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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CARLOS MIRAMONTES, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

GREEN WALL TECH, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 23CV032508

CLASS ACTION

Assigned for All Purposes To:

Hon. Brad Seligman
Dept.: 23

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code § 245 *et seq.* and 246;
7. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
10. Penalties Pursuant to Labor Code § 203;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Alameda
07/10/2023
Clad Flake, Executive Officer/Clerk of the Court
By: A. Linhares Deputy

1 Plaintiff CARLOS MIRAMONTES, (hereinafter “Plaintiff”) on behalf of himself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants GREEN WALL
8 TECH, INC., a California corporation, and DOES 1 through 50 (all defendants being collectively
9 referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated
10 various provisions of the California Labor Code, relevant orders of the Industrial Welfare
11 Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

12 2. Plaintiff is a resident of California and during the time period relevant to this
13 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
14 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
15 worked for Defendants in Alameda County, and in other nonexempt positions, throughout
16 California and, and consistently worked at Defendants’ behest without being paid all wages due.
17 More specifically, Plaintiff and the other similarly situated Class members were employed by
18 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
19 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
20 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
21 subjected to the same policies and practices, and (3) endured similar violations at the hands of
22 Defendants as the other Employee Class members who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to perform work
24 while remaining under Defendants’ control before and after being on the clock for their daily work
25 shift. Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and
26 provided them with inaccurate wage statements that prevented Plaintiff and the Class from
27 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class
28 with lawful meal and rest periods, as employees were not provided with the opportunity to take

1 timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

2 **THE PARTIES**

3 A. The Plaintiff

4 4. Plaintiff CARLOS MIRAMONTES has resided in California and during the time
5 period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee
6 within the State of California.

7 B. The Defendants

8 5. Defendant GREEN WALL TECH, INC. ("GWT") is a California corporation with
9 its principle executive office in Fremont, California, and has been listed as the employer on the
10 wage statements issued to Plaintiff during the relevant time period. GWT lists a California address
11 in Fremont, California with the California Secretary of State, and employs Class members in
12 Alameda County, including at Defendants' offices and facilities in Fremont, California, and
13 throughout California and conducts business throughout California.

14 6. The true names and capacities, whether individual, corporate, associate, or
15 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
16 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
17 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
18 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
19 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
20 this Complaint to reflect the true names and capacities of the Defendants designated herein as
21 Does 1 through 50 when their identities become known.

22 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
23 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
24 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
25 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
26 all respects as the employers or joint employers of Employees. Defendants, and each of them,
27 exercised control over the wages, hours or working conditions of Employees, or suffered or
28 permitted Employees to work, or engaged, thereby creating a common law employment

1 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
2 employed Employees.

3 **JURISDICTION AND VENUE**

4 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
6 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
7 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
8 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
9 obligations and liabilities giving rise to this lawsuit occurred at least in part in Alameda County
10 and Defendants maintain and operate company offices and facilities in Alameda County, and
11 employ Plaintiff and other Class members in Alameda County and throughout California.

12 **FACTUAL BACKGROUND**

13 9. The Employees who comprise the Class and Collective, including Plaintiff, are
14 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
15 Employees who work in nonexempt positions at the direction of Defendants in the State of
16 California. Plaintiff and the Class members were either not paid by Defendants for all hours
17 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
18 Plaintiff and Employees were not paid for the time that they worked “pre-shift” and “post-shift”
19 without compensation by picking up employees and work equipment before clocking in and after
20 clocking out for the day. Plaintiff also contends that Defendants failed to pay Plaintiff and the
21 Class members all wages due and owing, failed to provide meal and rest breaks, and failed to
22 furnish accurate wage statements, all in violation of various provisions of the California Labor
23 Code and applicable Wage Orders. Additionally, Defendants paid Plaintiff and Employees
24 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon
25 information and belief, Defendants failed to incorporate all remunerations, including
26 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the
27 calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,
28 during times when Plaintiff and Employees worked overtime and received nondiscretionary

1 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all
2 overtime wages by paying a lower overtime rate than required.

3 10. From at least four (4) years prior to the filing of this lawsuit and continuing to the
4 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
5 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
6 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
7 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
8 sick pay. Therefore, during times when Plaintiff and Employees worked overtime and received
9 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
10 to pay all sick pay by paying a lower overtime rate than required.

