

SUMMONS

(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

RCA CONSTRUCTION CLEAN UP, INC., a California corporation; and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

OSVALDO MUNOZ, individually, and on behalf of all others similarly situated.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUL 26 2023

BY: Khayara Frontela
Khayara Frontela, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
247 WEST 3RD STREET
SAN BERNARDINO, CALIFORNIA 92415

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
SCOTT ERNEST WHEELER (SBN 187998)
250 WEST FIRST STREET, SUITE 216
CLAREMONT, CALIFORNIA 91711

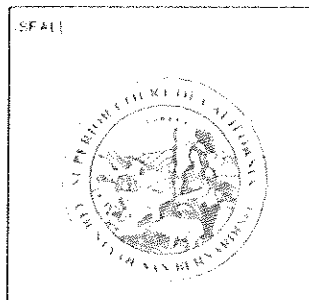
LAW OFFICE OF SCOTT ERNEST WHEELER
TELEPHONE: (909) 621-4988
FACSIMILE: (909) 621-4622

DATE: JUL 26 2023
(Fecha)

Clerk, by Khayara Frontela, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).) Khayara Frontela



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): SCOTT ERNEST WHEELER (SBN 187998) LAW OFFICE OF SCOTT ERNEST WHEELER 250 WEST FIRST STREET, SUITE 216 CLAREMONT, CALIFORNIA 91711 TELEPHONE NO. (909) 621-4988 FAX NO. (Optional) (909) 621-4622 E-MAIL ADDRESS SEW@SCOTTWHEELERLAWOFFICE.COM ATTORNEY FOR (Name): PLAINTIFF, OSVALDO MUNOZ		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO JUL 19 2023 BY: <u><i>Khiyara Frontela</i></u> Khiyara Frontela, Deputy			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS 247 WEST 3RD STREET MAILING ADDRESS CITY AND ZIP CODE SAN BERNARDINO, CALIFORNIA 92415 BRANCH NAME SAN BERNARDINO - CIVIL DIVISION		CASE NAME OSVALDO MUNOZ v. RCA CONSTRUCTION CLEAN UP, INC.			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less) </td> <td style="width: 50%; padding: 5px;"> Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>				CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
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Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PVPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PVPD/WD (23) Non-PVPD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PVPD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. ☐ Large number of separately represented parties
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☒ Substantial amount of documentary evidence | d. ☒ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision |
|---|---|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **TWELVE CAUSES OF ACTION**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 19, 2023

Scott Ernest Wheeler

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PIPD/WD (23)
Presses Liability (e.g., slip and fall)
Intentional Bodily Injury/PIPD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PIPD/WD

Non-PIPD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PIPD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item, otherwise report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commission Appeal

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

OSIVADO MUNOZ, individually, and on behalf
of all others similarly situated

CASE NO.:

CIV SB 2317103

vs.

RCA CONSTRUCTION CLEAN UP, INC., a California corporation; and
DOES 1 through 50, inclusive,

CERTIFICATE OF ASSIGNMENT

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the SAN BERNARDINO - CIVIL DIVISION District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☒ General☐ Collection

Nature of Action

Ground

- | | |
|---|---|
| ☐ 1. Adoption | Petitioner resides within the district. |
| ☐ 2. Conservator | Petitioner or conservatee resides within the district. |
| ☐ 3. Contract | Performance in the district is expressly provided for. |
| ☐ 4. Equity | The cause of action arose within the district. |
| ☐ 5. Eminent Domain | The property is located within the district. |
| ☐ 6. Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 7. Guardianship | Petitioner or ward resides within the district or has property within the district. |
| ☐ 8. Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 9. Mandate | The defendant functions wholly within the district. |
| ☐ 10. Name Change | The petitioner resides within the district. |
| ☐ 11. Personal Injury | The injury occurred within the district. |
| ☐ 12. Personal Property | The property is located within the district. |
| ☐ 13. Probate | Decedent resided or resides within or had property within the district. |
| ☐ 14. Prohibition | The defendant functions wholly within the district. |
| ☐ 15. Review | The defendant functions wholly within the district. |
| ☐ 16. Title to Real Property | The property is located within the district. |
| ☐ 17. Transferred Action | The lower court is located within the district. |
| ☐ 18. Unlawful Detainer | The property is located within the district. |
| ☐ 19. Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| ☒ 20. Other Employment | The cause of action arose within the district. |
| ☐ 21. THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. | |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designated district is:

RCA CONSTRUCTION CLEAN UP, INC.

1639 S Campus Avenue

NAME, INDICATE TITLE OR OTHER QUALIFYING FACTOR

ADDRESS

Ontario

California

91761

CITY

STATE

ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed

on July 19, 2023

at Claremont

, California.



