

Kevin Mahoney, Esq. (SBN: 235367)
kmahoney@mahoney-law.net
John A. Young (SBN: 299809)
jyoung@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone No.: 562-590-5550
Facsimile No.: 562-590-8400

Electronically FILED by
Superior Court of California,
County of Los Angeles
7/12/2023 12:05 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By R. Lozano, Deputy Clerk

Attorneys for Plaintiff JAVIER THOMAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JAVIER THOMAS,

Plaintiff,

v.

A-M ELECTRIC SERVICE INC.; and
DOES 1 through 50, inclusive,

Defendant.

Case No.: **23STCV16233**

COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages;
2. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys General Act, Labor Code § 2802 for Failure to Reimburse for Necessary Expenditures; and
6. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment.

DEMAND FOR JURY TRIAL

1 Plaintiff JAVIER THOMAS (“Plaintiff”) complains and alleges as follows:

2 **INTRODUCTION**

3 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
4 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
5 Defendant A-M Electric Service Inc. (“Defendant”). The term “RELEVANT TIME PERIOD” or
6 “TIME PERIOD” is defined as one (1) year prior to Plaintiff’s Notice of Labor Code Violations
7 to the Labor and Workforce Development Agency on May 5, 2023, through the present. Plaintiff
8 reserves the right to amend this complaint to reflect a different “Time Period” as further discovery
9 is conducted.

10 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
11 against Defendant for its: (1) failure to pay all wages due, including minimum and overtime
12 wages; (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to
13 provide rest periods or premium compensation in lieu thereof; (4) failure to provide accurate
14 itemized wage statements; (5) failure to reimburse for necessary business expenditures; and (6)
15 failure to pay wages due upon termination of employment.

16 3. At all relevant times herein, Defendant has consistently maintained and enforced
17 the following unlawful policies and practices against Plaintiff:

- 18 (a) Willfully refusing to pay all hours worked, including both minimum and overtime
19 wages;
- 20 (b) Willfully refusing to permit off-duty meal periods or providing compensation in
21 lieu thereof;
- 22 (c) Willfully refusing to permit rest periods or providing compensation in lieu
23 thereof;
- 24 (d) Willfully refusing to furnish accurate itemized wage statements upon payment of
25 wages;
- 26 (e) Willfully refusing to reimburse for necessary business expenditures; and
27 (f) Willfully refusing to pay all wages due upon separation of employment.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

5. Venue is proper in the County of Los Angeles because the Defendant maintains its location and transacts business in this county, the obligations and liability arise in this county, and work performed by Plaintiff and Aggrieved Employees that form the subject of this action occurred in this county.

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

Plaintiff

Defendant

///

1 10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
2 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
3 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
4 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
5 capacities of the DOE Defendant when ascertained.

6 11. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all
7 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
8 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
9 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
10 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
11 joint employers and conspire with one another to increase profits by engaging in the conduct
12 described in this complaint.

13 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
15 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
16 below was acting, at least in part, within the course and scope of that authority as such agent,
17 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
18 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
19 are legally attributable to the other Defendants.

20 **PAGA ADMINISTRATIVE PREREQUISITE**

21 13. This complaint, Plaintiff brings this case as a representative action seeking
22 penalties for the State of California in a representative capacity, as provided by the Private
23 Attorney General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee was
24 employed by Defendant and did not receive all wages due, was not paid regular wage, was not
25 paid overtime, was not provided accurate wage statements, was not reimbursed for necessary
26 expenditures, and was not able to take lawful meal and rest breaks or receive premium
27 compensation in lieu thereof.

28 ///

14. Prior to filing this complaint on May 5, 2023, Plaintiff gave written notice by certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. A true and correct copy of Plaintiff’s original letter sent to the LWDA on May 5, 2023, is attached hereto as Exhibit A.

FACTUAL ALLEGATIONS

16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its employees the benefits due under California's wage and hour laws for work performed in California. Defendant wrongfully refused to pay Plaintiff and the Aggrieved Employees minimum wages, overtime compensation, meal and rest break premiums, and other statutory benefits mandated by California.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendant's policies and practices described herein are common across each of Defendant's locations within the State of California.

