

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for WILLIAM GIRON, on behalf of himself,
all others similarly situated, and on behalf of the general public

Additional Counsel on Next Page

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

WILLIAM GIRON on behalf of himself,
all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

ACCENT BUILDING RESTORATION,
INC.; and DOES 1-100,

Defendants.

Case No. 23STCV08941

**PLAINTIFF'S FIRST AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 16-2001(11); Cal. Code Regs., tit. 8 § 11160);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 16-2001(12); Cal. Code Regs. Title 8 § 11160);
- 5) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246);
- 6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 7) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203);
- 8) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11160(8));
- 9) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and
- 10) Civil Penalties Under PAGA (Labor Code §§ 2699, et seq.)

DEMAND FOR JURY TRIAL

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Peter Horton, Esq. (227678)
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
Telephone: (323) 486-5101
Facsimile: (323) 306-5571

Attorneys for WILLIAM GIRON, on behalf of himself,
all others similarly situated, and on behalf of the general public

1 Plaintiff William Giron, on behalf of himself, all others similarly situated, and on behalf of the
2 general public, complains of Defendant Accent Building Restoration, Inc. (“Defendant”) and/or
3 DOES and for causes of action and alleges:

4 1. This is a class action pursuant to *California Code of Civil Procedure* section 382 on behalf
5 of Plaintiff William Giron and all hourly, non-exempt employees who are presently or were
6 formerly employed by Defendant and/or DOES and/or their subsidiaries or affiliated
7 companies and/or predecessors within the State of California.

8 2. Defendant is a California corporation with its principal place of business in Cerritos,
9 California.

10 3. At all times mentioned herein, Defendant and/or DOES have conducted business in Los
11 Angeles County and elsewhere within California.

12 4. At all times mentioned herein, Defendant and/or DOES, within the State of California,
13 have, among other things, offered a wide variety of property improvement services. These
14 services include painting contractor services for residential and commercial buildings, as
15 well as graffiti removal and historical paint and restoration projects. Defendant and/or
16 DOES also provide services related to commercial and industrial doors, including
17 installation, upgrades, painting, restoration, custom coatings, or hardware. Defendant
18 and/or DOES further provide gate, fencing and access control services for the automatic
19 gate industry, gated residential communities or individual properties. Additional services
20 Defendant and/or DOES provide include plumbing, waterproofing, safety and security
21 review, gutter and roof maintenance, electrical and lighting upgrades, parking lot striping
22 and resurfacing, drywall and acoustical tile installation.

23 5. Throughout the time period that includes the four (4) years prior to filing this action to the
24 present (the “Statutory Period”), Defendant and/or DOES have maintained uniform
25 policies that violate the wage and hour rights of Plaintiff and similarly situated hourly, non-
26 exempt employees in the manner complained of herein.

27 6. Throughout the Statutory Period, Defendant’s and/or DOES’ employees, including
28 Plaintiff and those similarly situated were not provided all straight and overtime wages

owed, meal periods and rest periods or compensation in lieu thereof, and/or sick pay/paid time off as mandated under the California Labor Code, and the implementing rules and regulations of the Industrial Welfare Commissions (“IWC”) California Wage Orders.

7. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated hourly, non-exempt employees for all of the hours they worked, including, but not limited to, rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when Plaintiff and similarly situated hourly non-exempt employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties but were not paid by Defendant and/or DOES. For example, Plaintiff and the Class Members are told to clock out and keep working when they have not finished an assignment before the end of the day. Plaintiff and the Class Members are also told to arrive early to worksites but are not permitted to clock-in until their scheduled start time, and thus, are not paid for this time. Additionally, Defendant and/or DOES calls and/or otherwise contacts Plaintiff and the Class Members while they are off the clock for business related purposes.

8. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy of requiring hourly, non-exempt employees within the State of California, including Plaintiff, to use their personal vehicles for work related purposes. Plaintiff and the Class Members are required by Defendant and/or DOES to transport tools used to perform work duties for Defendants and/or DOES in their personal vehicles to the work site. Defendant and/or DOES calls and/or texts Plaintiff and the Class Members the address of their first work location and expects Plaintiff and the Class Members to immediately get in their personal vehicles and drive to the provided work location. Plaintiff and the Class Members are not paid for the time it takes them to get to their first job site or back from their last job site.

9. Throughout the Statutory Period, through uniform policies and practices applicable to all Class Members, including Plaintiff, Defendant and/or DOES fail to pay employees the proper regular rate of pay. Defendant and/or DOES fail to incorporate bonuses employees were paid when calculating employees’ regular rate of pay. For example, Mr. Giron and

1 Class Members are paid non-discretionary performance bonuses and other amounts titled
2 “Taxable Benefits” on employees’ wage statements, yet these bonuses and other amounts
3 were not included in employees’ regular rate of pay.

4 10. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy of
5 requiring hourly, non-exempt employees within the State of California, including Plaintiff,
6 to work through meal periods and work at least five (5) hours without a meal period and
7 failing to pay such employees one (1) hour of pay at the employees’ regular rate of
8 compensation for each workday that the meal period is not provided, or other
9 compensation, as required by California’s state wage and hour laws.

10 11. Throughout the Statutory Period, through uniform policies and practices applicable to all
11 Class Members, including Plaintiff, Defendant and/or DOES only provide employees with
12 one meal period regardless of shift length. Defendant’s and/or DOES’ applicable policy
13 states, “All full-time Regular employees are provided with one meal period of 30 minutes
14 in length each workday.” As such, in shifts of ten hours or more, employees are not
15 provided with a second meal period.

16 12. Throughout the Statutory Period, through uniform policies and practices applicable to all
17 Class Members, including Plaintiff, Defendant and/or DOES fail to provide employees
18 with meal periods within the first five (5) continuous hours of work.

19 13. Throughout the Statutory Period, through uniform policies and practices applicable to all
20 Class Members, including Plaintiff, Defendant and/or DOES require Plaintiff and the Class
21 Members to remain on the work premises during meal periods.

22 14. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy of
23 requiring hourly, non-exempt employees within the State of California, including Plaintiff,
24 to take meal periods when assigned by a supervisor. Defendant’s and/or DOES’ applicable
25 policy states, “Supervisors will schedule meal periods to accommodate operating
26 requirements.” As such, if Plaintiff’s and the Class Members’ time records show late, short,
27 or missed meal periods, this is due to Defendant and/or DOES failing to provide meal
28 periods in accordance with California law.

