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7 Attorneys for Plaintiff(s),

8 KENNETH MILLER, and all others similarly situated

(Additional Counsel for Plaintiff Listed on Next Page)

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF MADERA**

11 **(UNLIMITED JURISDICTION)**

12 KENNETH MILLER, on behalf of himself and all
13 others similarly situated, and the general public,
14 and as an “aggrieved employee” on behalf of
15 other “aggrieved employees” and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 BARRIER SPECIALTY ROOFING &
19 COATINGS, INC., a California corporation and
20 DOES 1–50, inclusive,

21 *Defendant(s).*

ELECTRONICALLY FILED

Superior Court of California,

County of Madera

07/20/2023 at 03:41:37 PM

By: Bernice Jackson-Hyatt, Deputy Clerk

Case No. MCV089466

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code § 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*; and
8. Civil Penalties (Lab. Code §§ 2898, *et seq.*)

JURY TRIAL DEMANDED



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1 Plaintiff, Kenneth Miller (hereafter “Plaintiff” or “Miller”), on behalf of himself and all
2 others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Barrier Specialty
9 Roofing & Coatings, Inc., a California corporation and Does 1 through 50, inclusive (collectively
“Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
12 related relief. These claims are based on Defendants’ failures to:

13 (A) Pay all wages, including minimum, regular, overtime, and doubletime
14 wages, earned for all hours worked at the correct rates of pay;

15 (B) Provide all meal periods;

16 (C) Authorize and permit all rest breaks;

17 (D) Pay premium wages for unprovided meal periods;

18 (E) Pay premium wages for unprovided rest breaks;

19 (F) Indemnify for necessary work-related expenditures;

20 (G) Issue only accurate and complete itemized wage statements; and

21 (H) Timely pay wages upon termination of employment.

22 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
23 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
24 action.

25 **II. THE PARTIES**

26 3. Plaintiff Kenneth Miller is a resident of California. At all relevant times, Plaintiff
27 was an “employee” within the meaning of Title 8 California Code of Regulations section 11160
28 and an “aggrieved employee” within the meaning of Labor Code section 2699(c).

4. Defendant Barrier Specialty Roofing & Coatings, Inc. is a corporation organized
and existing under the laws of California and also a citizen of California based on Plaintiff’s



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1 information and belief.

2 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
3 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
4 is informed and believes and thereon alleges that said Defendants are legally responsible for the
5 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
6 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
when ascertained.

7 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
9 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
10 within the course and scope of such agency, employment, direction and control, and with the
11 approval and ratification of each of the other Defendants.

12 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
14 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
15 Members or otherwise complying with their rights in accordance with applicable California labor
laws as alleged herein.

16 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
17 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
18 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
19 described class in accordance with applicable laws as alleged herein.

20 III. CLASS ALLEGATIONS

21 9. This action has been brought and may be maintained as a class action pursuant to
22 California Code of Civil Procedure section 382 because there is a well-defined community of
23 interest among the persons who comprise the readily ascertainable class defined below and
24 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
a class action.

25 10. **Class Definition:** The Class is defined as follows: All persons Defendants
26 employed in California as hourly, non-exempt employees, including but not limited to roofers
27 and solar installers, individuals performing work comparable to the aforementioned, compensated
28 comparably to the aforementioned, and individuals in similar positions at any time during the



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period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

12. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

13. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime, meal period premium, and rest period premium wages;

B. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

C. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

D. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

E. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

F. Whether Defendants willfully failed to provide the class with timely final wages;

G. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

H. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

14. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or



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practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

17. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

18. The Wage Order applies to:

[A]ll persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 *et seq.*, drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 *et seq.*), including all work required to mine and/or establish pits, quarries, and surface or underground



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mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis.

Wage Order, § 1. The Wage Order defines “construction occupations” to mean:

[A]ll job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 *et seq.*, and any other similar or related occupations or trades.

Wage Order, § 2(C).

