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FILED
 Superior Court of California
 County of Los Angeles
09/12/2023
 David W. Slayton, Executive Officer / Clerk of Court
 By: M. Arellanes Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FRANCISCO CRUZ, an individual, on behalf
 of himself and others similarly situated,

Plaintiff,

vs.

HOWARD ROOFING COMPANY
 INCORPORATED; and DOES 1 through 50,
 inclusive,

Defendants.

Case No. 23STCV15380

Assigned for all purposes to:
 Hon. Elihu M. Berle, Dept. 6

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION
 COMPLAINT**

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods or Compensation;
3. Failure to Permit Rest Periods or Provide Compensation;
4. Failure to Provide Recovery Periods;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Waiting Time Penalties;
7. Failure to Reimburse Business Expenses;
8. Violation of the Unfair Competition Law; and
9. Violation of the Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

Action Filed: June 30, 2023
 Trial Date: None set

1 Plaintiff FRANCISCO CRUZ (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, brings this First Amended Class and Representative Action Complaint (“Complaint”) against
3 Defendants HOWARD ROOFING COMPANY INCORPORATED; and DOES 1 through 50,
4 inclusive (collectively, “Defendants”), and alleges as follows:

5 **INTRODUCTION**

6 1. This proposed class action, pursuant to California Code of Civil Procedure section 382,
7 is brought by Plaintiff individually and on behalf of all current and former non-exempt employees
8 employed by Defendants in California during the Class Period (collectively the “Class” or “Class
9 Members”). The term Class Period is defined as four (4) years prior to the filing of this action to the
10 date of class certification.

11 2. Plaintiff also brings this representative action pursuant to the Private Attorneys General
12 Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”), against Defendants, on behalf of himself
13 individually and other aggrieved employees who are and were employed by Defendants throughout
14 California during the PAGA Period (the “aggrieved employees”). The term PAGA Period is defined
15 as one (1) year prior to Plaintiff’s initial notice of Labor Code violations to the Labor and Workforce
16 Development Agency (“LWDA”) and Defendants until judgment.

17 3. This proposed class and representative action seeks, *inter alia*, unpaid wages (including
18 sick pay, vacation pay, minimum, regular, overtime, and double time wages), compensation for non-
19 compliant meal periods, rest periods, and recovery periods, waiting time penalties, itemized wage
20 statement penalties, civil penalties, business expense reimbursements, liquidated damages, interest,
21 reasonable attorneys’ fees, and costs. Plaintiff’s action is brought under, *inter alia*, the California
22 Industrial Welfare Commission (“IWC”) Wage Orders and applicable provisions of the California
23 Code of Regulations, California Business & Professions Code sections 17200 *et seq.*, California Civil
24 Code section 3289, California Code of Civil Procedure section 1021.5, and California Labor Code
25 (“Labor Code”) sections 201-204, 206, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174,
26 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2441, 2698, *et seq.*, 2800, and 2802.

27 4. Under the California Unfair Competition Law, Business and Professions Code
28 sections 17200 *et seq.* (“UCL”), and pursuant to the class action procedures provided for in this statute,

1 Plaintiff, on behalf of himself and the proposed Class, seeks declaratory relief, injunctive relief, and
2 restitution of all benefits Defendants have received from their employees due to their unlawful
3 business practices, including but not limited to, their failure to timely provide sick pay, vacation pay,
4 minimum, regular, overtime, and double time compensation due for all hours worked, failure to
5 reimburse business expenses, failure to provide compliant meal periods and rest breaks to their
6 employees or compensation in lieu thereof, and failure to provide accurate itemized wage statements.

7 **JURISDICTION AND VENUE**

8 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
9 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
10 in all cases except those given to other trial courts. All claims alleged herein arise under California
11 law for which Plaintiff seeks relief authorized by California law. Further, this is a class action pursuant
12 to California Code of Civil Procedure section 382 and representative action under PAGA. As such,
13 the monetary damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the
14 minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.
15 The Court also has jurisdiction over certain causes of action pursuant to California Business &
16 Professions Code sections 17203 and 17204, which provide for exclusive jurisdiction for enforcement
17 of this statute in any court of competent jurisdiction.

18 6. This Court has jurisdiction over all Defendants because each Defendant is a citizen of
19 California, a corporation or association organized under the laws of the State of California, an
20 association authorized to do business in California and registered with the California Secretary of
21 State, does sufficient business in California, has sufficient minimum contacts with California, and/or
22 intentionally avails itself of the laws and markets of California through the promotion, sale, marketing
23 and distribution of its products and/or services in California to render the exercise of jurisdiction by
24 the California courts permissible.

25 7. Venue in Los Angeles County is proper under California Business & Professions Code
26 section 17203 and California Code of Civil Procedure section 395.5 because a substantial part of
27 Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County, Defendants
28 had and have ongoing projects in this County, Defendants conduct substantial business in this County,

1 Defendants' liability arose in this County, and/or Defendants reside, transact business, maintain
2 offices, and/or have an agent or agents in this County. The relief requested is within the jurisdiction
3 of this Court.

4 **PARTIES**

5 8. Plaintiff is a California citizen. Defendants initially employed Plaintiff as a non-exempt
6 hourly General Laborer and later as a non-exempt hourly Second Foreman during the Class Period in
7 the State of California. Plaintiff's job duties included, *inter alia*, managing employees, maintaining a
8 list of materials and employees for various projects and jobsites, performing foreman duties, ensuring
9 that employees were performing their job duties, inspecting materials and worksites, meeting with co-
10 workers, and installing, maintaining, and/or repairing roofs. Plaintiff performed his job duties for
11 Defendants throughout Southern California including cities such as Van Nuys, Cerritos, Commerce,
12 San Bernardino, Fontana, Riverside, Corona, and Irvine.

