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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Nunez, Deputy Clerk

Attorneys for Plaintiff ERICK E. RUIZ MONTOYA, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES-CENTRAL DISTRICT
SPRING STREET COURTHOUSE**

ERICK E. RUIZ MONTOYA, on behalf of
himself and all others similarly situated;

Plaintiff,

v.

HHJ CONSTRUCTION, INC. a California
Corporation; and DOES 1 through 50
inclusive,

Defendant.

Case No.: **23STCV18917**

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
DAMAGES**

1. Failure to Pay Minimum Wage and Overtime Wages;
2. Failure To Reimburse for Necessary Expenditures (Cal. Labor Code § 2802);
3. Failure to Provide Meal Premiums;
4. Failure to Provide Rest Premiums;
5. Failure to Keep Accurate Payroll Records;
6. Failure to Pay Wages Upon Ending Employment;
7. Unfair Competition (Business and Professions Code § 17200 et seq.) and;
8. Penalties Under PAGA Labor Code §2698, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff ERICK E. RUIZ MONTOYA (hereinafter "Mr. MONTOYA" or "Plaintiff") on
2 behalf of himself and all others similarly situated, complain and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff ERICK E. RUIZ MONTOYA
5 and the class he seeks to represent ("Plaintiff Class"), as defined herein, as all non-exempt
6 employees employed by or formerly employed by Defendant HHJ CONSTRUCTION, INC.
7 (herein referred to as "Defendant" or "HHJ").

8 2. The Plaintiff Class consists of all non-exempt employees employed by or formerly
9 employed by Defendant within the State of California who are California Citizens at the time of
10 the filing of this Complaint."

11 3. The "Class Period" is defined as the four (4) years prior to the filing of the
12 Complaint through the date final judgment is entered. Plaintiff reserves the right to amend this
13 Complaint to reflect a different "Class Period" as further discovery is conducted.

14 4. The "PAGA Period" is defined as one (1) year prior to the filing of Plaintiff's
15 notice of Defendant's Labor Code violations to the Labor and Workforce Development Agency
16 ("LWDA") through the date of judgement. Plaintiff provided notice to the LWDA on April 13,
17 2023. Thus, the "PAGA Period" is defined as April 13, 2022, through the date of judgement.
18 Plaintiff reserves the right to amend this Complaint to reflect a different "PAGA Period" as further
19 discovery is conducted.

20 5. Plaintiff individually and on behalf the class he seeks to represent, seeks relief
21 against Defendant for (1) failure to pay all wages due, including minimum, regular, and overtime
22 and double-time wages; (2) failure to reimburse for necessary expenditures; (3) failure to provide
23 meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation
24 in lieu thereof; (5) failure to keep accurate, itemized time/payroll records; (6) failure to pay wages
25 of terminated or resigned employees; (7) unfair business practices and (8) violations of Labor
26 Code §§ 2698-2699 (Private Attorneys' General Act) as set forth more fully herein, which will
27 be asserted pursuant to an amended complaint once the LWDA review period expires.
28

6. At all relevant times herein, Defendant and Does 1-50, being jointly and severally liable under integrated enterprise and joint employer theories, have consistently maintained and enforced against Plaintiff Class the following unlawful practices and policies: a) willfully refusing to pay Plaintiff and Plaintiff Class for all hours worked, including minimum wage and overtime; b) failing to provide Plaintiff and Plaintiff Class with reimbursement for necessary expenditures in the discharge of their duties; c) failing to provide Plaintiff and Plaintiff Class with lawful meal and rest periods or premiums in lieu thereof; d) willfully refusing to compensate Plaintiff and members of the Plaintiff Class wages due and owing at the time Plaintiff's and Plaintiff Class's employment with Defendants ended; e) willfully refusing to furnish to Plaintiff and Plaintiff Class accurate itemized wage statements upon payment of wages.

JURISDICTION AND VENUE

7. Venue is proper in this Judicial district and the County of Los Angeles, because Defendant maintains its location and transacts business in this county, the obligations and liability arise in this county, and work was performed by Plaintiff and members of the proposed class made the subject of this action in the County of Los Angeles, California.

8. The California Superior Court has jurisdiction in the matter because the individual claims are under the Seventy-Five Thousand Dollar (\$75,000.00) jurisdictional threshold for Federal Court and upon information and belief Plaintiff is a resident of and/or domiciled in the State of California.

9. Further, there is no federal question at issue as the issues herein are based solely on California Statutes and law including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rule of Court, and Business and Professions Code.

THE PARTIES

A. The Plaintiff

10. Plaintiff was employed by Defendant from mid-2020 through November 29, 2022, as a construction worker, specifically as a framing and electrical worker. At all relevant times herein, Plaintiff was employed by Defendant in a non-exempt hourly position and was entitled to

1 compensation for all hours worked, including overtime compensation, premium wages, necessary
2 job-related expenses, and penalties from Defendant. Plaintiff was employed by Defendant in a
3 non-exempt hourly position during the Class Period and for at least four (4) years prior to the
4 commencement of this action, in the County of Los Angeles. Each of the Plaintiff Class members
5 are identifiable, current and/or formerly similarly situated persons who were employed in non-
6 exempt hourly positions in California for the Defendant during the Class Period.