19. At all relevant times during the applicable limitations period, the Defendants, Miller, and all of the Class Members were covered by the Wage Order because Miller and all of the Class Members worked for the Defendants in construction occupations. Accordingly, Miller and all of the other Class Members are entitled to the protections the Wage Order provides.

20. On approximately April 7, 2022, the Defendants began to employ Miller in Madera in the position of hourly, non-exempt roofer. The Defendants continuously employed him in that capacity until on or about January 19, 2023 when his employment ended.

21. At all relevant times, the Defendants issued wages to Miller and all of the other Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Miller and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

22. At all relevant times, the Defendants failed to compensate Plaintiff and all of the other Class Members for all hours worked at the applicable minimum or regular rates of pay. The Defendants required Plaintiff and all other Class Members to work unpaid hours. The Defendants disallowed Plaintiff and all other Class Members to take duty-free meal periods. The Defendants required Plaintiff and all other Class Members to remain on-duty and to monitor their personal cell phones for work-related communications at all times. Additionally, the Defendants required Plaintiff and all other Class Members to travel between job sites during their meal and rest periods.

23. At all relevant times, the Defendants failed to compensate Plaintiff and all of the other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants required Plaintiff and all other Class Members to work unpaid hours. The Defendants disallowed



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1 Plaintiff and all other Class Members to take duty-free meal periods. The Defendants required
2 Plaintiff and all other Class Members to remain on-duty and to monitor their personal cell phones
3 for work-related communications at all times. Additionally, the Defendants required Plaintiff and
4 all other Class Members to travel between job sites during their meal and rest periods.

5 24. At all relevant times, the Defendants failed to compensate Plaintiff and all of the
6 other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over
7 the first eight of the seventh day of the workweek. The Defendants required Plaintiff and all other
8 Class Members to work unpaid hours. The Defendants disallowed Plaintiff and all other Class
9 Members to take duty-free meal periods. The Defendants required Plaintiff and all other Class
10 Members to remain on-duty and to monitor their personal cell phones for work-related
11 communications at all times. Additionally, the Defendants required Plaintiff and all other Class
12 Members to travel between job sites during their meal and rest periods.

13 25. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
14 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required
15 Plaintiff and all other Class Members to forgo their duty-free meal periods. The Defendants
16 required Plaintiff and all other Class Members to remain on-duty and to monitor their personal
17 cell phones for work-related communications during their meal periods. Additionally, the
18 Defendants required Plaintiff and all other Class Members to travel between job sites during their
19 meal periods. The Defendants also failed to pay premium wages for days on which they failed to
20 provide Plaintiff and all of the other Class Members with meal periods as required by law.

21 26. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
22 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
23 worked or major portion thereof. The Defendants required Plaintiff and all other Class Members
24 to forgo their duty-free rest breaks. The Defendants required Plaintiff and all other Class Members
25 to remain on-duty and to monitor their personal cell phones for work-related communications
26 during their rest breaks. Additionally, the Defendants required Plaintiff and all other Class
27 Members to travel between job sites during their rest breaks. The Defendants also failed to pay
28 premium wages for days on which they failed to authorize and permit Plaintiff and all of the other
Class Members to take rest breaks as required by law.

27 27. At all relevant times, the Defendants failed to issue to Plaintiff and all of the other
28 Class Members complete and accurate wage statements that state all hours worked at the correct



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1 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
2 the wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
3 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
4 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
5 earned, all rest break premium wages earned, and related information.

6 28. At all relevant times, the Defendants also failed to timely pay Plaintiff and all of
7 the other Class Members all earned wages as described above during and at the conclusion of
8 employment.

9 29. At all relevant times, the Defendants failed to maintain accurate employee records
10 of Plaintiff and all of the other Class Members.

