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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

Attorneys for Plaintiff FRANK BERNAL

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

FRANK BERNAL, an individual,

Plaintiff,

v.

WATKINS ENVIRONMENTAL, INC.;
PIERCE F. BARONE, an individual;
WILLIAM SZYMANSKI, an individual; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2023-00033831-CU-OE-CTL

FIRST AMENDED COMPLAINT FOR
DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. WAITING TIME PENALTIES PER
LABOR CODE §203
5. MEAL AND REST PERIOD
VIOLATIONS
6. FAILURE TO PROVIDE A COPY OF
PAYROLL RECORDS AND EMPLOYEE
FILE
7. FAILURE TO REIMBURSE
8. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.
9. SEXUAL HARASSMENT, HOSTILE
ENVIRONMENT, AND CONSTRUCTIVE
TERMINATION IN VIOLATION OF
FEHA
10. CONSTRUCTIVE TERMINATION IN
VIOLATION OF PUBLIC POLICY
11. SEXUAL ASSAULT AND BATTERY

[IMAGED FILE]

1 Plaintiff FRANK BERNAL, an individual (hereinafter “Plaintiff”) alleges as follows:

2 **GENERAL ALLEGATIONS**

3 The public policy of California declares:

4 It is the public policy of this state to vigorously enforce minimum labor standards in
5 order to ensure employees are not required or permitted to work under substandard
6 unlawful conditions or for employers that have not secured the payment of compensation
7 and to protect employers who comply with the law from those who attempt to gain a
8 competitive advantage at the expense of their workers by failing to comply with
9 minimum labor standards.

(Labor Code §90.5 subd. (a).)

10 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code
11 and the Industrial Welfare Commission (“IWC”) Wage Orders. Defendants willfully failed to
12 pay mandated overtime, regular, minimum, and prevailing wage compensation, committed meal
13 and rest period violations, failed to reimburse business expenditures, and failed to provide and
14 maintain proper employee records to their employees.

15 1. This lawsuit is brought in response to the Defendants’ refusal to pay Plaintiff and
16 the other aggrieved employees all wages that they earned during their employment with
17 Defendants, among other Labor Code violations, and for sexual harassment, assault and battery
18 in violation of the California Fair Employment Housing Act and other California laws.

19 2. The acts complained of herein have occurred within the time period from four (4)
20 years preceding the filing of the original Complaint (hereinafter, the “Relevant Time Period”).

21 **JURISDICTION AND VENUE**

22 3. The Superior Court of the State of California for the County of San Diego has
23 jurisdiction over this case due to the fact that some of the alleged violations (a) of California
24 Labor Code (i.e. §§ 200 et seq.), (b) California Business and Professions Code §§ 17200 et seq.
25 and (c) related common law violations occurred in the County of San Diego.
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4. Venue is proper in Central Division of San Diego County Superior Court pursuant to Code of Civil Procedure §395(a) and §395.5, because *inter alia*, (a) the Defendants' and Defendant corporation's principal place of business is situated in this County, and (b) complaints regarding such issues may be filed in the Central Division.

PARTIES

5. Plaintiff FRANK BERNAL is an individual over the age of eighteen (18) and was an employee of Defendants during the last 4 years.

6. Plaintiff is informed and believes that Defendant WATKINS ENVIRONMENTAL, INC. is a California Corporation, and at all times mentioned herein operated its businesses within the jurisdiction of this Court.

7. Plaintiff is informed and believes that Defendant PIERCE F. BARONE is an individual who during the relevant time period has owned, managed and operated and continues to own, manage and operate WATKINS ENVIRONMENTAL, INC., and who at all times mentioned in this First Amended Complaint herein resided within the jurisdiction of this Court. PIERCE F. BARONE was and remains a person acting on behalf of WATKINS ENVIRONMENTAL, INC., on information and belief as the chief executive officer, chief financial officer, secretary, managing agent, and director of WATKINS ENVIRONMENTAL, INC., who violated and/or who caused to violate various Labor Code sections and other provisions regulating hours and days of work established by the Industrial Welfare Commission of the State of California rendering him individually liable pursuant to Labor Code Sections 558, 558.1, 1197.1, and 2699 et. seq. In addition, PIERCE F. BARONE is an officer, director, and person acting either individually or as a managing agent, who paid or caused to be paid the Plaintiff and the other aggrieved employees a wage less than the minimum, regular, prevailing, and overtime rate of pay under the law, failed to reimburse, and failed to provide accurate

1 records, or by an order of the commission and is therefore subject to a civil penalty, restitution of
2 wages payable to the employee, and any applicable wages, damages and penalties plus fees and
3 costs imposed pursuant to Labor Sections 203, 558, 558.1, 1197.1, and 2699 et. seq. Further,
4 PIERCE F. BARONE is a person who failed to take any action despite Defendant WILLIAM
5 SZYMANSKI's sexual harassment, hostile environment, assault, and battery which caused
6 Plaintiff and other employees significant damages all in violation of the California Fair
7 Employment and Housing Act, Govt. Code §§ 12900-12996 (hereinafter "FEHA"), among other
8 laws.

10 8. Plaintiff is informed and believes that Defendant WILLIAM SZYMANSKI, is an
11 individual who during the relevant time period worked and resided in San Diego County within
12 the jurisdiction of this Court, who was Plaintiff's supervisor, and who sexually harassed,
13 assaulted and battered Plaintiff.

15 9. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this First
16 Amended Complaint were licensed to do business and/or actually doing business in the State of
17 California. Plaintiff does not know the true names or capacities, whether individual, partner or
18 corporate, of DOES 1 to 50, inclusive and for that reason, DOES 1 to 50 are sued under such
19 fictitious names pursuant to California Code of Civil Procedure ("CCP") §474. Plaintiff will
20 amend this First Amended Complaint to allege such names and capacities as soon as they are
21 ascertained.

23 10. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
24 inclusive, are former co-employers and/or joint employers of Plaintiff.