- 1 15. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy
2 and/or practice of requiring hourly non-exempt employees within the State of California,
3 including Plaintiff, to work for over four (4) hours, or a major fraction thereof, without a
4 net ten (10) minute rest period, and failing to pay such employees one (1) hour of pay at
5 the employees' regular rate of compensation for each workday that the rest period is not
6 provide, or other compensation, as required by California's state wage and hour laws.
- 7 16. Throughout the Statutory Period, through uniform policies and practices applicable to all
8 Class Members, including Plaintiff, Defendant and/or DOES only provide employees with
9 two rest periods regardless of shift length. Defendant's and/or DOES' applicable policy
10 states, "Each workday, full-time nonexempt employees are provided with two rest periods
11 of ten minutes in length." As such, in shifts of ten hours or more, employees are not
12 provided with a third rest period.
- 13 17. Throughout the Statutory Period, through uniform policies and practices applicable to all
14 Class Members, including Plaintiff, Defendant and/or DOES fail to provide employees
15 with rest periods for every four (4) hours, or a major fraction thereof, worked.
- 16 18. Throughout the Statutory Period, through uniform policies and practices applicable to all
17 Class Members, including Plaintiff, Defendant and/or DOES require Plaintiff and the Class
18 Members to remain on the work premises during rest periods.
- 19 19. Throughout the Statutory Period, Defendants and/or DOES and/or their officers and/or
20 managing agents have had a consistent policy and/or practice of failing to reimburse
21 Plaintiff and hourly, non-exempt employees for business expenses incurred in the
22 discharge of their duties. These expenses include, but are not limited to, the purchase of
23 tools and safety measures such as face masks, paint brushes, gloves, tape, rollers, drills,
24 saws, hammers, protective glasses, and items to be worn in compliance with Defendant's
25 and/or DOES' uniform policies and/or practices such as protective shoes, white pants, and
26 replacement shirts with Defendant's and/or DOES' logo when needed. In addition, Plaintiff
27 and the Class Members are required to use their personal cell phones and personal vehicles.
28 *California Labor Code* section 2802(a) entitles Defendant and/or DOES to reimbursement

- 1 for said necessary expenditures, plus interest and expenses.
- 2 20. Throughout the statutory period, Defendant's and/or DOES' hourly non-exempt
3 employees, including Plaintiff, were not provided with accurate and itemized employee
4 wage statements.
- 5 21. Throughout the statutory period, Defendant and/or DOES knowingly and intentionally did
6 not itemize the total hours worked on hourly non-exempt employees', including Plaintiff's,
7 wage statements.
- 8 22. Throughout the statutory period, Defendant and/or DOES knowingly and intentionally did
9 not include meal and rest period premiums owed to Plaintiff and the Class Members for
10 unlawfully provided meal and rest periods on employees' wage statements.
- 11 23. Throughout the statutory period, Defendant and/or DOES knowingly and intentionally did
12 not include the last four digits of hourly non-exempt employees', including Plaintiff's,
13 security number or other employee identification on wage statements.
- 14 24. Throughout the statutory period, Defendant and/or DOES knowingly and intentionally fail
15 to correctly provide the name of the legal entity that employs Plaintiff and the Class
16 Members by citing their employer as "Accent Building Restoration, Inc", whereas Accent
17 Building Restoration, Inc. has a period at the end of its name. Further, Defendant and/or
18 DOES fail to list the employing legal entity's city, state, and zip code.
- 19 25. Defendant and/or DOES fail to comply with *California Labor Code* section 226,
20 subdivision (a), by itemizing in wage statements all hourly compensation and accurately
21 reporting total hours worked by Plaintiff and the members of the proposed class. Plaintiff
22 and members of the proposed class are entitled to penalties not to exceed \$4,000 for each
23 employee pursuant to Labor Code section 226(b).
- 24 26. Throughout the statutory period, Defendant's and/or DOES' employees, including Plaintiff
25 those similarly situated, were not timely paid all wages owed to them at the time of
26 termination.
- 27 27. Defendant and/or DOES are and were aware that Plaintiff and members of the proposed
28 class were not paid all straight time and overtime wages owed, nor provided meal and rest

1 periods or premium payment in compensation thereof. Defendant's and/or DOES' denial
2 of wages and other compensation due to Plaintiff and members of the proposed class was
3 willful and deliberate.

4 28. Throughout the Statutory Period, Defendant and/or DOES, by failing to lawfully pay
5 Plaintiff and those similarly situated all the wages they are owed, engaged in false, unfair,
6 fraudulent and deceptive business practices within the meaning of the Business and
7 Professions Code section 17200, et seq.

8 29. Defendant and/or DOES, each and collectively, controlled the wages, hours, and working
9 conditions of Plaintiff and the proposed class, creating a joint-employer relationship over
10 Plaintiff and the proposed class.

11 30. Plaintiff, on behalf of himself and all of Defendant's and/or DOES' hourly, non-exempt
12 employees employed at any time during the Statutory Period brings this action pursuant to
13 *California Labor Code* sections 201-203, 218, 218.5, 222, 223, 224, 226, subd. (b), 226.3,
14 226.7, 233, 234, 246, 510, 512, 515, 558, 1194, 1194.2, 1197, 2699 *et seq.*, 2802, and
15 *California Code of Regulations*, Title 8, sections 11160 and 3395, seeking unpaid wages,
16 overtime, meal and rest period compensation, sick pay/paid time off remedies,
17 reimbursement, illegal deductions, penalties, injunctive and other equitable relief, relief
18 under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and reasonable
19 attorneys' fees and costs.

20 31. Plaintiff, on behalf of himself and all of Defendant's and/or DOES' hourly, non-exempt
21 employees employed at any time during the Statutory Period, pursuant to *California*
22 *Business and Professions Code* sections 17200-17208, also seeks injunctive relief,
23 restitution, and disgorgement of all benefits Defendant and/or DOES enjoyed from their
24 failure to pay all straight time wages, overtime wages, and meal and rest period
25 compensation as well as their failure to adopt a compliant sick pay and/or paid time off
26 policy and reimbursement for employees' business expenses.

27 **I. VENUE**

28 32. Venue as to each Defendant and/or DOES is proper in this judicial district, pursuant to

1 *California Code of Civil Procedure* section 395. Defendant and/or DOES conduct business
2 and commit *California Labor Code* violations within Los Angeles County, and each
3 Defendant and/or DOE is within California for service of process purposes. The unlawful
4 acts alleged herein have a direct effect on Plaintiff and those similarly situated within the
5 State of California and within Los Angeles County. Defendant and/or DOES employ
6 numerous hourly, non-exempt employees who perform and/or performed work for
7 Defendant in Los Angeles County, California during the Statutory Period.

8 **II. PARTIES**

9 **A. Plaintiffs.**

10 33. Throughout the Statutory Period, Plaintiff William Giron is and was a resident of
11 California. During the Statutory Period, Plaintiff William Giron was employed by
12 Defendant and/or DOES in California.

13 34. A notice correspondence showing compliance with Labor Code Section 2699.3 was sent
14 to the LWDA and Defendant on April 19, 2023. This notice demonstrates that Plaintiff is
15 an aggrieved employee and has standing to bring a representative action on behalf of the
16 LWDA and as a private attorney general. The violations alleged in this notice also form
17 the basis for the allegations herein. No notice of cure by Defendant and/or DOES was
18 provided and no notice of investigation was received from the LWDA in the statutorily
19 proscribed sixty-five (65) day period since the mailing of the notice of the action.

20 35. Plaintiff and the proposed class of similarly situated hourly, non-exempt employees are
21 covered by, inter alia, California IWC Occupational Wage Order No. 16-2001, and Title 8,
22 *California Code of Regulations*, section 11160.

23 **B. Defendants.**

24 36. At all relevant times herein, Defendant and/or DOES engage in the ownership and
25 operation of their organization to serve Defendant's and/or DOES' customers in the State
26 of California.

27 37. On information and belief, Defendant and/or DOES exercised control over the wages,
28 hours, and/or working conditions of Plaintiff and members of the proposed class

1 throughout the liability period.

2 38. Defendant's and/or DOES' are a California corporation whose principal place of business
3 is in the State of California.

4 39. Defendant and/or DOES have, among other things, employed current and former hourly,
5 non-exempt employees run its business.