11 30. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
12 unlawful practices and policies, Plaintiff and the Class Members were:

- 13 A. Not provided with all off-duty meal periods;
- 14 B. Not authorized and permitted to take all rest break periods;
- 15 C. Not paid one hour's pay for each workday in which Defendants failed to
16 authorize and permit them to take one or more timely rest periods;
- 17 D. Not paid one hour's pay for each workday in which Defendants failed to
18 provide them with one or more timely meal periods;
- 19 E. Not paid all wages earned, including, but not limited to, minimum, regular,
20 overtime, and doubletime wages for work performed while clocked out;
- 21 F. Not indemnified for all necessary business expenditures incurred during
22 the discharge of their duties;
- 23 G. Not provided with accurate and complete wage statements; and
- 24 H. Not timely paid all earned and unpaid wages at the time their employment
25 ended.

26 **FIRST CAUSE OF ACTION**

27 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

28 **Lab. Code §§ 510, 1194, 1197, and 1198**

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

- 29 31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.
- 30 32. At all relevant times, Plaintiff and the Class Members have been non-exempt



employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

33. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

34. Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40) of the employee’s weekly salary.

35. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

36. Labor Code section 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one



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workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

37. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

38. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

39. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

40. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

41. At all relevant times during the applicable limitations period, the Defendants required Plaintiff and all other Class Members to work unpaid hours. The Defendants disallowed Plaintiff and all other Class Members to take duty-free meal breaks. The Defendants required Plaintiff and all other Class Members to remain on-duty and to monitor their personal cell phones for work-related communications at all times. Additionally, the Defendants required Plaintiff and all other Class Members to travel between job sites during their meal periods.

42. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all minimum, regular, overtime, and doubletime hours, respectively, that they worked at the correct rates of pay.

43. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'



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1 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
2 rates of pay as required by California law.

3 **B. UNDERPAID TRAVEL TIME**

4 44. Under Section 5 of the Wage Order,

5 All employer-mandated travel that occurs after the first location where the
6 employee's presence is required by the employer shall be compensated at
7 the employee's regular rate of pay or, if applicable, the premium rate that
8 may be required by the provisions of Labor Code Section 510 and Section
9 3, Hours and Days of Work, above.

10 45. At all relevant times, Defendants required Plaintiff and all other Class Members
11 to travel between worksites Defendants designated. However, Defendants did not pay Plaintiff
12 and all of the other Class Members for such travel time at amounts that were at least as much as
13 their regular rates of pay for work they performed at the worksites Defendants designated. This
14 is a violation of the Wage Order and also the Labor Code (§ 1198).

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **Lab. Code §§ 226.7 and 512**

18 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

19 46. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

20 47. At all relevant times during the applicable limitations period, Plaintiff and the
21 Class Members have been employees of Defendants and entitled to the benefits and protections
22 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

23 48. In relevant part, California Labor Code § 1198 states:

24 The maximum hours of work and the standard conditions of labor fixed by
25 the commission shall be the maximum hours of work and the standard
26 conditions of labor for employees. The employment of any employee for
27 longer hours than those fixed by the order or under conditions of labor
28 prohibited by the order is unlawful.

49. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than
five hours per day without providing the employee with a meal period of
not less than 30 minutes, except that if the total work period per day of the
employee is no more than six hours, the meal period may be waived by



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mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

50. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. (See Labor Code Section 512.)
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived. (See Labor Code Section 512.)
- (C) In all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.
- (D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (E) . . .
- (F) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. . . .

51. In relevant part, California Labor Code § 226.7 states:



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(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

53. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants required Plaintiff and all other Class Members to forgo their duty-free meal periods. The Defendants required Plaintiff and all other Class Members to remain on-duty and to monitor their personal cell phones for work-related communications during their meal periods. Additionally, the Defendants required Plaintiff and all other Class Members to travel between job sites during their meal periods.

54. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

55. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

56. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have



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1 suffered damages in amounts subject to proof to the extent they were not paid additional wages
2 owed for all meal periods not provided to them.

