business practices alleged above.

8 116. Business and Professions Code Section 17203 provides that the Court may restore
9 to any person in interest any money or property that may have been acquired by means of such
10 unfair competition. Plaintiff and Class are entitled to restitution pursuant to Business and
11 Professions Code Section 17203 for all wages and payments unlawfully withheld from
12 employees, including the fair value of the meal and rest periods taken away from them during the
13 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
14 by Plaintiff and Class in direct consequence of the discharge of his or her duties, or of his or her
15 obedience to the directions of the employer.

16 117. Business and Professions Code Section 17202 provides, “Notwithstanding Section
17 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
18 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Class are entitled to enforce
19 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
20 Section 17202.

21 118. Plaintiff’s success in this action will enforce important rights affecting public
22 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as herself and
23 other similarly situated employees. Plaintiff and Class seek and are entitled to restitution, civil
24 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

25 119. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
26 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
27 public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to
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1 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
2 Code of Civil Procedure Section 1021.5 and otherwise.

3 **EIGHTH CAUSE OF ACTION**

4 **Violation of California Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.***
5 **(Against Defendants, DOES 1 through 50, and each of them)**

6 120. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein,
7 as if fully alleged herein.

8 121. Plaintiff seeks recovery of penalties under the Labor Code Private Attorney
9 General Act of 2004 ("PAGA.") (Labor Code sections 2698 *et seq.*)

10 122. PAGA permits an "aggrieved employee" to recover penalties on behalf of
11 himself/herself and other employees subject to violations of the Labor Code, including violations
12 of sections 201-204, 226, 226.7, 246, 510, 512, 1174, 1194, 1198 and 2802, as well as the
13 applicable Wage Order.

14 123. Plaintiff is informed and believes Defendants at all relevant times employed one
15 or more employees.

16 124. For those code sections that provide for the recovery of civil penalties, Plaintiff
17 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor
18 Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one
19 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
20 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
21 subsequent violation pursuant to Labor Code section 2699, subdivision (f).

22 125. Section 2699, subdivision (a) provides that civil penalties may be "recovered
23 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
24 current or former employees." Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g),
25 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an
26 award of reasonable attorneys' fees and costs.

27 126. The State of California, Plaintiff and aggrieved employees are, therefore, entitled
28 to civil penalties, attorneys' fees and costs, according to proof.

1
2 **PRAYER FOR RELIEF**

3 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
4 the class claims, prays for relief and judgment against Defendant as follows:

5 **Class Certification**

- 6 1. That this action be certified as a class action with respect to the First, Second,
7 Third, Fourth, Fifth, Sixth and Seventh Causes of Action;
8 2. That Plaintiff be appointed as the representative of the Class; and
9 3. That counsel for Plaintiff be appointed as Class Counsel.

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

- 11 4. That the Court declare, adjudge and decree that Defendant violated California
12 Labor Code §§ 204, 246, 510, 1194, 1198 and applicable IWC Wage Orders by willfully
13 failing to pay all wages and sick pay due;
14 5. For general unpaid wages as may be appropriate;
15 6. For pre-judgment interest on any unpaid compensation commencing from the
16 date such amounts were due;
17 7. For liquidated damages;
18 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
19 California Labor Code § 1194(a); and,
20 9. For such other and further relief as the Court may deem equitable and
21 appropriate.
22

23 **As to the Second Cause of Action**

- 24 10. That the Court declare, adjudge and decree that Defendant violated California
25 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
26 11. For unpaid meal period premium wages as may be appropriate;
27
28

1 12. For pre-judgment interest on any unpaid compensation commencing from the
2 date such amounts were due;

3 13. For reasonable attorneys' fees under California Code of Civil Procedure §
4 1021.5, and for costs of suit incurred herein; and

5 14. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 As to the Third Cause of Action

8 15. That the Court declare, adjudge and decree that Defendant violated California
9 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

10 16. For unpaid rest period premium wages as may be appropriate;

11 17. For pre-judgment interest on any unpaid compensation commencing from the
12 date such amounts were due;

13 18. For reasonable attorneys' fees under California Code of Civil Procedure §
14 1021.5, and for costs of suit incurred herein; and