7 **B. The Defendant**

8 11. Plaintiff is informed and believes, and based thereon alleges that, HHJ
9 CONSTRUCTION INC., is a California Corporation registered and doing business in the state of
10 California and is and/or was the employer of the Plaintiff and Plaintiff Class during the Class
11 Period. During the liability period, Defendant employed Plaintiff and similarly situated persons
12 and failed to pay Plaintiff and Plaintiff Class for all hours worked including minimum wage and
13 overtime premium for overtime hours worked; failed to provide reimbursement for necessary
14 expenditures; and failed to pay due and owing wages upon ending of employment for employees
15 within California. On information and belief and based thereon alleges that Defendant is
16 conducting business in good standing in California.

17 12. Plaintiff is ignorant of the true names, capacities, relationships and extent of
18 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,
19 inclusive, but on information and belief allege that said Defendants are legally responsible for the
20 payment of overtime compensation and/or *Labor Code* § 203 penalties to the Plaintiff Class
21 members by virtue of their unlawful practices, and therefore sue these Defendants by such
22 fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of
23 DOE Defendants when ascertained.

24 13. Plaintiff is informed and believe, and based thereon alleges, that each Defendant
25 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
26 scheme, enterprise, business plan or policy in all respects pertinent hereto, and the acts of each
27 Defendant legally attributable to the other Defendant.

GENERAL ALLEGATIONS

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

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

16. During all or a portion of the Class Period, Plaintiff and each member of the Plaintiff Class was employed by Defendant in the State of California. Plaintiff and each of the Plaintiff Class members were non-exempt employees covered under one or more Industrial Welfare Commission (IWC) Wage Orders, and *Labor Code* § 510, and/or other applicable wage orders, regulations and statutes, and each Plaintiff Class member was not subject to an exemption for executive, administrative and professional employees, which imposed obligations on the part of the Defendant to pay Plaintiff and Plaintiff Class members regular, overtime, or double-overtime wages.

17. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff Class Members for all hours worked.

18. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff Class Members minimum wages and overtime compensation for all hours worked over eight (8) hours of work in one (1) day or forty (40) hours in one (1) week and double-time for hours worked in excess of twelve (12) in one day.

19. Defendant failed to compensate Plaintiff and Plaintiff Class their earned wages when they worked off the clock: (1) prior to the start of their shifts to complete tasks such as removing trash from the worksite, (2) cleaning their work locations after the end of their shifts, (3) when working through their meal periods to attend to clients, respond to management, or

1 address other work-related issues; (4) for training hours that were performed off the clock, and
2 (5) when working from home completing tasks such as reviewing materials list or reviewing blue
3 prints.

4 20. Further, Defendant failed to pay Plaintiff and Plaintiff Class accurate overtime
5 wages by paying overtime hours in cash at a regular rate instead of the legally mandated overtime
6 rate.

7 21. During the Class Period, Defendant was obligated to indemnify its employees for
8 all necessary expenditures or losses incurred by the employees in direct consequence of the
9 discharge of his or her duties. Plaintiff and Plaintiff Class were not reimbursed by Defendant for
10 necessary expenditures as a direct consequence of the discharge of their duties. Defendant
11 knowingly, willingly, and intentionally attempted to offset the cost of doing business by placing
12 costs on the Plaintiff and Plaintiff Class. Defendant had a corporate practice and policy of
13 requiring Plaintiff and Plaintiff Class to shoulder the burden of Defendant's cost of doing business.
14 Defendant continuously failed to reimburse Plaintiff and Plaintiff Class for necessary business
15 expenditures-- specifically reimbursement for mileage driven in their personal vehicles,
16 maintenance for wear and tear of personal vehicles caused by picking up heavy materials for jobs
17 and otherwise discharging of job duties the purchase, maintenance, and replacement of cell
18 phones, cell phone service, work tools such as sprayers, and other equipment not provided by the
19 Defendant but necessary to carrying out Plaintiff and Plaintiff Class's job duties.

20 22. Plaintiff and Plaintiff Class members primarily performed non-exempt work in
21 excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders,
22 regulations or statutes, and therefore Plaintiff and Plaintiff Class members were entitled to
23 overtime compensation at time and a half rate, and when applicable, double time rates as set forth
24 by the applicable Wage Orders, regulations and/or statutes.

25 23. During the Class Period, Defendant was obligated to provide Plaintiff and Plaintiff
26 Class with a timely work free meal and/or rest period(s). During the Class Period, Defendant, and
27 each of them, failed and/or refused to schedule Plaintiff and Plaintiff Class in an overlapping
28 manner so as to reasonably provide lawful and timely meal and/or rest breaks and/or shift relief

for Plaintiff and Plaintiff Class, thereby causing members of the Plaintiff Class to work without being given paid ten (10) minute rest periods for every four (4) hours or major fraction thereof worked and without being given a timely thirty (30) minute meal period for shifts of at least five (5) hours and a second thirty (30) minute meal period for shifts of at least ten (10) hours during which Plaintiff Class was relieved of all duties and free to leave the premises. Defendant further failed and/or refused to schedule Plaintiff and Plaintiff Class in an overlapping manner and/or provide shift relief for Plaintiff and Plaintiff Class so as to reasonably ensure meal and/or rest breaks were taken within the required statutory time frame as required by law. Furthermore, Defendant failed and/or refused to pay any Plaintiff Class one (1) hour's pay at the employees' regular rate of pay as premium compensation for failure to provide lawful rest and/or meal periods or to providing such rest and/or meal periods within the statutory time frame as a result of their scheduling policy.