Signature of Attorney Party

Printed Name of
the Party

CERTIFICATE OF ASSIGNMENT

Doc. Case 2317103

CLERK
of the Court

Osvaldo Munoz

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)

Justin A. Wheeler (SBN 342226)

250 West First Street, Suite 216

Claremont, California 91711

Telephone: (909) 621-4988

Facsimile: (909) 621-4622

Email: sew@scottwheelerlawoffice.com

jaw@scottwheelerlawoffice.com

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO

JUL 19 2023

Khayara Frontela
 BY: Khayara Frontela, Deputy

*Attorneys for Plaintiff and the Putative Class***SUPERIOR COURT OF THE STATE OF CALIFORNIA****COUNTY OF SAN BERNARDINO**

OSVALDO MUNOZ, individually, and on
 behalf of all others similarly situated,

Plaintiff,

v.

RCA CONSTRUCTION CLEAN UP, INC., a
 California corporation; and DOES 1 through
 50, inclusive,

Defendants.

CASE NO.

CIV SB 231710**CLASS ACTION COMPLAINT:**

1. Willful Misclassification of Employees
2. Failure to Provide Required Meal Periods
3. Failure to Provide Required Rest Breaks
4. Failure to Pay Overtime Wages
5. Failure to Pay Minimum Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Pay Timely Wages
8. Failure to Maintain Required Records
9. Failure to Furnish Accurate Itemized Statements
10. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL**By Fax**

[illegible]

5. Plaintiff and other non-exempt employees similarly do not receive reimbursements for the expenses they incur in the discharge of their job duties. These expenses include cellular phone usage.

6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for himself and a Class of all current and former non-exempt employees of RCA Construction during the applicable limitations period to compensate these workers for the wages RCA Construction has stolen from them and to protect current and future workers from being subjected to similar unlawful working conditions perpetrated by RCA Construction.

JURISDICTION AND VENUE

7. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident and citizen of California, and RCA Construction is a California corporation that is qualified to do business in California and regularly conducts business in California. All putative class members and aggrieved employees are also residents of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

8. Venue is proper in this judicial district and the County of San Bernardino because Plaintiff, and other persons similarly situated, performed work for RCA Construction in the County of San Bernardino, RCA Construction runs its business through its corporate office and its waste disposal facility is located in the County of San Bernardino, and RCA Construction's illegal payroll policies and practices, which are the subject of this action were applied to Plaintiff, and other persons similarly situated, in the County of San Bernardino.

THE PARTIES

9. Plaintiff is a resident of the State of California and a former employee of RCA Construction. At all relevant times herein, Plaintiff was employed by RCA Construction as a waste disposal truck driver, a non-exempt position, working at RCA Construction's facility located in Ontario, California, during the statute of limitations period.

10. Plaintiff, on behalf of himself and all other similarly situated individuals, brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, RCA Construction's failure to provide legally compliant meal and rest breaks and failure to provide proper compensation for missed and otherwise unlawful meal and rest breaks, unpaid and illegally calculated regular and overtime compensation, failure to pay minimum wages, failure to pay all wages due to discharged or

1 quitting non-exempt employees, and failure to maintain required records and failure to provide
2 accurate itemized wage statements.

3 11. During the statute of limitations period, RCA Construction has been a corporation
4 existing under the laws of the State of California and it has conducted business in the State of
5 California.

6 12. RCA Construction conducts business as RCA Construction Clean Up, Inc. and
7 employs individuals who work as waste disposal truck drivers, lot hands and office positions.

8 13. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
9 Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names.

10 Upon information and belief, each Defendant designated as a DOE is in some manner highly
11 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
12 damages, as alleged herein, were proximately caused by the conduct of such DOE defendants.

13 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
14 capacities of such DOE defendants when ascertained.

15 14. As a direct and proximate result of the unlawful actions of RCA Construction,
16 Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in
17 amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
18 Court.

19 **CLASS ACTION ALLEGATIONS**

20 15. Plaintiff brings this action on behalf of himself and the following similarly situated
21 Class of individuals ("Class members"):

22 All non-exempt employees who have performed work for RCA Construction in the state
23 of California at any time during the relevant statute of limitations period.

24 16. Plaintiff reserves the right to name additional Class representatives as may be
25 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
26 the proposed Class and/or add subclasses before the Court determines whether certification is
27 appropriate.

28 17. This action is appropriately suited for a class action because:

1 A. The proposed Class is a significant number. Plaintiff is informed and believes that
2 the proposed Class consists of at least 80 current and former non-exempt employees. Joinder of
3 all current and former non-exempt employees individually would be impractical.