25 11. Plaintiff is informed and believes and thereon alleges that DOES 1 to 50,
26 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiff the
27 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
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1 written contract, implied in fact contract, or by way of common counts such as money had and
2 received. Plaintiff reserves the right to augment the foregoing allegations to more clearly set
3 forth this Defendant's liability as discovery progresses and reveals the same.

4 12. Plaintiff is informed and believes, and based upon such information and belief
5 alleges that the Defendants, and each of them, are now and/or at all times mentioned in this First
6 Amended Complaint were in some manner legally responsible for the events, happenings and
7 circumstances alleged in this First Amended Complaint.

9 13. Plaintiff is further informed and believes, and based upon such information and
10 belief alleges, that at all times herein mentioned, all Defendants, and each of them, were and are
11 the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants,
12 and were, at all such times, acting within the course and scope of said employment and/or
13 agency; furthermore, that each and every Defendant herein, while acting as a high corporate
14 officer, director and/or managing agent, principal and/or employer, expressly directed, consented
15 to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as
16 herein alleged and was responsible in whole or in part for the matters referred to herein.

18 14. Plaintiff is further informed and believes, and based upon such information and
19 belief alleges, that at all times herein mentioned, Defendant, and each of them, proximately
20 caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
21 damages alleged in this First Amended Complaint.

23 15. Plaintiff is further informed and believes, and based upon such information and
24 belief alleges, that at all times herein mentioned, Defendants, and each of them were co-
25 employers and/or joint employers of Plaintiff.

26 16. Defendants, and each of them, are now and/or at all times mentioned in this First
27 Amended Complaint were members of and/or engaged in a joint venture, partnership and
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1 common enterprise, and were acting within the course and scope of, and in pursuit of said joint
2 venture, partnership and common enterprise and, as such were co-employers and/or joint
3 employers of Plaintiff.

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5 17. Defendants, and each of them, at all times mentioned in this First Amended
6 Complaint concurred with, contributed to, approved of, aided and abetted, condoned and/or
7 otherwise ratified the various acts and omissions of each and every one of the other Defendants
8 in proximately causing the complaints, injuries and/or damages alleged in this First Amended
9 Complaint.

10 18. Plaintiff is informed and believes and thereon alleges that at all times herein
11 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
12 named Defendants. Plaintiff is informed and believes and thereon alleges that there exists such a
13 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
14 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
15 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
16 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
17 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
18 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
19 recognition of the separate existence of Defendants would not promote justice, in that it would
20 permit Defendants to insulate themselves from liability to Plaintiff. Accordingly, the named
21 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
22 separate existence must be disregarded.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES**

3 **(Against all Defendants except WILLIAM SZYMANSKI)**

4 19. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
5 section as though fully set forth herein.
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7 20. Plaintiff was an “employee” of Defendants (as defined by section 350 of the
8 Labor Code) but Defendants failed to pay Plaintiff and the other aggrieved employees for all
9 hours worked. Plaintiff and the other aggrieved employees were employed as laborers who
10 performed work such as asbestos, mold, and lint removal and demolition work.

11 21. Pursuant to Labor Code section 1197 and San Diego Municipal Code §39.0107,
12 payment of less than the minimum wage fixed by the commission is unlawful.
13

14 22. During the entire period of time that Plaintiff and the other aggrieved employees
15 were employed by Defendants, and for the four (4) years preceding the filing of this lawsuit,
16 Defendants were required to compensate them at least at the minimum wage, but failed to carry
17 out their duties and responsibilities as an employer imposed under the laws and regulations of the
18 State of California and violated the law by failing to pay Plaintiff and the other aggrieved
19 employees a minimum wage for all hours worked pursuant to all applicable wage orders and in
20 accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194, 1194.2, and 1197.
21

22 23. Defendants regularly failed to pay Plaintiff and the other aggrieved employees all
23 of the wages that they earned. Specifically, Defendants have intentionally failed to pay Plaintiff
24 and the other aggrieved employees for all hours worked (“wage theft”), where Defendants
25 require Plaintiffs to arrive at the office and warehouse to load vehicles with materials and
26 equipment and to get daily instructions from their supervisors and then to drive their personal
27 vehicles to different job sites, however, Defendants fail to pay Plaintiffs for the time worked
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1 before beginning work at the job sites. Defendants also many times require Plaintiffs to drive
2 back to the office and warehouse from the job sites to unload materials and equipment, but are
3 also not paid for this driving and unloading time.

4 24. In violation of state and local laws, Defendants have knowingly and willfully
5 refused to perform their obligations to compensate Plaintiff and the other aggrieved employees
6 for minimum and regular wages earned and all hours worked. As a direct result, Plaintiff and the
7 other aggrieved employees have suffered, and continue to suffer, substantial losses related to the
8 use and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys' fees in
9 seeking to compel Defendants to fully perform its obligation under state law, all to their damage
10 in amounts according to proof at the time of trial, but in amounts in excess of the minimum
11 jurisdiction requirement of this Court. Defendants committed the acts alleged herein knowingly
12 and willfully, with wrongful and deliberate intent.

13 25. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
14 510, 558, 558.1, 1194, 1194.2, 1197.1, and 1197 and local laws such as San Diego Municipal
15 Code §39.0107. As a proximate result of the aforementioned violations, Plaintiff and the other
16 aggrieved employees have been damaged in an amount according to proof at the time of trial, but
17 in an amount in excess of the minimum jurisdiction requirement of this Court. Therefore,
18 pursuant to Labor Code sections 200, 203, 226, 558, 558.1, 1194, 1194.2, 1197, and 1197.1 and
19 San Diego Municipal Code §39.0107, Plaintiff is therefore entitled to recover the unpaid balance
20 of minimum wages and damages for minimum wage violations, including but not limited to LC
21 1194.2 liquidated damages in an amount to be proven at trial, plus interest, penalties, attorneys'
22 fees, expenses, and costs of suit.

