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behalf of himself and others similarly situated

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE**

ANDRES VILLALOBOS, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

INTERNATIONAL LINE BUILDERS,
INC., a Delaware corporation; and DOES 1
to 10, inclusive,

Defendants.

CASE NO. CVRI2302769

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 1182, 1194, 11198;**
- 3. Failure to Provide Compliant Meal Breaks in Violation of Labor Code section 226.7;**
- 4. Failure to Provide Compliant Rest Breaks in Violation of Labor Code section 226.7;**
- 5. Failure to Provide Sick Pay in Violation of Labor Code Section 246;**
- 6. Failure to Provide COVID-19 Supplemental Paid Sick Leave in Violation of Labor Code section 248.6;**
- 7. Failure to Timely Pay Wages During Employment in Violation of Labor Code section 204;**
- 8. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;**
- 9. Waiting Time Penalties Pursuant to Labor Code sections 201, 203;**
- 10. Violations of Business & Professions Code sections 17200 et seq.; and**
- 11. Civil Penalties Pursuant to PAGA Labor Code §§ 2698, et seq.**

DEMAND FOR JURY TRIAL

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1 Plaintiff, ANDRES VILLALOBOS (hereinafter “Plaintiff”) hereby submits his First
2 Amended Complaint against Defendants INTERNATIONAL LINE BUILDERS, INC., a
3 Delaware corporation and DOES 1 to 10 (hereinafter referred to as “Defendants”) on behalf of
4 himself and the class of all other similarly situated current and former employees of Defendants
5 as follows:

6 **NATURE OF THE CASE**

7 1. This is a class action arising out of Defendants’ failure to provide their non-
8 exempt employees with all wages, compliant meal and rest breaks, failure to timely pay all
9 wages during employment, failure to timely pay all wages at time of separation of employ, and
10 failure to provide compliant wage statements.

11 2. Defendants are a full-service electrical construction company headquartered in
12 Portland, Oregon. Defendants have locations in Corona, Riverside and West Sacramento,
13 California. At all relevant times, Defendants issued and maintained uniform, standardized
14 scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees
15 in California, including Plaintiff and others similarly situated, regardless of their position.

16 3. Defendants have maintained practices which have failed and continue to fail to
17 pay Plaintiff and other non-exempt employees all wages. Specifically, Defendants have a
18 company-wide policy of rounding hours worked. Moreover, Plaintiff and other non-exempt
19 employees are only paid for the hours they are scheduled to work rather than the actual hours
20 they worked. Moreover, Plaintiff and other non-exempt employees would be responsible for off-
21 the-clock tasks before their shifts and after their shifts. This time was unpaid. This has resulted
22 in Defendants’ failure to pay all overtime and/or minimum wages to Plaintiff and other non-
23 exempt employees.

24 4. Defendants also failed to provide Plaintiff and non-exempt employees with
25 compliant meal and rest breaks. Specifically, Defendants maintain a policy whereby meals are
26 provided anywhere from 4 to 6.5 hours after the start of a shift. This has resulted in late meals.
27 Further, Defendants provide two 15-minute rest breaks but fail to state whether it is paid and
28 when the rest breaks are provided. This has also resulted in late rest breaks.

1 5. In light of the foregoing, Defendants failed to provide Plaintiff and other non-
2 exempt employees with compliant wage statements and failed to timely pay wages during
3 employment in addition to final wages upon termination or separation from employment.
4 Further, Defendants provide non-compliant wage statements because wage statements are
5 missing sick pay and Covid-19 supplemental sick pay.

6 6. Plaintiff brings Causes of Action One through Ten (the “class claims”) as a class
7 action on behalf of himself and other similarly situated individuals who have worked for
8 Defendants in California, at any time from four-years prior to the filing of this complaint,
9 through the resolution of this action. Plaintiff, on his own behalf and on behalf of all Class
10 Members, brings the class claims pursuant to Labor Code sections 200-203, 204, 226, 226.7,
11 227.3, 246, 248, 510, 1174, 1194, 1194.2, 1197, 1198, the applicable Industrial Welfare
12 Commission (“IWC”) wage order and under Business & Professions Code sections 17200-
13 17208, for unfair competition due to Defendants’ unlawful, unfair and fraudulent business acts
14 and practices.

15 7. Plaintiff brings Cause of Action Eleven as a proxy of the State of California on behalf
16 of other aggrieved employees for penalties under the Private Attorneys General Act (PAGA). PAGA
17 provides that any civil penalty assessed and collected by the Labor and Workforce Development
18 Agency (LWDA) for violations of applicable provisions of the California Labor Code may, as an
19 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself
20 and other current or former employees pursuant to procedures outlined in California Labor Code §
21 2699.3. PAGA also provides that an aggrieved employee can bring a civil action on behalf of other
22 aggrieved employees for violation of any other Labor Code provision that does not itself contain a civil
23 penalty, in which case the civil penalties are assessed at \$100 for each aggrieved employee per pay
24 period for the initial violation and \$200 for each aggrieved employee per pay period for each
25 subsequent violation.