3 57. By reason of the above, Plaintiff and the Class Members are entitled to premium
4 wages for workdays in which one or more meal periods were not provided to them pursuant to
5 California Labor Code § 226.7.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

8 **Lab. Code § 226.7**

9 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

10 58. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

11 59. At all relevant times during the applicable limitations period, Plaintiff and the
12 Class Members have been employees of Defendants and entitled to the benefits and protections
13 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

14 60. In relevant part, California Labor Code § 1198 states:

15 The maximum hours of work and the standard conditions of labor fixed by
16 the commission shall be the maximum hours of work and the standard
17 conditions of labor for employees. The employment of any employee for
18 longer hours than those fixed by the order or under conditions of labor
19 prohibited by the order is unlawful.

20 61. In relevant part, Section 12 of the Wage Order states:

21 **Rest Periods:**

22 (A) Every employer shall authorize and permit all employees to take rest
23 periods, which insofar as practicable shall be in the middle of each
24 work period. Nothing in this provision shall prevent an employer
25 from staggering rest periods to avoid interruption in the flow of
26 work and to maintain continuous operations, or from scheduling rest
27 periods to coincide with breaks in the flow of work that occur in the
28 course of the workday. The authorized rest period time shall be
based on the total hours worked daily at the rate of ten (10) minutes
net rest time for every four (4) hours worked, or major fraction
thereof. Rest periods shall take place at employer designated areas,
which may include or be limited to the employees' immediate work
area.

(B) Rest periods need not be authorized in limited circumstances when
the disruption of continuous operations would jeopardize the



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product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) ...

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, 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 period is not provided. . . .

62. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

63. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

64. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. The Defendants required Plaintiff and all other Class Members to forgo their duty-free rest breaks. The Defendants required Plaintiff and all other Class Members to remain on-duty and to monitor their personal cell phones for work-related communications during their rest breaks. Additionally, the Defendants required Plaintiff and all other Class Members to travel between job sites during their rest breaks.

65. At all relevant times, Defendants failed to authorize and permit Plaintiff and the



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1 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
2 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
3 Plaintiff and the other Class Members to take timely rest periods.

4 66. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
5 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
6 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
7 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
8 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
9 to authorize and permit them to take 10-minute rest periods every four hours worked or major
fraction thereof.

10 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
12 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
13 take all rest breaks required by California law.

14 68. Defendants failed to provide Plaintiff with all required rest breaks in accordance
15 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
16 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
17 which resulted in Defendants not providing the Class Members with all rest breaks required by
California law.

18 69. Defendants failed to pay Plaintiff the additional wages required by California
19 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
20 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
21 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
22 Class Members with additional wages for all rest breaks not provided to them as required by
California Labor Code § 226.7.

23 70. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
24 suffered damages in amounts subject to proof to the extent they were not paid additional wages
owed for all rest breaks not provided to them.

25 71. By reason of the above, Plaintiff and the Class Members are entitled to premium
26 wages for workdays in which one or more rest breaks were not provided to them pursuant to
27 California Labor Code § 226.7.
28



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FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

72. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

73. In pertinent part, California Labor Code § 2802(a) states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.” Additionally, the Wage Order states:

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Wage Order, § 9(A) and (B).

74. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

75. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

76. As described above, the Defendants required Plaintiff and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Plaintiff and all of the other Class members to supply mobile phones, telecom, and their own transportation between work sites to perform their job duties. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Class members for these items.

77. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred



1 during the course of performing their duties.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

4 **Lab. Code § 226**

5 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

6 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS**

7 78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

8 79. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
9 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
10 statement showing:

11 A. Gross wages earned;

12 B. Total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

15 C. The number of piece rate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis;

17 D. All deductions, provided that all deductions made on written orders of the
18 Employee may be aggregated and shown as one item;

19 E. Net wages earned;

20 F. The inclusive dates of the period for which the employee is paid;

21 G. The name of the employee and his or her social security number, except
22 that by January 1, 2008, only the last four digits of his or her social security number or an
23 employee identification number other than a social security number may be shown on the itemized
24 statement;

25 H. The name and address of the legal entity that is the employer; and

26 I. All applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee.

28 80. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
the employer fails to provide accurate and complete information as required by California Labor



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Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.

81. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

82. Similarly, section 6(B) of the Wage Order states:

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee’s social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee’s wages.

83. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and



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1 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
2 the corresponding number of hours worked at each rate by the employee and other requirements
3 of California Labor Code section 226. Defendants failed to state in the wage statements they
4 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
5 including, but not limited to, regular and overtime wages for work they performed off-the-clock
6 (as described above). Defendants knowingly and intentionally did not issue either as a detachable
7 part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid
8 by personal check or cash, statements to Plaintiff and the Class Members that state all minimum
9 wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned,
all meal period premium wages earned, and all rest break premium wages earned.

10 84. Defendants' failure to provide Plaintiff and the other Class Members with accurate
11 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
12 the other Class Members with accurate wage statements but intentionally provided wage
13 statements that Defendants knew were not accurate.

14 85. As a result of being provided with inaccurate wage statements by Defendants,
15 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
16 wage statements were violated and they were misled about the amount of wages they had actually
17 earned and were owed. In addition, the absence of accurate information on their wage statements
18 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
19 and mathematical computations to determine the amounts of wages owed, has caused difficulty
20 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
21 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
22 and the other Class Members were not able to ascertain from the wage statements whether
Defendants complied with their obligations under California Labor Code section 226(a).

23 **SIXTH CAUSE OF ACTION**

24 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

25 **(Lab. Code §§ 201, 202, and 203)**

26 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

27 86. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 87. At all relevant times during the applicable limitations period, Plaintiffs and the
Class have been non-exempt employees of Defendants and entitled to the benefits and protections



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of California Labor Code §§ 201, 202, 203, and the Wage Order.

88. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

89. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours' notice before quitting are due and payable within 72 hours.

90. The Defendants failed to pay Plaintiff and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment, including regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, and unprovided rest break premium wages.

91. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

92. Plaintiff is informed and believes that Defendants' failure to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

93. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

95. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

96. The unlawful conduct of Defendants alleged herein amount to and constitutes

1 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
2 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
3 gained a competitive advantage over other comparable companies doing business in California
4 that comply with their legal obligations to compensate employees for all earned wages.

5 97. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
6 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
7 Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages,
8 phone expenses, missed rest period premium wages, missed meal period premium wages, telecom
9 expenses, mileage expenses, and comparable money and property.

10 98. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
11 Class Members are entitled to restitution of all monies rightfully belonging to them that
12 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
13 practices.

14 99. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
15 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
16 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

17 **EIGHTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **Lab. Code §§ 2698, *et seq.***

20 **(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,**
21 **against all Defendants)**

22 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 101. The "Aggrieved Employees" are all members of the Class defined above who
24 Defendants employed during the period beginning May 15, 2022, and ending on the date that
25 final judgment is entered in this action.

26 102. Labor Code § 204 states:

- 27 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
28 204.1, or 204.2, earned by any person in any employment are due
and payable twice during each calendar month, on days designated
in advance by the employer as the regular paydays. Labor performed
between the 1st and 15th days, inclusive, of any calendar month
shall be paid for between the 16th and the 26th day of the month
during which the labor was performed, and labor performed between



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the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

103. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

104. During the applicable time period, Defendants violated California Labor Code §§ 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

105. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

106. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars



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1 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
2 (penalty amounts established by California Labor Code § 210).

3 B. For violations of California Labor Code § 226(a), two hundred fifty
4 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
5 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
6 established by California Labor Code § 226.3).

7 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
8 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
9 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
10 established by California Labor Code § 558).

11 D. For violations of California Labor Code § 1197, one hundred dollars
12 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
13 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
14 pay period (regardless of whether the initial violations were intentionally committed) (penalty
15 amounts established by California Labor Code § 1197.1).

16 E. For violations of California Labor Code §§ 203, 226.7, 1194, 1198, and
17 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
18 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
19 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

20 107. Plaintiff has complied with the procedures for bringing suit specified in
21 California Labor Code § 2699.3. By letter dated May 15, 2023, Plaintiff filed written notice
22 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
23 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
24 to have been violated, including the facts and theories to support the alleged violations. A true
25 and correct copy of the notice to the LWDA dated May 15, 2023, is attached as Exhibit A.
26 Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed
27 to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
28 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not
intend to investigate these allegations.

108. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in



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connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

109. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages, including minimum, regular, overtime, double-time, missed meal period, and missed rest period wages;

E. Liquidated damages;

F. Statutory penalties, including waiting time penalties;

G. Civil penalties;

H. Restitution;

I. Declaratory relief;

J. Actual damages;

K. Pre-judgment interest;

L. Costs of suit;

M. Reasonable attorneys' fees; and

N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 20, 2023

By:



DAVID G. SPIVAK, Attorneys for
Plaintiff(s), KENNETH MILLER, and
all others similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM
EMPLOYEE RIGHTS

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 15, 2023

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Kenneth Miller / Barrier Specialty Roofing

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Kenneth Miller (hereafter “Miller” or “Complainant”) provides notice that Barrier Specialty Roofing & Coatings, Inc., a California corporation, and related entities (collectively “the Barrier Specialty Roofing Employers” or “the Employers”) violated his rights and those of all other individuals the Barrier Specialty Roofing Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including but not limited to roofers and solar installers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and related Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Miller hereby provides this notice to the Labor & Workforce Development Agency and the Barrier Specialty Roofing Employers and their agents and representatives.

At all relevant times, the Barrier Specialty Roofing Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Miller and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately April 7, 2022, the Barrier Specialty Roofing Employers began to employ Miller in Madera in the position of hourly, non-exempt roofer. The Barrier Specialty Roofing Employers continuously employed him in that capacity until on or about January 19, 2023 when his employment ended.

At all relevant times, the Barrier Specialty Roofing Employers issued wages to Miller and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Barrier Specialty Roofing Employers classified Miller and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Barrier Specialty Roofing Employers failed to compensate Miller and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to work unpaid hours. The Barrier Specialty Roofing Employers disallowed Miller and all other Aggrieved Employees to take duty-free meal periods. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to remain on-duty and to monitor their personal cell phones for work-related communications at all times. Additionally, the Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to travel between job sites during their meal and rest periods.

The Barrier Specialty Roofing Employers failed to compensate Miller and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to work unpaid hours. The Barrier Specialty Roofing Employers disallowed Miller and all other Aggrieved Employees to take duty-free meal periods. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to remain on-duty and to monitor their personal cell phones for work-related communications at all times. Additionally, the Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to travel between job sites during their meal and rest periods.

The Barrier Specialty Roofing Employers failed to compensate Miller and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to work unpaid hours. The Barrier Specialty Roofing Employers disallowed Miller and all other Aggrieved Employees to take duty-free meal periods. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to remain on-duty and to monitor their personal cell phones for work-related communications at all times. Additionally, the Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to travel between job sites during their meal and rest periods.

At all relevant times, the Barrier Specialty Roofing Employers failed to provide Miller and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees forgo their duty-free meal periods. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to remain on-duty and to monitor their personal cell phones for work-related communications during their meal periods. Additionally, the Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to travel between job sites during their meal periods. The Barrier Specialty Roofing Employers also failed to pay premium wages for days on which they failed to provide Miller and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Barrier Specialty Roofing Employers failed to authorize and permit Miller and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees forgo their duty-free rest breaks. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to remain on-duty and to monitor their personal cell phones for work-related communications during their rest breaks. Additionally, the Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to travel between job sites during their rest breaks. The Barrier Specialty Roofing Employers also failed to pay premium wages for days on which they failed to authorize and permit Miller and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Barrier Specialty Roofing Employers required Miller and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Barrier Specialty Roofing Employers required Miller and all of the other Aggrieved Employees to supply personal mobile phones, telecom, and their own transportation between worksites to perform their job duties. However, the Barrier Specialty Roofing Employers did not provide these items and did not reimburse Miller and the other Aggrieved Employees for these items.