4 B. This action involves common questions of law and fact to the proposed Class
5 because the action focuses on the RCA Construction's systematic course of illegal payroll
6 practices and policies, which was applied to all non-exempt employees in uniform violation of
7 the California Labor Code, IWC Wage Orders, and the California Business and Professions Code,
8 which prohibits unfair business practices arising from such violations. Here are a few common
9 questions of law and fact that can be answered on a classwide basis:

- 10 • Whether RCA Construction willfully misclassified its employees as
11 independent contractors;
- 12 • Whether RCA Construction failed to provide non-exempt employees with
13 legally compliant meal periods and rest breaks;
- 14 • Whether RCA Construction failed to pay overtime to non-exempt employees
15 in compliance with California law;
- 16 • Whether RCA Construction failed to pay minimum wages to non-exempt
17 employees in compliance with California law;
- 18 • Whether RCA Construction failed to timely pay wages to non-exempt
19 employees in compliance with California law;
- 20 • Whether RCA Construction failed to pay all wages due upon discharge or
21 termination in compliance with California law;
- 22 • Whether RCA Construction failed to maintain required records and accurate
23 wage statements for non-exempt employees;
- 24 • Whether RCA Construction failed to reimburse employees for business
25 expenses incurred; and
- 26 • Whether RCA Construction engaged in unfair and/or unlawful business
27 practices.

1 C. Plaintiff's claims are typical of the proposed Class because RCA Construction
2 subjected all of its non-exempt employees to the similar and overlapping violations of the
3 California Labor Code, the applicable IWC wage order, and the California Business and
4 Professions Code.

5 D. Plaintiff is able to fairly and adequately protect the interests of all members of the
6 proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain
7 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff
8 has also retained counsel that is experienced in wage and hour class action litigation.

9 **FIRST CAUSE OF ACTION**

10 **Willful Misclassification of Employees**

11 **[Cal. Lab. Code §§ 226.8, 2750 and 2750.3]**

12 **(On Behalf of Plaintiff and the Class Against all Defendants)**

13 18. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
14 allegations in paragraphs 1 through 17 (A-D).

15 19. During the Class Period, Plaintiff and Class Members worked for RCA
16 Construction, and were employees of RCA Construction, as defined by California Labor Code
17 §2750 and California IWC Wage Order No. 4-2001, §2, and all other IWC Wage Orders, which
18 defines "employ" as meaning to engage, suffer, or permit to work and that a contract for
19 employment is "a contract by which one, who is called the employer, engaged another, who is
20 called the employee, to do something for the benefit of the employer or a third person."

21 20. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, the
22 California Supreme Court held that the burden of proof is on the hiring entity to establish that a
23 worker is an independent contractor who is not entitled to protection within California's IWC
24 wage orders. *Id.* at 957. *Dynamex* further held, in order for the hiring entity to satisfy the burden,
25 it must establish each of the three factors of the ABC test:

26 "(A) that the worker is free from the control and direction of the hiring entity in
27 connection with the performance of the work, both under the contract for the performance
28 of the work and in fact; and

1 (B) that the worker performs work that is outside the usual course of the hiring entity's
2 business; *and*

3 (C) that the worker is customarily engaged in an independently established trade,
4 occupation, or business of the same nature as the work performed.”

5 *Id.* at 957.

6 21. The *Dynamex* holding was subsequently codified by the California Legislature.
7 See California Labor Code § 2750.3.

8 22. Contrary to California law, RCA Construction misclassified Plaintiff and Class
9 Members as independent contractors as a subterfuge to avoid treating them as employees. RCA
10 Construction, as a matter of established and uniform company policy and procedure, controlled,
11 among other things: job duties and responsibilities of Plaintiff and Class Members; the payment
12 of wages to Plaintiff and Class Members; the work and schedule of time in which Plaintiff and
13 the Class Members were suffered and permitted to work; the manner and/or means in which the
14 work was performed by Plaintiff and the Class Members; and the way Plaintiff and the Class
15 Members dressed and presented themselves at job sites. Finally, Plaintiff and the other Class
16 Members had no other means of profiting through self-management, as the only compensation
17 they received for the work they performed on behalf of RCA Construction was based upon hours
18 driven and other methods yet to be discovered.

19 23. By willfully misclassifying Plaintiff and Class Members as Independent
20 Contractors, as defined under California Labor Code §226.8(i)(4), RCA Construction lowered its
21 cost of doing business by means of, including but not limited to, the following:

22 A. RCA Construction avoided the payment of wages and minimum wages,
23 failed to pay overtime compensation and illegally calculated overtime
24 compensation, failed to provide meal and rest periods, failed to pay all
25 wages due to discharged or quitting employees, failed to maintain required
26 records, failed to provide accurate itemized wage statements, and failed to
27 indemnify employees for necessary expenditures and/or losses incurred in
28 discharging their duties;

- 1 B. RCA Construction did not report or pay the employer's share of federal or
2 state payroll taxes with respect to any of the funds paid to Plaintiff and the
3 Class Members, as required by law;
4 C. RCA Construction did not provide or pay for Worker's Compensation
5 insurance for Plaintiff and the Class Members;
6 D. RCA Construction did not provide for or pay for State Disability insurance
7 for Plaintiff and the Class Members;
8 E. RCA Construction did not provide for or pay for benefits to Plaintiff and
9 Class Members that other employees of RCA Construction received or
10 should have received.