24. Class Members who ended their employment during the Class Period but were not paid the above due compensation for all hours worked, overtime compensation timely upon the termination of their employment as required by *Labor Code* §§ 201-203 and are entitled to penalties as provided by *Labor Code* § 203.

25. During the Class Period, Defendant and each of them, required the Plaintiff and Class members to work without compensation as described herein, in violation of the various applicable Wage Orders, regulations and statutes, and the Defendant: (1) Willfully failed and refused, and continue to fail and refuse to pay compensation for all hours worked, including minimum wage and lawful overtime compensation to the Plaintiff Class Members; and (2) willfully failed and refused, and continue to fail and refuse to pay due and owing wages promptly upon termination of employment to Plaintiff and Plaintiff Class Members.

CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of himself and all other similarly situated persons, as a class action pursuant to California Civil Code of Procedure § 382 on behalf of himself and all other similarly situated persons in the Class, which is composed of and defined as follows:

1 **A. Class Definition:** All current and former California hourly non-exempt
2 employees who work or worked for Defendant at any time in the four (4) years
3 preceding the filing of this action through judgment.

4 27. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
5 or modify the Class description with greater specificity or further division into subclasses or
6 limitation to particular issues.

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

10 29. This Court should permit this action to be maintained as a class action pursuant to
11 California Code of Civil Procedure section 382 because:

- 12 a) The questions of law and fact common to the Plaintiff Class predominate over
13 any question affecting only individual members;
- 14 b) A class action is superior to any other available method for the fair and efficient
15 adjudication of the claims of the members of the Plaintiff Class;
- 16 c) The Plaintiff Class is so numerous that it is impractical to bring all member of
17 the Class before the Court;
- 18 d) Plaintiff and the other members of the Plaintiff Class will not be able to obtain
19 effective and economic legal redress unless the action is maintained as a class
20 action;
- 21 e) There is a community of interest in obtaining appropriate legal and equitable
22 relief for the common law and statutory violations and other improprieties, and
23 in obtaining adequate compensation for the damages and injuries which
24 Defendant's actions have inflicted upon the Plaintiff Class;
- 25 f) There is a community of interest in ensuring that the combined assets and
26 available insurance of the Defendant is sufficient to adequately compensate
27 members of the Plaintiff Class for the injuries sustained;

g) Without class certification, the prosecution of separate actions by individual members of the Plaintiff Class would create a risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the Plaintiff Class which would establish incompatible standard of conduct for the Defendant; and/or
- 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible for Defendant; and

h) Defendant has acted or refused to act on grounds generally applicable to the Plaintiff Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE AND OVERTIME WAGES

(Plaintiff and Plaintiff Class Members against Defendant HHJ, and Does 1-50, Inclusive)

30. Plaintiff and Plaintiff Class incorporates the above paragraphs of this Complaint as if fully alleged herein.

31. Plaintiff alleges that Plaintiff and Plaintiff Class members regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff, and Plaintiff Class members minimum wage for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendant. Defendant failed to pay Plaintiff and Plaintiff Class the legally mandated wage rates for all hours worked.

32. Defendant failed to compensate Plaintiff and Plaintiff Class their earned wages when they worked off the clock (1) prior to the start of their shifts to complete tasks such as

1 removing trash from the worksite; (2) cleaning their work locations after the end of their shifts,
2 (3) working through their meal periods to attend to clients, respond to management, or address
3 other work-related issues; and (4) when working from home completing tasks such as reviewing
4 materials list or reviewing blue prints.

5 33. Further, Defendant failed to pay Plaintiff and Plaintiff Class accurate overtime
6 wages by paying overtime hours in cash at a regular rate instead of the legally mandated overtime
7 rate.

8 34. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
9 Plaintiff Class all wages including both minimum wage and overtime. Plaintiff and Plaintiff Class
10 were denied proper overtime wages as a result of Defendant's policies as described herein.
11 Defendant have regularly violated the Labor Code with respect to meeting the requirements of
12 paying wages earned, including, overtime, double-time and remuneration when calculating the
13 employees' regular rate of pay, as herein before alleged. Defendant has intentionally excluded
14 time Plaintiff and Plaintiff Class worked off the clock in order to avoid payment of overtime
15 wages and other benefits in violation of the Labor Code and the order issued by the IWC.

16 35. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees,
17 costs, pursuant to California *Labor Code* § 1194 and prejudgment interest.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE FOR NECESSARY EXPENDITURES**

20 **CAL. LABOR CODE § 2802**

21 **(Plaintiff and Plaintiff Class Members against Defendant HHJ, and Does 1-50, Inclusive)**

22 36. Plaintiff and Plaintiff Class re-allege and incorporate by reference the allegations
23 in the preceding paragraphs.

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

27 38. Plaintiff and the Plaintiff Class were not reimbursed by Defendant for necessary
28 expenditures as a direct consequence of the discharge of their duties.

1 39. Defendant knowingly, willingly and intentionally attempted to offset the cost of
2 doing business on the Plaintiff and Plaintiff Class.