26 8. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 have engaged in, among other things a system of willful violations of the Labor Code and the
28 applicable IWC wage orders by creating and maintaining policies, practices and customs that

1 knowingly deny employees the above stated rights and benefits.

2 **PARTIES**

3 9. Plaintiff, ANDRES VILLALOBOS is an individual over the age of eighteen (18)
4 and is now, and/or at all relevant times mentioned in this Complaint was, a resident and
5 domiciliary of the State of California. During the relevant time period, Plaintiff worked for
6 Defendants in Temecula, California from approximately January 2022 through approximately
7 November 12, 2022. Plaintiff was employed as an infrastructure worker/driver and earned
8 approximately \$35.50 per hour.

9 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
10 INTERNATIONAL LINE BUILDERS, INC., is a Delaware corporation. Plaintiff is further
11 informed and believes that at all times relevant hereto, Defendant has transacted, and continues
12 to transact, business throughout the State of California.

13 11. Plaintiff is informed and believes, and based upon such information and belief
14 alleges, that Defendants are, now and/or at all times mentioned in this Complaint were in some
15 manner legally responsible for the events, happenings and circumstances alleged in this
16 Complaint.

17 12. Plaintiff is further informed and believes, and based upon such information and
18 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all
19 others similarly situated, and the general public to be subjected to the unlawful practices,
20 wrongs, complaints, injuries and/or damages alleged in this Complaint.

21 13. Plaintiff is informed and believes and based thereon alleges that at all times
22 herein mentioned Defendants and DOES 1 through 10, are and were corporations, business
23 entities, individuals, and partnerships, licensed to do business and actually doing business in the
24 State of California.

25 14. Plaintiff does not know the true names or capacities, whether individual, partner
26 or corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that
27 reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to
28 amend this complaint when the true names and capacities are known. Plaintiff is informed and

1 believes and based thereon alleges that each of said fictitious Defendants were responsible in
2 some way for the matters alleged herein and proximately caused Plaintiff and members of the
3 general public and class to be subject to the illegal employment practices, wrongs and injuries
4 complained of herein.

5 15. At all times herein mentioned, each of said Defendants participated in the doing
6 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
7 Defendants, and each of them, were the agents, servants and employees of each of the other
8 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
9 acting within the course and scope of said agency and employment.

10 16. At all times herein mentioned, the acts and omissions of various Defendants, and
11 each of them, concurred and contributed to the various acts and omissions of each and all of the
12 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
13 herein mentioned, Defendants, and each of them, ratified each and every act or omission
14 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
15 and abetted the acts and omissions of each and all of the other Defendants in proximately
16 causing the damages as herein alleged.

17 17. The members of the classes (as defined below), including the representative
18 Plaintiff named herein, have been employed during the Class Period in California. The practices and
19 policies which are complained of by way of this Complaint are enforced throughout the State of
20 California.

21 **JURISDICTION AND VENUE**

22 18. The Court has jurisdiction over this class action pursuant to article 6, section 10
23 of the California Constitution and California Code of Civil Procedure section 410.10.

24 19. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for
25 injunctive relief, including restitution of earned wages, arising from Defendants' unfair
26 competition under Business & Professions Code sections 17203 and 17204. The Court also has
27 jurisdiction over Plaintiff's and the Class' claims as pursuant to the applicable Labor Code
28 provisions.

20. The Court has jurisdiction over Defendants because they are authorized to do business in the State of California and are registered with the California Secretary of State. Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails itself of the California market through the advertising, marketing and sale of goods and services, to render the exercise of jurisdiction over Defendants by the California court consistent with traditional notions of fair play and substantial justice.

21. Venue is proper in Riverside County because the acts which give rise to this litigation occurred in this county and because Defendants have employed class members in this county and transacts business in this county.

FACTUAL ALLEGATIONS

22. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

Defendant's Failure to Pay Overtime Wages

24. During the Class Period, upon information and belief, Defendants have, and continue to have, a company-wide policy of discouraging and impeding Plaintiff and other non-exempt employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, led Plaintiff and other non-exempt employees to work off-the-clock after their shifts. However, because Defendants only paid Plaintiff and members of the classes for the hours they were scheduled to work, any off-the-clock work was unpaid. Moreover, Defendants rounded hours worked. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and members of the Classes were performing assigned duties off-the-clock and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

25. This, resulted in unpaid wages some of which should have been overtime hours. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all of the overtime hours they actually worked.

Defendants' Failure to Pay all Wages and Minimum Wages

26. As stated above, during the relevant time period, Defendants have a policy of subjecting Plaintiff and members of the Classes to work off-the-clock and rounded hours worked as described above.

27. Thus, Defendants did not pay at least minimum wages for all hours worked by Plaintiff and members of the Classes.

Defendants' Failure to Provide Compliant Meal Breaks

28. Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC wage order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC wage order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-1042.