13 9. Plaintiff is informed, believes and thereon alleges that, at all relevant times Defendant
14 HOWARD ROOFING COMPANY INCORPORATED ("HRCI") was and is a California corporation
15 doing business in the State of California, with its principal place of business in Los Angeles County.
16 Plaintiff is informed, believes, and thereon alleges that, HRCI owns and operates a roofing company
17 and provides its services to California consumers. Plaintiff is further informed, believes and thereon
18 alleges that, at all relevant times, HRCI regularly conducted and conducts business within the State of
19 California and derives substantial revenues from services performed in California. Plaintiff is
20 informed, believes and thereon alleges that, at all relevant times, HRCI was and is an employer subject
21 to California state wage and hour laws.

22 10. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter
23 mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers,
24 whose employees were and are engaged throughout this County and the State of California.

25 11. Defendants continue to employ non-exempt employees within California.

26 12. Plaintiff is unaware of the true names and capacities of those defendants identified as
27 DOES 1 through 50. Therefore, Plaintiff identifies those defendants fictitiously. Plaintiff is informed,
28 believes and thereon alleges that at all relevant times each DOE defendant was a parent, sister, or

1 related corporate entity of defendants, or an owner, employee or agent of defendants, and each related
2 entity, and was acting with the knowledge and authorization of each of the other defendants. Plaintiff
3 will seek to amend this Complaint to allege the true names and capacities of each DOE defendant
4 when their names have been ascertained and identified. Plaintiff is informed, believes and thereon
5 alleges that each of the defendants sued as DOES 1 through 50 participated in, received the benefit of,
6 or was in some way responsible for one or more of the wrongful acts and omissions and some portion
7 of the damages alleged herein.

8 13. Plaintiff is informed, believes and thereon alleges that at all times material hereto, each
9 defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out
10 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
11 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
12 employer and/or joint employer of Plaintiff and the Class Members.

13 14. Plaintiff is informed, believes and thereon alleges that defendants, each and all of them,
14 at all times material hereto, were the joint employers, parent companies, successor companies,
15 predecessors in interest, affiliates, agents, employees, servants, joint venturers, directors, fiduciaries,
16 representatives, and/or co-conspirators of each of the remaining defendants. Defendants, unless
17 otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within
18 the course and scope of said relationship(s), and are a proximate cause of Plaintiff's damages as herein
19 alleged.

20 15. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
21 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality and
22 separateness between the individual and the corporation does not exist, as Defendants, and DOES 1
23 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned herein were
24 mere shells, instrumentalities and conduits through which DOES 1 through 50, inclusive, carried out
25 their business in the business name, exercising complete control and dominance over such business;
26 (2) that Defendants were conceived, intended and used by DOES 1 through 50, inclusive, as devices
27 to avoid individual liability and in place of Defendants, and DOES 1 through 50, inclusive, and were
28 without the financial solvency and responsibility required by law; and (3) that all of the assets of the

1 Defendants have been transferred to DOES 1 through 50, inclusive, or some other individual or entity
2 which he or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants,
3 leaving Defendants with no assets. Further, Plaintiff is informed, believes and thereon alleges, that
4 there exists a principal-agency relationship between and among Defendants.

5 16. At all relevant times herein, Defendants were agents of each other and acting within
6 the course and scope of their agency.

7 **CLASS ALLEGATIONS AND FACTUAL BACKGROUND**

8 17. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this action
9 individually and as a class action on behalf of a proposed Class defined as follows:

10 Class

11 All current and former non-exempt employees employed by Defendants in the State of
12 California within four (4) years prior to the commencement of this action to the date of
13 class certification.

14 18. The Class is also comprised of the following Subclass:

15 Waiting Time Subclass

16 Those members of the Class who separated from their employment with Defendants
17 within three (3) years prior to the commencement of this action to the date of class
18 certification.

19 19. Plaintiff reserves the right pursuant to California Rules of Court, Rule 3.764 and 3.765,
20 to amend or modify the respective definitions of the Class and/or Subclasses to provide greater
21 specificity and/or further division into subclasses or limitation to particular issues based on further
22 investigation and discovery.

23 20. This action is brought, and may properly be maintained, as a class action pursuant to
24 California Code of Civil Procedure section 382 because there is a well-defined community of interest
25 in the litigation, and the proposed class is easily ascertainable. This action presents questions of
26 common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance, and
27 superiority requirements of this provision.

28 21. Through this action, Plaintiff alleges Defendants have consistently maintained and

1 enforced against Plaintiff and Class Members unlawful employment practices and policies which
2 violate the Labor Code and IWC Wage Orders.