3 40. Defendant had a corporate practice and policy of requiring Plaintiff and Plaintiff
4 Class to shoulder the burden of Defendant's cost of doing business. Defendant continuously failed
5 to reimburse Plaintiff and Plaintiff Class for necessary business expenditures-- specifically,
6 reimbursement for mileage driven in their personal vehicles, maintenance for wear and tear of
7 personal vehicles caused by picking up heavy materials for jobs and otherwise discharging of job
8 duties, in addition to reimbursement for the purchase, maintenance, and replacement of cell
9 phones, cell phone service, work tools such as sprayers, and other equipment not provided by the
10 Defendant but necessary to carrying out Plaintiff and Plaintiff Class's job duties.

11 41. Accordingly, Plaintiff and Plaintiff Class are entitled to an award of "necessary
12 expenditures or losses" in accordance with *Cal. Labor Code* § 2802, which include attorney's
13 fees incurred by the employee enforcing the rights granted by this section.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION**

16 **IN LIEU THEREOF**

17 **(Plaintiff and Plaintiff Class Members against Defendant HHJ, and Does 1-50, Inclusive)**

18 42. The Plaintiff and Plaintiff Class re-allege and incorporate by reference all the
19 above paragraphs of this complaint as if fully alleged herein.

20 43. *Labor Code* §§ 226.7 and 512 provide that no employer shall employ any person
21 for a work period of more than five (5) hours without providing a meal period of not less than
22 thirty (30) minutes or employ any person for a work period of more than ten (10) hours without
23 a second (2nd) meal period of not less than thirty (30) minutes.

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

1 45. Defendant failed to schedule Plaintiff and similarly situated persons in an
2 overlapping manner so as to reasonably ensure that Plaintiff and Plaintiff Class could take and/or
3 receive such meal periods uninterrupted and within the statutory timeframe. Specifically,
4 Defendant required Plaintiff and Plaintiff Class to either take their meal period late and/or perform
5 work during meal periods by requiring them to attend to clients, respond to management, prepare
6 material lists and address other work-related issues without premium compensation.

7 46. As a result, Plaintiff and Plaintiff Class were often forced to forego a timely
8 uninterrupted meal period and/or work during their meal period. In so doing, Defendant has
9 intentionally and improperly denied timely uninterrupted meal periods to the Plaintiff and
10 Plaintiff Class in violation of *Labor Code* §§ 226.7 and 512 and other regulations and statutes.

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

13 48. At varying times relevant hereto, Plaintiff and Plaintiff Class have worked more
14 than ten (10) hours in a workday.

15 49. At all times relevant hereto, the Defendant failed to schedule Plaintiff and similarly
16 situated persons in a manner so as to reasonably provide timely uninterrupted thirty (30) minute
17 meal and/or work free meal period as required by *Labor Code* §§ 226.7 and 512.

18 50. By virtue of the Defendant's failure to schedule Plaintiff and Plaintiff Class in such
19 a way as to provide a timely and uninterrupted meal period, and/or work free meal period to the
20 Plaintiff and Plaintiff Class, thereby causing Plaintiff and Plaintiff Class to suffer, and will
21 continue to suffer, damages in the amounts which is presently unknown, but which exceed the
22 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

23 51. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of
24 meal period compensation pursuant to *Labor Code* §226.7 which they are owed beginning four
25 (4) years prior to filing this complaint as well as the assessment of any statutory penalties against
26 the Defendant, and each of them, in a sum as provided by the Labor Code and/or other statutes.

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1 58. Plaintiff, individually, and on behalf of employees similarly situated, requests
2 recovery of rest period compensation pursuant to *Labor Code* §226.7, which they are owed
3 beginning four (4) years prior to filing this complaint as well as the assessment of any statutory
4 penalties against the Defendant, in a sum as provided by the Labor Code and/or any other statute.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**

7 **(Plaintiff and Plaintiff Class Members against Defendant HHJ, and Does 1-50, Inclusive)**

8 59. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully
9 set forth herein, the above paragraphs in their entirety.

10 60. *Labor Code* §1174 (d), requires an employer to keep at a central location in
11 California or at the plant or establishment at which the employees are employed, payroll records
12 showing the hours worked daily, and the wages paid to, each employee. Plaintiff is informed, and
13 believes that Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff
14 Class. Specifically, Defendant did not have a time-keeping system or a policy in place to record
15 when Plaintiff and Plaintiff Class members began and ended their meal/rest periods. Defendant
16 would simply deduct all meal/rest breaks regardless of whether they were taken.

17 61. *Labor Code* § 226(a) states that, “every employer shall, semi-monthly or at the
18 time of each payment of wages, furnish each of his or her employees, either as a detachable part
19 of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid
20 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
21 earned, (2) total hours worked by the employee, (4) all deductions, (5) net wages, (6) the inclusive
22 dates of the period for which the employee is paid, (7) the name of the employee and only the last
23 four digits of his or her social security number or an employee identification number other than a
24 social security number, (8) the name and address of the legal entity that is the employer, and (9)
25 all applicable hourly rates in effect during the pay period and corresponding number of hours
26 worked at each hourly rate by the employee.”