11 11. From at least four (4) years prior to the filing of this lawsuit and continuing to the
12 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
13 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
14 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
15 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
16 vacation pay. Therefore, during times when Plaintiff and Employees worked overtime and
17 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
18 Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

19 12. During the course of Plaintiff and the Class members' employment with
20 Defendants, they were not paid all wages they were owed, including for all work performed and
21 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
22 labor budgets low.

23 13. As a matter of uniform Company policy, Plaintiff and the Class members were
24 required to work during their meal and rest breaks which were not compensated by Defendants in
25 violation of the California Labor Code. Plaintiff and the Class members were also not paid
26 regular wages and overtime for the time they were required to comply with other requirements
27 imposed upon them, which they had to complete while working through their meal and rest
28 breaks and without compensation. As a result Plaintiff and the Class members worked shifts over

1 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
2 appropriate overtime rate for all such hours, including by being required to perform work duties
3 and tasks without pay and while off-the-clock. As a result, Plaintiff and the Class members
4 worked substantial overtime hours during their employment with Defendants for which they were
5 not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

6 14. As a result of the above described the daily work demands and pressures to work
7 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
8 Class members were not properly paid for all wages earned and for all wages owed to them by
9 Defendants, including when working more than eight (8) hours in any given day and/or more than
10 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
11 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
12 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
13 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
14 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
15 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
16 Labor Code, applicable IWC Wage Orders.

17 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
18 continuing to the present, Defendants had a consistent policy or practice of failing to pay
19 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
20 by California Law.

21 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
22 continuing to the present, Defendants had a consistent policy or practice of failing to pay
23 Employees overtime compensation at premium overtime rates for all hours worked in excess of
24 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
25 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
26 sections of IWC Wage Orders.

27 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
28 continuing to the present, Defendants have regularly required Employees to work shifts in excess

1 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
2 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
3 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
4 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
5 Defendants failed to provide or deficiently provided.

6 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
7 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
8 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
9 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
10 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
11 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

12 19. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
13 continuing to the present, Defendants have consistently failed to provide Employees with timely,
14 accurate, and itemized wage statements as required by California wage-and-hour laws.
15 Specifically, Defendants failed in their affirmative obligation to keep accurate records of the
16 correct overtime wages based on proper regular rate calculations that included nondiscretionary
17 commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of
18 compensation of their Employees. Moreover, the wage statements given to Employees by
19 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
20 periods and rest breaks all of which Defendants knew or reasonably should have known were
21 owed to Employees, as alleged hereinabove. The wage statements provided to Employees were
22 confusing and required Employees to engage in discovery and refer to outside sources to verify
23 whether their pay was correct and potentially resulting in a miscalculation by the Employees.

24 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
25 continuing to the present, Defendants have consistently failed to provide Employees with timely,
26 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

27 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
28 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the

1 performance of their job duties for Defendants including, but not limited to, the cost of vehicle
2 maintenance, mileage, and fuel which was necessary to perform their duties under Defendants'
3 employ in violation of Labor Code § 2802.

4 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
5 continuing to the present, Defendants have consistently failed to keep accurate time and wage
6 records as required by California wage-and-hour laws.

7 23. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
8 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
9 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
10 required by California wage-and-hour laws.

11 24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
12 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1,
13 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802.

14 25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
15 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
16 enjoyed from their violations of Labor Code.

17 **CLASS ALLEGATIONS**

18 26. Plaintiff brings this class action on behalf of himself an all others similarly situated
19 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
20 all individuals employed by Defendants, at any time within four (4) years of the filing of this
21 lawsuit, and have been employed by Defendants within the State of California.

22 27. Further, plaintiff seeks to represent the following Subclasses composed of and
23 defined as follows:

24 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
25 compensated for all hours worked for Defendants at the applicable minimum wage.

26 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
27 compensated for all hours worked for Defendants at the required rates of pay, including for all
28 hours worked in excess of eight in a day and/or forty in a week.

1 c. Subclass 3. Vacation Wages Subclass. All Class members who were not
2 compensated at the Employee's regular rate of pay for their vacation wages.

3 d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at
4 the Employee's regular rate of pay for their sick pay wages.

5 e. Subclass 5. Meal Period Subclass. All Class members who were subject to
6 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty
7 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

8 f. Subclass 6. Rest Break Subclass. All Class members who were subject to
9 Defendants' policy and/or practice of failing to authorize and permit Employees to take
10 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
11 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

12 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
13 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
14 by California wage-and-hour laws.