3 22. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
4 Defendants failed to pay Plaintiff and Class Members minimum, regular, overtime, and/or double time
5 wages for all hours worked at the legally mandated rates. During the Class Period, Plaintiff and other
6 Class Members regularly worked more than eight (8), 10, and/or 12 hours per workday without
7 receiving compensation at the proper rates of pay. Specifically, Defendants failed to include all
8 remunerations such as split shift premiums and/or other incentive pay when calculating Plaintiff's and
9 Class Members' regular rate of pay for purposes of paying overtime, double time, meal and rest
10 premiums, vacation pay, and/or sick pay. Defendants also required Plaintiff and Class Members to
11 clock out after their shifts and clock back in and continue working without overtime and double time
12 pay. For example, Plaintiff after working about an eight (8) or more hour shift, was required by
13 Defendants to clock out and clock back in approximately two (2) hours later to begin working an
14 additional roughly four (4) shift without overtime and/or double time pay. Instead, the additional time
15 worked in the same workday would be paid at Plaintiff's and Class Members' regular rate of pay. In
16 addition, Defendants required Plaintiff and Class Members to wait in line, without pay, in order to
17 clock in on Defendants' cell phone via a phone application at Defendants' worksites. Further,
18 Defendants required Plaintiff and Class Members to drive their personal vehicles to travel to and from
19 worksites that were further than their regular commute to work without compensation for travel time.
20 Similarly, Defendants required Plaintiff and Class Members to arrive at Defendants' primary worksite
21 (e.g., yard) and then drive to various jobsites without compensation for travel time. Defendants also
22 failed to provide Plaintiff and Class Members the prevailing wage for public works projects.
23 Additionally, Defendants prevented Plaintiff and Class Members from clocking in until their
24 scheduled start time and required them to remain at the worksite without compensation. Similarly,
25 Defendants required Plaintiff and Class Members to attend meetings without compensation. Further,
26 Defendants rounded Plaintiff's and Class Members' time worked in favor of Defendants and to the
27 detriment of the employees. Defendants further failed to provide paid sick leave and/or vacation pay
28 to Plaintiff and Class Members. Defendants also automatically deducted and/or rounded meal periods

1 from Plaintiff and Class Members when meal periods were missed or less than the purported time that
2 was deducted from their wages. In addition, Defendants failed to provide reporting time pay when
3 Plaintiff and Class Members arrived at Defendants' worksites only to be turned away due to the
4 weather (e.g., rain) without compensation or work for that day. As such, Defendants failed to pay
5 Plaintiff and other Class Members all minimum, regular, overtime, and/or double time wages for all
6 hours worked in violation of the Labor Code and applicable IWC Wage Orders.

7 23. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
8 Defendants failed to provide timely off-duty 30-minute meal periods within the appropriate time
9 intervals to Plaintiff and other Class Members as required by Labor Code section 512 and section 11
10 of the applicable Wage Order. Specifically, Plaintiff and other Class Members had their meal periods
11 late, interrupted, missed, and/or short due to Defendants' policy and practice of prioritizing work
12 demands over taking compliant breaks, failure to properly document total hours worked per shift or
13 workday, and failure to provide second meal periods. In addition, Defendants automatically deducted
14 and rounded meal periods despite missed meal periods. Defendants also failed to provide second meal
15 periods when Plaintiff and other Class Members worked over 10 hours. Despite the aforementioned
16 meal period violations, Defendants failed to compensate Plaintiff and other Class Members with an
17 additional hour of pay at their regular rate for every day in which they suffered a meal period violation.
18 Accordingly, Defendants failed to provide Plaintiff and Class Members with timely, uninterrupted off-
19 duty meal periods for at least 30 minutes when they worked more than five (5) hours and/or 10 hours
20 in a workday, and failed to compensate Plaintiff and Class Members with an additional hour of pay at
21 their regular rate of pay for every day in which they were denied a compliant meal period in violation
22 of the Labor Code and applicable IWC Wage Orders.

23 24. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
24 Defendants failed to authorize or permit ten-minute (10) rest periods for every four (4) hours worked
25 or major fraction thereof. Specifically, Plaintiff and other Class Members regularly had their rest
26 breaks shortened, interrupted, restricted to the worksite, and/or missed altogether due to Defendants'
27 policy and practice of prioritizing work demands over taking compliant breaks and failing to
28 implement a compliant rest break policy and/or practice. Defendants also failed to adopt and

1 implement a policy and practice of providing third rest breaks when Plaintiff and other Class Members
2 worked over 10 hours. Notwithstanding the above rest break violations, Defendants failed to
3 compensate Plaintiff and Class Members with an additional hour of pay at their regular rate for every
4 day in which they suffered a rest period violation. Accordingly, Defendants violated the Labor Code
5 and the applicable IWC Wage Orders.

6 25. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
7 Defendants failed to authorize or permit Plaintiff and Class Members from taking recovery periods.
8 Specifically, Plaintiff and Class Members were required to work outdoors at various construction sites
9 during hot days, including during summer, without access to shade or recovery periods to cool down
10 and prevent heat illness. Defendants also failed to provide Plaintiff and Class Members with access to
11 potable water at jobsites and suitable seating in violation of the Labor Code, IWC Wage Orders, and/or
12 the California Occupational Safety and Health Act of 1973 (“OSHA”).

13 26. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
14 Defendants failed to reimburse Plaintiff and Class Members for all necessary business expenses
15 incurred for Defendants’ benefit. For example, Defendants required Plaintiff and other Class Members
16 to purchase and/or maintain their own tools without reimbursement (e.g., power drill, drill bits, saw,
17 blades, screws, etc.). Defendants also required Plaintiff and Class Members to use their personal
18 vehicles to drive to worksites without reimbursement for mileage. Further, Defendants required
19 Plaintiff and Class Members to use their personal cell phones for work to navigate to worksites,
20 communicate with Defendants’ management and employees, and document and take photos of
21 worksites, repairs, and work performed without reimbursement for a reasonable portion of their cell
22 phone bills. In addition, Defendants required Plaintiff and Class Members to separately maintain their
23 heavily soiled uniforms, which displayed Defendants’ logo and the words “Howard Roofing
24 Company,” without reimbursement. Accordingly, Defendants violated the Labor Code and applicable
25 IWC Wage Orders.