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1 26. Pursuant to Labor Code §200, “wages” includes all amounts for labor performed
2 by employees of every description, whether the amount is fixed or ascertained by the standard of
3 time, task, piece, commission basis, or other method of calculation.

4 27. Plaintiff and the other aggrieved employees have not been paid for all of their
5 hours worked at least at their regular rate of pay and are thus entitled to their earned unpaid
6 wages in an amount to be proven at trial, plus interest, penalties, attorneys’ fees and costs.

7 28. Under California law, including but not limited to, Labor Code sections 200, 226,
8 500, 510, 558, 558.1, and 1198, Defendants were required to compensate Plaintiff and the other
9 aggrieved employees for all overtime, which is calculated at one and one-half (1.5) times the
10 regular rate of pay for hours worked in excess of forty (40) per week or after eight (8) in one day,
11 and double time (2) times the regular rate of pay for hours worked on the seventh consecutive
12 work day, or after twelve (12) hours in any workday.

13 29. Throughout their employment with Defendants, Plaintiff and the other aggrieved
14 employees regularly worked overtime hours, but were not paid anything for the overtime hours
15 worked (see above), and therefore not at the overtime rate of pay. Plaintiff and the other
16 aggrieved employees are or were non-exempt employees entitled to overtime pay under
17 California law, including but not limited to Labor Code sections 200, 226, 500, 510, 558, 558.1,
18 1194 and 1198.

19 30. Under the applicable wage orders, statutes and regulations, Plaintiff and the other
20 aggrieved employees are entitled to one and one-half (1.5) times and double their regular rate of
21 pay for overtime work performed during the entire course of their employment with Defendants.

22 31. As a direct result, Plaintiff and the other aggrieved employees have suffered
23 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
24 and expenses and attorneys’ fees in seeking to compel Defendants to fully perform its obligation
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1 under state law, all to their respective damage in amounts according to proof at the time of trial,
2 but in amounts in excess of the jurisdiction of this Court. Defendants committed the acts alleged
3 herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff,
4 from improper motives amounting to malice, and in conscious disregard of Plaintiff's rights.
5 Plaintiff is thus entitled to recover nominal, actual, compensatory damages in amounts according
6 to proof at the time of trial, but in amounts in excess of the jurisdiction of this Court.
7

8 32. Defendants' conduct described herein violates Labor Code sections 200, 226, 500,
9 510, 558, 558.1, 1194, and 1197.1. As a proximate result of the aforementioned violations,
10 Plaintiff has been damaged in an amount according to proof at the time of trial, but in an amount
11 in excess of the jurisdiction of this Court. Therefore, pursuant to Labor Code sections 200, 203,
12 226, 558, 558.1, and 1194, Plaintiff is entitled to recover the unpaid balance of overtime
13 compensation Defendants owe to Plaintiff in an amount to be proven at trial, plus interest,
14 penalties, attorneys' fees, expenses, and costs of suit.
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16 33. Pursuant to Labor Code sections 1770-1781, payment of less than the applicable
17 prevailing wage is unlawful. Throughout Plaintiff's employment by Defendants, and for the four
18 (4) years preceding the filing of this lawsuit, Defendants were required to compensate Plaintiffs
19 and the other aggrieved employees at the prevailing wage, but failed to carry out their duties and
20 responsibilities as an employer imposed under the laws and regulations of the State of California
21 and violated the law by failing to pay Plaintiff the applicable prevailing wage for all hours
22 worked by Plaintiff pursuant to all applicable wage orders and in accordance with Labor Code
23 sections 1770-1781.
24

25 34. In violation of state law, Defendants have knowingly and willfully refused to
26 perform their obligations to pay Plaintiff and the other aggrieved employees the applicable
27 prevailing wages earned and for all hours worked. As a direct result, Plaintiff has suffered, and
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1 continues to suffer, substantial losses related to the use and enjoyment of such wages, lost
2 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to
3 fully perform their obligation under state law, all to their damage in amounts according to proof
4 at the time of trial, but in amounts in excess of the jurisdiction of this Court.
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6 35. Defendants committed the acts alleged herein knowingly and willfully, with the
7 wrongful and deliberate intention of injuring Plaintiff and the other aggrieved employees, from
8 improper motives amounting to malice, and in conscious disregard of the aggrieved employees'
9 rights. Plaintiff and the other aggrieved employees are thus entitled to recover nominal, actual,
10 compensatory, punitive and exemplary damages in amounts according to proof at the time of
11 trial, but in amounts in excess of the jurisdiction of this Court.
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13 36. Defendant's conduct described herein violates Labor Code sections 1170-1781.
14 Plaintiff is therefore entitled to recover the unpaid balance of wages Defendant owes Plaintiff,
15 plus interest, penalties, liquidated damages, attorneys' fees, expenses, and costs of suit.
16

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO TIMELY FURNISH**

19 **ACCURATE ITEMIZED WAGE STATEMENTS**

20 **(Pursuant to Labor Code §226)**

21 **(Against all Defendants Except WILLIAM SZYMANSKI)**

22 37. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
23 section as though fully set forth herein.

24 38. Plaintiff is informed and believes and thereon alleges that Defendants, in violation
25 of Labor Code §226(a), engaged in a practice with respect to Plaintiff and the other aggrieved
26 employees of regularly failing to furnish them with accurate, itemized statements in writing
27 showing (1) all gross wages earned, (2) all deductions, (3) net wages earned, and/or (4) accurate
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1 rate of pay during each respective pay period for which wages have been and continue to be due
2 and owing, as well as all other information required by section 226 of the Labor Code.
3 Specifically, Defendants failed to provide wage statements to Plaintiff and the other aggrieved
4 employees showing the above required information.
5

6 39. Plaintiff seeks damages pursuant to Labor Code §226 for each violation by
7 Defendants of Labor Code §226, and pursuant to §§ 226.3, 558.1, plus attorneys' fees and costs.
8 In addition, Plaintiff seeks preliminary and permanent injunctive relief pursuant to Labor Code
9 §226(h).