11 24. As a proximate result of the violations as alleged herein against RCA
12 Construction, Plaintiff and the Class Members have suffered, and continue to suffer, substantial
13 losses related to, among other things, the loss of the employer's share of payroll taxes, the use
14 and enjoyment of such employee benefits, lost wages in the form of overtime payments that were
15 not paid, premium payments owed and due for missed meal and rest periods, reimbursements
16 owed and due for expenditures incurred in the discharge of their job duties, all associated
17 penalties, and attorney's fees and costs in compelling RCA Construction to fully perform its
18 obligations pursuant to the laws of the State of California.

19 25. Plaintiff and the Class Members seek to recover reimbursement of all damages
20 proximately resulting from such misclassification and/or unlawful reduction in compensation and
21 expense reimbursement, as well as the appropriate withholding of federal, state, and local income
22 taxes based on a flat withholding rate for supplemental wage payments in accordance with the
23 appropriate tax regulations, and any corresponding state or local law, and the Class Members'
24 share of FICA, Medicare, and state and local employment taxes that were improperly not paid by
25 RCA Construction as a result of the unlawful misclassification of Plaintiff and the Class
26 Members.

27 26. RCA Construction's failure to classify Plaintiff and Class Members as employees,
28 in violation of California law, was knowing and intentional. The decision to misclassify Plaintiff

1 and Class Members as Independent Contractors was made, maintained and enforced by RCA
2 Construction, and was done willfully, maliciously, oppressively, and fraudulently, with the
3 wrongful and deliberate intention of injuring Plaintiff and Class Members, and with conscious
4 disregard for the rights of Plaintiff and Class Members under California laws, all of which has
5 deprived Plaintiff and Class Members of their property and legal rights. Therefore, in addition to
6 all other types of relief requested herein, Plaintiff and Class Members are entitled recover
7 punitive and exemplary damages in amounts according to proof at the time of trial.

8 27. Pursuant to California Labor Code §226.8, RCA Construction is subject to a civil
9 penalty and damages of not less than five thousand dollars (\$5,000), and up to fifteen thousand
10 dollars (\$15,000), for each willful misclassification of Plaintiff and Class Members as
11 Independent Contractors. Additionally, Plaintiff alleges that RCA Construction engaged in a
12 pattern and practice of willfully misclassifying employees as independent contractors, and
13 therefore Plaintiff and Class Members seek penalties and damages of not less than ten thousand
14 dollars (\$10,000) and up to twenty-five thousand dollars (\$25,000) for each violation, in addition
15 to any other penalties, damages and fines as permitted by law.

16 **SECOND CAUSE OF ACTION**

17 **Failure to Provide Required Meal Periods**

18 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 4-2001, § 11 and all**
19 **other applicable IWC Wage Orders]**

20 **(On Behalf of Plaintiff and the Class Against all Defendants)**

21 28. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 27.

23 29. During the statute of limitations period, as part of RCA Construction's unlawful
24 policies and practices to deprive its non-exempt employees of all wages earned and due, RCA
25 Construction required, permitted or otherwise suffered Plaintiff and Class members to perform
26 work during their meal periods, to completely skip their meal periods, to take late and short meal
27 periods, and RCA Construction has otherwise failed to provide the required meal periods to
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1 Plaintiff and Class members as required under California Labor Code §§ 226.7, 512, and § 11 of
2 the applicable IWC Order.

3 30. RCA Construction has implemented several common policies and practices that
4 have caused Plaintiff and Class members to systematically miss and otherwise take non-
5 compliant meal periods.

6 31. RCA Construction grossly understaffs its facility such that Class members
7 regularly miss or take non-compliant meal periods. As a direct consequence of this understaffing,
8 Plaintiff and Class members have so much work to complete within their scheduled shifts that
9 they are forced to skip their meal periods altogether, to take them after working longer than five
10 (5) hours, to perform work during their meal periods, or return to work after taking less than a
11 thirty (30) minute meal period.

12 32. Moreover, RCA Construction failed to implement adequate policies or procedures
13 to provide meal periods to its non-exempt employees. Among other things, RCA Construction
14 overworked Plaintiff and Class members and did not adequately advise them of their rights to
15 take meal periods, and systematically denied them the opportunity to take meal periods, including
16 second meal periods during shifts of ten hours or longer.

17 33. RCA Construction has also violated California Labor Code §§ 226.7, IWC Wage
18 Order No. 4-2001, § 11, all other applicable IWC Wage Orders, and the California Unfair
19 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff
20 and Class members who were not authorized and permitted to take a complete, timely,
21 uninterrupted meal period, in accordance with the applicable wage order, one additional hour of
22 compensation at the proper regular rate of pay for each workday that such a meal period was not
23 authorized or permitted.

24 34. RCA Construction further violated California Labor Code sections 226.7, 510,
25 1194, 1197, IWC Wage Order No. 4-2001 and all other applicable IWC Wage Orders by failing
26 to compensate Plaintiff and Class members for all hours worked during their meal periods.