27 62. *Labor Code* § 226(e) provides that if an employer knowingly and intentionally
28 fails to provide a statement itemizing, inter alia, the gross and net wages earned, the total hours

1 worked by the employee and the applicable hourly overtime rates, causing the employee injury,
2 then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50.00)
3 for the initial violation and one hundred dollars (\$100.00) for each subsequent violation, up to
4 four thousand dollars (\$4,000.00). Plaintiff is informed and believes that Defendant willfully
5 failed to make or keep accurate records for Plaintiff and Plaintiff Class.

6 63. IWC Wage Order No.1-2001, paragraph 7(a) requires that every employer shall
7 keep accurate information with respect to each employee, including time records showing when
8 each employee begins and ends each work periods, the total daily hours worked by each employee
9 and the total hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed
10 and believes that Defendant willfully and intentionally failed to make and/or keep records which
11 accurately reflect the hours worked by Plaintiff and Plaintiff Class. Specifically, Plaintiff believes
12 that Defendant's records do not accurately reflect where Plaintiff and Plaintiff Class worked due
13 to Defendant' "Rounding Policy" that is not fair and neutral and resulted, over a period of time,
14 in failure to compensate the employees properly for all the time they have actually worked.

15 64. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
16 records, as described above, violated *Labor Code* § 1174(d) and the applicable wage order.
17 Plaintiff and the Plaintiff Class are entitled to civil penalties of five hundred dollars (\$500.00).

18 65. An employee suffering injury as a result of a knowing and intentional failure by
19 an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages
20 or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred
21 dollars (\$100.00) per employee for each violation in a subsequent pay period, not to exceed an
22 aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and
23 reasonable attorney's fees.

24 66. Plaintiff is informed and believe that Defendant' failure to keep and maintain
25 accurate records and information, as described above, were willful, and Plaintiff and Plaintiff
26 Class are entitled to a statutory penalty of five hundred dollars (\$500.00) for Plaintiff and each
27 member of Plaintiff Class pursuant to Labor Code § 1174.5.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES UPON ENDING EMPLOYMENT**

3 **(Plaintiff and Plaintiff Class Members against Defendant HHJ, and Does 1-50, Inclusive)**

4 67. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully
5 set forth herein, the above paragraphs in their entirety as if fully alleged herein.

6 68. Plaintiff and certain members of the Plaintiff Class who ended their employment
7 with Defendant during the Class Period, were entitled to be promptly paid both minimum wage
8 and lawful overtime compensation and other premiums, as required by *Labor Code* §§ 201-203.
9 Defendant refused and/or failed to promptly compensate Plaintiff and Plaintiff Class wages owed
10 as a result of their failure to pay Plaintiff and Plaintiff Class minimum wage, overtime, and
11 premium compensations. Pursuant to *Labor Code* § 203, such Plaintiff and Plaintiff Class seek
12 the payment of penalties pursuant to *Labor Code* § 203, according to proof.

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION LAW**

15 **(Plaintiff and Plaintiff Class Members against Defendant HHJ, and Does 1-50,**
16 **Inclusive)**

17 69. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully
18 set forth herein, the above paragraphs in their entirety.

19 70. *California Business and Professions Code* § 17200 et. seq. (also referred to herein
20 as the "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair competition
21 in the form of any unlawful, unfair or fraudulent business act or practice.

22 71. *California Business and Professions Code* § 17204 allows "any person who has
23 suffered injury in fact and has lost money or property as a result of such unfair competition" to
24 prosecute a civil action for violation of the Unfair Competition Law ("UCL").

25 72. *Labor Code* § 90.5(a) states that it is the public policy of California to vigorously
26 enforce minimum labor standards in order to ensure employees are not required to work under
27 substandard and unlawful conditions, and to protect employers who comply with the law from
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those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

73. Beginning at an exact date unknown to Plaintiff, but at least four (4) years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint including but not limited to violations of *Labor Code* §§ 2802, 1194, 1197, 1198 as well as other statutes.

74. The violations of these laws and regulations, as well as of the fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of *Business and Professions Code* § 17200 et. seq.

75. The acts and practices described above constitute unfair, unlawful and fraudulent Business Practices, and unfair competition, within the meaning of *Business and Professions Code* § 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other similarly situated employees to labor for many hours without receiving the both minim wage and overtime compensation, to which they are entitled by law, while enabling Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

76. As a result of Defendant's acts, Plaintiff and Plaintiff Class have suffered injury in fact by being denied their statutorily entitled full compensation for hours of labor and not being indemnified for necessary business-related expenses. As a result of Defendant's unlawful acts of unfair competition, Plaintiff and Plaintiff Class have lost money and property in the form of a loss of wages in an amount to be proven at trial.

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

78. *Business and Professions Code* § 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition.

79. *Business and Professions Code* § 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair

1 competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to *Business and*
2 *Professions Code* § 17203 for all wages and payments unlawfully withheld from employees,
3 including the cost of necessary job-related expenses not reimbursed, during the four-year period
4 prior to the filing of this Complaint.

5 80. *Business and Professions Code* §17202 provides, "Notwithstanding section 3369
6 of the *Civil Code*, specific or preventative relief may be granted to enforce a penalty, forfeiture,
7 or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to enforce
8 all applicable penalty provisions of the *Labor Code* pursuant to *Business and Professions Code* §
9 17202.