10 **THIRD CAUSE OF ACTION**

11 **UNFAIR BUSINESS PRACTICES**

12 **(BUSINESS & PROFESSIONS CODE §17200, et seq.)**

13 **(Against all Defendants Except WILLIAM SZYMANSKI)**

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15 40. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
16 section as though fully set forth herein.

17 41. Defendants have engaged in unfair business practices in California by utilizing
18 and engaging in an unlawful pattern and practice of failing to properly pay employee
19 compensation as described throughout this First Amended Complaint, specifically, by requiring
20 the Plaintiff and the other aggrieved employees to perform the work without proper payment of
21 overtime, regular, prevailing, minimum pay earned, without proper meal and rest periods, failed
22 to reimburse business expenditures, and failed to pay and report proper taxes to the US and
23 California governments. Defendants' use of such practices constitutes a statutorily illegal, and
24 thus, unfair business practice and provides an unfair advantage over Defendants' competitors.
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42. Plaintiff seeks full restitution by Defendants as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair business practices complained of herein.

43. Plaintiff seeks the appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

44. The acts complained of herein, occurred, at least in part, within the last 4 years preceding this First Amended Complaint for Damages.

45. Further, if Defendants are not enjoined from the unlawful conduct described above, Defendants will continue unabated in its unlawful conduct, which will continue to result in irreparable injury to members of the general public, including, but not limited to Plaintiff and the other aggrieved employees, who are current and former employees of the Defendants, and for which there is no adequate remedy at law. Thus, Plaintiff requests that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

FOURTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT

WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203

(Against all Defendants Except WILLIAM SZYMANSKI)

46. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

47. Defendants failed to pay Plaintiff and the other aggrieved employees all earned wages upon the separation of their employment with Defendants in violation of Labor Code sections 201 and 202, including but not limited to, overtime, minimum, regular, meal and rest period premiums, and prevailing wages, and despite his several demands to be paid.

1 48. Defendants' failure to pay Plaintiff and the other aggrieved employees all wages
2 due was willful and done with malice. Plaintiff and the other aggrieved employees are therefore
3 entitled to penalties pursuant to Labor Code §203, and pursuant to §§ 558, 558.1, plus attorneys'
4 fees and costs.

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6 **FIFTH CAUSE OF ACTION**

7 **MEAL AND REST PERIOD VIOLATIONS**

8 **LABOR CODE §§ 226.7 and 512**

9 **(Against all Defendants Except WILLIAM SZYMANSKI)**

10 49. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
11 section as though fully set forth herein.

12 50. Under California Labor Code sections 226.7, 512 and California Wage Orders,
13 Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at
14 least 5 hours in a shift, except that when a work period of not more than 6 hours will complete
15 the day's work then the meal period may be waived by mutual consent of the employer and
16 employee. Time records of meal periods must be kept except that meal periods during which
17 operations cease need not be recorded. Employers must provide non-exempt employees 2 Off
18 Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be
19 recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties.
20 Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods
21 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
22 provided in a work day.

23 51. At all times mentioned herein, Defendants violated Labor Code sections 226.7
24 and 512 by refusing to allow Plaintiff and the other aggrieved employees to be fully relieved of
25 their duties during all of their meal and rest periods. Defendants did not allow Plaintiff and the
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1 aggrieved employees to be fully relieved of their duties during all of their meal and rest periods
2 and the meal and rest periods were not proper, and were required to work through them since, for
3 instance. Further, even if they were allowed to take all of their meal and rest periods, there was
4 no time given the duties they had to complete by specified deadlines, because they would
5 otherwise be reprimanded if they did not finish their required duties in time.
6

7 52. Accordingly, Plaintiff seeks damages available pursuant to the Labor Code,
8 including but not limited to Labor Code sections 226.7, 512, 558, and 558.1 in an amount proven
9 at trial, plus interest, penalties, fees, and costs.

10 **SIXTH CAUSE OF ACTION**

11 **EMPLOYEE FILE & PAYROLL RECORDS VIOLATION**

12 **LABOR CODE §§ 1198.5, 432, 226(b), (c), and (f)**

13 **(Against all Defendants Except WILLIAM SZYMANSKI)**

14
15 53. Plaintiff incorporates by reference and re-alleges each and every one of the
16 allegations contained in this First Amended Complaint as though fully set forth herein.

17 54. On or about February 3, 2023, Plaintiff, through his counsel, requested in writing
18 that Defendants provide Plaintiff with a copy of certain documents in his employee file and
19 payroll and time records. Defendants failed to timely furnish Plaintiff with a copy of his
20 employee file and payroll and time records in violation of Labor Code §§432, and 226(b),(c), (f),
21 and 1198.5; IWC Orders 1 through 15, Section 7, and IWC Order 16, Section 6, despite multiple
22 requests to do so. To date, Defendants have failed to provide Plaintiff's employee file and
23 records. Plaintiff is entitled to recover any and all penalties and compensation provided by the
24 Labor Code, including the above mentioned sections and section 558.1, for Defendant's failure
25 to furnish the requested personnel and payroll and time records including at least \$750.00 in
26 penalties pursuant to LC §§226(f) and 1198.5, plus attorneys' fees and costs.
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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE**

3 **(Against All Defendants Except WILLIAM SZYMANSKI)**

4 55. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
5 section as though fully set forth herein.
6

7 56. Pursuant to Labor Code §2802(a), an employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
10 the employer.
11

12 57. Defendants required Plaintiff and the other aggrieved employees to incur
13 expenditures for the benefit of the Defendants including but not limited to personal vehicle use,
14 use of personal cellular phone and service, and purchase of tools for use in the discharge of their
15 daily duties. Defendants, however, failed to reimburse Plaintiff and the other aggrieved
16 employees for such expenditures.