15 h. Subclass 8. Wage Statement Subclass. All Class members who, within the
16 applicable limitations period, were not provided with accurate itemized wage statements.

17 i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures. All Class
18 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in
19 the performance of Employees job duties for Defendants which were necessary to perform their
20 duties under Defendants' employ.

21 j. Subclass 11. Termination Pay Subclass. All Class members who, within the
22 applicable limitations period, either voluntarily or involuntarily separated from their employment
23 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
24 termination.

25 k. Subclass 12. UCL Subclass. All Class members who are owed restitution as a
26 result of Defendants' business acts and practices, to the extent such acts and practices are found to
27 be unlawful, deceptive, and/or unfair.

28 28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or

1 modify the class description with greater particularity or further division into subclasses or
2 limitation to particular issues.

3 29. This action has been brought and may properly be maintained as a class action
4 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
5 of interest in litigation and proposed class is easily ascertainable.

6 **A. Numerosity**

7 30. The potential members of the class as defined are so numerous that joinder of all
8 the member of the class is impracticable. While the precise number of class member has not been
9 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
10 time period relevant to this lawsuit, employed more than 100 individuals were employed by
11 Defendant's within the State of California.

12 31. Accounting for employee turnover during the relevant time period increases this
13 number substantially. Plaintiff alleges that Defendants' employment records will provide
14 information as to the number and location of all class members.

15 **B. Commonality**

16 32. There are questions of law and fact common to the class that predominate over any
17 questions affecting only individual class members. These common questions of law and fact
18 include:

- 19 a. Whether Defendants failed to pay Employees minimum wages;
- 20 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 21 c. Whether Defendants failed to pay Employees overtime as required under Labor
22 Code § 510;
- 23 d. Whether Defendants failed to pay Employees vacation wages as required under
24 Labor Code § 227.3;
- 25 e. Whether Defendants failed to pay Employees sick pay as required under Labor
26 Code § 245;
- 27 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
28 IWC Wage Orders, by failing to provide Employees with requisite meal periods or

- 1 premium pay in lieu thereof;
- 2 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
- 3 Orders, by failing to provide Employees with requisite rest breaks or premium pay
- 4 in lieu thereof;
- 5 h. Whether Defendants violated Labor Code § 226(a);
- 6 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 7 j. Whether Defendants failed to reimburse Employees for necessary business
- 8 expenses;
- 9 k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 10 wages and compensation due and owing at the time of termination of employment;
- 11 l. Whether Defendants violated Business and Professions Code § 17200 et seq.; and
- 12 m. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq*; and
- 13 n. Whether Employees are entitled to equitable relief pursuant to Business and
- 14 Professions Code § 17200 et seq.

15 **C. Typicality**

16 33. The claims of the named plaintiff are typical of those of the other Employees.

17 Employees all sustained injuries and damages arising out of and caused by Defendant's common

18 course of conducts in violation of statutes, as well as regulations that have the force and effect of

19 law, as alleged herein.

20 **D. Adequacy of Representation**

21 34. Plaintiff will fairly and adequately represent and protect the interest of Employees.

22 Counsel who represents Employees are experienced and competent in litigating employment class

23 actions.

24 **E. Superiority of Class Action**

25 35. A class action is superior to other available means for the fair and efficient

26 adjudication of this controversy. Individual joinder of all Employees is not practicable, and

27 questions of law and fact common to all Employees predominate over any questions affecting only

28 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of

Defendants' illegal policies or practices of failing to compensate Employees properly.

36. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

37. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

38. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working "pre-shift" and "post-shift" without compensation by picking up employees and work equipment before clocking in and after clocking out for the day. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

39. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

40. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore entitled to double the minimum wage during the relevant period.

41. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California Labor Code § 1194(a) which states:

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

7 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
8 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

9 43. California Labor Code § 1194.2 also provides for the following remedies:

10 In any action under Section 1194 . . . to recover wages because of
11 the payment of a wage less than the minimum wages fixed by an
12 order of the commission, an employee shall be entitled to recover
13 liquidated damages in an amount equal to the wages unlawfully
14 unpaid and interest thereon.