10 81. Plaintiff's success in this action will enforce important rights affecting public
11 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and
12 other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution,
13 civil penalties, declaratory relief, and all other equitable remedies owing them.

14 82. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
15 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
16 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
17 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
18 *Code of Civil Procedure* § 1021.5 and otherwise.

19 **EIGHTH CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL**

21 **ACT**

22 **[CAL. LABOR CODE §2698-2699]**

23 **(Plaintiff and Plaintiff Class Members against Defendant HHJ, and Does 1-50, Inclusive)**

24 83. Plaintiff on behalf of himself and on behalf of aggrieved hourly non-exempt
25 employees herein re-alleges and incorporates each and every one of the allegations contained in
26 paragraphs 1-65, inclusive of this Complaint, as if fully set forth herein.

27 84. *Labor Code* § 2698-2699, the Labor Code Private Attorney General Act of 2004,
28 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development

Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or himself, and collectively on behalf of all other current or former employees.

85. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or hourly non-exempt employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

86. Plaintiff, and all hourly non-exempt employees of Defendant are "aggrieved employees" as defined by *Labor Code* § 2699, in that they are all current or former hourly non-exempt employees of Defendant, and one or more of the alleged violations was committed against them.

87. Prior to filing the Complaint, Plaintiff gave written notice to the LWDA on April 13, 2023, (LWDA Case No. LWDA-CM-948291-23) via online filing through the State of California LWDA/Department of Industrial Relations website with a copy to the employer via certified mail, of the specific provisions of this code alleged to have been violated, including listing some facts and some theories to support the alleged violations as required by *Labor Code* §2699.3; A true and correct copy of said Notice is attached hereto as Exhibit A. Plaintiff alleges that he has exhausted all administrative remedies and filed the herein complaint sixty-five (65) days after mailing said notice. At the date of filing this complaint, the LWDA has not responded with any intention to investigate. As such, Plaintiff has exhausted his administrative requirements pursuant to *Labor Code* § 2699.3(a)(1) and (2) (A-C).

88. Plaintiff asserts all of the claims in this Complaint against Defendant, individually and on behalf of all aggrieved hourly non-exempt employees in her capacity as private attorney general, and seeks all statutory penalties available under the Labor Code.

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1 89. Pursuant to *Labor Code* §2699, Plaintiff, individually and on behalf of all
2 aggrieved hourly non-exempt employees, requests and is entitled to recover penalties from the
3 Defendant for its violation of the Labor Code including failing to provide regular and overtime
4 compensation, meal and rest premiums, waiting period wages, reimbursement of necessary job
5 related expenses, waiting time penalties, and accurate and itemized wage statements; and
6 penalties according to proof, and plaintiff is further entitled to recover interest, attorney's fees and
7 costs pursuant to *Labor Code* §2699(g)(1), as well as all statutory penalties and attorneys' fees
8 against Defendant, and each of them, including, but not limited to:

9 A. Penalties under *Labor Code* § 2699 in the amount of one hundred dollars
10 (\$100.00) for each aggrieved employee per pay period for each initial violation,
11 and two hundred dollars (\$200.00) for each aggrieved employee per pay period
12 for each subsequent violation;

13 B. Penalties under *Code of Regulations, Title 8* § 11070 in the amount of fifty
14 dollars (\$50.00) for each aggrieved employee per pay period for the initial
15 violation, and one hundred dollars (\$100.00) for each aggrieved employee per pay
16 period for each subsequent violation;

17 C. Penalties under *Labor Code* § 210, in addition to and entirely independent
18 and apart from other penalty provided in the Labor Code, in the amount of one
19 hundred dollars (\$100.00) for each aggrieved employee per pay period for each
20 violation, and two hundred dollars (\$200.00) for each aggrieved employee per pay
21 period for each subsequent violation, plus twenty-five percent (25%) of the wage
22 wrongly withheld;

23 D. Any and all additional penalties and sum as provided by the Cal. Labor
24 Code and/or other statutes.

25 90. In addition, thereto, Plaintiff seeks and is entitled to fifty percent (50%) of all
26 penalties obtained under *Labor Code* § 2699 to be allocated to the General Fund, and twenty-five
27 percent (25%) of all penalties obtained to be allocated to the LWDA, for education of employers
28

1 and employees about their rights and responsibilities under the Labor Code, and twenty-five
2 percent (25%) to all aggrieved employees.

3 91. Further, plaintiff is entitled to seek and recover reasonable attorney's fees and costs
4 pursuant to *Labor Code* §§ 2699(g)(1), 1194, 210, and 212 and any other applicable statute.