26 27. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
27 Defendants willfully failed to timely pay all wages due to Plaintiff and the Waiting Time Subclass
28 upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff and

1 Waiting Time Subclass Members were not paid all wages (including minimum, regular, overtime, and
2 double time wages), expense reimbursements, vacation pay, meal period premiums, and/or rest period
3 premiums within the required time period in violation of the Labor Code and applicable IWC Wage
4 Orders.

5 28. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
6 Defendants failed to provide Plaintiff and Class Members with accurate itemized wage statements that
7 accurately reported, among other things, sick pay, vacation pay, the gross and net wages earned, the
8 total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding
9 number of hours worked at each hourly rate. As a result, Defendants violated the requirements of the
10 Labor Code and applicable IWC Wage Orders.

11 29. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
12 described throughout this Complaint were willful.

13 **NUMEROSITY**

14 30. The Class is so numerous that joinder of all of its members is impracticable. While the
15 exact number and identities of Class Members are unknown to Plaintiff at this time and can only be
16 ascertained through appropriate discovery, Plaintiff is informed, believes and thereon alleges that the
17 Class consists of more than 100 persons.

18 31. A class action is the only available method for the fair and efficient adjudication of this
19 controversy. The members of the Class are so numerous that joinder of all members is impractical, if
20 not impossible. The identity of Class Members can be ascertained by analysis of Defendants'
21 employee and payroll records.

22 **COMMONALITY**

23 32. Common questions of fact and law exist as to all members of the Class that predominate
24 over any questions affecting only individual Class Members. These common legal and factual
25 questions include, but are not limited to, the following:

- 26 (a) Whether Defendants paid Plaintiff and Class Members all wages (including sick pay,
27 vacation pay, minimum, regular, overtime, and double time wages) for all hours
28 worked;

- 1 (b) Whether Defendants required Plaintiff and Class Members to work off-the-clock
2 without compensation;
- 3 (c) Whether Defendants compensated Plaintiff and Class Members the proper rate of pay;
- 4 (d) Whether Defendants provided Plaintiff and Class Members with compliant meal
5 periods or paid compensation in lieu thereof;
- 6 (e) Whether Defendants authorized and permitted compliant rest breaks to Plaintiff and
7 Class Members or paid compensation in lieu thereof;
- 8 (f) Whether Defendants failed to provide Plaintiff and Class Members with accurate
9 itemized wage statements;
- 10 (g) Whether Defendants failed to timely pay the Plaintiff and Class Members all wages
11 due immediately upon termination or within 72 hours of resignation;
- 12 (h) Whether Defendants failed to reimburse Plaintiff and Class Members for necessary
13 business expenditures;
- 14 (i) Whether Defendants' conduct was willful or reckless;
- 15 (j) Whether Defendants engaged in unfair business practices in violation of Business and
16 Professions Code sections 17200, *et seq*; and
- 17 (k) Additional common questions of law and fact that may develop as the litigation
18 progresses.

19 **TYPICALITY**

20 33. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical of
21 the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising out of
22 and caused by Defendants' unlawful policies and practices; the claims arise out of the same course of
23 conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the claims of the
24 Class; and the legal issues raised under California state law as a result of Defendants' conduct apply
25 equally to Plaintiff and the Class Members.

26 **ADEQUACY OF REPRESENTATION**

27 34. Plaintiff is an adequate representative of the Class, in that his claims (and defenses, if
28 any) are typical of those of the Class. Plaintiff has no conflicts of interest with his fellow Class

1 Members and will be able to fairly and adequately protect the interests of the Class. Plaintiff has the
2 same interests in the litigation of this case as the Class Members; and is committed to vigorous
3 prosecution of this case and has retained competent counsel experienced in class action and wage and
4 hour litigation of this nature.

5 **PREDOMINANCE**

6 35. Defendants have engaged in a common course of wage and hour abuse toward Plaintiff
7 and Class Members. The common issues arising from this conduct that affect Plaintiff and Class
8 Members predominate over any individual issues. Adjudication of these common issues in a single
9 action has important and desirable advantages of judicial economy.

10 **SUPERIORITY OF CLASS ACTION**

11 36. A class action is superior to other available methods for the fair and efficient
12 adjudication of this controversy because individual litigation of the claims of all Class Members is
13 impracticable. Even if every Class Member could afford individual litigation, the court system could
14 not. It would be unduly burdensome to the courts in which individual litigation of numerous cases
15 would proceed. Individualized litigation would also present the potential for varying, inconsistent, or
16 contradictory judgments and would magnify the delay and expense to all parties and to the court
17 system resulting from multiple trials of the same complex factual issues. Moreover, individual actions
18 by Class Members may establish inconsistent standards of conduct for Defendants. By contrast, the
19 conduct of this action as a class action, with respect to some or all of the issues presented herein,
20 presents fewer management difficulties, conserves the resources of the parties and the court system,
21 and protects the rights of each Class Member.

22 37. Defendants have acted or refused to act in respects generally applicable to the Class,
23 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
24 herein.

25 **PUBLIC POLICY CONSIDERATIONS**

26 38. Employers in the State of California violate employment and labor laws every day.
27 Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation.
28 Former employees are fearful of bringing actions because they believe their former employers might

1 damage their future endeavors through negative references and/or other means. Class actions provide
2 Class Members who are not named in the action with a type of anonymity that allows for the
3 vindication of their rights while affording them privacy protections.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES**

6 **(AGAINST ALL DEFENDANTS)**

7 39. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
8 fully set forth herein.

9 40. At all times herein relevant, Defendants had a duty to comply with Labor Code sections
10 204, 206, 210, 227.3, 246, 558, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders,
11 and all applicable local minimum wage ordinances in effect throughout California.