15 19. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 As to the Fourth Cause of Action

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

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

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

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

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

1 As to the Fifth Cause of Action

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

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

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

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

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

13 As to the Sixth Cause of Action

14 30. That the Court declare, adjudge and decree that Defendant violated Labor Code §
15 2802 and the IWC Wage Orders;

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

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

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

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

24 As to the Seventh Cause of Action

25 35. That the Court declare, adjudge and decree that Defendant violated California
26 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
27 (including minimum and overtime wages), failing to provide meal periods, failing to
28 maintain accurate records of meal periods, failing to authorize and permit rest periods, and

1 failing to maintain accurate records of all hours worked and meal periods, failing to furnish
2 accurate wage statements, and failing to indemnify necessary business expenses;

3 36. For restitution of unpaid wages to Plaintiff and all Class Members and
4 prejudgment interest from the day such amounts were due and payable;

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

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

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

13 40. For such other and further relief as the Court may deem equitable and
14 appropriate.
15

16 As to the Eighth Cause of Action

17 41. That the Court declare, adjudge and decree that Defendants violated the
18 California Labor Code by failing to pay wages for all hours worked and sick pay, failing to
19 provide meal periods, failing to maintain accurate records of meal periods, failing to
20 authorize and permit rest periods, failing to maintain accurate records of all hours worked
21 and meal periods, failing to indemnify necessary business expenses, failing to pay final
22 wages at termination, and failing to furnish accurate wage statements;

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

25 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Labor Code § 2699;
27
28

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

3
4 As to all Causes of Action

5 45. For any additional relief that the Court deems just and proper.
6

7 Dated: June 26, 2023

TUNYAN LAW, APC

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9 
10 _____

11 Lilit Tunyan
12 Artur Tunyan

13 Attorneys for Plaintiff GERARDO JAQUEZ
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Dated: June 26, 2023

Thurs

Attorneys for Plaintiff GERARDO JAQUEZ

Exhibit “A”



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

April 20, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
Site Safe Traffic Safety and Signs
Chad C Lodel
335 Marna Dr
Vacaville, CA 9568

VIA CERTIFIED MAIL

Return Receipt Requested

Site Safe Traffic Safety and Signs
630 Eubanks CT, Suite 200
Vacaville, CA 95688

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

Re: Jaquez v. Site Safe Traffic Safety and Signs

To Whom It May Concern:

Please be advised that my office has been retained by Gerardo Jaquez (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer Site Safe Traffic Safety and Signs (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiff alleges Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt

employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

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

Factual Background Regarding Plaintiff's Employment with Defendant

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

Plaintiff worked for Defendant as a foreman from approximately 2018 to April 21, 2022, in Sacramento, Stanislaus, Modesto, Merced, San Francisco, Alameda, Yolo, Solano counties. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5-7 days per week and over 10-12 hours each workday.

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

Failure to Pay for All Hours Worked, Including Overtime

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

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

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

Pursuant to Industrial Welfare Commission Order N 5-2001 Section 5 (a) each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. In addition, failure to pay all reporting time pay due at the time of employment termination may be the basis for waiting time penalties pursuant to Labor Code § 203.

Throughout the statutory time period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked including straight time wages and overtime wages. Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Defendant failed to maintain a time recording system. Plaintiff and the Aggrieved Employees were required to fill out written work order forms with their scheduled time despite the fact they actually worked more than their scheduled time. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work on-call shifts. However, Defendant has not compensated Plaintiff and the Aggrieved Employees for the standby on-call time. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to report for work but has not put them to work. They were required to return home immediately or shortly after upon arrival at work. In those occasions Defendant failed to pay Plaintiff and the Aggrieved Employees the reporting time pay of half the usual scheduled day of work or at least two hours. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Throughout the statutory period, Defendant required Plaintiff and the Aggrieved Employees to watch training videos and tutorials, to read training materials outside their scheduled shift time but failed to compensate them for that time. Throughout the statutory period, Defendant also regularly required Plaintiff and the Aggrieved Employees to do pre-trip inspection and to log their notes prior to driving to the jobsite location but failed to compensate for that time. Defendant also required Plaintiff and the Aggrieved Employees to arrive to the jobsite at least one hour earlier than their scheduled shift to do preparatory so that by the scheduled shift start time the street or intersection is cleared and closed, the traffic cone is put down and the street is ready for constructions works but failed to compensate for that time. Plaintiff and the Aggrieved Employees were also required to receive and respond to work related calls and text messages from the dispatcher regarding the next day job assignment location and start time after their scheduled shift time. Defendant also failed to compensate Plaintiff and the Aggrieved Employees for the travel time to different stores to purchase supplies and materials necessary to perform their work as well as all travel time to jobsites. Additionally throughout statutory period, Plaintiff and the Aggrieved Employees were required to spend about one hour after the end of their scheduled shift at home to remove tools from the truck to their houses for theft protection, to clean out the truck, to review the plan for the next day job assignment, to make sure the truck is loaded with all items and materials