1 35. As a proximate result of the aforementioned violations, Plaintiff and Class
2 members have been damaged in an amount according to proof at trial, and seek all wages earned
3 and due, interest, penalties, expenses, and costs of suit.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Provide Required Rest Breaks**

6 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12, and all other applicable**

7 **IWC Wage Orders]**

8 **(On Behalf of Plaintiff and the Class Against all Defendants)**

9 36. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 35.

11 37. At all times relevant herein, as part of RCA Construction's illegal policies and
12 practices to deprive its non-exempt employees of all wages earned and due, RCA Construction
13 failed to permit Plaintiff and Class members to take rest breaks as required under California
14 Labor Code §§ 226.7 and 512, and § 12 of all applicable IWC Wage Orders.

15 38. As with meal periods, RCA Construction's policies and practices caused Plaintiff
16 and Class members to miss or otherwise take non-compliant rest periods by, among other things,
17 giving them unreasonable amounts of work that had to be completed within their shift such that
18 rest periods simply could not be taken. This was the result of systematic understaffing. In
19 addition, RCA Construction did not adequately notify Plaintiff and Class members of their rights
20 to take rest periods, and systematically denied them the opportunity to take rest periods, including
21 all rest periods required during long shifts, which at times exceeded 12 consecutive hours.

22 39. RCA Construction further violated California Labor Code § 226.7, IWC Wage
23 Order No. 4-2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
24 17200 *et. seq.*, by failing to pay Plaintiff and Class members who were not provided with a rest
25 break, in accordance with the applicable wage order, one additional hour of compensation at the
26 proper regular rate of pay for each workday that a rest break was not provided.

1 40. As a proximate result of the aforementioned violations, Plaintiff and Class
2 members have been damaged in an amount according to proof at trial, and seek all wages earned
3 and due, interest, penalties, expenses, and costs of suit.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3 and all other**
7 **applicable IWC Wage Orders]**

8 **(On Behalf of Plaintiff and the Class against all Defendants)**

9 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 40.

11 42. Pursuant to California Labor Code §§ 510, 1194, IWC Wage Order No. 4-2001, §
12 3, and all other applicable IWC Wage Orders, RCA Construction is required to compensate
13 Plaintiff and Class members for all overtime, which is calculated at one and one-half (1 ½) times
14 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
15 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double
16 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
17 in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

18 43. Plaintiff and Class members are current and former non-exempt employees
19 entitled to the protections of California Labor Code §§ 510, 1194, IWC Wage Order No. 4-2001
20 and all other applicable IWC Wage Orders. During the Class period, RCA Construction failed to
21 compensate Plaintiff and Class members for all overtime hours worked as required under the
22 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
23 methods: failing to properly calculate the regular rate of pay for the purposes of calculating
24 overtime pay owed and due; requiring, permitting or suffering Plaintiff and Class members to
25 work off the clock; requiring waste disposal truck drivers to remain on-call between assignments;
26 requiring, suffering, or permitting Plaintiff and Class members to work through meal and rest
27 periods but not compensating them for this time, failing to include this time in all hours worked;

1 rounding the time worked by Plaintiff and Class members unfavorably; and other methods to be
2 discovered.

3 44. In a short-sighted attempt to maximize profits, RCA Construction has understaffed
4 its facility and its waste disposal truck drivers are not adequately scheduled. Not only has this
5 practice resulted in widespread missed meal and rest breaks, but it has also caused Plaintiff and
6 Class members to perform significant amounts of work while off-the-clock. RCA Construction
7 knows that Plaintiff and Class members perform this work off-the-clock work because RCA
8 Construction's owner and operator was aware of them doing this work well before the beginning
9 of the start of their scheduled shifts.

10 45. Plaintiff and Class members also work perform substantial work off-the-clock as a
11 result of RCA Construction's unlawful rounding practice. RCA Construction implements a
12 rounding practice wherein it rounds the time worked by non-exempt employees to the nearest
13 quarter-hour. RCA Construction pays Plaintiff and Class members based on rounded time. This
14 rounding practice results in systematic unpaid overtime.

15 46. Plaintiff and Class members must get to work by no later than the start of their
16 shifts – and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
17 minutes late. Likewise, Plaintiff and Class members are in a rush to complete their mandatory
18 job duties, so they are rarely afforded the benefit of clocking out early at the end of their shifts.
19 This results in the widespread underpayment of time worked, including overtime.

20 47. In violation of California law, RCA Construction has knowingly and willfully
21 refused to perform its obligations to compensate Plaintiff and Class members for all wages earned
22 and all hours worked at the legally required rates of pay. As a proximate result, Plaintiff and
23 Class members have suffered, and continue to suffer, substantial losses related to the use and
24 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
25 seeking to compel RCA Construction to fully perform its obligations under state law, all to their
26 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
27 this Court.

48. RCA Construction's conduct described herein violates California Labor Code §§ 510, 1194, 1198, IWC Wage Order No. 4-2001, § 3 and all other applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of wages owed to them by RCA Construction, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FIFTH CAUSE OF ACTION

Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 4-2001, § 4, and all other applicable IWC Wage Orders]

(On Behalf of Plaintiff and the Class against all Defendants)

49. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 48.