6 40. The true names and capacities, whether individual, corporate, associate, or otherwise, of
7 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues
8 these Defendants by such fictitious names under *California Code of Civil Procedure*
9 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
10 Defendants designated herein as a DOE is legally responsible in some manner for the
11 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint
12 to reflect the true names and capacities of the Defendants designated hereinafter as DOES
13 when such identities become known.

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

19 **III. CLASS ACTION ALLEGATIONS**

20 42. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
21 action pursuant to section 382 of the *California Code of Civil Procedure*. Plaintiff seeks to
22 represent a Class composed of and defined as follows:

23
24 All California citizens who are employed or have been employed by
25 Defendant and/or DOES in the State of California as hourly, non-
26 exempt employees at any time during the period of the relevant
27 statute of limitations. ("Class Members")
28

1 Plaintiff also seeks to represent subclasses composed of and defined as follows:

2
3 All Class Members who worked one (1) or more shifts in excess of
4 five (5) hours.

5
6 All Class Members who worked one (1) or more shifts in excess of
7 six (6) hours.

8
9 All Class Members who worked one (1) or more shifts in excess of
10 ten (10) hours.

11
12 All Class Members who worked one (1) or more shifts in excess of
13 twelve (12) hours.

14
15 All Class Members who worked one (1) or more shifts in excess of
16 two (2) hours.

17
18 All Class Members who worked one (1) or more shifts in excess of
19 three and one-half (3.5) hours, but less than or equal to six (6) hours.

20
21 All Class Members who worked one (1) or more shifts in excess of
22 six (6) hours, but less than or equal to ten (10) hours.

23
24 All Class Members who worked one (1) or more shifts in excess of
25 ten (10) hours.

26
27 All Class Members who worked one (1) or more shifts in which they
28 received a wage statement for the corresponding pay period.

1
2 All Class Members who were not permitted to use sick pay and/or
3 paid time off.

4
5 All Class Members who separated their employment from
6 Defendants.

7
8 All Class Members who incurred business expenses and were not
9 reimbursed.

10
11 43. Plaintiff reserves the right under Rule 1855, subdivision (b), *California Rules of Court*, to
12 amend or modify the Class description with greater specificity or further division into
13 subclasses or limitation to particular issues.

14 44. This action has been brought and may properly be maintained as a class action under the
15 provisions of *California Code of Civil Procedure* section 382 because there is a well-
16 defined community of interest in the litigation and the proposed Class is easily
17 ascertainable.

18 **A. Numerosity.**

19 45. The potential members of the Class as defined are so numerous that joinder of all the
20 members of the Class is impracticable. While the precise number of Class Members has
21 not been determined at this time, Plaintiff is informed and believes that Defendant and/or
22 DOES currently employ, and during the liability period employed, over one hundred (100)
23 Class Members in Los Angeles County during the liability period and who are or have been
24 affected by Defendant's and/or DOES' policies of failure to pay all straight and overtime
25 wages owed, failure to provide meal and/or rest periods without the appropriate legal
26 compensation, failure to implement a lawful sick pay policy, willful failure to pay all wages
27 due at time of separation from employment, knowing and intentional failure to provide
28 accurate and itemized employee wage statements, and failure to reimburse for all necessary

business expenses incurred in the performance of employees' jobs. Accounting for employee turnover during the relevant periods increases this number substantially. Upon information and belief, Plaintiff alleges Defendant's and/or DOES' employment records will provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

46. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

(1) Whether Defendant and/or DOES violated the *California Labor Code* and/or applicable IWC Wage Orders in failing to pay its employees all earned wages at the regular rate for all hours worked.

(2) Whether Defendant's and/or DOES' uniform policies and/or practices whereby employees were pressured and/or incentivized to forego taking meal and/or rest periods.

(3) Whether Defendant's and/or DOES' violated *California Labor Code* section 226.7, IWC Wage Order No. 16-2001 or other applicable IWC Wage Orders, and/or *California Code of Regulations*, Title 8, section 11160, by failing to authorize, permit, and/or provide thirty (30) minute meal periods before the end of the fifth hour worked and/or failing to pay said employees one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.

(4) Whether Defendant and/or DOES violated *California Labor Code* section 226.7, IWC Wage Order No. 16-2001 or other applicable IWC Wage Orders, and/or *California Code of Regulations*, Title 8, section 11160, by failing to authorize, permit, and/or provide ten (10) minute rest periods to its employees for every four (4) hours or major fraction thereof

1 worked and/or failing to pay said employees one (1) hour of pay at the
2 employee's regular rate of compensation for each work day that the rest
3 period was not authorized, permitted and/or provided.

4 (5) Whether Defendant and/or DOES violated *California Labor*
5 *Code* sections 233 and 234 by adopting uniform policies and/or practices
6 which counts sick leave taken pursuant to *California Labor Code* section
7 233 as an unauthorized absence that may result in discipline, discharge,
8 demotion, or termination.

9 (6) Whether Defendant and/or DOES violated *California Labor*
10 *Code* section 246 by having uniform policies and/or practices of failing to
11 provide Class Members wage statements itemizing the amount of
12 accrued/available sick leave.

13 (7) Whether Defendant and/or DOES have uniform policies
14 and/or practices of failing to provide employees accurate and itemized wage
15 statements.

16 (8) Whether Defendant and/or DOES knowingly and
17 intentionally fail to provide employees accurate and itemized wage
18 statements.

19 (9) Whether Defendant and/or DOES have uniform policies
20 and/or practices of failing to timely pay all wages owed to employees who
21 left Defendant's and/or DOES' employ or who were terminated.

22 (10) Whether Defendant and/or DOES willfully fail to pay, in a
23 timely manner, wages owed to members of the proposed Class who left
24 Defendant's and/or DOES' employ or who were terminated.

25 (11) Whether Defendant and/or DOES have uniform policies
26 and/or practices of failing to reimburse members of the proposed Class for
27 all necessary expenses incurred in the performance of their jobs.

28 47. The answer to each of these respective questions will generate a common answer capable

of resolving class-wide liability in one stroke.

48. Said common questions predominate over any individualized issues and/or questions affecting only individual members.

C. Typicality.

49. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff and all members of the proposed Class sustained injuries and damages arising out of and caused by Defendant's and/or DOES' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged.

50. Plaintiff was subjected to the same uniform policies and/or practices complained of herein that affected all such employees. Thus, as Plaintiff was subjected to the same unlawful policies and practices as all employees, his claims are typical of the class he seeks to represent.

D. Adequacy of Representation.

51. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class.

52. Plaintiff is ready and willing to take the time necessary to help litigate this case.

53. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and protect the interests of the members of the Class.

54. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

55. Specifically, David Mara, Esq., Jill Vecchi, Esq., and Taylor Getman, Esq., of Mara Law Firm, PC, and Peter Horton, Esq., of Lawyers for Employee and Consumer Rights are California lawyers in good standing.

56. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

57. Counsel who represent Plaintiff have been named class counsel in numerous cases.

58. Counsel who represent Plaintiff's practice is primarily focused on representing classes, large and small, on the basis of *California Labor Code* and IWC Wage Order Violations

1 similar to those alleged herein. The attorneys at Mara Law Firm, PC, are also frequently
2 called upon to and do author amicus briefs on behalf of the Consumer Attorneys of
3 California on cases in the appellate courts and Supreme Court of California involving
4 important issues relating to those alleged herein.

5 59. Counsel who represent Plaintiff have the resources to take this case to trial and judgment,
6 if necessary.