29. As stated above, Defendants failed to provide compliant meal breaks to Plaintiff and members of the Classes. Plaintiff alleges meal breaks were frequently late. Specifically, Defendants maintain a policy whereby meals are provided anywhere from 4 to 6.5 hours after the start of a shift.

Defendants' Failure to Provide Compliant Rest Breaks

30. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided.

1 Labor Code section 226.7 provides that no employer shall require an employee to work during
2 any rest period mandated by an applicable order of the IWC. The applicable IWC wage order
3 provides that “[e]very employer shall authorize and permit all employees to take rest periods,
4 which insofar as practicable shall be in the middle of each work period” and that the “rest period
5 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
6 per four (4) hours or major fraction thereof” unless the total daily work time is less than three
7 and one-half (3½) hours.

8 31. To comply with its obligation to authorize and permit rest periods under Labor
9 Code section 226.7 and the applicable IWC wage order, an employer must “relinquish any
10 control over how employees spend their break time, and relieve their employees of all duties—
11 including the obligation that an employee remains on call. A rest period, in short, must be a
12 period of rest.” *Augustus, et al. v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269-270.

13 32. Further, Defendants provide two 15-minute rest breaks but fail to state whether it
14 is paid and when the rest breaks are provided. This has also resulted in late rest breaks.
15 Accordingly, Defendants failed to authorize and permit all rest periods in violation of Labor
16 Code sections 226.7, 516, and 1198.

17 ***Defendants’ Failure to Provide Compliant Wage Statements***

18 33. During the class period, Defendants have knowingly and intentionally provided
19 Plaintiff and other non-exempt employees with uniform, incomplete, and inaccurate wage
20 statements. For example, Defendants issued uniform wage statements to Plaintiff and members
21 of the Classes that fail to correctly list: gross wages earned; total hours worked; net wages
22 earned; and all applicable hourly rates in effect during the pay period, including rates of pay for
23 overtime wages and/or meal period premiums, and the corresponding number of hours worked
24 at each hourly rate. Further, Defendants provide non-compliant wage statements because wage
25 statements are missing sick pay and Covid-19 supplemental sick pay.

26 34. Because Defendants did not record the time Plaintiff and members of the Classes
27 spent working off-the-clock, Defendants did not list the correct amount of gross wages and net
28 wages earned by Plaintiff and other non-exempt employees in compliance with section

226(a)(1) and section 226(a)(5), respectively.

35. Defendants also failed to list the total number of hours worked by Plaintiff and members of the Classes and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate.

36. Because Defendants failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and members of the Classes have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members of the Classes have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Defendants' Failure to Timely Pay all Wages During Employment

37. Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

38. Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

39. During the class period, Defendants willfully failed to pay Plaintiff and members of the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest period premiums, within the time periods specified by Labor Code section 204.

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1 ***Defendants' Failure to Timely Pay Final Wage Upon Termination***

2 40. Defendants willfully failed to pay Plaintiff and members of the Classes who are
3 no longer employed by Defendants the earned and unpaid wages set forth above, including but
4 not limited to, minimum wages, and/or meal rest period premiums, either at the time of
5 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

6 ***Defendants' Failure to Provide Sick Pay***

7 41. Defendants failed to provide mandated sick pay and failed to include it on wage
8 statements.

9 ***Defendants' Failure to Provide Covid-19 Supplemental Sick Pay***

10 42. As of 2022, employers must provide employees with written notice that sets forth
11 the amount of Covid-19 supplemental paid sick leave that the employee has used through the
12 pay period in which it was due to be paid and shall list zero if a worker has not used any Covid-
13 19 supplemental paid sick leave. Defendants also fail to provide Plaintiff and class members
14 with such written notice that sets forth the amount of Covid-19 supplemental paid sick leave that
15 they have used or were entitled to on wage statements.

16 ***Facts Regarding Willfulness***

17 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
18 and were advised by skilled lawyers, other professionals, employees with human resources
19 background and advisors with knowledge of the requirements of California wage and hour laws
20 and that at all relevant times, Defendants knew or should have known, that members of the
21 Classes, including Plaintiff, were entitled to receive one hour of pay at the employee's regular
22 rate of compensation for each day that a meal and/or rest period was not provided and were and
23 are entitled to received pay for all hours worked, accurate itemized wage statements, and final
24 pay in a timely manner.

25 ***Unfair Business Practices***

26 44. Defendants have further engaged in, and continue to engage in, unfair business
27 practices in California by practicing, employing and utilizing the unlawful employment
28 practices and policies outlined above.

1 45. As a direct result of the wage and hour violations herein alleged, Plaintiff and
2 members of the Classes have suffered, and continue to suffer substantial losses related to the use
3 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
4 seeking to compel Defendants to perform their obligations under state law, all to Plaintiff's and
5 members of the Classes' respective damage in amounts according to proof at the time of trial.

6 ***Plaintiff's Exhaustion of Administrative Remedies***

7 46. By letter dated May May 26, 2023, required notice was provided to the Labor and
8 Workforce Development Agency ("LWDA") and Defendants, of the specific provisions of the
9 Labor Code alleged to have been violated, including the facts and theories to support the alleged
10 violations.