15 44. Defendants have the ability to pay minimum wages for all time worked and have
16 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
17 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

18 45. Wherefore, Employees are entitled to recover the unpaid minimum wages
19 (including double minimum wages), liquidated damages in an amount equal to the minimum
20 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
21 to California Labor Code § 1194(a).

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

24 **(Against All Defendants)**

25 46. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 47. By their conduct, as set forth herein, Defendants violated California Labor Code §
28 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
(a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
(8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not

1 paying Employees wages for all hours worked including time off the clock working “pre-shift”
2 and “post-shift” without compensation by picking up employees and work equipment before
3 clocking in and after clocking out for the day. Employees regularly worked over 8 hours on a
4 given day without receiving overtime compensation.

5 48. Furthermore, on information and belief, Defendants did not pay Plaintiff and
6 Employees the correct overtime rate for the recorded overtime hours that they generated. In
7 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary
8 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
9 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
10 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
11 rate of pay for purposes of calculating the overtime wage rate.

12 49. Therefore, during times when Plaintiff and Employees worked overtime and
13 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
14 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

15 50. Defendants’ failure to pay compensation in a timely fashion also constituted a
16 violation of California Labor Code § 204, which requires that all wages shall be paid
17 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
18 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
19 and overtime compensation earned by Employees. Each such failure to make a timely payment of
20 compensation to Employees constitutes a separate violation of California Labor Code § 204.

21 51. Employees have been damaged by these violations of California Labor Code §§
22 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

23 52. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
24 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
25 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
26 reasonable attorneys’ fees and costs.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 53. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 54. Employees regularly worked shifts greater than five (5) hours and greater than ten
7 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
8 more than five (5) hours without providing him or her with a meal period of not less than thirty
9 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
10 meal period of not less than thirty (30) minutes.

11 55. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code. Employees were consistently required to work through their meal periods which they
13 were consistently denied. Employees were also required to take meal periods after working well
14 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
15 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
16 period as required by law.

17 56. Moreover, Defendants failed to compensate Employees for each meal period not
18 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
19 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
20 employee a meal period in accordance with this section, the employer shall pay the employee one
21 hour of pay at the employee's regular rate of compensation for each workday that the meal period
22 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
23 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
24 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
25 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
26 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

27 57. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
28 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal

1 period not provided or deficiently provided, a sum to be proven at trial.

2 **FOURTH CAUSE OF ACTION**

3 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

4 **(Against All Defendants)**

5 58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 59. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
8 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
9 not less than ten (10) minutes for each consecutive four (4) hour shift.

10 60. Defendants failed to provide Employees with timely rest breaks of not less than ten
11 (10) minutes for each consecutive four (4) hour shift.

12 61. Moreover, Defendants failed to compensate Employees for each rest period not
13 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
14 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
15 accordance with this section, the employer shall pay the employee one hour of pay at the
16 employee's regular rate of compensation for each workday that the rest period is not provided.
17 Defendants failed to compensate the Employees in the Class for each rest period not provided or
18 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
19 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
20 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
21 or by otherwise incorrectly calculating the regular rate.

22 62. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
23 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
24 worked without the required rest breaks, a sum to be proven at trial.

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PAY VACATION WAGES**

27 **(Against All Defendants)**

28 63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 64. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
3 employment policy provides for paid vacation and an employee is terminated without having
4 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate
5 in accordance with said contract of employment or policy respecting eligibility or time served.

6 65. Defendants paid nondiscretionary commissions, incentive pay, and/or
7 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
8 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

9 66. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant
10 to Labor Code § 227.3.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246**

13 **(Against All Defendants)**

14 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 68. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
17 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
18 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
19 with the pay calculation under California Labor Code § 246(l).

20 69. Defendants paid nondiscretionary commissions, incentive pay, and/or
21 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
22 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
23 calculating the amount of paid sick time due when sick time is used according to the requirements
24 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
25 rate, in violation of the law.

26 70. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
27 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

28 ///

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES
IN VIOLATION OF LABOR CODE § 2802
(Against All Defendants)

71. Plaintiff re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

72. Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

73. Employees incurred necessary expenditures in the performance of their job duties for Defendants, namely the cost of vehicle maintenance, mileage, and fuel, which was necessary to perform their duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for these necessarily incurred business expenses.

74. As a result of the unlawful acts of Defendants, Employees have been deprived of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

76. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the

1 employer must give the employee these statements twice a month or each time wages are paid.