17 58. Therefore, pursuant to Labor Code §2802(c) Plaintiff is entitled to recover
18 reimbursement for all necessary expenditures for personal vehicle use, use of personal cellular
19 phone and service, and purchase of tools for use in the discharge of their daily duties for
20 Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.
21

22 **EIGHTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

24 **PER LABOR CODE §2699, et seq.**

25 **(Against All Defendants Except WILLIAM SZYMANSKI)**

26 59. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
27 section as though fully set forth herein.
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1 60. On or about April 6, 2023, pursuant Labor Code sections 2699(a) and 2699.3,
2 Plaintiff, through his counsel, provided notice in writing by online submission to the California
3 Labor Workforce Development Agency (“LWDA”) and via certified US Mail to Defendants and
4 each of them, that Plaintiff intended to assert a PAGA claim pursuant to section 2699(a) on his
5 own behalf, and in a representative capacity on behalf of other aggrieved employees of
6 Defendants, for Defendants’ violations of specified provisions of the California Labor Code. See
7 Exhibit 1 attached to this First Amended Complaint. The LWDA did not respond within 65
8 days.
9

10 61. As a result, Plaintiff has perfected his right to sue Defendants in a civil action, and
11 to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on behalf of all
12 aggrieved employees (PAGA Employees).
13

14 62. As a result of the acts alleged above, Plaintiff brings this action on his own behalf,
15 and in a representative capacity on behalf of other current or former aggrieved employees
16 (PAGA Employees), for penalties pursuant to California Labor Code section 2699 for
17 Defendants’ violations of the enumerated Labor Code sections, including, but not limited to
18 sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227,
19 227.3, 246, 510, 512, 558, 558.1, 98.6, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198,
20 1198.5, 1199, 1770-1781, and 2802.
21

22 63. Pursuant to California Labor Code section 2699, Plaintiff and PAGA Employees
23 are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in
24 addition to interest, attorney’s fees and costs.

25 64. The Court should award seventy-five (75%) percent of all penalties due under
26 California law to the State of California.
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1 65. Plaintiff, on behalf of the State of California and the aggrieved employees,
2 therefore seeks to recover from Defendants, and each of them, allowable damages and civil
3 penalties for the violations claimed above regarding Plaintiff's claims, plus interest, costs, and
4 attorneys' fees, plus civil penalties regarding the other aggrieved employees' claims in an
5 amount according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*
6

7 66. Labor Code Section 558 states that "[a]ny employer or *other person* acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commission
10 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
11 each underpaid employee for each pay period for which the employee was underpaid in addition
12 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
13 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
14 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
15 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
16 state that "[t]he civil penalties provided for in this section are in addition to any other civil or
17 criminal penalty provided by law."
18

19 67. Labor Code Section 558.1(a) provides in pertinent part: "Any employer or other
20 person acting on behalf of an employer, who violates, or causes to be violated, any provision
21 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
22 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
23 2802, may be held liable as the employer for such violation."
24

25 68. Defendants violated/violate, or caused/causes to be violated, multiple sections of
26 the Labor Code as well as provisions regulating hours and days of work in any order of the
27 Industrial Welfare Commission including those requiring payment of minimum and regular
28

1 wages and payment of overtime and prevailing wages, meal and rest periods, failure to reimburse
2 records violations, as set forth in detail throughout this First Amended Complaint.

3 69. Accordingly, Plaintiff is also entitled to recovery of wages, premium wages,
4 damages, and penalties pursuant to Labor Code Sections 558 and 558.1.
5

6 **NINTH CAUSE OF ACTION**

7 **SEXUAL HARASSMENT, DISCRIMINATION, HOSTILE ENVIRONMENT, AND**
8 **CONSTRUCTIVE TERMINATION IN VIOLATION OF FEHA**

9 **(Against all Defendants)**

10 70. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
11 section as though fully set forth herein.
12

13 71. At all times mentioned herein, the Fair Employment and Housing Act, Govt.
14 Code §§ 12900-12996 (hereinafter “FEHA”), was in full force and effect and binding on
15 Defendant. These statutes required Defendants to refrain from discriminating, sexually
16 harassing, allowing a hostile environment, or constructively terminating any employee. Within
17 the time provided under FEHA, Plaintiff filed complaints against Defendants with the
18 Department of Fair Employment and Housing alleging harassment, discrimination, hostile
19 environment and constructive termination all based on sexual harassment and sex in full
20 compliance with these sections, and received right-to-sue letters. Attached hereto and
21 incorporated herein by reference as Exhibit 2 are true and correct copies of the right-to-sue
22 notices received by Plaintiff.
23

24 72. FEHA prohibits discrimination, harassment, hostile environment, and constructive
25 termination on the basis of sex and sexual harassment, which is a form of sex discrimination
26 under Article I, §8 of the California Constitution. California Government Code §12940, et seq.;
27 *Rojo v. Kliger*, 52 Cal. 3d 65, 73, 90 (1990).
28

1 73. Sexual harassment consists of any unwelcome sexual advances, assault battery,
2 requests for sexual favors, or other verbal or physical conduct of a sexual nature. Sexual
3 harassment includes, but is not limited to, verbal conduct (i.e., epithets, derogatory comments or
4 slurs), as well as physical and visual insults. Sexual harassment also includes, but is not limited
5 to, physical contact, e.g., assault, impeding or blocking movement, or any physical interference
6 with normal work or movement, visual objects such as videos, posters, cartoons, or drawings,
7 sexual favors, and unwanted sexual advances. Cal. Code Regs. Tit. 2, §§ 7287.6(b)(1), 7291.1(f).

9 74. California's FEHA prohibits an employer or person from discriminating and
10 retaliating against, and constructively terminating any person because that person has opposed or
11 complained about sexual harassment or any discriminatory practice, and prohibits hostile
12 environment. Cal. Gov't Code §§ 12940(a), (h), (j).