12 41. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages
13 owed on regularly scheduled paydays at least twice during each calendar month, on days designated
14 in advance by the employer as the regular paydays. All wages earned in excess of the normal work
15 period must be paid no later than the payday for the next regular payroll period.

16 42. Labor Code section 206 provides that in case of a dispute over wages, the employer
17 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to
18 the employee all remedies he/she is otherwise entitled to as to any balance claimed.

19 43. Labor Code section 210 provides:
20 every person who fails to pay the wages of each employee as provided in Sections
21 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a
22 penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each
23 failure to pay each employee. (2) For each subsequent violation, or any willful or
24 intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
plus 25 percent of the amount unlawfully withheld. (b) The penalty shall either be
recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor
Commissioner as a civil penalty through the issuance of a citation or pursuant to
Section 98.3.

25 44. Labor Code section 246 requires employers to provide and allow employees to use at
26 least 24 hours, or three days, of paid sick leave per year.

27 45. At all times relevant, Labor Code section 510, and applicable sections of the California
28 Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with Defendants and

1 continue to apply to Class Members' employment with Defendants. Labor Code section 510 and
2 applicable provisions of the California Code of Regulations and IWC Wage Orders state that any work
3 performed in excess of eight hours in a workday and/or 40 hours in a workweek must be paid at one
4 and one-half times the employee's regular rate of pay. Any work performed in excess of 12 hours in
5 a workday must be compensated at the rate of no less than twice the regular rate of pay for an
6 employee.

7 46. Labor Code section 558 provides "[a]ny employer or other person acting on behalf of
8 an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
9 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
10 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
11 each pay period for which the employee was underpaid in addition to an amount to recover underpaid
12 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
13 for each pay period for which the employee was underpaid in addition to an amount sufficient to
14 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
15 employee."

16 47. The IWC Wage Orders define "hours worked" as "the time during which an employee
17 is subject to the control of an employer and includes all time the employee is suffered or permitted to
18 work, whether or not required to do so."

19 48. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to
20 all employees in California for all hours worked. Local minimum wage ordinances, may provide for
21 higher minimum wage rates that must be paid to employees for all hours worked in those locales where
22 each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay less than
23 the state or local minimum wage, whichever is higher, for any hour of work.

24 49. Labor Code section 1194 requires that employers pay employees at least the legal
25 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.
26 Labor Code section 1194 further authorizes any employee receiving less than the legal minimum wage
27 applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages,
28 along with interest thereon, reasonable attorneys' fees and costs of suit.

1 50. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount
2 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

3 51. Labor Code section 1198 prohibits employers from employing for longer hours or less
4 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
5 the Labor Commissioner.

6 52. Plaintiff is informed, believes, and thereon alleges that during the Class Period, Plaintiff
7 and Class Members regularly worked over eight (8) hours, 10 hours per workday, and/or 12 hours per
8 workday and/or over 40 hours per workweek.

9 53. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
10 Defendants failed to pay Plaintiff and Class Members all wages due at the proper rates, including sick
11 pay, vacation pay, minimum, regular, overtime and/or double time wages, failed to compensate for
12 off-the-clock work and travel time, and failed to pay the prevailing wage rate, among other things.

13 54. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein,
14 Plaintiff and Class Members have sustained and continue to sustain damages, including loss of
15 earnings from minimum, regular, overtime, and double time compensation due, in an amount to be
16 established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

17 55. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
18 conduct described herein, have committed an "intentional theft of wages in an amount greater than
19 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
20 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
21 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
22 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
23 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
24 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
25 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
26 recover from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to
27 California Penal Code section 496(c).

28 56. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as

described herein and below.

SECOND CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

57. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

58. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders.

59. Labor Code section 512 and the IWC Wage Orders prohibit an employer from employing any person for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes (commencing before the employee's fifth hour of work), except that if the total work period per day is no more than 6 hours, the meal period may be waived by mutual consent of the employer and employee. A second meal period of not less than 30 minutes is required if an employee works more than 10 hours per day and must begin before the employee's tenth hour of work, except if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. An employer must relieve an employee of all duties during meal periods.

60. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

61. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from requiring any employee to work during a meal period mandated by any California statute, regulation, standard or order. If an employer fails to provide an employee with a meal period in accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is noncompliant.

62. During the Class Period, Plaintiff and Class Members did not receive compliant meal periods for working more than five (5) and/or 10 hours per day because their meal periods were not

1 free of all duties, were short, missed, rounded to 30 minutes, automatically deducted, interrupted,
2 and/or late. Defendants also failed to provide Plaintiff and Class Members with second meal periods.

3 63. During the Class Period, Defendants failed to pay Plaintiff and Class Members meal
4 period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the
5 applicable IWC Wage Order.

6 64. As a result of Defendants' failure to provide compliant meal periods and pay meal
7 period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor
8 Code sections 226.7 and 512, Plaintiff and Class Members suffered and continue to suffer a loss of
9 wages and compensation.

10 65. Because Plaintiff and Class Members were and/or are entitled to such meal periods or
11 "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to
12 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
13 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

14 66. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
15 conduct described herein, have committed an "intentional theft of wages in an amount greater than
16 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
17 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
18 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
19 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
20 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
21 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
22 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
23 recover from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to
24 California Penal Code section 496(c).

25 67. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys'
26 fees and costs from Defendants in an amount subject to proof and approved by the Court.

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THIRD CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

68. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

69. At all relevant times, Defendants had a duty to comply with Labor Code section 226.7 and the applicable IWC Wage Orders.

70. The IWC Wage Orders require employers to authorize and permit all employees to take 10-minute duty-free rest periods for each four hours worked, or major fraction thereof.