7 60. The lawyers representing Plaintiff have the experience, ability, and ways and means to
8 vigorously prosecute this case.

9 **E. Superiority of Class Action.**

10 61. A class action is superior to other available means for the fair and efficient adjudication of
11 this controversy. Individual joinder of all Class Members is not practicable, and questions
12 of law and fact common to the Class predominate over any questions affecting only
13 individual members of the Class. Each member of the Class has been damaged and is
14 entitled to recovery by reason of Defendant's and/or DOES' illegal policies and/or
15 practices of failing to pay all straight time and overtime wages owed, failing to provide
16 meal periods, failing to permit or authorize rest periods, failing to adopt a lawful sick
17 pay/paid time off policy, knowingly and intentionally failing to comply with wage
18 statement requirements, failing to pay all wages due at termination, and failing to reimburse
19 for incurred expenses.

20 62. Class action treatment will allow those similarly situated persons to litigate their claims in
21 the manner that is most efficient and economical for the parties and the judicial system.
22 Plaintiff is unaware of any difficulties that are likely to be encountered in the management
23 of this action that would preclude its maintenance as a class action.

24 63. Because such common questions predominate over any individualized issues and/or
25 questions affecting only individual members, class resolution is superior to other methods
26 for fair and efficient adjudication.

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2 **IV. CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay All**

4 **Straight Time Wages**

5 64. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
6 and every other paragraph in this Complaint herein as if fully plead.

7 65. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
8 similarly situated for all hours worked.

9 66. It is fundamental that an employer must pay its employees for all time worked. *California*
10 *Labor Code* sections 218 and 218.5 provides a right of action for nonpayment of wages.
11 *California Labor Code* section 222 prohibits the withholding of part of a wage. *California*
12 *Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage
13 scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum
14 wage. *California Labor Code* section 1194 states that an employee receiving less than the
15 legal minimum wage is entitled to recover in a civil action the unpaid balance of the full
16 amount of this minimum wage. *California Labor Code* section 1194.2 states that an
17 employee receiving less than the legal minimum wage is entitled to recover liquidated
18 damages in an amount equal to the wages unlawfully unpaid and interest thereon.
19 *California Labor Code* section 224 only permits deductions from wages when the
20 employer is required or empowered to do so by state or federal law or when the deduction
21 is expressly authorized in writing by the employee for specified purposes that do not have
22 the effect of reducing the agreed upon wage.

23 67. Plaintiff and those similarly situated Class Members were employed by Defendant and/or
24 DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff
25 for all hours worked and were prohibited from making deductions that had the effect of
26 reducing the agreed upon wage.

27 68. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
28 similarly situated for all hours worked. For example, Defendant and/or DOES have not

1 paid for all the time Plaintiff and the Class Members worked throughout the day, including,
2 but not limited to rounding, before “shifts” start, after “shifts” end, and/or any other time
3 in the day during which employees were subject to the control of Defendant and/or DOES
4 and/or performing work tasks or otherwise had work duties during periods of time for
5 which Defendant and/or DOES are not paying them. For example, Plaintiff and the Class
6 Members are told to clock out and keep working when they have not finished an assignment
7 before the end of the day. Plaintiff and the Class Members are also told to arrive early to
8 worksites but are not permitted to clock-in until their scheduled start time, and thus, are not
9 paid for this time. Additionally, Defendant and/or DOES calls and/or otherwise contacts
10 Plaintiff and the Class Members while they are off the clock for business related purposes.
11 Defendant’s and/or DOES’ failure to pay for all hours worked while under Defendant’s
12 and/or DOES’ control and/or while suffered or permitted to work has resulted in Plaintiff
13 and Class Members being deprived of straight time wages throughout the Statutory Period.

14 69. Further, Defendant and/or DOES require Plaintiff and the Class Members to use their
15 personal vehicles for work related purposes. Plaintiff and the Class Members must
16 transport tools they use to perform work for Defendant and/or DOES in their personal
17 vehicle. Defendant and/or DOES calls and/or texts Plaintiff and the Class Members with
18 the address of their first work location and then Plaintiff and the Class Members must
19 immediately get into their personal vehicles and drive to the job site. Plaintiff and the Class
20 Members are not paid for the time it takes them to get to their first job site or back from
21 their last job site.

22 70. Moreover, Plaintiff and the Class Members are not relieved of all duties and/or employer
23 control during their meal periods. Plaintiff and the Class Members are informed and believe
24 and thereon allege that Defendant and/or DOES breached the legal duty to pay for all hours
25 worked by Plaintiff and the Class Members by failing to pay Plaintiff and the Class
26 Members for meal period time when Plaintiff and the Class Members are not relieved of
27 all duties and/or employer control.

28 71. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct

1 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
2 Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost
3 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant
4 and/or DOES to fully perform their obligations under state law, all to their respective
5 damage in amounts, according to proof at trial.

6 72. As a direct result of Defendant's and/or DOES' policy of illegal wage theft, Plaintiff and
7 those similarly situated have been damaged in an amount to be proven at trial.

8 73. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
9 below.

10 **SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay**

11 **All Overtime Wages**

12 74. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
13 and every other paragraph in this Complaint herein as if fully plead.

14 75. It is fundamental that an employer must pay its employees for all time worked. *California*
15 *Labor Code* sections 218 and 218.5 provides a right of action for nonpayment of wages.
16 *California Labor Code* section 222 prohibits the withholding of part of a wage. *California*
17 *Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage
18 scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum
19 wage. *California Labor Code* section 224 only permits deductions from wages when the
20 employer is required or empowered to do so by state or federal law or when the deduction
21 is expressly authorized in writing by the employee for specified purposes that do not have
22 the effect of reducing the agreed upon wage.

23 76. *California Labor Code* section 510 states that eight (8) hours of labor constitutes a day's
24 work. Any work in excess of eight (8) hours in one workday and any work in excess of
25 forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh
26 (7th) day of work in any one workweek shall be compensated at the rate of no less than
27 one and one-half (1.5) times the regular rate of pay for an employee.

28 77. *California Labor Code* section 510 further dictates that any work in excess of twelve (12)

1 hours in one day shall be compensated at the rate of no less than two (2) times the regular
2 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
3 seventh (7th) day of a workweek shall be compensated at the rate of no less than two (2)
4 times the regular rate of pay of an employee.

5 78. Plaintiff and those similarly situated Class Members were employed by Defendant and/or
6 DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff
7 and the Class Members for all overtime hours worked and were prohibited from making
8 deductions that had the effect of reducing the agreed upon wage.

9 79. Defendant and/or DOES fail to pay for the overtime that was due, pursuant to IWC Wage
10 Order No. 16-2001, item 3(A).

11 80. Defendant and/or DOES have a continuous policy of failing to pay Plaintiff and Class
12 Members for all hours worked, including those hours worked over eight (8) hours in a day
13 and forty (40) hours in a week. Defendant and/or DOES have a continuous policy of failing
14 to pay overtime when employees worked over eight (8) hours per day and when employees
15 worked over forty (40) hours per week. Because Defendant and/or DOES fail to pay them
16 overtime wages for all overtime hours worked, Plaintiff and Class Members were deprived
17 of wages for all overtime hours worked, which resulted in Plaintiff and the Class Members
18 not being paid all overtime wages owed to them.

19 81. Defendant and/or DOES have a consistent policy that fails to pay Plaintiff and the Class
20 Members the overtime rate for overtime hours worked over eight (8) hours in a day when
21 the total recorded hours in that week are less than forty (40) hours.