14 75. Defendants failed to take all reasonable steps to prevent harassment and
15 discrimination based on sex because Plaintiff was an employee of Defendants; Plaintiff was
16 subjected to harassment and discrimination in the course of his employment; Defendants failed
17 to take all reasonable steps to prevent the harassment and discrimination; Plaintiff was harmed;
18 and Defendants' failure to take all reasonable steps to prevent harassment or discrimination was
19 a substantial factor in causing Plaintiff's harm. Cal. Gov't Code §12940(k).

21 76. A termination is constructive when the employer created or knowingly permitted
22 working conditions that were so intolerable or aggravated at the time of the resignation that a
23 reasonable employer would realize that a reasonable person in the employee's position would be
24 compelled to resign. A continuous course of harassment uncorrected by management can
25 constitute objectively intolerable working conditions. *Thompson v. Tracor Flight Systems, Inc.*,
26 86 Cal.App.4th 1156, 1171-1172 (2001).

27 ///

1 77. Plaintiff's supervisor Defendant WILLIAM SZYMANSKI on many occasions
2 made unwelcome physical touching of a sexual nature, and grabbed Plaintiff's and other
3 employees' private parts. For instance, on several occasions, Defendant WILLIAM
4 SZYMANSKI grabbed Plaintiff's nipples and squeezed them very hard and even put Plaintiff in
5 a headlock while squeezing his nipples. Defendant WILLIAM SZYMANSKI also sexually
6 assaulted Plaintiff on several occasions.
7

8 78. In addition, Defendant WILLIAM SZYMANSKI many times pulled pubic hairs
9 from his own private parts and would put them in employees' mouths, where he made attempts
10 to put them in Plaintiff's mouth, but Plaintiff was forced and able to push his arms away.
11

12 79. Defendant WILLIAM SZYMANSKI also regularly made unwelcome lewd and
13 vulgar comments of a sexual nature to Plaintiff such as "you are going to end up giving me oral
14 sex", and "I told other employees that if they don't do their work that I'm going to rape them".
15

16 80. Plaintiff complained and reported the sexual harassment, assault and battery by
17 Defendant WILLIAM SZYMANSKI to his other supervisors and the manager, including Manny
18 Lozano, and to Defendants' Human Resources Department, however, nothing was done in
19 response to the complaints by Plaintiff, and Defendant WILLIAM SZYMANSKI was still
20 employed by Defendants and working during Plaintiff's shift.
21

22 81. After Plaintiff reported the sexual harassment, assault and battery by Defendant
23 WILLIAM SZYMANSKI to Mr. Lozano and to HR, Plaintiff's coworkers harassed and made
24 fun of Plaintiff with comments such as, "don't touch me, I'm going to sue", "that's sexual
25 harassment", further creating a hostile work environment.
26

27 82. Plaintiff was forced to resign due to the continuous course of harassment
28 uncorrected by Defendants' supervisors, manager, and HR department, and thus constituted

1 intolerable working conditions. Plaintiff had an excellent record as an asbestos/lint removal
2 laborer, and was dedicated to his position.

3 83. As a direct and proximate result of Defendants' unlawful actions against Plaintiff
4 as alleged above, Plaintiff has been harmed in that Plaintiff has suffered the loss of the wages,
5 salary, benefits, and additional amounts of money Plaintiff would have received if Plaintiff's
6 employment had not been wrongfully terminated by Defendants. Additionally, as a result of
7 Defendants' wrongful actions alleged above, Plaintiff has been harmed in that Plaintiff has
8 suffered intangible loss of such employment-related opportunities such as continued experience
9 in the position from which Plaintiff was terminated, and for further experience in positions that
10 Plaintiff would have been promoted had his employment not been terminated. Defendants'
11 actions also created a hostile work environment that caused Plaintiff harm. As a result of
12 Defendants' conduct, Plaintiff has suffered damages in an amount to be determined at trial and
13 according to proof.

14 84. As a further proximate result of Defendants' wrongful actions against Plaintiff as
15 alleged above, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental
16 anguish, and severe emotional and physical distress, and has been injured in mind and body, in
17 an amount to be determined at trial and according to proof.

18 85. The above-recited actions of Defendants in wrongfully terminating Plaintiff's
19 employment were done intentionally with malice, fraud, oppression, and reckless disregard of
20 the Plaintiff's rights under the Government Code and within the meaning of California Civil
21 Code section 3294. Plaintiff is therefore entitled to punitive and exemplary damages in an
22 amount sufficient to punish and make an example of Defendants.

23 86. By reason of the conduct of Defendant herein, Plaintiff has retained attorneys to
24 prosecute his claims under FEHA. Plaintiff is therefore entitled to recover reasonable attorneys'
25

1 fees and costs pursuant to Govt. Code §12965(b), in addition to other damages as provided by
2 law and as alleged herein.

3 **TENTH CAUSE OF ACTION**

4
5 **CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY**

6 **(Against All Defendants)**

7 87. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
8 section as though fully set forth herein.

9 88. Govt. Code §§ 12940, et seq. (FEHA), embody a fundamental state public policy.
10 These statutes contain specific language that forbids an employer and its employees from
11 discriminating, sexually harassing, and failing to stop sexual harassment, a hostile work
12 environment, sexual assault, and battery. A constructive discharge in violation of this
13 fundamental public policy gives rise to a tort action in favor of the terminated employee.
14

15 89. As alleged above, Plaintiff's supervisor Defendant WILLIAM SZYMANSKI on
16 many occasions made unwelcome physical touching of a sexual nature, and grabbed Plaintiff's
17 and other employees' private parts. For instance, on several occasions, Defendant WILLIAM
18 SZYMANSKI grabbed Plaintiff's nipples and squeezed them very hard and even put Plaintiff in
19 a headlock while squeezing his nipples. Defendant WILLIAM SZYMANSKI also sexually
20 assaulted Plaintiff on several occasions.
21

22 90. In addition, Defendant WILLIAM SZYMANSKI many times pulled pubic hairs
23 from his own private parts and would put them in employees' mouths, where he made attempts
24 to put them in Plaintiff's mouth, but Plaintiff was forced and able to push his arms away.
25

26 91. Defendant WILLIAM SZYMANSKI also regularly made unwelcome lewd and
27 vulgar comments of a sexual nature to Plaintiff such as "you are going to end up giving me oral
28 sex", and "I told other employees that if they don't do their work that I'm going to rape them".