1 19. Plaintiff is informed and believes, and based thereon alleges, that at all times
2 herein mentioned, Defendant was advised by skilled lawyers, employees and other professionals
3 who were knowledgeable about California's wage and hour laws, employment and personnel
4 practices, and the requirements of California law.

5 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
6 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages for
7 all hours worked, including minimum, regular, and overtime wages, and that they were not
8 receiving all wages earned for work that was required to be performed. In violation of the Labor
9 Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved Employees earned
10 wages by failing compensate Plaintiff and Aggrieved Employees the mandatory minimum wage.
11 Defendant also failed to pay Plaintiff and Aggrieved Employees at the requisite over and double
12 time rate for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday.
13 Specifically, Plaintiff and Aggrieved Employees were obligated by Defendant to report to job
14 sites and or meet to discuss work responsibilities before being clocked-in and after being clocked
15 out for their meal period.

16 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
17 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all required
18 meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
19 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
20 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
21 of not providing proper meal periods. Plaintiff and Aggrieved Employees missed their meal
22 periods, took them late, or had them interrupted as a result of work-related tasks and or an job
23 responsibilities Defendant assigned to Plaintiff and Aggrieved Employees. Defendant also had a
24 pattern, practice, and policy of not providing second meal periods. As a result of Defendant's
25 daily work requirements, demands, and unlawful policies, Plaintiff and Aggrieved Employees did
26 not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff and
27 Aggrieved Employees' regular rate of pay when they did not receive a timely, uninterrupted 30-
28 minute off-duty meal period.

1 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
2 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all paid
3 rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'
4 regular rate of pay when a rest period was missed, interrupted, or shortened. In violation of the
5 Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing
6 paid rest periods. Specifically, Defendant failed to implement a rest break policy and Defendant
7 did not inform Plaintiff and Aggrieved Employees when they were entitled took to breaks and or
8 prioritized work responsibilities over providing Plaintiff and Aggrieved Employees their
9 mandatory rest breaks. As a result of Defendant's daily work requirements, demands, and failure
10 to implement a rest break policy, Plaintiff and Aggrieved Employees did not receive all paid rest
11 periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees regular
12 rate of pay when a paid rest period was missed, truncated, or interrupted.

13 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
14 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
15 wage statements that accurately showed their actual hours worked, total hours worked, number
16 of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per
17 pay period in accordance with California law. In violation of the Labor Code, Plaintiff and
18 Aggrieved Employees were not provided with accurate itemized wage statements showing their
19 rate of pay, the actual hours worked, correct premium wages earned per pay period, as well as the
20 total hours work per pay period.

21 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant
22 willfully failed to reimburse its employees for necessary business expenses incurred during their
23 employment with Defendant. Specifically, Defendant failed to indemnify Plaintiff and other
24 employees for expenditures they incurred on their behalf, including without limitation, the
25 reimbursement of utilizing their personal vehicle and cell phones in the discharge of their duties

26 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
27 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
28 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff

1 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
2 time periods, upon separation of employment.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
5 **OVERTIME**

6 **(Plaintiff Against All Defendants)**

7 26. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
8 complaint as if fully set forth herein.

9 27. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
10 and forty (40) hours per week. Defendant failed to pay Plaintiff and Aggrieved Employees
11 minimum wage for all hours worked and overtime premium for hours worked in excess of over
12 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendant.
13 Defendant failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
14 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
15 Defendant. Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner
16 that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby
17 causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or
18 forty (40) hours per week.

19 28. As such, Plaintiff and Aggrieved Employees seek overtime in an amount according
20 to proof, which they earned and accrued one (1) year prior to filing this complaint, according to
21 proof, as part of the civil penalty pursuant to Labor Code section 558, subdivision (a).

22 29. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
23 Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and
24 Aggrieved Employees were denied proper wages as a result of Defendant's policy of having
25 Plaintiff and Aggrieved Employees work before clocking in and/or after clocking out and failing
26 to compensate Plaintiff and Aggrieved Employees when they worked through meal breaks off-
27 the-clock. As such, Defendant failed to compensate Plaintiff and Aggrieved Employees for all
28 hours worked at the proper rate of pay pursuant to Labor Code section 510.