At all relevant times, the Barrier Specialty Roofing Employers failed to issue to Miller and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The Barrier Specialty Roofing Employers knowingly and intentionally failed to state on the wage statements they issued to Miller and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Barrier Specialty Roofing Employers also failed to timely pay Miller and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Barrier Specialty Roofing Employers failed to maintain accurate employee records of Miller and all of the other Aggrieved Employees.

For the reasons stated herein, Miller alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Barrier Specialty Roofing Employers failed to pay Miller and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Barrier Specialty Roofing Employers failed to provide Miller and all of the other Aggrieved Employees all meal periods in compliance with California law;

- (c) The Barrier Specialty Roofing Employers failed to authorize and permit Miller and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Barrier Specialty Roofing Employers failed to compensate Miller and all of the other Aggrieved Employees at one hour's pay for each day in which the Barrier Specialty Roofing Employers failed to provide them with one or more meal periods as required by law;
- (e) The Barrier Specialty Roofing Employers failed to compensate Miller and all of the other Aggrieved Employees at one hour's pay for each day in which the Barrier Specialty Roofing Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Barrier Specialty Roofing Employers failed to indemnify Miller and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Barrier Specialty Roofing Employers knowingly and intentionally failed to provide Miller and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Barrier Specialty Roofing Employers willfully failed to timely pay Miller and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Barrier Specialty Roofing Employers and when their employment ended; and
- (i) The Barrier Specialty Roofing Employers failed to maintain accurate employment records pertaining to Miller and all of the other Aggrieved Employees.

Accordingly, Miller now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Barrier Specialty Roofing Employers' alleged violations of the Labor Code and the Wage Order.

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The Wage Order

The Wage Order applies to:

[A]ll persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 *et seq.*; drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586; and mining (not covered by Labor Code Section 750 *et seq.*), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis. . . .

Wage Order, § 1.

The Wage Order defines “construction occupations” to mean:

[A]ll job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 *et seq.*, and any other similar or related occupations or trades.

Wage Order, § 2(C).

At all relevant times during the applicable limitations period, the Barrier Specialty Roofing Employers, Miller, and all of the Aggrieved Employees were covered by the Wage Order because Miller and all of the Aggrieved Employees worked for the Barrier Specialty Roofing Employers in construction occupations. Accordingly, Miller and all

of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" when the employer knew or reasonably should have known that employees were working during those hours. See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to work unpaid hours. The Barrier Specialty Roofing Employers disallowed Miller and all other Aggrieved Employees to take duty-free meal periods. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to remain on-duty and to monitor their personal cell phones for work-related communications at all times. Additionally, the Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to travel between job sites during their meal and rest periods.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904-905. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Barrier Specialty Roofing Employers, Miller and all of the other Aggrieved Employees earned rest period premium wages, meal period premium wages, and related compensation during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Barrier Specialty Roofing Employers failed to pay to Miller and all of the other Aggrieved Employees rest period premium wages, meal period premium wages, overtime, and double time premium pay on such rest period premium wages, meal period premium wages, and related compensation.

At all relevant times during the applicable limitations period, the Barrier Specialty Roofing Employers failed to compensate Miller and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Miller now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Underpaid Travel Time

Under Section 5 of the Wage Order,

All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.

At all relevant times, the Barrier Specialty Roofing Employers required Miller and all of the other Aggrieved Employees to travel between multiple Barrier Specialty Roofing Employers' worksites, as designated by the Barrier Specialty Roofing Employers. However, the Barrier Specialty Roofing Employers did not pay Miller and all of the other Aggrieved Employees for such travel time at amounts that were at least as much as their regular rates of pay for work they performed at the worksites the Barrier Specialty Roofing Employers designated.

This is a violation of the Wage Order and also the Labor Code (§ 1198). Accordingly, Miller seeks civil penalties from the Barrier Specialty Roofing Employers on behalf of himself and all of the Aggrieved Employees as follows: \$100 for each aggrieved

employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived

by mutual consent of employer and employee. (See Labor Code Section 512.)