5 **XIV.**

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff and Plaintiff Class pray for judgment as follows:

8 1. For compensatory damages;

9 2. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged
10 profits from the unlawful business practices of Defendant;

11 3. For waiting time penalties pursuant to *Labor Code* § 203, on behalf of the
12 terminated or resigned employees;

13 4. For statutory penalties pursuant to *Labor Code* §§ 226, 226(e), 2802, 512 and
14 1194, and as provided for by *Labor Code* § 2699;

15 5. For interest accrued to date;

16 6. Declaratory relief, enjoining Defendant's practices as being unlawful and unfair
17 business practices within the meaning of *Bus. & Prof. Code* §§ 17200, et seq., and declaring
18 Defendant has unlawfully treated Plaintiff and Plaintiff Class, failed to pay all wages and overtime
19 compensation in violation of California law, failed to pay wages to former employees Plaintiff
20 and other certain members of Plaintiff Class, failed to provide Plaintiff and Plaintiff Class
21 accurate itemized wage statements upon payment of wages, and declaring the amounts of
22 damages, penalties, equitable relief, costs, and attorney's fees Plaintiff and Plaintiff Class are
23 entitled to;

24 7. For costs of suit and expenses incurred herein pursuant to Code of Civil Procedure
25 § 1021.5, *Labor Code* §§ 226, 2802, 1194, and 2699(g);

26 8. For reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5, *Labor*
27 *Code* §§ 226, 2802, 1194, and 2699(g) and;
28

9. For all such other and further relief as the Court may deem just and proper.

Dated: August 9, 2023

**MAHONEY LAW GROUP, APC/AP LAW
OFFICES**

Nathaniel Adams

Kevin Mahoney, Esq.

Katherine J. Odenbreit, Esq.

Alexander Perez, Esq.

Attorneys for Plaintiff ERICK E. RUIZ
MONTROYA

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Dated: August 9, 2023

Nathaniel Adams

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EXHIBIT A



Katherine J. Odenbreit, Esq.
562.590.5550 Phone
562.590.8400 Facsimile
kodenbreit@mahoney-law.net

April 12, 2023

VIA Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL #7022 2410 0000 2418 4814

Return Receipt Requested

HHJ Construction, Inc.
11156 S. Main Street
Los Angeles, CA 90061

VIA CERTIFIED MAIL #7022 2410 0000 2418 4999

Return Receipt Requested

HHJ Construction, Inc.
c/o Agent for Service of Process
Joh S. Hyun
11156 S. Main Street
Los Angeles, CA 90061

Re: Erick E. Ruiz Montoya v. HHJ Construction, Inc.

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

To: Labor and Workforce Development Agency; HHJ Construction, Inc.

From: Erick E. Ruiz Montoya, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC and AP Law Offices, represent the interests of Erick E. Ruiz Montoya ("Mr. Montoya"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

HHJ Construction, Inc. (“Employer”) is a California corporation. Mr. Montoya began working for Employer in or around June 2020 until on or about November 29, 2022.

Mr. Montoya alleges that HHJ Construction violated various sections of the Labor Code, including sections 201, 203, 204, 221 226, 226.7, 510, 512, 551, 1174, 1194, 1198, and 2802 by:

- a) Failing to pay Mr. Montoya and aggrieved employees all wages owed, including minimum, overtime, and double time wages;
- b) Failing to provide Mr. Montoya and aggrieved employees with compliant meal periods or premium compensation in lieu thereof;
- c) Failing to provide Mr. Montoya and aggrieved employees with compliant rest periods or premium compensation in lieu thereof;
- d) Failing to provide Mr. Montoya and aggrieved employees with accurate itemized wage statements and failing to maintain accurate payroll records;
- e) Failing to reimburse Mr. Montoya and aggrieved employees for necessary business expenditures; and
- f) Failing to pay all wages earned and owed upon termination or separation of employment.
- g) Wrongfully terminating Mr. Montoya on the basis of his assertion of a legal right to be reimbursed mileage for use of his personal vehicle for business, use of his personal cell phone for business, pay for all hours worked and other work conditions in violation of public policy.

Mr. Montoya and the similarly aggrieved employees are identifiable current and/or former hourly non-exempt employees who worked for Employer in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employer failed to pay Mr. Montoya and aggrieved employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), “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.”

Labor Code section 510, subdivision (a), provides that “[a]ny 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 an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

Labor Code section 221(a) states “No employer shall ...make or take any deduction from the earnings of any employee, either directly or indirectly, to cover the whole or any part of the cost of compensation under this division”.

Mr. Montoya and aggrieved employees were frequently required to perform work for which they were not paid. Mr. Montoya and aggrieved employees were required to arrive before the start of their scheduled shifts to clean the worksite. They were not compensated for this time. Employees were required to stay beyond their scheduled shifts to finish a project or clean up their area but Employer would not permit this work time to be recorded and therefore Mr. Montoya and aggrieved employees were not paid for this time worked. Further, Employer would automatically deduct thirty (30) minutes for meal periods regardless of whether they were actually provided and/or taken by employees. When Mr. Montoya and aggrieved employees were unable to take a meal period due to workload or their meal periods were interrupted with work duties or client questions, Employer would still deduct thirty (30) minutes of time from their time record and not pay premium pay.

Further, when Mr. Montoya and aggrieved employees they received two separate checks not accounting for the total hours worked during the workweek thereby failing to properly pay all overtime wages due.

Additionally, Employer would deduct hours from Mr. Montoya’s and aggrieved employees’ time record for “Training Hours”. Mr. Montoya and aggrieved employees were not provided training and the deduction of these hours resulted in a failure to pay all wages, including overtime wages, due.

Even further, Employer obligated Mr. Montoya and other aggrieved employees to perform additional work from home including reviewing blueprints and materials lists, without lawful compensation for their time worked.

Accordingly, since Mr. Montoya and aggrieved employees were not paid for all hours worked, specifically the hours in excess of eight (8) in a workday, Employer failed to compensate them at the applicable minimum wage and overtime wage rate.