1 92. Plaintiff complained and reported the sexual harassment, assault and battery by
2 Defendant WILLIAM SZYMANSKI to his other supervisors and the manager, including Manny
3 Lozano, and to Defendants' Human Resources Department, however, nothing was done in
4 response to the complaints by Plaintiff, and Defendant WILLIAM SZYMANSKI was still
5 employed by Defendants and working during Plaintiff's shift.
6

7 93. After Plaintiff reported the sexual harassment, assault and battery by Defendant
8 WILLIAM SZYMANKSI to Mr. Lozano and to HR, Plaintiff's coworkers harassed and made
9 fun of Plaintiff with comments such as, "don't touch me, I'm going to sue", "that's sexual
10 harassment", further creating a hostile work environment.
11

12 94. Plaintiff was forced to resign due to the continuous course of harassment
13 uncorrected by Defendants' supervisors, manager, and HR department, and thus constituted
14 intolerable working conditions. Plaintiff had an excellent record as an asbestos/lint removal
15 laborer, and was dedicated to his position.

16 95. Based on the misconduct alleged in this First Amended Complaint, Plaintiff
17 believes and alleges that Plaintiff's constructive termination was wrongful because it was in
18 violation of the public policy of the State of California in that Plaintiff's constructive termination
19 was based on Defendants' violations of the above-mentioned laws.
20

21 96. In constructively terminating Plaintiff for these reasons and under the
22 circumstances alleged herein, Defendants' constructive discharge of Plaintiff violated the public
23 policy of the State of California, as expressed in provisions of the above-mentioned laws.

24 97. As a direct, foreseeable, and proximate result of Defendants' wrongful
25 termination of Plaintiff in violation of the public policy of the State of California, Plaintiff
26 sustained damages in the form of lost and continued loss of income and benefits, loss of
27 professional advancement and reputation, and has suffered and continues to suffer humiliation,
28

1 embarrassment, depression, mental and emotional distress, and discomfort all to Plaintiff's
2 damage in an amount to be proven at trial, but in excess of the jurisdictional amount.

3 98. In doing the things herein alleged, Defendants are guilty of oppression, fraud and
4 malice, and, insofar as the things alleged were attributable to employees of Defendants, said
5 employees were employed by Defendants with advance knowledge of the unfitness of the
6 employees and they were employed with a conscious disregard for the rights of others; or
7 Defendants authorized or ratified the wrongful conduct; or there was advance knowledge,
8 conscious disregard, authorization, ratification or act of oppression, fraud or malice on the part of
9 an officer, director or managing agent of defendants all entitling Plaintiff to the recovery of
10 exemplary and punitive damages, as alleged above.
11

12 **ELEVENTH CAUSE OF ACTION**

13 **ASSAULT AND BATTERY**

14 **(Against All Defendants)**

15
16 99. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
17 section as though fully set forth herein.

18 100. By engaging in the acts and omissions detailed herein, Defendants' employee,
19 Defendant WILLIAM SZYMANSKI, acted with the specific intent to make a contact with
20 Plaintiff's person and to injure Plaintiff.
21

22 101. Defendant WILLIAM SZYMANSKI performed such acts as alleged above with
23 full and complete knowledge that Plaintiff was economically dependent upon his job with
24 Defendants.

25 102. At no time did Plaintiff consent to any of the acts of Defendants alleged herein.

26 103. At all times material herein, Defendants, and each of them, knew or reasonably
27 should have known, that the incidents, conduct, acts and failures to act described herein above,
28

1 would and did proximately result in emotional distress to Plaintiff, including, but not limited to,
2 loss of sleep, anxiety, tension, fear of being harassed, depression and humiliation.

3 104. Plaintiff is further informed, believes and alleges that Defendants have ratified the
4 above-referenced conduct of its employee, Defendant WILLIAM SZYMANSKI, in that they
5 were informed of the inappropriate actions by Defendant WILLIAM SZYMANKSI, but they did
6 not fully and properly investigate and failed to repudiate SZYMANSKI's conduct by redressing
7 the harm done and punishing or discharging SZYMANKSI.

9 105. As a direct and proximate result of the failure of Defendants to protect Plaintiff,
10 and to adequately supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the
11 conduct, acts, and failures to act of all other Defendants and/or supervisors, agents or employees
12 as alleged herein above, said conduct, acts, and failures to act were perceived by them as, and in
13 fact had the effect of, ratifying, encouraging, condoning, exacerbating, increasing, and/or
14 worsening said conduct, acts, and failures to act. As a direct and proximate result of the actions
15 of Defendants Plaintiff has suffered and will continue to suffer pain and suffering, extreme and
16 severe mental anguish and emotional distress. Plaintiff is thereby entitled to general and
17 compensatory damages in amounts to be proven at trial.

19 106. In light of the outrageous and malicious conduct of Defendants, Plaintiff seeks an
20 award of punitive and exemplary damages against Defendants in an amount according to proof.
21 Defendants recognized their obligation to not discriminate against and harass Plaintiff and of
22 their obligation not to abuse employees. Defendants were aware and conscious of Plaintiff's
23 rights and yet, they chose, to ignore and disregard them.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For compensatory damages, including but not limited to, those pursuant to Labor Code §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 246, 350-356, 500, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1, 1198, 1198.5, 1770-1781, 2802, 2699, et seq., California Wage Orders, FEHA, California common law, and other statutes and laws;
2. For special damages according to proof;
3. For general damages according to proof;
4. For pre-judgment interest pursuant to all applicable statutes including but not limited to, Labor Code §§218.6, et seq., loss of earnings damages, and pursuant to Civil Code §§ 3287(b) and 3289;
5. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f) and 1198.5, 226.3, 226.7, 246, 350-356, 432, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, civil penalties pursuant to section 2699, et seq., and other statutes and laws;
6. For all damages available pursuant to all applicable sections of the Labor Code;
7. For injunctive relief pursuant to Labor Code §226(h);
8. For an award of reasonable attorneys' fees and costs;
9. For restitution of all monies due to Plaintiff and disgorged profits from the unlawful business practices of Defendants;
10. For all remedies available pursuant to Business and Professions Code section 17200 et seq.;
11. For punitive and exemplary damages;
12. For all other appropriate injunctive, declaratory and equitable relief;