71. If an employer fails to provide an employee with a rest period in accordance with California law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is noncompliant.

72. During the Class Period, Defendants did not implement a compliant rest break policy. Consequently, Plaintiff and Class Members did not receive a paid 10 minute rest period for every four (4) hours worked or major fraction thereof because their rest breaks were shortened, interrupted, restricted to the worksite, and/or missed altogether and/or were not authorized by Defendants.

73. During the Class Period, Defendants failed to pay Plaintiff and Class Members rest period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the applicable IWC Wage Order.

74. As a result of Defendants' failure to provide compliant rest periods and pay rest period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code sections 226.7 and 516, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

75. Because Plaintiff and Class Members were and/or are entitled to such rest periods or "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

76. Plaintiff is informed, believes, and thereon alleges that Defendants, through their conduct described herein, have committed an “intentional theft of wages in an amount greater than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period” within the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to recover from Defendants treble damages and costs, including reasonable attorneys’ fees, pursuant to California Penal Code section 496(c).

77. Pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys' fees and costs from Defendants in an amount subject to proof and approved by the Court.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE RECOVERY PERIODS

(AGAINST ALL DEFENDANTS)

78. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

79. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7.

80. Labor Code section 226.7 requires employers to provide employees with a “recovery period” which means a cooldown period afforded an employee to prevent heat illness. If an employer fails to provide a recovery period, then “the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the . . . recovery period is not provided.”

81. During the Class Period, Defendants did not implement a compliant recovery period policy or practice. Specifically, access to shade and recovery periods were not provided to Plaintiff and Class Members who performed construction work outdoors for Defendants during extremely hot days, especially during the summer. Consequently, Plaintiff and Class Members did not receive paid

1 recovery periods and did not receive compensation in lieu thereof.

2 82. During the Class Period, Defendants failed to pay Plaintiff and Class Members
3 recovery period premiums for noncompliant recovery periods pursuant to Labor Code section 226.7
4 and the applicable IWC Wage Order.

5 83. As a result of Defendants' failure to provide compliant recovery periods and pay
6 recovery period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders
7 and Labor Code sections 226.7, Plaintiff and Class Members suffered and continue to suffer a loss of
8 wages and compensation.

9 84. Because Plaintiff and Class Members were and/or are entitled to such recovery periods
10 or "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according
11 to proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre-
12 and post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

13 85. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
14 conduct described herein, have committed an "intentional theft of wages in an amount greater than
15 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars
16 (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within
17 the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally
18 deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as
19 defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the
20 knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class
21 Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to
22 recover from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to
23 California Penal Code section 496(c).

24 86. Pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys' fees
25 and costs from Defendants in an amount subject to proof and approved by the Court.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(AGAINST ALL DEFENDANTS)**

4 87. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
5 fully set forth herein.

6 88. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.

7 89. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
8 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
9 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
10 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net
11 wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
12 identification number of the employee, (8) the name and address of the legal entity that is the
13 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked
14 at each hourly rate.

15 90. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a
16 knowing and intentional failure by an employer to provide an accurate itemized wage statement to
17 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
18 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
19 an award of costs and attorneys' fees.

20 91. During the Class Period, Defendants have knowingly and intentionally failed to comply
21 with Labor Code sections 226(a) on wage statements that were provided to Plaintiff and Class
22 Members. The deficiencies include, among other things, Defendants' failure to correctly state the gross
23 and net wages earned, the total hours worked, sick pay, vacation pay, meal and rest period premiums,
24 reimbursements, all applicable hourly rates in effect during the pay period, and the corresponding
25 number of hours worked at each hourly rate.

26 92. As a result of Defendants' violation of California Labor Code sections 226(a), Plaintiff
27 and Class Members have suffered injury and damage to their statutorily protected rights. Specifically,
28 Plaintiff and Class Members have been injured by Defendants' intentional violation of California

1 Labor Code sections 226(a) because they were denied both their legal right to receive, and their
2 protected interest in receiving, accurate itemized wage statements under California Labor Code section
3 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the underpayment of
4 wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage
5 in these efforts and incur these costs had Defendants provided the accurate wages earned. This has
6 also delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

7 93. Defendants' violations of California Labor Code sections 226(a) prevented Plaintiff
8 and Class Members from knowing, understanding and disputing the wages paid to them, and resulted
9 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
10 intentional failure to comply with California Labor Code sections 226(a), Plaintiff and Class Members
11 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be
12 shown according to proof at trial.

13 94. Plaintiff and Class Members are also entitled to injunctive relief under California Labor
14 Code section 226(h), compelling Defendants to comply with California Labor Code sections 226, and
15 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

16 **SIXTH CAUSE OF ACTION**

17 **WAITING TIME PENALTIES**

18 **(AGAINST ALL DEFENDANTS)**

19 95. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
20 fully set forth herein.

21 96. At all relevant times, Defendants had a duty to comply with Labor Code sections 201,
22 202, and 203. Defendants failed to comply with these final paycheck requirements with respect to
23 Plaintiff and Waiting Time Subclass Members.

24 97. Labor Code section 201 requires that if an employer discharges an employee, the wages
25 earned and unpaid at the time of discharge are due and payable immediately.

26 98. Labor Code section 202 requires that if "an employee not having a written contract for
27 a definite period" quits, the employee's wages shall become due and payable no later than 72 hours
28 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in

1 which case the employee is entitled to his or her wages at the time of quitting.

2 99. Labor Code section 203 provides that if an employer willfully fails to pay, without
3 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
4 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
5 action therefor is commenced, but that the wages shall not continue for more than 30 days per
6 employee.

7 100. Labor Code section 227.3 requires employers to pay terminated employees for their
8 unused paid vacation time at their final rate of pay.

9 101. During the relevant time period, Defendants willfully failed to pay Plaintiff and
10 Waiting Time Subclass Members all their earned wages upon termination including, but not limited
11 to, minimum, regular, overtime, and double time compensation, vacation pay, premium compensation,
12 and expense reimbursements either at the time of discharge or within 72 hours of leaving Defendants'
13 employ.

14 102. As a result of Defendants' failure to timely pay all wages owed to Plaintiff and Waiting
15 Time Subclass Members in accordance with Labor Code sections 201, 202 and 203, Plaintiff and
16 Waiting Time Subclass Members are entitled to recover waiting time penalties, prejudgment interest,
17 attorneys' fees, and costs in amounts that will be established at trial.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(AGAINST ALL DEFENDANTS)**

21 103. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
22 fully set forth herein.

23 104. At all relevant times, Defendants had a duty to comply with Labor Code sections 2800
24 and 2802. Defendants failed to comply with these indemnification and reimbursement requirements
25 with respect to Plaintiff and Class Members.

26 105. Labor Code section 2800 requires employers to indemnify employees for losses caused
27 by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and Class
28 Members failed to request, demand, notify or otherwise seek reimbursement for their expenses and

1 losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class Members due to their
2 own negligence.

3 106. Labor Code section 2802(a) requires that employers indemnify and reimburse
4 employees for all business expenses, which are defined as all necessary expenditures or losses incurred
5 by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred
6 based on the employee's obedience to the employer's directions. Labor Code section 2802(b)
7 authorizes employees to recover in a court action interest which shall accrue from the date on which
8 the employee incurred the necessary expenditure or loss. Labor Code section 2802(c) authorizes
9 employees, who to enforce their right to reimbursements under Labor Code section 2802, to also
10 recover attorneys' fees and costs.

11 107. During the relevant time period, Defendants required Plaintiff and Class Members to
12 purchase and/or maintain tools, separately maintain their heavily soiled uniforms, and use their
13 personal vehicles and cell phones without reimbursement in violation of Labor Code sections 2800
14 and 2802.

15 108. As a result of Defendants' failure to indemnify and reimburse Plaintiff and Class
16 Members for all business and work-related costs, expenditures, losses and expenses in accordance
17 with Labor Code sections 2800 and 2802, Plaintiff and Class Members are entitled to recover the full
18 unreimbursed balance of reimbursements, expenditures and losses, prejudgment interest, and statutory
19 penalties, along with attorneys' fees and costs in amounts that will be established at trial.

20 **EIGHTH CAUSE OF ACTION**
21 **UNFAIR BUSINESS PRACTICES**
22 **(AGAINST ALL DEFENDANTS)**

23 109. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
24 fully set forth herein.

25 110. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful
26 and harmful to Plaintiff and Class Members. Plaintiff seeks to enforce important rights affecting the
27 public interest within the meaning of Code of Civil Procedure section 1021.5.

28 111. Defendants' activities, as alleged herein, violate California law and constitute unlawful

1 business acts or practices in violation of California Business and Professions Code sections 17200, *et*
2 *seq.*

3 112. A violation of Business and Professions Code sections 17200, *et seq.* may be predicated
4 on the violation of any state or federal law.

5 113. Defendants' policies and practices have violated state law in at least the following
6 respects:

7 (a) Failing to pay all sick pay, vacation pay, minimum, regular, overtime, and double time
8 wages due to Plaintiff and Class Members in violation of Labor Code sections 204,
9 206, 210, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197 and 1198;

10 (b) Failing to provide meal periods without paying Plaintiff and Class Members premium
11 wages for every day in which a meal period was not provided in violation of Labor
12 Code sections 226.7 and 512;

13 (c) Failing to authorize or permit paid rest breaks without paying Plaintiff and Class
14 Members premium wages for every day in which a rest break was not authorized or
15 permitted in violation of Labor Code section 226.7;

16 (d) Failing to provide recovery periods without paying Plaintiff and Class Members
17 premium wages for every day in which a recovery period was not authorized or
18 permitted in violation of Labor Code section 226.7;

19 (e) Failure to provide suitable seating and potable water in violation of Labor Code
20 sections 1198, 2441, and IWC Wage Order 16-2001.

21 (f) Failing to provide Plaintiff and Class Members with accurate itemized wage statements
22 in violation of Labor Code sections 226;

23 (g) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass Members
24 upon separation of employment in violation of Labor Code sections 201, 202, 203, and
25 227.3; and

26 (h) Failing to reimburse Plaintiff and Class Members all necessary business expenses in
27 violation of Labor Code sections 2800 and 2802.

28 114. Defendants intentionally avoided paying Plaintiff and Class Members' wages and

monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and gain a greater foothold in the marketplace.

115. Pursuant to Business and Professions Code sections 17202, 17203, and 17208, Plaintiff and Class Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this class action; an award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

116. Plaintiff and Class Members are entitled to an injunction, restitution, and other equitable relief against such unlawful practices to return all funds over which Plaintiff and Class Members have an ownership interest and to prevent future damage pursuant to Business and Professions Code sections 17200 *et seq.*

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

117. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

118. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

119. On June 30, 2023, Plaintiff gave written notice of the specified provisions alleged to have been violated by Defendants including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website. More than 65 days have passed since Plaintiff submitted his PAGA notice to the LWDA without a response from the LWDA. Accordingly, Plaintiff may amend the Complaint to add a PAGA cause of action against Defendants.