Employer’s failure to pay Mr. Montoya and aggrieved employees for all hours worked, including applicable overtime and double time rates, as detailed above, is actionable under PAGA as a violation of Labor Code sections 510, 1182.12 and 1194.

B. Employer failed to provide Mr. Montoya and aggrieved employees with compliant meal periods or premium compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no employer shall employ a person for a work period of more than five hours without providing an uninterrupted meal period of at least thirty minutes. Nor shall an employer employ a person for a work period of more than ten hours without providing a second uninterrupted meal period of at least thirty minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one hour

of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Mr. Montoya and aggrieved employees worked eight (8) hours or more each workday but did not frequently did not receive a timely, uninterrupted thirty (30) minutes for meal periods. When Mr. Montoya and aggrieved employees were not provided with requisite meal periods, they were not compensated with one hour of pay at their regular rate of pay as required by law.

Employer often required Mr. Montoya and aggrieved employees to prepare the materials list during meal breaks when they were clocked out. Mr. Montoya and aggrieved employees also were frequently interrupted during meal breaks with questions from project managers. Mr. Montoya complained to the Employer on numerous occasions that he and other employees were being interrupted or instructed to work during meal periods. In response the Employer retaliated against Mr. Montoya. Because the Employer required employees to record meal periods Employer knew they did not receive, Mr. Montoya and aggrieved employees were not paid overtime wages each workday and were not paid an additional hour of pay at their regular rate of pay. Despite knowledge that employees were not receiving full, uninterrupted meal periods, Employer automatically deducted thirty (30) minutes whether or not a full meal break was provided.

Employer's conduct in failing to provide compliant meal periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Mr. Montoya and aggrieved employees with compliant rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that employers permit all employees to take a ten-minute rest period for every four hours, or major fraction thereof worked. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Mr. Montoya and other aggrieved employee consistently had rest breaks interrupted by the project manager, superintendent and were instructed they had to stop their breaks to answer client questions. Therefore, Mr. Montoya and aggrieved employees were essentially "on-call" during meal and rest breaks. Mr. Montoya complained to Employer several times. Employer did not maintain a policy or practice to pay an additional hour of pay for interrupted rest breaks.

Employer's conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as a violation of Labor Code section 226.7.

D. Employer failed to provide Mr. Montoya and aggrieved employees with accurate itemized wage statements

Pursuant to Labor Code section 226, subdivision (a), “[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, 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.”

By failing to pay Mr. Montoya and aggrieved employees for all hours worked, including overtime wages, and premium compensation for missed meal and rest periods, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate total number of hours worked, inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Employer’s conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

E. Employer failed to reimburse Mr. Montoya and aggrieved employees for necessary business expenditures

Pursuant to Labor Code section 2802, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Employer required Mr. Montoya and aggrieved employees to utilize their personal cellular devices every day to communicate with supervisors and clients but were not reimbursed. Mr. Montoya and aggrieved employees were also frequently required to use their personal vehicles to pick up materials but were not reimbursed by Employer for mileage or maintenance expenses.

Mr. Montoya and aggrieved employees were also required to tools, sprayers and other equipment Employer refused to provide to perform their work duties.

Employer's failure to reimburse Mr. Montoya and aggrieved employees for all necessary business expenditures, specifically the use of their personal cellular devices, personal vehicle use to carry out work duties and purchasing tools, is a violation of Labor Code section 2802 and is therefore actionable under PAGA.

F. Employer failed to pay Mr. Montoya and aggrieved employees all wages earned and owed at separation of employment.

Pursuant to Labor Code section 201, subdivision (a), "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202, subdivision (a) provides, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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."

At the time that Mr. Montoya and aggrieved employees resigned or were terminated, Employer failed to compensate them for all wages earned and owed as well as for meal and rest premiums as described herein.

Labor Code section 203, subdivision (a), states that "[i]f an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Accordingly, Mr. Montoya and aggrieved employees are entitled to thirty days of waiting time penalties.

G. Employer discriminated and retaliated against Mr. Montoya based on his disability

Pursuant to Labor Code 98.6: "(a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter...or made a written or oral complaint that he or she is owed unpaid wages..."

"(b) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be

entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.”

Labor Code section 98.6(b)(3) provides: “In addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000.00) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Mr. Montoya complained to his supervisors many times that he and other employees were consistently being interrupted during rest and meal breaks, were not being paid for all time worked, were not being reimbursed for necessary business expenses and other work conditions. In response, Employer terminated Mr. Montoya’s employment when he submitted a request to be reimbursed for mileage and gas after being instructed to drive to another project to check on its progress. Employer informed Mr. Montoya he was asking for too much and informed him they had no more work for him.

H. Reservation of Rights

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, Mr. Montoya becomes aware of additional compensation owed or losses incurred by Mr. Montoya or by any other aggrieved employee of Employer, Mr. Montoya 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.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Katherine J. Odenbreit, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550

Email: kodenbreit@mahoney-law.net; smarquez@mahoney-law.net

Sincerely,

A handwritten signature in blue ink, appearing to read "Katherine J. Odenbreit", is written over a light blue horizontal line.

Katherine J. Odenbreit, Esq.

MAHONEY LAW GROUP, APC