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13. For interest to the extent permitted by law; and

14. For such other and further relief as the Court may deem proper.

Dated: August 16, 2023



Rodolfo Ruiz-Velasco, Esq.
Attorneys for Plaintiff,
FRANK BERNAL

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

April 6, 2023

Via Electronic Submission

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

By Certified Mail

Mr. Pierce F. Barone
Watkins Environmental, Inc.
4345 Murphy Canyon Road
San Diego, CA 92123

Re: **Bernal v. Watkins Environmental, Inc., et al.**

To Whom It May Concern:

We represent Frank Bernal individually and on behalf of all other individuals (collectively "Plaintiffs") who are either former or current employees of Watkins Environmental, Inc., and its owner, officer, and managing agent Pierce F. Barone (collectively "Defendants"). Pursuant to Labor Code section 2699.3, this letter constitutes written notice of Defendant's Labor Code violations and of our client's intent to recover statutory penalties under the Labor Code Private Attorney General Act of 2004. A copy of this letter is also being sent to Defendants via certified mail pursuant to Labor Code section 2699.3.

Plaintiffs were employed by Defendants as laborers who performed asbestos and lint removal and demolition work for Defendants. Defendants require Plaintiffs to arrive at the office and warehouse to load vehicles with materials and equipment and to get daily instructions from their supervisors and then to drive their personal vehicles to different job sites, however, Defendants fail to pay Plaintiffs for the time worked before beginning work at the job sites. Defendants also many times require Plaintiffs to drive back to the office and warehouse from the job sites to unload materials and equipment, but are also not paid for this driving and unloading time. Further, Defendants often do not pay Plaintiffs for all prevailing wages earned when they work government jobs. All of these actions cause minimum wage, overtime wage, and prevailing wage violations.

Defendants have failed to provide paycheck statements with all accurate wages and premium gross wages earned, with all net wages earned, with all hours worked, and

with all applicable pay rates as required by Labor Code Section 226. On or about February 3, 2023, Plaintiff Bernal's attorneys sent a written request for a copy of Plaintiff Bernal's employee file and records pursuant to LC §§ 226, 1198.5, 432, to Defendants. To date, however, Defendants have failed to timely provide a copy of Plaintiff Bernal's employee file and records in violation of LC §§ 226, 1198.5, 432.

Plaintiffs were not paid all of their wages and premium wages owed at the time of their separation of work in violation of LC §§ 203 and 204.

Defendants have required Plaintiffs to use their personal vehicle, personal cellular phone service, and to purchase tools in performance of their duties, however, they did not reimburse Plaintiffs for said expenditures in violation of LC §2802.

Pierce F. Barone, as the owner, officer, director, and/or managing agent of Watkins Environmental, Inc. is jointly and severally liable for the above violations pursuant to LC Sections 558, 558.1, 1197.1, 2699, et seq., and others.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1. Overtime compensation is statutorily required by California Labor Code Section 510, 558, 558.1. Meal and rest periods are required pursuant to Labor Code section 226.7 and 512, 558, 558.1. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code section 226. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Failure to pay sick pay wages is a violation of LC 246. Failure to pay vacation pay is a violation of LC 227, 227.3. Defendants' misclassification of Plaintiffs is a violation of LC 226.8. Retaliation and threats for requesting his or her rights and reporting illegal behavior is a violation of Labor Code Sections 98.6, 1102.5, among other laws and statutes. Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 350-356, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2802, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will

California Labor & Workforce Development Agency
Re: Bernal v. Watkins Environmental, Inc., et al.
April 6, 2023
Page 3

pursue these claims for statutory penalties on behalf of themselves and all other current and former employees. If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to be 'RR' with a long horizontal stroke extending to the right.

Rodolfo Ruiz-Velasco, Esq.

EXHIBIT 2



Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

August 8, 2023

RE: Notice of Filing of Discrimination Complaint
CRD Matter Number: 202308-21562308
Right to Sue: Bernal / Watkins Environmental, Inc. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

August 8, 2023

Frank Bernal

,

RE: **Notice of Case Closure and Right to Sue**
CRD Matter Number: 202308-21562308
Right to Sue: Bernal / Watkins Environmental, Inc. et al.

Dear Frank Bernal:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective August 8, 2023 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Frank Bernal

CRD No. 202308-21562308

Complainant,

vs.

Watkins Environmental, Inc.
4345 Murphy Canyon Road
San Diego, CA 92123

Pierce Barone
4345 Murphy Canyon Road
San Diego, CA 92123

William Szymanski
4345 Murphy Canyon Road
San Diego, CA 92123

Respondents

1. Respondent **Watkins Environmental, Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Pierce Barone** individual as Co-Respondent(s).
Complainant is naming **William Szymanski** individual as Co-Respondent(s).

3. Complainant **Frank Bernal**, resides in the City of , State of .

4. Complainant alleges that on or about **November 30, 2022**, respondent took the following adverse actions:

Complainant was harassed because of complainant's sex/gender, sexual harassment-hostile environment, sexual harassment- quid pro quo.

1 **Complainant was discriminated against** because of complainant's sex/gender, sexual
2 harassment- hostile environment, sexual harassment- quid pro quo and as a result of the
discrimination was forced to quit.

3 **Complainant experienced retaliation** because complainant reported or resisted any form
4 of discrimination or harassment and as a result was forced to quit.

5 **Additional Complaint Details:**
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