22 82. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Class
23 Members for all hours worked. Defendant and/or DOES have not paid for all the time
24 Plaintiff and Class Members worked throughout the day, including, but not limited to
25 rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when the
26 employees were performing work tasks, subject to the control of Defendant and/or DOES
27 and/or otherwise had work duties but were not paid by Defendant and/or DOES. For
28 example, For example, Plaintiff and the Class Members are told to clock out and keep

1 working when they have not finished an assignment before the end of the day. Plaintiff and
2 the Class Members are also told to arrive early to worksites but are not permitted to clock-
3 in until their scheduled start time, and thus, are not paid for this time. Additionally,
4 Defendant and/or DOES calls and/or otherwise contacts Plaintiff and the Class Members
5 while they are off the clock for business related purposes. When Plaintiff and the Class
6 Members work shifts lasting over eight (8) hours, those unpaid hours would qualify for the
7 overtime rate.

8 83. In addition, Defendant and/or DOES require Plaintiff and the Class Members to use their
9 personal vehicles for work related purposes. Plaintiff and the Class Members must
10 transport tools they use to perform work for Defendant and/or DOES in their personal
11 vehicle. Defendant and/or DOES calls and/or texts Plaintiff and the Class Members with
12 the address of their first work location and then Plaintiff and the Class Members must
13 immediately get into their personal vehicles and drive to the job site. Plaintiff and the Class
14 Members are not paid for the time it takes them to get to their first job site or back from
15 their last job site. Because Plaintiff and the Class Members ordinarily work shifts lasting
16 over eight (8) hours, the majority of these unpaid hours would qualify for the overtime rate.

17 84. Moreover, Plaintiff and the Class Members are not relieved of all duties and/or employer
18 control during their meal periods. Plaintiff and the Class Members are informed and believe
19 and thereon allege that Defendant and/or DOES breached the legal duty to pay for all hours
20 worked by failing to pay Plaintiff and the Class Members for meal period time when
21 Plaintiff and the Class Members were not relieved of all duties and/or employer control.
22 When Plaintiff and the Class Members work over eight (8) hours in a shift, these unpaid
23 hours must be compensated at an overtime rate.

24 85. Furthermore, Defendant and/or DOES fail to pay Plaintiff and the Class Members at the
25 appropriate regular rate of pay for all overtime hours worked. Specifically, Defendant
26 and/or DOES fail to incorporate bonuses employees were paid when calculating
27 employees' regular rate of pay for purposes of paying overtime compensation. For
28 example, Plaintiff and the Class Members are paid non-discretionary performance bonuses

1 and other amounts titled "Taxable Benefits" on employees' wage statements, yet these
2 bonuses and other amounts were not included in employees' regular rate of pay.

3 86. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
4 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
5 Class Members have suffered, and continue to suffer, substantial unpaid overtime wages,
6 and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to
7 compel Defendant and/or DOES to fully perform their obligations under state law, all to
8 their respective damage in amounts according to proof at time of trial. Defendant and/or
9 DOES commit the acts alleged herein knowingly and willfully, with the wrongful and
10 deliberate intention on injuring Plaintiff and the Class Members. Defendant and/or DOES
11 act with malice or in conscious disregard of Plaintiff's and the Class Member's rights. In
12 addition to compensation, Plaintiff is also entitled to any penalties allowed by law.

13 87. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
14 below.

15 **THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Provide**
16 **Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage Order**
17 **No. 16-2001(10); Cal. Code Regs., tit. 8, § 11160)**

18 88. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
19 and every other paragraph in this Complaint herein as if fully plead.

20 89. Under *California Labor Code* section 512 and IWC Wage Order No. 16-2001, no employer
21 shall employ any person for a work period of more than five (5) hours without providing a
22 meal period of not less than thirty (30) minutes. During these meal periods of not less than
23 thirty (30) minutes, the employee is to be completely free of the employer's control and
24 must not perform any work for the employer. If the employee does perform work for the
25 employer during the thirty (30) minute meal period, the employee has not been provided a
26 meal period in accordance with the law. Also, the employee is to be compensated for any
27 work performed during the thirty (30) minute meal period.

28 90. Under *California Labor Code* section 226.7, if the employer does not provide an employee

- 1 a meal period in accordance with the above requirements, the employer shall pay the
2 employee one (1) hour of pay at the employee's regular rate of compensation for each
3 workday that the meal period is not provided.
- 4 91. Defendant and/or DOES do not provide Plaintiff and the Class Members with duty-free
5 meal periods.
- 6 92. Further, Defendant and/or DOES breach the legal duty to provide meal periods to
7 employees by failing to provide employees with meal periods within the timeframes
8 outlined by California law. Specifically, Defendant and/or DOES fail to provide Plaintiff
9 and the Class Members with meal periods within the first five (5) continuous hours of work.
- 10 93. Defendant and/or DOES breach the legal duty to provide meal periods to employees by
11 only providing employees with one meal period per shift regardless of shift length.
12 Defendant's and/or DOES' applicable policy states, "All full-time Regular employees are
13 provided with one meal period of 30 minutes in length each workday." As such, in shifts
14 of ten hours or more, employees are not provided with a second meal period.
- 15 94. Defendant and/or DOES breach the legal duty to provide meal periods to employees by
16 requiring Plaintiff and the Class Members to remain on the work premises during meal
17 periods.
- 18 95. Defendant and/or DOES require employees to take meal periods when assigned by a
19 supervisor. Defendant's and/or DOES' applicable policy states, "Supervisors will schedule
20 meal periods to accommodate operating requirements." As such, if Plaintiff's and the Class
21 Members' time records show late, short, or missed meal periods, this is due to Defendant
22 and/or DOES failing to provide meal periods in accordance with California law.
- 23 96. Defendant and/or DOES breach the legal duty to provide meal periods to employees by
24 imposing a continuous and consistent policy of requiring Plaintiff and the Class Members
25 to work through their meal periods to satisfy the demanding workload duties imposed by
26 Defendant and/or DOES such that Plaintiff and the Class Members were unable to take a
27 meal period at all, on-duty or otherwise.
- 28 97. By failing to provide compensation for such unprovided or improperly provided meal

periods, as alleged above, Defendant and/or DOES willfully violate the provisions of *California Labor Code* sections 226.7, 512, and IWC Wage Order No. 16-2001.

98. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks to represent have been deprived of premium wages, in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to *California Labor Code* section 226.7, and IWC Wage Order No. 16-2001. Plaintiff and the Class he seeks to represent did not willfully waive their right to take meal periods through mutual consent with Defendant and/or DOES.

99. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 16-2001(11); Cal. Code Regs. Title 8 § 11160)

100. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein, as if fully plead.

101. Under IWC Wage Order No. 16-2001, every employer shall authorize and permit all employees to take rest periods, "[t]he authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof." IWC Wage Order 16-2001(12). The time spent on rest periods "shall be counted as hours worked for which there shall be no deduction from wages." *Id.*

102. Under *California Labor Code* section 226.7, if the employer does not provide an employee a rest period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest break is not provided.

103. Defendant and/or DOES also breach the legal duty to provide rest periods to employees by only providing employees with two rest periods regardless of shift length. Defendant's and/or DOES' applicable policy states, "Each workday, full-time nonexempt employees are provided with two rest periods of ten minutes in length." As such, in shifts of ten hours

1 or more, employees are not provided with a third rest period.