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived. (See Labor Code Section 512.)
- (C) In all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.
- (D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (E) . . .
- (F) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the meal period provisions, the collective bargaining agreement will prevail.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Barrier Specialty Roofing Employers failed to provide Miller and all of the other Aggrieved Employees with all timely meal periods. The Barrier Specialty Roofing Employers denied Miller and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees forgo their duty-free meal periods. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to remain on-duty and to monitor their personal cell phones for work-related communications during their meal periods. Additionally, the Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to travel between job sites during their meal periods. Furthermore, the Barrier Specialty Roofing Employers failed to pay premium wages for days on which they failed to provide Miller and all of the other Aggrieved Employees with timely meal periods. Accordingly, Miller now seeks civil penalties for these Labor Code violations that the Barrier Specialty Roofing Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));

2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 11 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees’ immediate work area.

- (B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.
- (C) ...
- (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, 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 period is not provided. . . .

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.
- (d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare

Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Barrier Specialty Roofing Employers failed to authorize and permit Miller and all of the other Aggrieved Employees to take ten-minute, duty-free rest breaks every four hours worked or major fraction thereof. The Barrier Specialty Roofing Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees forgo their duty-free rest breaks. The Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to remain on-duty and to monitor their personal cell phones for work-related communications during their rest breaks. Additionally, the Barrier Specialty Roofing Employers required Miller and all other Aggrieved Employees to travel between job sites during their rest breaks. Moreover, the Barrier Specialty Roofing Employers failed to pay Miller and all of the other Aggrieved Employees premium wages on workdays the Barrier Specialty Roofing Employers failed to provide Miller and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Miller now seeks civil penalties for these Labor Code violations that the Barrier Specialty Roofing Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)) and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
- ...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Barrier Specialty Roofing Employers required Miller and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Barrier Specialty Roofing Employers required Miller and all of the other Aggrieved Employees to supply personal mobile phones, telecom, and their own transportation between work sites to perform their job duties. However, the Barrier Specialty Roofing Employers did not provide these items and did not reimburse Miller and the other Aggrieved Employees for these items. Accordingly, Miller seeks civil penalties for these Labor Code violations that the Barrier Specialty Roofing Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

- (1) Gross wages earned;
- (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- (3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- (4) All deductions, provided that all deductions made on written orders of the Employer may be aggregated and shown as one item;
- (5) Net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other

than a social security number may be shown on the itemized statement;

- (8) The name and address of the legal entity that is the employer; and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 6(B) of the Wage Order states:

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Barrier Specialty Roofing Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Barrier Specialty Roofing Employers failed to state in the wage statements they issued to Miller and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-

the-clock. The Barrier Specialty Roofing Employers knowingly and intentionally failed to state on the wage statements they issued to Miller and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information. Accordingly, Miller seeks civil penalties for the Labor Code violations that the Barrier Specialty Roofing Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Barrier Specialty Roofing Employers failed to compensate Miller and all of the other Aggrieved Employees for wages earned, including regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other earnings at the intervals stated above. As a result, the Barrier Specialty Roofing Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Miller now seeks civil penalties for the Labor Code violations that the Barrier Specialty Roofing Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Barrier Specialty Roofing Employers failed to pay Miller and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Miller, including overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and similar forms of compensation. By failing to pay Miller and all of the other Aggrieved Employees as set forth above at the end of employment, the Barrier Specialty Roofing Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Miller seeks civil penalties from the Barrier Specialty Roofing Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

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2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Kenneth Miller will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.
david@spivaklaw.com

cc: Kenneth Miller
Walter L. Haines Esq.

Barrier Specialty Roofing & Coatings, Inc.
c/o Blair R. Cummings, Agent for Service of Process
2671 S Cherry Ave
Fresno, CA 93706

State of California,
County of Los Angeles

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

William M. Woolman, Esq.
Sagaser Watkins & Wieland PC
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XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East, 25th Fl, Los Angeles, CA 90067.

EXECUTED on Thursday, July 20, 2023, at Los Angeles, California.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


BRECK OYAMA