50. Pursuant to Cal. Lab. Code §§ 1194, 1197, § 4 of IWC Wage Order No. 4, and all other applicable IWC Wage Orders, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

51. During the statute of limitations period, the hourly rates for Plaintiff and Class members were precisely at minimum wage. Based on this common practice, RCA Construction failed to actually pay Plaintiffs and Class members minimum wages for all hours worked by requiring, permitting or suffering them to work off-the-clock, such as requiring them to work through meal, rest breaks, but not compensating them for this time, and failing to include this time in all hours worked, and other methods to be discovered.

52. RCA Construction's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, § 4 of IWC Wage Order No. 4, and all other applicable IWC Wage Orders. As a proximate result of the aforementioned violations, Plaintiff and Class members have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law, Plaintiff and Class members are entitled to

1 recover the unpaid balance of wages owed to them by RCA Construction, plus interest, penalties,
2 attorneys' fees, expenses, and costs of suit.

3 **SIXTH CAUSE OF ACTION**

4 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

5 **[Cal. Lab. Code §§ 201, 202, 203]**

6 **(On Behalf of Plaintiff and the Class against all Defendants)**

7 53. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 52.

9 54. Pursuant to California Labor Code §§ 201, 202, and 203, RCA Construction is
10 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
11 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
12 and unpaid at the time of discharge are due and payable immediately.

13 55. Furthermore, pursuant to California Labor Code § 202, RCA Construction is
14 required to pay all accrued wages due to an employee no later than seventy-two (72) hours after
15 the employee quits his or her employment, unless the employee provided seventy-two (72) hours
16 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
17 wages at the time of quitting.

18 56. California Labor Code § 203 provides that if an employer willfully fails to pay, in
19 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
20 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
21 compensation to the employee at the same rate for up to thirty (30) workdays.

22 57. During the statute of limitations period, RCA Construction has willfully failed to
23 pay accrued wages and other compensation to Plaintiff and Class members in accordance with
24 California Labor Code §§ 201 and 202. RCA Construction does not have a sufficient policy to
25 provide Plaintiff and Class members with their final paychecks within the timeframes required
26 under California law. In addition, because RCA Construction has failed and continues to fail to
27 properly compensate Plaintiff and Class members for all hours worked when due, overtime
28 wages, minimum wages, and compensation for non-compliant meal and rest breaks, RCA

1 Construction has also willfully failed and continues to fail to pay accrued wages and other
2 compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201
3 and 202. Moreover, RCA Construction fails to pay Class members employed on a temporary
4 basis weekly in accordance with Labor Code §201.3.

5 58. As a result, Plaintiff and Class members are entitled to all available statutory
6 penalties, including the waiting time penalties provided in California Labor Code § 203, together
7 with interest thereon, as well as other available remedies.

8 59. As a proximate result of RCA Construction's unlawful actions and omissions,
9 Plaintiff and Class members have been deprived of compensation in an amount according to
10 proof at the time of trial, but in excess of the jurisdiction of this Court, and are entitled to
11 recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to
12 California Labor Code § 1194.

13 **SEVENTH CAUSE OF ACTION**

14 **Failure to Pay Timely Wages**

15 **[Cal. Lab. Code §§ 204, 210]**

16 **(On Behalf of Plaintiff and the Class against All Defendants)**

17 60. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 59.

19 61. California Labor Code § 204 provides that all wages earned by any person in any
20 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
21 wages due upon termination of an employee, are due and payable between the 16th and 26th day
22 of the month during which the labor was performed. California Labor Code § 204 further
23 provides that all wages earned by any person in any employment between the 16th and the last
24 day, inclusive, of any calendar month, other than those wages due upon termination of an
25 employee, are due and payable between the 1st and the 10th day of the following month.
26 California Labor Code § 204 further provides that all wages eared for labor in excess of the
27 normal work period shall be paid no later than the payday for the next regular payroll period.

1 62. During the statute of limitations period, RCA Construction, among other things,
2 willfully failed to pay Plaintiff and Class members all wages earned and due to them, including
3 but not limited to, meal and rest break premiums, overtime and minimum wages, and payment for
4 work performed off-the-clock, within any time period permissible under Labor Code § 204.

5 63. As a proximate result of RCA Construction's unlawful actions and omissions,
6 Plaintiff and Class members are entitled to all available statutory penalties, including but not
7 limited to, civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, and
8 other applicable provisions under the California Labor Code and IWC Wage Orders, and an
9 award of costs, expenses, and reasonable attorneys' fees.

10 **EIGHTH CAUSE OF ACTION**

11 **Failure to Maintain Required Records**

12 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 7, and all other**
13 **applicable IWC Wage Orders]**

14 **(On Behalf of Plaintiff and the Class against all Defendants)**

15 64. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 63.