1 30. Since the LWDA has not indicated that it will be investigating more than 65 days
2 since Plaintiff provided notice, and because Defendant took no corrective action to remedy the
3 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
4 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
5 the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each
6 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
7 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

8 31. Plaintiff is informed and believes that Defendant has violated, and continues to
9 violate, provisions of the Labor Code and applicable Wage Orders related to the payment of
10 minimum wages and overtime.

11 32. Plaintiff, as a personal representative of the general public, will and does seek to
12 recover any and all penalties for each and every violation shown to exist or to have occurred
13 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
14 otherwise only available to public agency enforcement actions. Funds recovered will be
15 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
16 reimbursed to the LWDA.

17 33. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
18 costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment
19 interest.

20 **SECOND CAUSE OF ACTION**

21 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE MEAL PERIODS OR**
22 **PREMIUM COMPENSATION IN LIEU THEREOF**

23 **(Lab. Code, §§ 226.7 and 512)**

24 **(Plaintiff against All Defendants)**

25 34. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
26 fully set forth herein.

27 35. Labor Code sections 226.7 and 512 and IWC Wage Order 9-2001, Sect. 11
28 provides that no employer shall employ any person for a work period of more than five (5) hours

1 without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes
2 or employ any person for a work period of more than ten (10) hours without a second meal period
3 of not less than thirty (30) minutes.

4 36. Labor Code section 226.7 provides that if an employer fails to provide an
5 employee a meal period in accordance with this section, the employer shall pay the employee one
6 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
7 period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide
8 legally compliant meal periods in addition to impeding, discouraging, dissuading and/or not
9 relieving employees from all work duties during meal periods thereby preventing employees from
10 taking legally compliant meal periods.

11 37. Industrial Welfare Commission (IWC) Wage Order No. 9-2001 (Wage Order 9)
12 section 11(A) states, "Unless the employee is relieved of all duty during a 30-minute meal period,
13 the meal period shall be considered an "on duty" meal period and counted as time worked. An
14 "on duty" meal period shall be permitted only when the nature of the work prevents an employee
15 from being relieved of all duty and when by written agreement between the parties an on-the-job
16 paid meal period is agreed to. The written agreement shall state that the employee may, in writing,
17 revoke the agreement at any time."

18 38. The burden to prove that a meal or rest period violation has occurred normally
19 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* (238 Cal. App. 4th 1138,
20 1159-60 (2015)), where an employer fails to keep accurate records of meal and rest periods, a
21 presumption of meal and rest period violations is created, shifting the burden to the employer to
22 prove that meal and rest period violations did not occur.

23 39. Defendant failed to schedule non-exempt employees adequately to reasonably
24 ensure Plaintiff and Aggrieved Employees could take and/or receive such meal periods within the
25 statutory timeframe. Further, Defendant assigned Plaintiff and Aggrieved Employees work
26 assignments in such a way that encouraged non-exempt employees to work through meal periods.
27 In addition, Plaintiff and Aggrieved Employees were obligated to work through meal periods
28 while off-the-clock in order to complete work. Defendant denied Plaintiff and Aggrieved

1 Employees duty-free meal periods, as a result, Plaintiff and Aggrieved Employees were often
2 forced to forego meal periods and/or work during their meal periods. In so doing, Defendant has
3 intentionally and improperly denied meal periods to Plaintiff and Aggrieved Employees in
4 violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

5 40. Defendant failed to keep accurate records of the meal periods taken by Plaintiff
6 and Aggrieved Employees.

7 41. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
8 than five (5) hours in a workday.

9 42. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
10 worked more than ten (10) hours in a workday.

11 43. At all times relevant hereto, Defendant, failed offer or to schedule non-exempt
12 positions in a manner so as to reasonably provide meal and/or work free meal period as required
13 by Labor Code sections 226.7 and 512.

14 44. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
15 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
16 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
17 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, injury which will be
18 ascertained according to proof at trial.

19 45. Further, Defendant's failure to maintain accurate records of the meal periods taken
20 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
21 and shifts the burden to Defendant to prove they did not occur.