11 47. More than sixty-five (65) days have passed since the date the notice was mailed to
12 Defendants and the LWDA, and Plaintiff has received no response from the LWDA indicating that
13 it plans to investigate.

14 48. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
15 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of
16 California Labor Code identified in this Complaint.

17 **CLASS ACTION ALLEGATIONS**

18 49. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

19 50. Pursuant to Code of Civil Procedure section 382, this action is brought and may
20 be properly maintained as a class action. This action satisfies the ascertainability, numerosity,
21 commonality, typicality, adequacy, predominance, and superiority requirements of those
22 provisions.

23 51. Plaintiff brings this suit as a class action on behalf of two classes of individuals
24 defined as follows (collectively the "Classes"):

25 52. Plaintiff Class: All persons who have been, or currently are, employed by
26 Defendants and who held, or hold, job positions which Defendants have classified as "non-
27 exempt" employees in the State of California, at any time since four years prior to filing this
28 action, through the date judgment is rendered in this action.

1 53. Terminated Sub Class: All members of the Plaintiff Class whose employment
2 ended during the Class Period.

3 54. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that
4 during the class period hundreds of class members have been employed by Defendants as non-
5 exempt employees in the State of California. Because so many persons have been employed by
6 Defendants in this capacity, the members of the Plaintiff Class are so numerous that joinder of
7 all members is impossible and/or impracticable.

8 55. Common Questions of Law and/or Fact: Common questions of law and fact,
9 exist as to all members of the Plaintiff Class and predominate over any questions affecting
10 solely individual members of the Plaintiff Class. Among the questions of law and fact, that are
11 relevant to the adjudication of Class Members' claims are as follows:

- 12 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits
13 of California wage and hour statutes;
- 14 b. Whether Defendants failed to pay Plaintiff and Class Members for all hours
15 worked;
- 16 c. Whether Defendants had a standard policy of not providing compliant meal
17 breaks to Plaintiff and members of the Plaintiff Class;
- 18 d. Whether Defendants had a standard policy of not providing compliant rest
19 breaks to Plaintiff and members of the Plaintiff Class;
- 20 e. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
21 members of the Plaintiff Class with true and proper wage statements upon
22 payment of wages, in violation of Labor Code section 226;
- 23 f. Whether Defendants unlawfully and/or willfully failed to maintain accurate
24 records;
- 25 g. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiff and
26 the Terminated Sub Class upon termination;
- 27 h. Whether Defendants failed to timely pay wages to Plaintiff and members of the
28 Plaintiff Class during their employment;

- i. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class with sick pay wages;
- j. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class with Covid-19 supplemental sick pay wages;
- k. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;
- l. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California (Bus. & Prof. Code, § 17200, et seq.)

56. Typicality: The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their non-exempt employees with meal and rest periods and all wages in compliance with the applicable wage order or premium compensation at the regular rate in lieu thereof, failing to provide them with compliant wage statements, failing to timely pay wages during employment and/or at termination, and failing to provide sick pay at the regular rate, has caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising from Defendants' common policies, practices, procedures, protocols, routines, and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

57. Adequacy of Representation: Plaintiff is an adequate representative of the proposed classes because he is a member of the class, and his interests do not conflict with the interests of the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and his attorneys.

58. Superiority of Class Action: A class action is superior to other available methods for

1 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
2 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
3 to proceed on an individual basis, because this would potentially result in hundreds of individual,
4 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
5 contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable
6 allocation of recovery among those with equally meritorious claims. By contrast, the class action
7 device presents far fewer management difficulties, and provides the benefit of a single
8 adjudication, economics of scale, and comprehensive supervision by a single court.

9 59. The various claims asserted in this action are additionally or alternatively certifiable
10 under the provisions of the California Code of Civil Procedure section 382 because:

- 11 a. The prosecution of separate actions by hundreds of individual Class
12 Members would create a risk of varying adjudications with respect to
13 individual class members, thus establishing incompatible standards of
14 conduct for Defendants, and
- 15 b. The prosecution of separate actions by individual Class Members would also
16 create the risk of adjudications with respect to them that, as a practical
17 matter, would be dispositive of the interest of the other Class Members who
18 are not a party to such adjudications and would substantially impair or
19 impede the ability of such non-party class members to protect their interests.

20 **FIRST CAUSE OF ACTION**

21 **Unpaid Overtime**

22 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

23 60. Plaintiff incorporates herein by reference the allegations set forth above.

24 61. At all times relevant herein, which comprise the time period not less than four (4)
25 years preceding the filing of this action, Defendants were required to compensate their hourly
26 employees for all overtime hours worked.