2 104. Defendant and/or DOES also breach the legal duty to provide rest periods to employees by
3 failing to provide employees with rest periods for every four (4) hours, or a major fraction
4 thereof, worked.

5 105. Defendant and/or DOES also breach the legal duty to provide rest periods to employees by
6 requiring Plaintiff and the Class Members to remain on the work premises during rest
7 periods.

8 106. Defendant and/or DOES also breach the legal duty to provide rest periods to employees by
9 imposing a continuous and consistent policy of requiring Plaintiff and Class Members to
10 work through their rest periods to satisfy the demanding workload duties imposed by
11 Defendant and/or DOES such that Plaintiff and the Class Members were unable to take a
12 rest period.

13 107. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks
14 to represent have been deprived of premium wages, in amounts to be determined at trial,
15 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
16 fees and costs, pursuant to *California Labor Code* section 226.7, and IWC Wage Order
17 No. 16-2001.

18 108. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
19 below.

20 **FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Adopt**
21 **a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246)**

22 109. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
23 and every other paragraph in this Complaint herein as if fully plead.

24 110. Section 246(a)(1) of the *California Labor Code* states: "An employee who, on or after July
25 1, 2015, works in California for the same employer for 30 or more days within a year from
26 the commencement of employment is entitled to paid sick days as specified in this section."

27 111. *California Labor Code* section 246, subdivision (b)(1), provides, in pertinent part, "an
28 employee shall accrue paid sick days at the rate of not less than one (1) hour per every

thirty (30) hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later.”

112. *California Labor Code* section 246(c) states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

113. *California Labor Code* section 233(c) states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

114. *California Labor Code* section 233(d) provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

115. *California Labor Code* section 234 further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

116. *California Labor Code* section 246(k) provides that, “[a]n employee may determine how much paid sick leave they need to use, provided that an employer may set a renewable minimum increment, not to exceed two hours, for the use of paid sick leave.”

117. *California Labor Code* section 246(i) requires: “An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section

1 by indicating on the notice or the employee's itemized wage statement "unlimited."

2 118. Defendant and/or DOES fail to provide Plaintiff and Class Members with paid sick days

3 in accordance with these provisions.

4 119. Defendant and/or DOES operate under an absence control policy that counts sick leave

5 taken pursuant to *California Labor Code* section 233 as an unauthorized absence that may

6 result in discipline, discharge, demotion, or termination. Thus, Defendant's and/or DOES'

7 sick pay policy punishes Plaintiff and Class Members by way of suspension and/or

8 termination for use of protected and appropriate sick leave.

9 120. Further, Defendant's and/or DOES' sick pay policy fails to pay Plaintiff and Class

10 Members sick pay for all appropriate and protected purposes enumerated in *California*

11 *Labor Code* sections 233, 234, and 246, and Defendant and/or DOES fail to itemize the

12 amount of accrued/available sick leave Plaintiff and Class Members have on wage

13 statements each pay period.

14 121. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks

15 to represent have been incurred damages, in amounts to be determined at trial, and are

16 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees

17 and costs, pursuant to *California Labor Code* sections 233(e) and 246.

18 122. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described

19 below.

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24 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Knowing and**

25 **Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab.**

26 **Code §§ 226, 246, 1174, 1175; IWC Wage Order No. 16-2001; Cal. Code Regs., Title 8, §**

27 **11160)**

28 123. Plaintiff and those similarly situated Class Members hereby incorporate by reference each

- 1 and every other paragraph in this Complaint herein as if fully plead.
- 2 124. *California Labor Code* section 226(a) requires Defendant and/or DOES to, inter alia,
3 itemize in wage statements and accurately report the total hours worked and total wages
4 earned. Defendant and/or DOES have knowingly and intentionally failed to comply with
5 *California Labor Code* section 226, subdivision (a), on each and every wage statement
6 provided to Plaintiff and members of the proposed Class.
- 7 125. *California Labor Code* section 1174 requires Defendant and/or DOES to maintain and
8 preserve, in a centralized location, records showing the daily hours worked by and the
9 wages paid to its employees. Defendant and/or DOES have knowingly and intentionally
10 failed to comply with *California Labor Code* section 1174. The failure of Defendant and/or
11 DOES, and each of them, to comply with *California Labor Code* section 1174 is unlawful
12 pursuant to *California Labor Code* section 1175.
- 13 126. Defendant and/or DOES fail to maintain accurate time records - as required by IWC Wage
14 Order No. 16-2001(7), and *California Code of Regulations* Title 8 section 11160 - showing,
15 among other things, when the employee begins and ends each work period, the total daily
16 hours worked in itemized wage statements, total wages, bonuses and/or incentives earned,
17 and all deductions made.
- 18 127. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor
19 in excess of the normal work period shall be paid no later than the payday for the next
20 regular payroll period.” An employer complies with *California Labor Code* section 226(a)
21 “if hours worked in excess of the normal work period during the current pay period are
22 itemized as corrections on the paystub for the next regular pay period. Any corrections set
23 out in a subsequently issued paystub shall state the inclusive dates of the pay period for
24 which the employer is correcting its initial report of hours worked.”
- 25 128. Defendant and/or DOES have knowingly and intentionally failed to provide Plaintiff and
26 the Class Members with accurate itemized wage statements which show: “(1) gross wages
27 earned, (2) total hours worked by the employee, . . . (4) all deductions, provided that all
28 deductions made on written orders of the employee may be aggregated and shown as one

1 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
2 paid, (7) the name of the employee and only the last four digits of his or her social security
3 number or an employee identification number other than a social security number, (8) the
4 name and address of the legal entity that is the employer and, if the employer is a farm
5 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
6 legal entity that secured the services of the employer, and (9) all applicable hourly rates in
7 effect during the pay period and the corresponding number of hours worked at each hourly
8 rate by the employee[.]” Cal. Lab. Code § 226(a).

9 129. Defendant and/or DOES have knowingly and intentionally failed to comply with
10 *California Labor Code* section 226(a) by failing to list all of the required information on
11 each and every wage statement provided to Plaintiff and Class Members.

12 130. In every pay period during the relevant statute of limitations, Defendant and/or DOES
13 knowingly and intentionally did not include the total hours worked on wage statements.
14 Defendant and/or DOES therefore knowingly and intentionally fail to itemize the total
15 hours worked on wage statements as *California Labor Code* section 226(a) requires.

16 131. In every pay period during the relevant statute of limitations, Defendant and/or DOES
17 knowingly and intentionally did not include the last four digits of hourly non-exempt
18 employees’, including Plaintiff’s, security number or other employee identification on
19 wage statements.

20 132. In every pay period during the relevant statute of limitations, Defendant and/or DOES
21 knowingly and intentionally fail to correctly provide the name of the legal entity that
22 employs Plaintiff and the Class Members by citing their employer as “Accent Building
23 Restoration, Inc”, whereas Accent Building Restoration, Inc. has a period at the end of its
24 name. Further, Defendant and/or DOES fail to list the employing legal entity’s city, state,
25 and zip code.

26 133. In every pay period during the period of the relevant statute of limitations, Defendant
27 and/or DOES knowingly and intentionally did not itemize the total hours worked on
28 Plaintiff’s and the Class Members’ wage statements. Defendant and/or DOES have had a

1 consistent policy and/or practice of not paying Plaintiff and similarly situated hourly, non-
2 exempt employees for all of the hours they worked, including, but not limited to, rounding,
3 before “shifts” start, after “shifts” end, and/or any other time in the day when Plaintiff and
4 similarly situated hourly non-exempt employees were performing work tasks, subject to
5 the control of Defendant and/or DOES and/or otherwise had work duties but were not paid
6 by Defendant and/or DOES. As Defendant and/or DOES knew or had reason to know
7 Plaintiff and Class Members were working during the unpaid time outlined herein,
8 Defendant and/or DOES knowingly and intentionally fail to comply with *California Labor*
9 *Code* section 226(a).

10 134. In every pay period during the period of the relevant statute of limitations, Defendant
11 and/or DOES knowingly and intentionally did not include all meal and rest period
12 premiums owed on wage statements. Defendant and/or DOES therefore knowingly and
13 intentionally fail to itemize all meal and rest period premiums owed on Plaintiff’s and the
14 Class Members’ wage statements throughout the relevant statute of limitations.

15 135. In addition, Defendant and/or DOES fail to include all overtime hours worked by Plaintiff
16 and the Class Members on wage statements and itemize those overtime hours at the proper
17 regular rate of pay that incorporated bonuses earned during the pay period.

18 136. Defendant and/or DOES also fail to provide Plaintiff and Class Members with written
19 notice that sets forth the amount of sick leave available for use, either in employees’
20 itemized wage statements or in a separate writing provided to employees on the designated
21 pay date.

22 137. As a result of the knowing and intentional failure by Defendant and/or DOES to comply
23 with itemized employee wage statement provisions, Plaintiff and the Class Members have
24 been able to reconstruct only a reasonable estimate of the hours worked and have, therefore,
25 not received full compensation.

26 138. As a direct result of Defendant’s and/or DOES’ unlawful acts, Plaintiff and the Class he
27 intends to represent have been damaged and are entitled to recovery of such amounts, plus
28 interest thereon, attorneys’ fees, and costs, pursuant to *California Labor Code* section 226.

139. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay

All Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-203)

140. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

141. Plaintiff's employment with Defendant and/or DOES was terminated on or about January 23, 2023.

142. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant and/or DOES, Defendants and/or DOES did not timely pay him all straight time wages owed at the time of his termination.

143. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant and/or DOES, Defendant and/or DOES did not timely pay him all overtime wages owed at the time of his termination.

144. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant and/or DOES, Defendants and/or DOES did not timely pay him meal and/or rest period premiums owed at the time of his termination.

145. Numerous members of the Class are no longer employed by Defendant and/or DOES. They were either fired or they quit Defendant's and/or DOES' employ. Defendant and/or DOES did not pay all timely wages owed at the time of their termination. Defendant and/or DOES did not pay all premium wages owed at the time of their termination.

146. *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

147. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to

1 pay Plaintiff's and the Class Members' who are no longer employed by Defendant and/or
2 DOES their wages that were earned and unpaid within seventy-two (72) hours of their
3 leaving Defendant's and/or DOES' employ in violation of *California Labor Code* sections
4 201 and 202.

5 148. *California Labor Code* section 203 provides that, if an employer willfully fails to pay,
6 without abatement or reduction, in accordance with *California Labor Code* sections 201,
7 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages
8 of the employee shall continue at the same rate, for up to thirty (30) days from the due date
9 thereof, until paid or until an action therefore is commenced.

10 149. Plaintiff's employment with Defendant and/or DOES was terminated by Defendant and/or
11 DOES on or about January 23, 2023. Defendant and/or DOES fail to provide Plaintiff all
12 his final wages at his time of termination in accordance with *California Labor Code*
13 sections 201 and 202. Plaintiff did not receive his final paycheck until the next regularly
14 scheduled payday, approximately one week later.

15 150. Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff
16 and similarly situated hourly, non-exempt employees for all of the hours they worked,
17 including, but not limited to, rounding, before "shifts" start, after "shifts" end, and/or any
18 other time in the day when Plaintiff and similarly situated hourly non-exempt employees
19 were performing work tasks, subject to the control of Defendant and/or DOES and/or
20 otherwise had work duties but were not paid by Defendant and/or DOES. Failing to pay
21 for all hours worked while under Defendant's and/or DOES' control and/or while suffered
22 or permitted to work resulted in hourly, non-exempt employees being deprived of straight
23 time and/or overtime wages.

24 151. Additionally, Defendant and/or DOES fail to pay all meal and rest period premiums owed
25 to Plaintiff and Class Members.

26 152. Defendant's and/or DOES' failure to pay Class Members who are no longer employed by
27 Defendant and/or DOES all wages that were earned and unpaid at the time of termination
28 or within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ is in

1 violation of *California Labor Code* sections 201 and 202.

2 153. Defendant and/or DOES fail to pay Plaintiff and Class Members a sum certain at the time
3 of their termination or within seventy-two (72) hours of their resignation and have failed
4 to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of *California*
5 *Labor Code* section 203, Plaintiff and Class Members are entitled to a penalty in the amount
6 of their daily wage, multiplied by thirty (30) days.

7 154. Defendant's and/or DOES' failure to pay said wages to Plaintiff and members of the Class
8 he seeks to represent, was willful in that Defendant and/or DOES and each of them knew
9 the wages to be due, but failed to pay them.

10 155. As a consequence of Defendant's and/or DOES' willful conduct in not paying wages owed
11 at the time of separation from employment, Plaintiff and members of the proposed Class
12 are entitled to thirty (30) days' worth of wages as a penalty under *California Labor Code*
13 section 203, together with interest thereon and attorneys' fees and costs.

14 156. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
15 below.

16 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to**
17 **Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802; IWC Wage Order No. 16-2001; Cal.**
18 **Code Regs., Title 8, § 11160)**

19 157. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
20 and every other paragraph in this Complaint herein as if fully plead.

21 158. *California Labor Code* section 2082 provides: "[a]n employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of his or her duties, or of his or her obedience to the directions
24 of the employer.... [which] shall include[s] all reasonable costs, including, but not limited
25 to, attorney's fees incurred by the employee enforcing the rights granted by this section."

26 159. Under *California Labor Code* section 221, "[i]t shall be unlawful for any employer to
27 collect or receive from an employee any part of wages theretofore paid by said employer
28 to said employee."

1 160. Plaintiff and Class Members incurred expenses in the discharge of their duties without
2 receiving reimbursement from Defendant and/or DOES. These expenses include, but are
3 not limited to, the purchase of tools and safety measures such as face masks, paint brushes,
4 gloves, tape, rollers, drills, saws, hammers, protective glasses, and items to be worn in
5 compliance with Defendant's and/or DOES' uniform policies and/or practices such as
6 protective shoes, white pants, and replacement shirts with Defendant's and/or DOES' logo
7 when needed.

8 161. In addition, Defendant and/or DOES require employees to use to use their personal cell
9 phones and vehicles for business purposes, but fail to reimburse these expenses. Defendant
10 and/or DOES require employees to clock-in and clock-out on a smartphone application
11 called TimeShift. Plaintiff and the Class Members have to use their personal cell phones
12 for this process as well as for calls and/or text messages to communicate with their
13 managers and supervisors throughout the day. Defendant and/or DOES further require
14 Plaintiff and the Class Members to use their personal vehicles to travel to and from the
15 locations of their customers in their personal vehicles, but fail to reimburse related
16 expenses incurred.