22 46. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
23 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,
24 subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well
25 as the assessment of any civil penalties against Defendants, and each of them, in a sum as provided
26 by the Labor Code and/or other statutes.

27 47. Since the LWDA has not indicated that it will be investigating and 65 days have
28 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy

1 the allegations set forth above, Plaintiff, as a representative of the people of the State of California,
2 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
3 the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each
4 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,
5 subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

6 48. Plaintiff is informed and believes that Defendant has violated and continues to
7 violate provisions of the Labor Code and applicable Wage orders related to the payment of
8 minimum wages, including overtime.

9 49. Plaintiff, as a personal representative of the general public, will and does seek to
10 recover any and all penalties for each and every violation shown to exist or to have occurred
11 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
12 otherwise only available to public agency enforcement actions. Funds recovered will be
13 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
14 reimbursed to the LWDA.

15 50. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
16 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

17 **THIRD CAUSE OF ACTION**

18 **VIOLATION OF PAGA FOR FAILURE TO PROVIDE REST PERIODS OR**
19 **PREMIUM COMPENSATION IN LIEU THEREOF**

20 **(Lab. Code, §§ 226.7 and 512)**

21 **(Plaintiff against All Defendants)**

22 51. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
23 preceding paragraphs of this complaint as if fully set forth herein.

24 52. Labor Code section 226.7 provides that employers authorize and permit all
25 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

26 53. Labor Code section 226.7, subdivision (b), provides that if an employer fails to
27 provide an employee rest periods in accordance with this section, the employer shall pay the
28

1 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
2 that the rest period is not provided.

3 54. Defendant, and each of them, failed and or refused to implement a relief system
4 by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest
5 periods. Defendant denied Plaintiff and Aggrieved Employees duty free rest periods by
6 interrupting Plaintiff and Aggrieved Employees' rest periods. By and through their actions,
7 Defendant intentionally and improperly denied duty free rest periods to the Plaintiff and
8 Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

9 55. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with
10 duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all
11 together in violation of Labor Code section 226.7 and 512.

12 56. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and
13 Aggrieved Employees.

14 57. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
15 more than four (4) hours in a workday.

16 58. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff
17 and Aggrieved Employees as a result of their work being scheduled by Defendant, Plaintiff and
18 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
19 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
20 ascertained according to proof at trial.

21 59. Plaintiff, by virtue of Plaintiff's employment with Defendant, Defendant's failure
22 to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant's policy of
23 requiring employees to work through their rest periods without receiving compensation in lieu
24 thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
25 satisfied all prerequisites to serve as a representative of the general public to enforce California's
26 labor laws, and the penalty provisions identified in Labor Code section 2699.5.

27 60. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
28 recovery of meal period compensation pursuant to Labor Code sections 226.7 and 558,

subdivision (a), which they are owed beginning one (1) year prior to filing this complaint as well as the assessment of any civil penalties against Defendant, and each of them, in a sum as provided by the Labor Code and/or other statutes. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 226.7 and 512.

61. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

62. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

FOURTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED

WAGE STATEMENTS

(Lab. Code, §§ 1174, 226, subd. (A), (E))

(Plaintiff against All Defendants)

63. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

64. Labor Code section 226, subdivision (a), states in pertinent part that, "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the

1 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
2 only the last four digits of his or her social security number or an employee identification number
3 other than a social security number; (8) the name and address of the legal entity that is the
4 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
5 number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

6 65. Defendant knowingly and intentionally failed to provide timely and accurate
7 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
8 section 226, subdivision (a), by failing to record the accurate number of hours worked, the
9 accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the
10 accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved
11 Employees.

12 66. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
13 section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the
14 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
15 violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

16 67. Plaintiff, as a personal representative of the general public, will and does seek to
17 recover any and all penalties for each and every violation shown to exist or to have occurred
18 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
19 otherwise only available to public agency enforcement actions. Funds recovered will be
20 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
21 reimbursed to the LWDA.

22 68. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
23 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

3 **TERMINATION OF EMPLOYMENT**

4 **(Lab. Code, §§ 201, 203)**

5 **(Plaintiff against All Defendants)**

6 69. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
7 preceding paragraphs of this complaint as if fully set forth herein.

8 70. Plaintiff and certain members of the Aggrieved Employees who ended their
9 employment with Defendant during the Relevant Time Period, were entitled to be promptly paid
10 both minimum wage and lawful overtime compensation and other premiums, as required by Labor
11 Code sections 201 and 203.

12 71. Defendant refused and/or failed to promptly compensate Plaintiff and Aggrieved
13 Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as
14 well as pay both minimum and overtime compensation owed for work performed for Defendant.

15 72. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
16 with standing to bring an action under the PAGA and has suffered injury as to one or more
17 violations committed by Defendant. Plaintiff has satisfied all prerequisites to serve as a
18 representative of the general public to enforce California's labor laws, and the penalty provisions
19 identified in Labor Code section 2699.5.

20 73. Plaintiff, as a representative of the people of the State of California, will seek any
21 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
22 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
23 that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions:
24 201-203, 226, 226.7, 510, 512, 1174, and 1194.

25 74. Plaintiff, as a personal representative of the general public, will and does seek to
26 recover any and all penalties for each and every violation shown to exist or to have occurred
27 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
28 otherwise only available to public agency enforcement actions. Funds recovered will be

distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

75. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

SIXTH CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON

TERMINATION OF EMPLOYMENT

(Lab. Code, §§ 201, 203)

(Plaintiff against All Defendants)

76. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

77. Labor Code section 2802 states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...."

78. Defendant failed to reimburse its employees for necessary expenditures as a direct consequence of the discharge of their duties.

79. Defendant knowingly, willingly, and intentionally attempted to offset the cost of doing business on its employees in violation of the California labor code.

80. Defendant has a corporate practice and policy of requiring its employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse its employees for necessary business expenditures, specifically requiring employees to utilize their personnel vehicles and personal cell phones in direct consequence of the discharge of their duties to Defendant.

81. Plaintiff acting as a Private Attorney General pursuant to the Private Attorney General Act (2004), and more specifically, Labor Code section 2698, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are

1 otherwise only available to public agency enforcement actions. Funds recovered will be
2 distributed in accordance with the PAGA.

3 82. Accordingly, Plaintiff entitled to attorneys' fees and costs pursuant to Labor Code
4 section 2699, subdivision (g)(1), and prejudgment interest.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff and Aggrieved Employees pray for judgment as follows:

- 7 1. For civil penalties for each violation for Plaintiff and each Aggrieved
8 Employee as provided by law, including, but not limited to, those civil
9 penalties provided by statute, provided by PAGA and for unpaid wages
10 pursuant to Labor Code section 558;
- 11 2. For costs of suit and expenses incurred herein pursuant to Labor Code section
12 2699, subdivision (g), and any other statutory basis or pursuant to the
13 California Rules of Court;
- 14 3. For reasonable attorneys' fees pursuant to Labor Code section 2699,
15 subdivision (g), and any other statutory basis; and
- 16 4. For all such other and further relief as the Court may deem just and proper.
17

18 Dated: July 11, 2023

MAHONEY LAW GROUP, APC

19
20 /s/ John Young, Esq.
21 Kevin Mahoney, Esq.
22 John A. Young, Esq.
23 Attorneys for Plaintiff JAVIER THOMAS
24
25
26
27
28

EXHIBIT A



John Young, Esq.
562.590.5550 phone
562.590.8400 facsimile
jyoung@mahoney-law.net

May 5, 2023

VIA ONLINE SUBMISSION

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL #7022 2410 0000 2418 5705

Return Receipt Requested

A-M Electric Service Inc.

37346 Mahonia Avenue

Palmdale, CA 93552

Re: *Javier Thomas v. A-M Electric Service Inc.*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION SECTIONS 2698 *et seq.***

To: California Labor and Workforce Development Agency, A-M Electric Service Inc.

From: Javier Thomas, on behalf of himself and aggrieved employees who were subject to A-M Electric Service Inc.'s unlawful wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Javier Thomas ("Mr. Thomas") as a representative for all other aggrieved employees, who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA").

Please be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(1) and 2699.3, subdivision (c)(1) and may lead to action against A-M Electric Service Inc. (referred to herein as "Employer") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

Mr. Thomas worked for Employer as a non-exempt employee. Mr. Thomas alleges that Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 2802 by failing to provide Mr. Thomas and all other aggrieved employees all wages for all hours worked, including minimum wage and overtime, failed to provide meal and rest periods or compensation in lieu thereof, failing to provide accurate wage statements, failing to maintain accurate records of hours worked, failing to pay all compensation due upon separation of employment and failing to reimburse Mr. Thomas and all other aggrieved employees for work related expenses. Mr. Thomas and other aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer as non-exempt employees during the PAGA Period defined as one year prior to the submission of this letter to the Labor Workforce and Development Agency (“LWDA”) and certified mailing to Employer until resolution of these claims.

Mr. Thomas and other aggrieved employees were regularly not compensated for all hours worked, including minimum wages as well as overtime wages, which is in violation of Labor Code sections 510, 1194, 1182.12, 1197 and is actionable under Labor Code section 2699.5. Specifically, Employer requested and incentivized Mr. Thomas and other aggrieved employees to report to job sites prior to their scheduled start time in order to complete work, drive to job sites, and or meet to discuss work responsibilities prior to the aggrieved employees scheduled start time. Mr. Thomas and other aggrieved employees were not compensated an hourly rate for this time during the which they were subject to the control of Employer, or suffered or permitted to work for Employer. Accordingly, the time spent by Mr. Thomas and other aggrieved employees performing work for Employer or being subjected to Employer’s control off-the-clock was performed without compensation and in violation of Labor Code sections 510, 1194, 1182.12, 1197 and is actionable under Labor Code section 2699.5

Mr. Thomas will further allege that Employer failed to include all hours worked when calculating his and other aggrieved employees’ regular and overtime rates for purposes of compensating Mr. Thomas and other aggrieved employees as required by Labor Code Labor Code section 510. Mr. Thomas will also allege that Employer violated Labor Code section 201 and 202, et seq., due to its uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages to all such former employees.

Employer also failed to provide Mr. Thomas and other aggrieved employees with timely uninterrupted meal and rest periods. Employer had a practice of failing to adequately staff employees to allow Mr. Thomas and other aggrieved employees to be completely relieved of all of their work responsibilities while on their legally mandated meal or rest break. Further, Employer ordered that Mr. Thomas and other aggrieved employees to prioritize completing projects and tasks over taking their legally mandated meal and rest breaks. In addition, if Employer provided a full uninterrupted meal period, the meal period was not provided prior to the start of Mr. Thomas and other aggrieved employees fifth (5th) hour of work. As a result of Employer’s policy and practices, Mr. Thomas and other aggrieved employees did not receive timely uninterrupted meal and rest periods and were not compensated with premium wages for non-compliant meal and/or

rest periods. Employer's conduct is in violation of Labor Code sections 226.7 and 512, is also actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer violated Labor Code sections 201, 202, 203, 204, 206, and 210 due to their uniform policy, practice, and procedure of failing to timely pay all of the above-mentioned wages earned during and after Mr. Thomas and the aggrieved employees' employment with Employer.

In addition, Employer failed to maintain accurate payroll records and failed to provide Mr. Thomas and other aggrieved employees with complete and accurate wage statements showing premium wages earned per pay period, among other things. This conduct is in violation of Labor Code sections 226, 226.3, 1174, and 1174.5 and is actionable under PAGA.

Lastly, Employer required Mr. Thomas and other aggrieved employees to use their own personal vehicle at their own expense. Mr. Thomas alleges that he and his coworkers had to use their personal cell phone for work and their personal vehicle to transport supplies from Employer's supply yard to job sites and between job sites. Employer failed to reimburse Mr. Thomas and other aggrieved employees a reasonable percentage of their cell phone bill and or the mileage driven as part of their employment and is in violation of Labor Code section 2802 and therefore is actionable under PAGA.

Mr. Thomas will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,



John Young, Esq.

MAHONEY LAW GROUP, APC