17 65. During the statute of limitations period, as part of RCA Construction's illegal
18 payroll policies and practices to deprive Plaintiff and Class members of all wages earned and due,
19 RCA Construction knowingly and intentionally failed to maintain records as required under
20 California Labor Code §§ 226, 1174, IWC Wage Order No. 4-2001, § 7 and all other applicable
21 IWC Wage Orders, including but not limited to, the following records: total daily hours worked
22 by each non-exempt employee; applicable rates of pay; all deductions; meal periods; time records
23 showing when each non-exempt employee begins and ends each workday; and accurate itemized
24 wage statements.

25 66. As a proximate result of RCA Construction's unlawful actions and omissions,
26 Plaintiff and Class members have been damaged in an amount according to proof at trial, and are
27 entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class
28 members are entitled to all available statutory penalties, including but not limited to civil

1 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,
2 expenses, and reasonable attorneys' fees, including but not limited to those provided in California
3 Labor Code § 226(e), as well as other available remedies.

4 **NINTH CAUSE OF ACTION**

5 **Failure to Furnish Accurate Itemized Wage Statements**

6 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 4-2001, § 7, and all other**

7 **applicable IWC Wage Orders]**

8 **(On Behalf of Plaintiff and the Class against all Defendants)**

9 67. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 66.

11 68. During the statute of limitations period, RCA Construction routinely failed to
12 provide Plaintiff and Class members with timely, accurate, and itemized wage statements in
13 writing showing each employee's gross wages earned, total hours worked, all deductions made,
14 net wages earned, the name and legal address of the hiring entity, and all applicable hourly rates
15 in effect during each pay period and the corresponding number of hours worked at each hourly
16 rate, in violation of California Labor Code § 226, IWC Wage Order No. 4-2001, § 7 and all other
17 applicable IWC Wage Orders.

18 69. RCA Construction's wage statements violate Labor Code § 226 by, among other
19 things, failing to provide Plaintiff and Class members with proper meal and rest breaks and not
20 including in their wage statements one (1) additional hour of compensation at their regular rates
21 of pay for each non-compliant meal or rest break. In addition, RCA Construction required
22 Plaintiff and Class members to work off-the-clock without compensation and illegally rounded
23 the time that they worked, rendering the wage statements inaccurate.

24 70. RCA Construction knowingly and intentionally failed to provide Plaintiff and
25 Class members with timely, accurate, and itemized wage statements in accordance with
26 California Labor Code § 226(a) so as to prevent Plaintiff and Class members from being able to
27 determine whether they were being paid for, among other things, all of the hours they worked and
28 at the proper rates of pay.

1 71. As a proximate result of RCA Construction's unlawful actions and omissions,
2 Plaintiff and Class members have been damaged in an amount according to proof at trial, and
3 seek all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members
4 are entitled to all available penalties, including but not limited to penalties pursuant to California
5 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
6 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
7 well as other available remedies.

8 **TENTH CAUSE OF ACTION**

9 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**

10 **[Cal. Lab. Code § 2802]**

11 **(On Behalf of Plaintiff and the Class against All Defendants)**

12 72. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 71.

14 73. California Labor Code § 2802(a) requires an employer to indemnify an employee
15 for all necessary expenditures or losses incurred by the employee in direct consequence of the
16 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

17 74. During the statute of limitations period, RCA Construction knowingly and willfully
18 failed to indemnify Plaintiff and Class Members for all business expenses and/or losses incurred in
19 direct consequence of the discharge of their duties while working under the direction of RCA
20 Construction, including but not limited to, cellular phone usage and other employment-related
21 expenses, in violation of California Labor Code § 2802.

22 75. As a proximate result of RCA Construction's unlawful actions and omissions,
23 Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek
24 reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor
25 Code § 2802(b). Additionally, Plaintiff and Class Members are entitled to all available statutory
26 penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided
27 in California Labor Code § 2802(c), as well as other available remedies.

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ELEVENTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code § 17200 *et. seq.*]

(On Behalf of Plaintiff and the Class against all Defendants)

76. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 75.

77. Each and every one of RCA Construction’s acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to, RCA Construction’s failure to provide required meal and rest breaks, failure to pay proper overtime and minimum wage compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, and failure to furnish accurate itemized wage statements or to maintain required records, constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

78. RCA Construction’s violations of California wage and hour laws constitute a business practice because RCA Construction’s aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

79. Among other practices, RCA Construction has avoided payment of wages, overtime wages, the provision of meal and rest breaks, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, RCA Construction has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations. In addition, RCA Construction failed to comply with the notice requirements of the Wage Theft Prevention Act including Labor Code Section 2810.5 further resulting in unlawful business practices.

80. As a result of these unfair and unlawful business practices, RCA Construction has reaped unfair and illegal profits during the Class period at the expense of Plaintiff and Class

1 members, and members of the public. RCA Construction should be made to disgorge its ill-
2 gotten gains and to restore them to Plaintiff and Class members.

3 81. RCA Construction's unfair and unlawful business practices entitle Plaintiff and
4 Class members to seek preliminary and permanent injunctive relief, including but not limited to
5 orders that RCA Construction account for, disgorge, and restore to Plaintiff and Class members
6 the wages and other compensation unlawfully withheld from them. Plaintiff and Class members
7 are entitled to restitution of all monies to be disgorged from RCA Construction in an amount
8 according to proof at the time of trial.

9 **TWELFTH CAUSE OF ACTION**

10 **Representative Action for Civil Penalties Pursuant to the Private Attorneys**

11 **General Act ("PAGA")**

12 **[Cal. Lab. Code §§ 2698- 2699.5]**

13 **(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)**

14 82. Plaintiff incorporates herein by specific reference as though fully set forth the
15 allegations in paragraphs 1 through 81, with exception of the allegations in Paragraphs 15
16 through 16 (A) – (D).

17 83. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code
18 § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other
19 current and former non-exempt employees of RCA Construction pursuant to the procedures
20 specified in California Labor Code § 2699.3, because Plaintiff was employed by RCA
21 Construction and the alleged violations of the California Labor Code were committed against
22 Plaintiff.

23 84. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
24 California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but
25 not limited to penalties under California Labor Code §§ 2699, in a representative action for the
26 violations set forth above, including but not limited to violations of California Labor Code §§
27 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. Plaintiff is also entitled
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1 to an award of reasonable attorneys' fees and costs pursuant to California Labor Code §
2 2699(g)(1).

3 85. Pursuant to California Labor Code §§ 2699.3, on May 12, 2023, Plaintiff gave
4 written notice by certified mail to the California Labor and Workforce Development Agency
5 ("LWDA") and RCA Construction of the specific provisions of the California Labor Code and
6 IWC Wage Orders alleged to have been violated, including the facts and theories to support the
7 alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice
8 letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged
9 violations. Therefore, Plaintiff has complied with all of the requirements set forth in California
10 Labor Code § 2699.3 to commence a representative action under PAGA.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
13 situated, respectfully prays for relief against RCA Construction and DOES 1 through 50,
14 inclusive, and each of them, as follows:

- 15 1. For compensatory damages in an amount to be ascertained at trial;
- 16 2. For restitution of all monies due to Plaintiff and Class members, as well as
17 disgorged profits from the unfair and unlawful business practices of RCA Construction;
- 18 3. For meal and rest break compensation pursuant to California Labor Code § 226.7,
19 IWC Wage Order No. 4-2001 and all applicable IWC Wage Orders;
- 20 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 21 5. For preliminary and permanent injunctive relief enjoining RCA Construction from
22 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
23 from engaging in the unlawful business practices complained of herein;
- 24 6. For waiting time penalties pursuant to California Labor Code § 203;
- 25 7. For statutory and civil penalties according to proof;
- 26 8. For interest on the unpaid wages at 10 percent per annum pursuant to California
27 Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other
28 applicable provision providing for pre-judgment interest;

1 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
2 218.5, 226, 1194, 2802, and 2699, and California Civil Code § 1021.5, and/or any other
3 applicable provisions providing for attorneys' fees and costs;

4 10. For declaratory relief;

5 11. For an order requiring and certifying the First through Eleventh Causes of Action
6 as a class action;

7 12. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
8 Class counsel; and

9 13. For such further relief that the Court may deem just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
12 with respect to all issues triable of right by jury.

13 DATED: July 19, 2023

THE LAW OFFICE OF SCOTT E. WHEELER

14
15 By: _____

16 Scott E. Wheeler
17 Justin A. Wheeler

18 *Attorneys for Plaintiff and the Putative Class*
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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO**

San Bernardino District
247 West 3rd St
San Bernardino CA 92415
www.sb-court.org
909-708-8678

*Complex-Class Action - Osvaldo Munoz v. RCA Construction Clean Up, Inc, et al *

NOTICE OF TRIAL SETTING CONFERENCE and NOTICE OF CASE ASSIGNMENT

Case Number

CIVSB2317103

LAW OFFICE OF SCOTT ERNEST WHEELER
250 WEST FIRST STREET
SUITE 216
CLAREMONT CA 91711

This case has been assigned to: Jeffrey R Erickson in Department S14 - SBJC for all purposes.

Notice is hereby given that the above-entitled case has been set for Trial Setting Conference on:

Hearing Date: 01/29/2024 at 8:30 AM in Department S14 - SBJC

Date: 7/27/2023

By:

Khiyara Frontela, Deputy Clerk

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above-listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above-listed notice by:

- ☒ Enclosed in a sealed envelope mailed to the interested party addressed above for collection and mailing this date, following standard Court practices.
- ☐ Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above or as shown on the attached listing.
- ☐ A copy of this notice was given to the filing party at the counter.
- ☐ A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file-stamped documents.

Date of Mailing: 7/27/2023

I declare under penalty of perjury that the forgoing is true and correct. Executed on 7/27/2023 at San Bernardino, CA.

By:

Khiyara Frontela, Deputy Clerk