27 62. California Labor Code sections 510 and 1198 and the applicable IWC wage order
28 require employers to pay employees working more than eight (8) hours in a day or more than forty

(40) hours in a workweek at the rate of one-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC wage order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

63. Defendants willfully failed to pay all overtime wages owed to Plaintiff and members of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

64. Defendants knew or should have known that as a result of company-wide practices and/or policies, that prevents Plaintiff and members of the Classes from earning overtime as alleged above. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all of the overtime hours they actually worked. Further, Defendants maintained a company-policy whereby it rounded hours worked. This resulted in unpaid wages including overtime wages.

65. Defendants' failure to pay Plaintiff and members of the Classes the balance of overtime compensation, as required by California law, violates the provisions of Labor Code sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties, attorney's fees, costs, and interest thereon.

SECOND CAUSE OF ACTION

Failure to Pay All Wages

(By Plaintiff and Members of the Putative Class Against All Defendants)

66. Plaintiff incorporates herein by reference the allegations set forth above.

67. At all times relevant herein, which comprise the time period not less than four (4)

1 years preceding the filing of this action, Defendants were required to compensate their hourly
2 employees for all hours worked.

3 68. For at least the four (4) years preceding the filing of this action, Defendants failed to
4 compensate employees for all hours worked. Defendants implemented policies that actively
5 prevented employees from being compensated for all time worked by subjecting Plaintiff and
6 members of the Classes to work off-the-clock, rounding hours worked and failing to pay accrued
7 vacation wages.

8 69. Under the above-mentioned wage order and state regulations, Plaintiff and members
9 of the Classes are entitled to recover compensation for all hours worked, but not paid, for the four
10 (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of
11 suit in accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections
12 203 and 206.

13 70. The applicable IWC wage order defines “hours worked” to mean “the time during
14 which an employee is subject to the control of an employer and includes all the time the employee
15 is suffered or permitted to work, whether or not required to do so.”

16 71. Defendants suffered or permitted Plaintiff and members of the Classes to work
17 portions of the day for which Defendants failed to compensate them.

18 72. Labor Code section 1194(a) provides in relevant part: “[n]otwithstanding any
19 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
20 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
21 ... including interest thereon, reasonable attorney’s fees, and costs of suit.”

22 73. Labor Code section 1194.2(a) provides in relevant part: “[i]n any action under
23 section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the
24 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
25 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

26 74. Labor Code section 1197 provides: “[t]he minimum wage for employees fixed by
27 the commission is the minimum wage to be paid to employees, and the payment of a less wage
28 than the minimum so fixed is unlawful.”

75. Plaintiff is informed and believes, and therefore alleges, that Defendants' compensation schemes do not fairly compensate Plaintiff and members of the Classes for all hours spent performing their job duties.

76. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194, 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

77. The failure to pay designated wages to Plaintiff and members of the Classes for each and every hour worked violates Labor Code sections 221 and 223; the applicable IWC Wage Order; and Business & Professions Code.

78. During the applicable time period, Defendants have and continue to have a pattern and practice of not providing its employees all wages, by failing to include all compensable time, including time worked off-the-clock. Thus, Defendants did not pay at least minimum wages for all hours worked by Plaintiff and members of the Classes. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock. Defendants also rounded hours worked.

79. As a proximate result of the above-mentioned violations. Plaintiff and the members of the Classes have been damaged in an amount according to proof at time of trial.

THIRD CAUSE OF ACTION

Non-Compliant Meal Breaks in Violation of Labor Code sections 200, 226.7, 512

(By Plaintiff and Members of the Putative Class Against All Defendants)

80. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

81. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the Classes regularly worked more than five (5) hours per shift and were entitled to a meal period of not less than thirty (30) minutes without duty.

82. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants routinely failed to provide Plaintiff and the members of the Classes with such meal periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not

1 waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of the
2 Classes with meal periods required by Labor Code sections 226.7, 512, 516 and IWC wage order,
3 section 11 and categorically failed to pay any and all meal period wages due.

4 83. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
5 and IWC wage order section 11(D), in the amount of one additional hour of pay at the regular rate
6 for each work day that the meal period is/was not provided to Plaintiff and any member of
7 members of the Classes, the cumulative sum of which is to be determined at trial.

8 84. Under the foregoing, California employers must provide meal periods and authorize
9 and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security Services,*
10 *Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal and rest
11 periods must be “off-duty,” which means that employees must be relieved of “all work-related
12 duties,” including the duty to remain “on call,” and they must be “free from employer control” over
13 how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to use meal and
14 rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court* (2012) 53
15 Cal.4th 1004, 1038-39.

16 85. When employees must either “remain at the ready and capable of being summoned
17 to action,” “respond ... when the employer seeks contact with [them],” “perform ... other work if
18 the employer so requests,” and/or remain “on call” during their meal and rest periods, the
19 employees have not been “relieve[d] ... of all work-related duties and employer control.”
20 *Augustus, supra*, 2 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is
21 “impermissible.” *Ibid.*

22 86. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
23 rest break cases that have affirmed California’s broad, protective standard for employees.¹
24 Moreover, as the mere existence of a facially lawful meal and rest break policy is unavailing if

25
26 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
27 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926, *reh’g denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
28 *Assocs., Inc.*, 216 (2013) Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D. Cal., Aug.
31, 2017, No. 17-cv-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus*].”)

1 there are practical constraints and pressures on employees to perform their duties in ways that omit
2 breaks. *See Brinker, supra*, 53 Cal.4th at p. 1040.

3 87. Yet Defendants did and do not provide Plaintiff and members of the Plaintiff Class
4 with meal periods during which they are completely relieved of duty for at least thirty (30) minutes
5 by the fifth hour of work and again by the tenth hour of work as alleged above.

6 88. Thus, Defendants have failed to perform its obligations to provide Plaintiff and the
7 members of the Classes with off-duty meal periods by the end of the fifth hour of work and a
8 second meal period by the end of the tenth hour of work. Defendants also have failed to pay
9 Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each non-
10 compliant meal break.

11 89. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
12 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
13 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
14 employee's "regular rate of pay" instead of their base hourly rate. The regular rate of pay may be
15 higher than the base hourly rate because the regular rate of pay must include all nondiscretionary
16 incentive payments, including shift differential pay.

17 90. Plaintiff and members of the Plaintiff Class are thus entitled to compensation for
18 Defendants' failure to provide compliant meal periods, plus interest, attorneys' fees, expenses, and
19 costs of suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

20 **FOURTH CAUSE OF ACTION**

21 **Non-Compliant Rest Breaks in Violation of Labor Code sections 200, 226.7, 512**

22 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

23 91. Plaintiff hereby incorporates by reference each and every one of the allegations
24 contained in the preceding paragraphs as if the same were fully set forth herein.

25 92. Plaintiff is informed and believes, and thereon allege, that Plaintiff and members of
26 the Classes were entitled to a paid rest period of not less than ten (10) minutes without duty for
27 each and every four (4) hours worked during the workday.

28 93. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that

1 Defendants routinely failed to provide Plaintiff and members of the Classes with such paid rest
2 periods without duty, notwithstanding the fact that Plaintiff and members of the Classes had not
3 waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members
4 with rest periods required by Labor Code sections 226.7, 512, and 516, IWC wage order, section
5 12 and categorically failed to pay any and all rest period wages due.

6 94. Plaintiff alleges that Defendants maintained a factually non-compliant rest break
7 policy and rest breaks were frequently late as alleged above.

8 95. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
9 and the applicable IWC wage order section 12(B), in the amount of one additional hour of pay at
10 the regular rate for each work day that the rest period is/was not provided or provided late to
11 Plaintiff and any member of the Classes, the cumulative sum of which is to be determined at trial.

12 96. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation
13 for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of
14 suit pursuant to Labor Code sections 226.7(b) and the applicable wage order.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Provide Sick Pay**

17 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

18 97. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
19 forth herein.

20 98. Labor Code section 246 provides that employers must provide employees with
21 written notice that sets forth the amount of paid sick leave available or paid time off leave an
22 employer provides in lieu of sick leave, for use on either the employee's itemized wage statement
23 described in section 226 or in a separate writing.

24 99. By failing to list sick pay leave on wage statements, Defendants willfully violated
25 Labor Code section 246.

26 100. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff
27 seeks to represent sick pay in amounts to be determined at trial, and they are entitled to recover
28 these amounts with interest, attorneys' fees, and costs.

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Provide COVID-19 Supplemental Paid Sick Leave**

3 **(By Plaintiff and Members of the Putative Class Against Defendant)**

4 101. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth
5 above as if fully set forth herein.

6 102. California Labor Code sections 248.6 and 248.7 required Defendants to provide
7 California Supplemental Sick Paid Leave ("SSPL") through December 31, 2022.

8 103. Pursuant to subdivision (i) of Section 246 as it relates to this section, COVID-19
9 supplemental paid sick leave must be set forth separately from paid sick days. Defendants failed to
10 provide Plaintiff and the Plaintiff Class with written notice that sets forth the amount of COVID-19
11 supplemental paid sick leave that they had used or were entitled on wage statements.

12 104. The employer shall list zero hours used if a worker has not used any COVID-19
13 supplemental paid sick leave. This requirement is not enforceable until the next full pay period
14 following the date that this section takes effect.

15 105. Plaintiff and the Plaintiff class were entitled access to this supplemental paid leave
16 and whether any had been utilized if they experience a qualifying need for leave. However,
17 Defendants failed to Supplemental COVID-19 Sick pay or properly account for it on their wage
18 statements as provided by California law.

19 106. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff seeks
20 to represent supplemental COVID-19 sick pay in amounts to be determined at trial, and Plaintiff and
21 the class are entitled to recover these amounts with interest, attorneys' fees, and costs.

22 **SEVENTH CAUSE OF ACTION**

23 **Failure to Timely Pay Wages During Employment**

24 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

25 107. Plaintiff hereby incorporates by reference each and every one of the allegations
26 contained in the preceding paragraphs as if the same were fully set forth herein.

27 108. Labor Code section 204 requires that all wages earned by any person in any
28 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those

1 wages due upon termination of an employee, are due and payable between the 16th and the 26th
2 day of the month during which the labor was performed, and that all wages earned by any person in
3 any employment between the 16th and the last day, inclusive, of any calendar month, other than
4 those wages due upon termination of an employee, are due and payable between the 1st and the
5 10th day of the following month.

6 109. Labor Code section 204 also requires that all wages earned for labor in excess of the
7 normal work period shall be paid no later than the payday for the next regular payroll period.
8 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
9 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
10 paid not more than seven (7) calendar days following the close of the payroll period.

11 110. During the class period, Defendants willfully failed to pay Plaintiff and members of
12 the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest
13 period premiums, within the time periods specified by Labor Code section 204.

14 111. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
15 Class have been damaged in an amount according to proof at time of trial.

16 **EIGHTH CAUSE OF ACTION**

17 **Failure to Furnish Accurate Itemized Wage Statements and Failure to Maintain Accurate** 18 **Records**

19 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

20 112. Plaintiff hereby incorporates by reference each and every one of the allegations
21 contained in the preceding paragraphs as if the same were fully set forth herein.

22 113. Labor Code section 226(a) and the applicable IWC wage order section 7(B) requires
23 employers to furnish each employee with a statement itemizing, among other things, the total hours
24 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

25 114. Labor Code section 226(e) provides that if an employer fails to comply with
26 providing an employee with properly itemized wage statements as set forth in 226(a), then the
27 employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in
28 which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not

1 to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates
2 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
3 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
4 the employer fails to provide the employee a wage statement or fails to keep the required records
5 pursuant to section 226(a).

6 115. Defendants knowingly and intentionally failed to furnish Plaintiff and the members
7 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
8 the applicable IWC wage order section 7(B).

9 116. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
10 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
11 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
12 applicable hourly rates in effect during each respective pay period and the corresponding number
13 of hours worked at each hourly rate by each respective individual. This is a result of failing to pay
14 for all hours worked and for failing to provide meal and rest break premiums. Further, Defendants
15 provide non-compliant wage statements because wage statements are missing sick pay and Covid-
16 19 supplemental sick pay.

17 117. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
18 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiff
19 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
20 missing hours worked and missed meal and rest-break premiums.

21 118. As a result of not having kept accurate records, Plaintiff and the Class Members
22 suffered injuries in the form of confusion over whether they received all wages owed to them, and
23 difficulty and expense in reconstructing pay records in addition to other injuries which may come
24 to light during the discovery process.

25 119. Labor Code section 1198 provides that the maximum hours of work and the
26 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
27 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
28 employees for longer hours than those fixed by the order or under conditions of labor prohibited by

1 the order is unlawful.” Pursuant to the applicable IWC wage order, employers are required to keep
2 accurate time records showing when the employee begins and ends each work period and meal
3 period.

4 120. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
5 to Labor Code section 226(e) for Defendants’ violations of Labor Code section 226(a).

6 121. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
7 and an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 226(h).
8 Plaintiff and the members of the Classes also request relief as described below.

9 **NINTH CAUSE OF ACTION**

10 **Waiting Time Penalties**

11 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

12 122. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
13 forth herein.

14 123. At all times, relevant herein, Defendants were required to pay their employees all
15 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
16 sections 201-203.

17 124. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the
18 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
19 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

20 125. Labor Code sections 201 and 202 provide that if an employer discharges an
21 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
22 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
23 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
24 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
25 entitled to his or her wages at the time of quitting.

26 126. On information and belief, Defendants have a company-wide practice or policy of
27 paying departing employees their final wages late, instead of adhering to the time requirements set
28 forth in Labor Code sections 201 and 202.

1 127. Specifically, Defendants willfully failed to pay Plaintiff and members of the
2 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
3 minimum wages, and/or meal rest period premiums, either at the time of discharge, or within
4 seventy-two (72) hours of their leaving Defendants' employ.

5 128. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
6 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

7 **TENTH CAUSE OF ACTION**

8 **Violation of Business and Professions Code Section 17200 et seq.**

9 **(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)**

10 129. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
11 forth herein.

12 130. Business and Professions Code section 17200 defines unfair competition to include,
13 "unlawful, unfair or fraudulent business practices."

14 131. Plaintiff and all proposed Class Members are "persons within the meaning of
15 Business and Professions Code section 17204, who have suffered injury in fact and have lost
16 money or property as a result of Defendants' unfair competition.

17 132. Defendants have been committing, and continue to commit, acts of unfair
18 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
19 described in this Complaint, including, but not limited to:

- 20 a) Violations of Labor Code sections 510 and 1198.
- 21 b) violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197,
22 1198;
- 23 c) violations of Labor Code sections 226.7, and 1198;
- 24 d) violations of Labor Code section 226, 1174;
- 25 e) violations of Labor Code sections 201 and 202;
- 26 f) violations of Labor Code section 204;
- 27 g) violations of Labor Code section 246;
- 28 h) violations of Labor Code section 248; and

1 i) violations of the applicable wage order.