120. On September 12, 2023, Plaintiff provided an amended written notice of the specified

1 provisions alleged to have been violated by Defendants including the facts and theories to support the
2 alleged violations, as required by Labor Code section 2699.3. This amended written notice was
3 provided via certified mail to Defendants and to OSHA and the LWDA by electronically filing the
4 notice via their respective websites.

5 121. Under Labor Code section 2699.3(a)(2)(C), “Notwithstanding any other provision of
6 law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
7 under this part at any time within 60 days of the time periods specified in this part.” More than 65 days
8 have passed since Plaintiff submitted his initial PAGA notice to the LWDA without notice from the
9 LWDA. Accordingly, Plaintiff may amend his Complaint as a matter of right within this 60 day period
10 as specified by Labor Code section 2699.3(a)(2)(C).

11 122. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides
12 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
13 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
14 recovered through a civil action brought by an aggrieved employee on behalf of himself and other
15 current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

16 123. For all provisions of the Labor Code except those for which a civil penalty is
17 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred
18 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred
19 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which
20 Defendants violated these provisions of the Labor Code.

21 124. Pursuant to Labor Code sections 2699.3 and 2699.5, Plaintiff may seek civil penalties
22 for any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201,
23 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5,
24 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs
25 (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230,
26 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of
27 Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2,
28 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851,

851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

125. Defendants' conduct violates numerous Labor Code sections, including, but not limited to, the following:

126. Violation of Labor Code sections 201-204, 206, 210, 222, 223, 510, 558, 1194, 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including minimum, regular, overtime, and double time wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

127. Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

128. Violation of Labor Code sections 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

129. Violation of Labor Code sections 226.7 for failure to provide recovery periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed recovery periods as herein alleged;

130. Violation of Labor Code sections 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

131. Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate records regarding the employment of Plaintiff and other aggrieved employees as herein alleged; and

132. Violation of Labor Code section 2800 and 2802 for failure to reimburse Plaintiff and

1 other aggrieved employees for business expenses;

2 133. Violation of Labor Code section 2441 for failure to supply drinking water/potable water
3 to Plaintiff and aggrieved employees; and

4 134. Violation of Labor Code section 1198 and IWC Wage Order 16-2001 for failure to
5 provide suitable seating to Plaintiff and aggrieved employees.

6 135. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a) of
7 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
8 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
9 violation in a subsequent citation, for which the employer fails to provide the employee a wage
10 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil
11 penalties provided for in this section are in addition to any other penalty provided by law.”

12 136. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf
13 of an employer who violates, or causes to be violated, a section of this chapter or any provision
14 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
15 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
16 employee for each pay period for which the employee was underpaid . . . (2) For each subsequent
17 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
18 employee was underpaid.”

19 137. Labor Code section 558.1 provides that any “employer or other person acting on behalf
20 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
21 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to
22 be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor Code], may be held liable
23 as the employer for such violation.”

24 138. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
25 maintain accurate and complete payroll records showing the hours worked daily by and the wages paid
26 to employees.

27 139. Labor Code section 1197.1 also provides “[a]ny employer or other person acting either
28 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to

1 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
2 of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is
3 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period
4 for which the employee is underpaid . . . (2) For each subsequent violation for the same specific
5 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which
6 the employee is underpaid regardless of whether the initial violation is intentionally committed.

7 140. Labor Code section 2441 provides “[e]very employer of labor in this state shall, without
8 making a charge therefor, provide fresh and pure drinking water to his or her employees during
9 working hours. Access to the drinking water shall be permitted at reasonable and convenient times
10 and places. Any violation of this section is punishable for each offense by a fine of not less than fifty
11 dollars (\$50), nor more than two hundred dollars (\$200).”

12 141. As set forth above, Defendants have violated numerous provisions of the Labor Code
13 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff also seeks
14 the civil penalties set forth in Labor Code sections 558 and 1197.1, in addition to the underpaid wages,
15 for himself, the underpaid employees, and the State of California.

16 142. Plaintiff is an “aggrieved employee” because he was employed by the alleged violators
17 and had one or more of the alleged violations committed against him, and therefore is properly suited
18 to represent the interests of all other aggrieved employees.

19 143. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3
20 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other
21 aggrieved employees under the PAGA.

22 144. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
23 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
24 above.

25 145. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

26 **PRAYER FOR RELIEF**

27 Plaintiff, individually and on behalf of the proposed Class, other aggrieved employees, and the
28 State of California, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;
2. For appointment of Plaintiff Francisco Cruz as the class representative;
3. For appointment of the Law Office of Daniel J. Hyun as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. For damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;
7. For waiting time penalties pursuant to Labor Code section 203;
8. For liquidated damages pursuant to Labor Code section 1194.2;
9. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
10. For restitution to Plaintiff and Class Members of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code sections 17200 *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code sections 17200, *et seq.*;
12. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
13. For post judgment interest on all amounts awarded to Plaintiff and Class Members as provided by law;
14. For recovery of attorneys' fees and costs provided by Labor Code sections 218.6, 226, 1194, 2698 *et seq.*, 2802, and Code of Civil Procedure section 1021.5;
15. For PAGA and OSHA penalties; and
16. For such other relief as the Court deems just and proper.

1 Dated: September 12, 2023

LAW OFFICE OF DANIEL J. HYUN

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3 By: _____

4 Daniel J. Hyun
Attorneys for Plaintiff FRANCISCO CRUZ

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10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

12 Dated: September 12, 2023

LAW OFFICE OF DANIEL J. HYUN

13
14 By: _____

15 Daniel J. Hyun
Attorneys for Plaintiff FRANCISCO CRUZ