2 77. Defendants failed to provide Employees with accurate itemized wage statements in
3 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
4 Defendants, failed to include the above requirements enumerated above. Employees' wage
5 statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and
6 failed to accurately set forth all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9).
8 The wage statements provided to Employees were confusing and required Employees to engage in
9 discovery and refer to outside sources to verify whether their pay was correct and potentially
10 resulting in a miscalculation by the Employees. Additionally, Specifically, Defendants failed in
11 their affirmative obligation to keep accurate records of the correct overtime wages based on proper
12 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or
13 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.
14 Moreover, the wage statements given to Employees by Defendants failed to accurately account for
15 wages, overtime, and premium pay for deficient meal periods and rest breaks, all of which
16 Defendants knew or reasonably should have known were owed to Employees, as alleged
17 hereinabove. The wage statements provided to Employees were confusing and required
18 Employees to engage in discovery and refer to outside sources to verify whether their pay was
19 correct and potentially resulting in a miscalculation by the Employees.

20 78. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
21 Employees suffered injuries, including among other things confusion over whether they received
22 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
23 forcing them to make mathematical computations to analyze whether the wages paid in fact
24 compensated them correctly for all hours worked.

25 79. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
26 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
27 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
28 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an

1 award of costs and reasonable attorneys' fees.

2 80. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
3 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
4 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
5 employee for each pay period.

6 81. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
7 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
8 shown according to proof.

9 **NINTH CAUSE OF ACTION**

10 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

11 **AND 1174.5**

12 **(Against All Defendants)**

13 82. Plaintiff re-allege and incorporate all preceding paragraphs, as though set forth in
14 full herein.

15 83. California Labor Code § 1174 requires that all employers shall keep accurate time
16 and wage records for all employees. California Labor Code § 1174.5 further requires that any
17 employee suffering injury due to a willful violation of the aforementioned obligations may seek
18 damages, including civil penalties, from the employer.

19 84. During the course of Plaintiff's and Employees' employment, Defendants
20 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
21 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
22 overtime, and premium pay as discussed above.

23 85. Accordingly, Defendants are liable for civil penalties pursuant to the California
24 Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

25 **TENTH CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 203**

27 **(Against All Defendants)**

28 86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 87. Numerous Employees are no longer employed by Defendants; they either quit
3 Defendants' employ or were fired therefrom.

4 88. Defendants failed to pay these Employees all wages due and certain at the time of
5 termination or within seventy-two (72) hours of resignation.

6 89. The wages withheld from these Employees by Defendants remained due and owing
7 for more than thirty (30) days from the date of separation of employment.

8 90. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
9 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
10 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
11 to thirty (30) days from the date they were due.

12 **ELEVENTH CAUSE OF ACTION**

13 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

14 **(Against All Defendants)**

15 91. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 92. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
18 pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in
19 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
20 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
21 meaning of Code of Civil Procedure
22 § 1021.5.

23 93. Plaintiff is a "person" within the meaning of Business & Professions Code
24 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
25 relief, restitution, and other appropriate equitable relief.

26 94. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair
27 business practices.

28 95. Wage-and-hour laws express fundamental public policies. Paying employees their

1 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
2 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
3 to enforce minimum labor standards, to ensure that employees are not required or permitted to
4 work under substandard and unlawful conditions, and to protect law-abiding employers and their
5 employees from competitors who lower costs to themselves by failing to comply with minimum
6 labor standards.

7 96. Defendants have violated statutes and public policies. Through the conduct alleged
8 in this Complaint Defendants have acted contrary to these public policies, have violated specific
9 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
10 violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff,
11 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
12 guaranteed to all employees under the law.

13 97. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
14 violation of the Business & Professions Code § 17200 et seq.

15 98. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
16 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
17 care should have known that their conduct was unlawful; therefore their conduct violates the
18 Business & Professions Code § 17200 et seq.

19 99. As a proximate result of the above-mentioned acts of Defendants, Employees have
20 been damaged, in a sum to be proven at trial.

21 100. Unless restrained by this Court Defendants will continue to engage in such
22 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
23 make such orders or judgments, including the appointment of a receiver, as may be necessary to
24 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
25 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
26 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
27 failed to pay.