2 133. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
3 Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of
4 Plaintiff and proposed Class Members. Defendants' unlawful, unfair, and/or fraudulent conduct has
5 also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and
6 competitors.

7 134. The Business and Professions Code section 17203 provides that the Court may
8 restore to an aggrieved party any money or property acquired by means of the unlawful, unfair,
9 and/or fraudulent business acts or practices.

10 135. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or
11 fraudulent activity alleged herein.

12 136. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff
13 Class are entitled to recover pre-judgment interest on wages earned, but not paid.

14 137. Plaintiff further seeks an order requiring an audit and accounting of the payroll
15 records to determine the amount of restitution of all unpaid wages owed to himself and members of
16 the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds
17 to be paid to current and former employees that can be identified and located pursuant to a court
18 order and supervision.

19 138. Plaintiff seeks restitution for himself and all others similarly situated of these
20 amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of
21 Civil Procedure section 1021.5.

22 **ELEVENTH CAUSE OF ACTION**

23 **Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)**

24 **(On Behalf of All Aggrieved Employees Against Defendant)**

25 147. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
26 forth herein.

27 148. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
28 California Labor Code §§ 2698-99) applied to Defendant's employment of Plaintiff and the proposed

1 Class Members.

2 149. At all times set forth herein, California Labor Code § 2699(a) has provided that any
3 provision of law under the California Labor Code that provides for a civil penalty to be assessed and
4 collected by the Labor and Workforce Development Agency (LWDA) for violations of the California
5 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
6 employee on behalf of himself and other current or former employees pursuant to procedures outlined
7 in California Labor Code § 2699.3.

8 150. At all times set forth herein, the PAGA has also provided that for the violation of any
9 Labor Code provision that does not itself contain a civil penalty, there are established civil penalties of
10 \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved
11 employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

12 151. A civil action under PAGA may be brought by an “aggrieved employee,” any person
13 that was employed by the alleged violator and against whom one or more of the alleged violations was
14 committed.

15 152. Defendants have been committing, and continue to commit, violations of the California
16 Labor Code, including, but not limited to:

17 a) Violations of Labor Code sections 510 and 1198.

18 b) violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;

19 c) violations of Labor Code sections 226.7, and 1198;

20 d) violations of Labor Code section 226, 1174;

21 e) violations of Labor Code sections 201 and 202;

22 f) violations of Labor Code section 204;

23 g) violations of Labor Code section 246;

24 h) violations of Labor Code section 248; and

25 i) violations of the applicable wage order.

26 a. Plaintiff was employed by Defendants and the alleged violations have been committed
27 against him during his time of employment and he is, therefore, an aggrieved employee.

28 Plaintiff and other employees are “aggrieved employees” as defined by California

Labor Code §2699(c) in that they are all current or former employees of Defendant, and one or more of the alleged violations were committed against them.

153. Pursuant to California Labor Code § 2699.3, aggrieved employees, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

154. On May 26 2023, Plaintiff provided written notice to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

155. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code identified in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiff Class and Terminated Sub-Class;
2. For an order that counsel for Plaintiff be appointed class counsel
3. Certification of this class action on behalf of the proposed Plaintiff Class and

Terminated Sub-Class;

4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants
6. Prejudgment and post judgment interest on all sums awarded;
7. For compensatory damages;
8. For penalties pursuant to Labor Code sections 2699, 200, 226, 226.7;
9. For interest accrued to date;
10. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226, 2699 (g)(1) and 1194;
11. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 2699(g)(1) and Code of Civil Procedure section 1021.5, and/or other applicable law; and
12. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law;
 - a. Labor Code sections 510 and 1198 for failure to pay overtime wages;
 - b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for failing to pay all wages;
 - c. Labor Code sections 226.7, for failing to provide compliant meal and rest breaks;
 - d. Labor Code section 246 for failing to pay sick pay wages;
 - e. Labor Code section 248 for failing to pay Covid-19 Supplemental sick pay;
 - f. Labor Code section 226, 1174 for failing to provide compliant wage statements and failing to maintain accurate records;
 - g. Labor Code section 204 for failing to timely pay wages during employment;
 - h. Labor Code sections 201 and 202 for failing to pay wages at

1 termination;

2 i. Business & Professions Code sections 17200-08 for violating the
3 provisions set forth herein above.

4 13. For all such other and further relief that the Court may deem just and proper.

5 DATED: August 28, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

7
8 By: _____



Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Sahag Majarian, Esq.
Garen Majarian, Esq.
Attorneys for Plaintiff and others similarly
situated

12
13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to
15 the extent authorized by law.

16 DATED: August 28, 2023

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

18
19 By: _____



Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Sahag Majarian, Esq.
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Attorneys for Plaintiff and others similarly
situated

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I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

FIRST AMENDED CLASS ACTION COMPLAINT
on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day

[X] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Suzette Becker

1
PROOF OF SERVICE

Villalobos v. International Line Builders
Riverside County Superior Court Case No. CVRI2302769

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