necessary for the work and to call stores for the missing materials and items. Plaintiff and the Aggrieved Employees were not compensated for that time as well. Plaintiff and the Aggrieved Employees also spent about two hours each Saturday to review the work orders forms, to prepare job hazard analyst forms, to drive to FedEx location to send the filled-out paperwork to Defendant's principal office for payroll. They were not compensated for that time. Lastly, approximately from March 2020, Defendant required Plaintiff and the Aggrieved Employees to undergo COVID pre-screening (temperature check) procedure prior to the start of their scheduled shifts but failed to compensate for that time. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

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

Failure to Provide Meal Periods

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

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods or recording of meal periods. Defendant failed to keep a record of meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant,

however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

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

Failure to Authorize and Permit Rest Periods

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

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

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

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

Failure to Maintain Accurate Records of Hours Worked

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5.

Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and meal periods taken or missed by Plaintiff and the Aggrieved Employees. Defendant did not record meal periods.

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

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

Failure to Reimburse and Indemnify Expenses

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

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Plaintiff and the Aggrieved Employees were required to use their personal cell phones to respond to and to make work related calls and to receive work related text messages but were not reimbursed for the cost of the cell phone usage. Defendant also failed to reimburse Plaintiff and the Aggrieved Employees for the mileage for all the travel time to the jobsite locations as well for the travel time to different stores to purchase necessary materials for work. Defendant also required Plaintiff and the Aggrieved Employees to purchase and wear protective gear such as reflective vests, hard hats, ear plugs, safety glasses, steel toe boots, but failed to compensate for that protective gear. Defendant failed to compensate Plaintiff and the Aggrieved Employees for cleaning and maintenance of the protective gear as well. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of

performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

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

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

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

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

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

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her

social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

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

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly list gross wages earned, the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

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

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

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

Failure to Pay All Earned Wages Twice Per Month

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

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the

wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

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

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

Failure to Provide Paid Sick Leave and Written Notice of Available Paid Sick Leave

Labor Code § 246 (a) an employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.

Labor Code § 246 (i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available.

During the statutory period, Defendant maintained a policy and practice of failing to provide Plaintiff and the Aggrieved Employees with the paid sick leave as well as to provide a written notice of accrued paid sick leave. On information and belief, Defendant's failure to provide an employee with written notice that sets forth the amount of paid sick leave available was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to provide any information on accrued sick leave.

Action for Civil Penalties Under PAGA

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

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;

2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements;
8. Labor Code § 204 by failing to pay all earned wages two times per month;
9. Labor Code § 246 by failing to provide paid sick leave and written notice of available paid sick leave.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 558, 1174.5, 1197.1, 2802, 2699(f)(2), 6427, 6428, 6429.

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as well as attorneys representing Defendant as indicated on the first page.

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

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

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

7022 1670 0001 3766 3230

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 630 Eubanks CT, Suite 200
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First-Class Mail®	1		\$1.74
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 Weight: 0 lb 2.60 oz
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 Mon 04/24/2023

Certified Mail®			\$4.15
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Tracking #:
 70221670000137663230

Return Receipt			\$3.35
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 9590 9402 8114 2349 9468 23

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 Mon 04/24/2023

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Return Receipt			\$3.35
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Tracking #:
 9590 9402 8114 2349 9468 30

Total			\$9.24
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Grand Total:			\$18.48
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Credit Card Remit			\$18.48
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Card Name: VISA
 Account #: XXXXXXXXXXXX0153
 Approval #: 01389G
 Transaction #: 350
 AID: A0000000031010 Contactless
 AL: VISA CREDIT
 CHASE VISA

7022 1670 0001 3766 3247

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Vacaville, CA 95688

Certified Mail Fee \$4.15
 \$
 Extra Services & Fees (check box, add fees as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage \$1.74
 \$
 Total Postage and Fees \$9.24
 \$

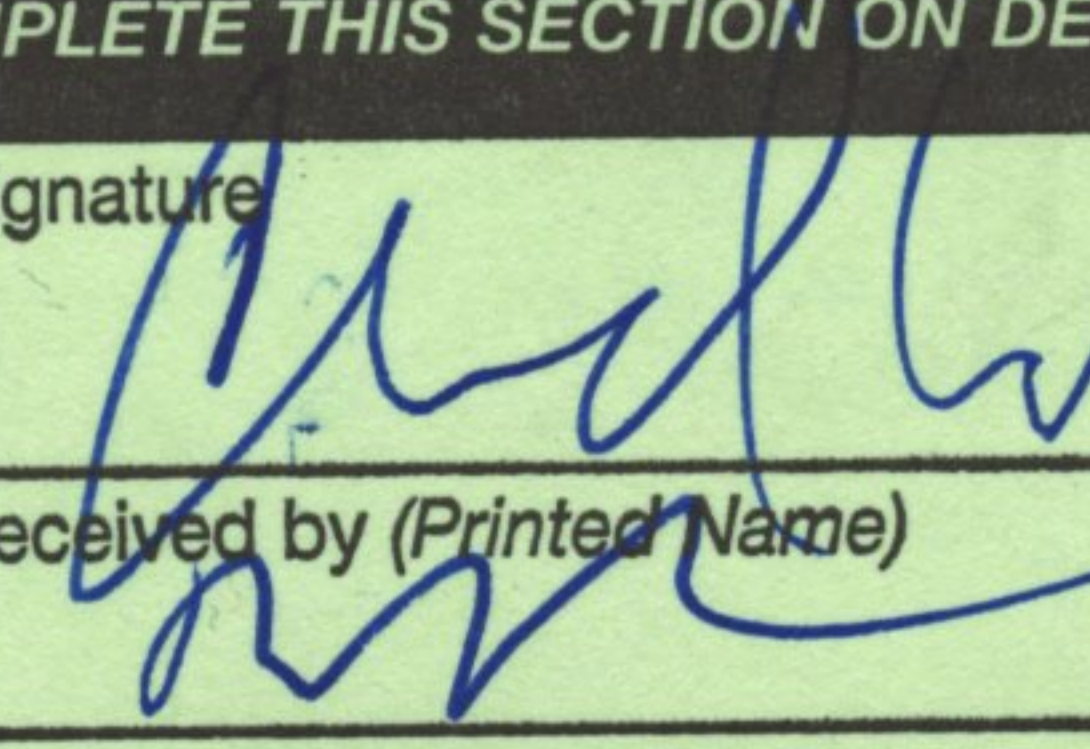
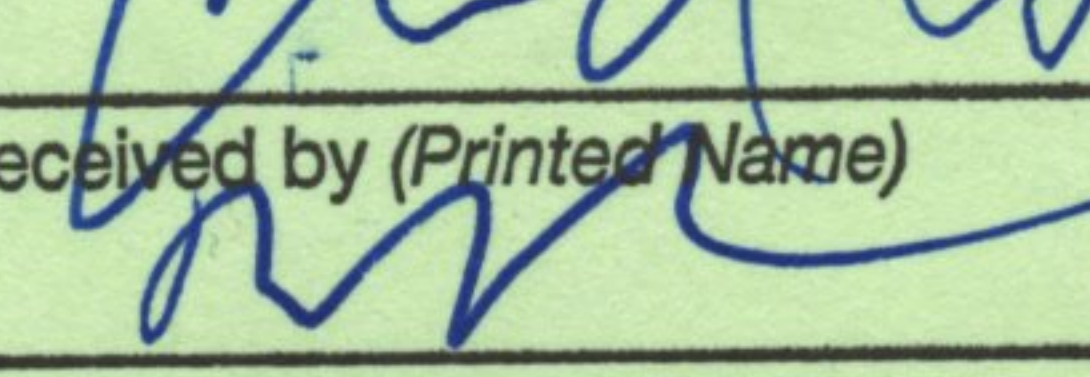
Sent To

Street and Apt. No., or

City, State, ZIP+4®

PS Form 3800, April

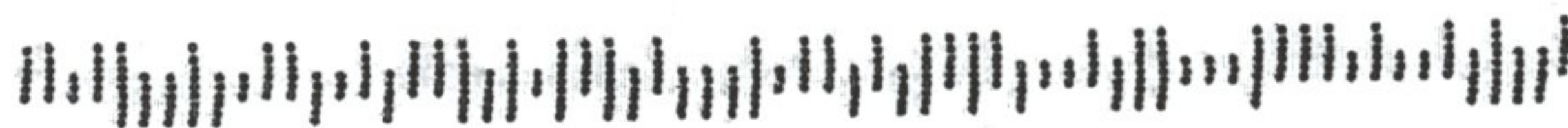
Chad C Lodel
 Agent for Service of Process for
 Site Safe Traffic Safety and Signs
 335 Mama Dr
 Vacaville, CA 95687

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY													
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X  ☐ Agent ☐ Addressee													
1 Chad C Lodel Agent for Service of Process for Site Safe Traffic Safety and Signs 335 Marna Dr Vacaville, CA 95687  9590 9402 8114 2349 9468 30		B. Received by (Printed Name)  C. Date of Delivery 4/24/23													
2. Article Number (Transfer from service label) 7022 1670 0001 3766 3247		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No													
		3. Service Type <table border="0"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☐ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☐ Certified Mail Restricted Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td></td> </tr> </table>		☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☐ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™	☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery	☐ Collect on Delivery Restricted Delivery	
☐ Adult Signature	☐ Priority Mail Express®														
☐ Adult Signature Restricted Delivery	☐ Registered Mail™														
☐ Certified Mail®	☐ Registered Mail Restricted Delivery														
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™														
☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery														
☐ Collect on Delivery Restricted Delivery															
		1 Mail 1 Mail Restricted Delivery (over \$500)													
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt													

USPS TRACKING#		SACRAMENTO, CA 957	
 9590 9402 8114 2349 9468 30		First-Class Mail Postage & Fees Paid USPS Permit No. G-10 24 APR 2023 PM 6 L	
United States Postal Service		• Sender: Please print your name, address, and ZIP+4® in this box•  TUNYAN LAW, APC 1336 Rossmoyne Avenue Glendale, CA 91207	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Agent ☒ Addressee	
1. Article Addressed to: Site Safe Traffic Safety and Signs 630 Eubanks CT, Suite 200 Vacaville, CA 95688		B. Received by (Printed Name) C. Date of Delivery	
2. Article Number (Transfer from service label) 7022 1670 0001 3766 3230		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Mail Restricted Delivery (00)			
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

USPS TRACKING #		First-Class Mail Postage & Fees Paid USPS Permit No. G-10	
9590 9402 8114 2349 9468 23			
United States Postal Service		• Sender: Please print your name, address, and ZIP+4® in this box•	
TUNYAN LAW		TUNYAN LAW, APC 1336 Rossmoyne Avenue Glendale, CA 91207	



From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, April 20, 2023 8:10:50 PM

4/20/2023

LWDA Case No. LWDA-CM-949895-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Gerardo Jaquez
Employer: Site Safe Traffic Safety and Signs
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1336 Rossmoyne Avenue Glendale, California 91207. On June 26, 2023, I served the foregoing document described as:

Randy Barnum
rbarnum@rmblaw.com
Jenna R. Avila
javila@rmblaw.com
Cindy Hovanec
chovanec@rmblaw.com
**LAW OFFICES OF BARNUM &
AVILA**
279 East H Street
Benicia, California 94510
Telephone: 707-745-3747
Facsimile: 707-745-4580

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

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

Executed on June 26, 2023, at Glendale, California.

Thun

Signature