17 162. *California Labor Code* section 2802(a) entitles Defendant and/or DOES to reimbursement
18 for said necessary expenditures, plus interest and expenses.

19 163. Defendant and/or DOES have failed to indemnify or in any manner reimburse Plaintiff and
20 Class Members for these expenditures and losses.

21 164. By requiring Plaintiff and Class Members to pay expenses and cover losses that they
22 incurred in direct consequence of the discharge of their duties for Defendant and/or DOES
23 and/or in obedience of Defendant's and/or DOES' direction, Defendant and/or DOES have
24 violated and continues to violate *California Labor Code* section 2802.

25 165. As a direct and proximate result of Defendant's and/or DOES' conduct, Plaintiff and Class
26 Members have suffered substantial losses according to proof, as well as pre-judgment
27 interest, costs, and attorneys' fees for the prosecution of this action, which losses are
28 compensable under *California Labor Code* section 2802.

166. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)

167. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

168. Defendant and/or DOES failure to pay all straight time and overtime wages earned, failure to provide compliant meal and/or rest breaks and/or premium pay compensation in lieu thereof, failure to adopt a compliant sick pay policy, failure to itemize and keep accurate records, failure to pay all wages due at time of termination, and failure to reimburse all necessary business expenses incurred, as alleged herein, constitutes unlawful activity prohibited by *California Business and Professions Code* section 17200, et seq.

169. The actions of Defendant and/or DOES in failing to pay Plaintiff and members of the proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent, and deceptive business practices, within the meaning of *California Business and Professions Code* section 17200, et seq.

170. Plaintiff is entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as members of the general public actually harmed and as a representative of all others subject to Defendant and/or DOES unlawful acts and practices.

171. As a result of their unlawful acts, Defendant and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiff and the proposed Class he seeks to represent. Defendant and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to *California Business and Professions Code* section 17203. Plaintiff is informed and believes, and thereon alleges, that Defendant and/or DOES are unjustly enriched through their policy of not all wages owed to Plaintiff and members of the proposed Class.

1 172. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
2 proposed class are prejudiced by Defendant's and/or DOES' unfair trade practices.

3 173. As a direct and proximate result of the unfair business practices of Defendant and/or DOES,
4 and each of them, Plaintiff, individually and on behalf of all employees similarly situated,
5 are entitled to equitable and injunctive relief, including full restitution and/or disgorgement
6 of all wages and premium pay which have been unlawfully withheld from Plaintiff and
7 members of the proposed Class as a result of the business acts and practices described
8 herein and enjoining Defendant and/or DOES from engaging in the practices described
9 herein.

10 174. The illegal conduct alleged herein is continuing, and there is no indication that Defendant
11 and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if
12 Defendant and/or DOES are not enjoined from the conduct set forth in this Complaint, they
13 will continue the unlawful activity discussed herein.

14 175. Plaintiff further requests that the Court issue a preliminary and permanent injunction
15 prohibiting Defendant and/or DOES from continuing to not pay Plaintiff and the members
16 of the proposed Class all earned but unpaid wages as discussed herein.

17 176. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
18 below.

19 **TENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violations of the**
20 **Private Attorneys General Act of 2004 ("PAGA") (Labor Code §2698 et seq.)**

21 177. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
22 and every other paragraph in this Complaint herein as if fully plead.

23 178. Plaintiff, by virtue of his employment with Defendant and/or DOES and Defendant's
24 and/or DOES' failure to provide meal and rest periods, failure to provide all straight time
25 and overtime compensation, failure to reimburse for necessary business expenses, failure
26 to adopt a compliant sick pay policy, failure to provide accurate itemized wage statements,
27 and failure to pay all wages due during employment and at termination, is an aggrieved
28 employee with standing to bring an action under the Private Attorney General Act

1 (“PAGA”).

2 179. Plaintiff, as representative of the people of the State of California, will seek any and all
3 penalties otherwise capable of being collected by the Labor Commission and/or the
4 Department of Labor Standards Enforcement (DLSE). This includes each of the following,
5 as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a) applies
6 to any alleged violation of the following provisions: Sections 201 through 203, 204, 205.5,
7 221, 222, 223, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2802.

8 180. On April 19, 2023, pursuant to California Labor Code section 2699.3, Plaintiff provided
9 notice to the Labor and Workforce Development Agency (“LWDA”). This notice outlined
10 the California Labor Code violations Plaintiff alleges against Defendant and/or DOES. The
11 violations alleged in this notice also form the basis for the allegations herein.

12 181. Plaintiff is informed and believes that Defendant and/or DOES have violated and continue
13 to violate provisions of the California Labor Code and applicable Wage Orders related to
14 meal and rest periods, straight time and overtime compensation, wages for all work
15 performed, wage statements, sick pay, and all wages due during employment and at
16 termination.

17 182. Plaintiff, as personal representatives of the general public, will and does seek to recover
18 any and all penalties for each and every violation shown to exist or to have occurred during
19 the one-year period of filing this action, in an amount according to proof, as to those
20 penalties that are otherwise only available to public agency enforcement actions. Funds
21 recovered will be distributed in accordance with PAGA, with at least 75% of the penalties
22 recovered being reimbursed to the State of California and the Labor and Workforce
23 Development Agency (LWDA).

24 **V. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment as follows:

26 A. That the Court determine that this action may be maintained as a class action;

27 B. For compensatory damages, in an amount according to proof at trial, with interest
28 thereon;

- 1 C. For economic and/or special damages in an amount according to proof with interest
2 thereon;
- 3 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,
4 with interest thereon;
- 5 E. For compensation for all time worked;
- 6 F. For compensation for not being provided paid meal periods;
- 7 G. For compensation for not being provided paid rest breaks;
- 8 H. For damages and/or monies owed for failure to comply with itemized employee wage
9 statement provisions;
- 10 I. For damages and/or monies owed for adopting an unlawful sick pay policy;
- 11 J. For reimbursement of business expenses incurred;
- 12 K. For all waiting time penalties owed;
- 13 L. That Defendant and/or DOES be found to have engaged in unfair competition in
14 violation of sections 17200 et seq. of the *California Business and Professions Code*;
- 15 M. That Defendant and/or DOES be ordered and enjoined to make restitution to the Class
16 due to their unfair competition, including disgorgement of their wrongfully withheld
17 wages pursuant to *California Business and Professions Code* sections 17203 and
18 17204;
- 19 N. That an order of specific performance of all penalties owed be issued under *California*
20 *Business and Professions Code* sections 17202;
- 21 O. That Defendant and/or DOES be enjoined from continuing the illegal course of
22 conduct, alleged herein;
- 23 P. That Defendant and/or DOES further be enjoined to cease and desist from unfair
24 competition in violation of section 17200 et seq. of the *California Business and*
25 *Professions Code*;
- 26 Q. That Defendant and/or DOES be enjoined from further acts of restraint of trade or
27 unfair competition;
- 28 R. For penalties for each violation of the Labor Code Private Attorneys General Act of

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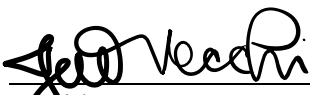
- 2004 (“PAGA”);
- S. For attorneys’ fees;
- T. For liquidated damages;
- U. For interest accrued to date;
- V. For costs of suit and expenses incurred herein; and
- W. For any such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: August 8, 2023

MARA LAW FIRM, PC



David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff William Giron on behalf of
himself, all others similarly situated, and on behalf of
the general public