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1 **TWELFTH CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

3 **(Against All Defendants)**

4 101. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 102. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
7 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
8 alleged violators, Defendants.

9 103. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
10 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
11 penalty provisions, without limitation, based on the following California Labor Code sections:
12 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174,
13 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802.

14 104. The penalties shall be allocated as follows: 75% to the Labor and Workforce
15 Development Agency (LWDA) and 25% to the affected employee.

16 105. Employees also seek any and all penalties and remedies set forth in Labor Code
17 § 558, which states:

18 (a) Any employer or other person acting on behalf of an
19 employer who violates, or causes to be violated, a section of this
20 chapter or any provision regulating hours and days of work in any
21 order of the Industrial Welfare Commission shall be subject to a
22 civil penalty as follows: (1) For any initial violation, fifty dollars
23 (\$50) for each underpaid employee for each pay period for which
24 the employee was underpaid in addition to an amount sufficient to
25 recover underpaid wages. (2) For each subsequent violation, one
26 hundred dollars (\$100) for each underpaid employee for each pay
27 period for which the employee was underpaid in addition to an
28 amount sufficient to recover underpaid wages. (3) Wages
recovered pursuant to this section shall be paid to the affected
employee.

(b) If upon inspection or investigation the Labor
Commissioner determines that a person had paid or caused to be
paid a wage for overtime work in violation of any provision of
this chapter, or any provision regulating hours and days of work
in any order of the Industrial Welfare Commission, the Labor
Commissioner may issue a citation. The procedures for issuing,

1 be proven;

2 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

3 7. For penalties pursuant to Labor Code § 226.3, as may be proven;

4 8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
5 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

6 9. For penalties pursuant to Labor Code § 227.3, as may be proven;

7 10. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

8 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

9 12. For restitution for unfair competition pursuant to Business & Professions Code
10 § 17200 et seq., including disgorgement or profits, as may be proven;

11 13. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

12 14. For compensatory damages in the amount of all previously unreimbursed business
13 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
14 from four (4) years prior to the original filing of this action, as may be proven;

15 15. For an order enjoining Defendants and their agents, servants, and employees, and
16 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
17 duties adumbrated in this Complaint;

18 16. For all general, special, and incidental damages as may be proven;

19 17. For an award of pre-judgment and post-judgment interest;

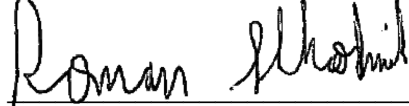
20 18. For an award providing for the payment of the costs of this suit;

21 19. For an award of attorneys' fees; and

22 20. For such other and further relief as this Court may deem proper and just.

23 DATED: July 10, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

24 By 
25

David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
CARLOS MIRAMONTES
and the putative class

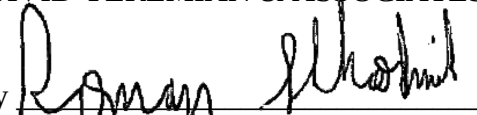
DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: July 10, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

By



David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
CARLOS MIRAMONTES
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201, La Crescenta, CA 91214.

CONSENTED TO E-SERVICE

[] **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with 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 1 day after date of deposit for mailing in affidavit.

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

Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA Branch Name: Rene C. Davidson Alameda County Courthouse Mailing Address: 1225 Fallon Street City, State and Zip Code: Oakland CA 94612	
SHORT TITLE: MIRAMONTES, ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED vs GREEN WALL TECH, INC., A CALIFORNIA CORPORATION NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 23CV032508

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of ALAMEDA. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect ALA
 Reference Number: 7866430_2023_07_10_19_56_20_303_5
 Submission Number: 23AA00096764
 Court Received Date: 07/10/2023
 Court Received Time: 12:58 pm
 Case Number: 23CV032508
 Case Title: MIRAMONTES, ON BEHALF OF HIMSELF AND OTHERS SIMILARLY SITUATED vs GREEN WALL TECH, INC., A CALIFORNIA CORPORATION
 Location: Rene C. Davidson Alameda County Courthouse
 Case Type: Civil Unlimited
 Case Category: Other Employment Complaint Case
 Jurisdictional Amount: Over \$25,000
 Notice Generated Date: 07/19/2023
 Notice Generated Time: 11:16 am

Documents Electronically Filed/Received

Status

Amended Complaint	Accepted
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Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect ALA
 Contact: Legal Connect
 Phone: