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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

9 KENNETH NESMITH, on behalf of himself
and other similarly situated and/or aggrieved
10 employees in the State of California,

11 Plaintiff,

12 v.

13 RCS SAFETY, LLC., DBA ROADWAY
CONSTRUCTION SERVICE, and DOES 1
14 through 50 inclusive,

15 Defendants.

Case No.: 23STCV18913

Unlimited Civil

Amount Demanded exceeds \$25,000.00

**INDIVIDUAL, CLASS, AND
REPRESENTATIVE ACTION COMPLAINT**

1. FAILURE TO PROVIDE MEAL PERIODS;
2. FAILURE TO PROVIDE REST PERIODS;
3. FAILURE TO PROVIDE HEAT RECOVERY PERIODS;
4. FAILURE TO PAY MINIMUM, REGULAR AND OVERTIME WAGES;
5. FAILURE TO INDEMNIFY ALL NECESSARY EXPENDITURES;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
7. FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT; AND
8. VIOLATION OF BUSINESS & PROFESSIONS CODE §17200, *ET SEQ.*
9. RETALIATION;
10. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY; AND
11. PRIVATE ATTORNEYS GENERAL ACT OF 2004 (LAOBR CODE §§ 2698, *ET SEQ.*)

– JURY TRIAL DEMANDED –

Kenneth Nesmith, individually and on behalf of all other similarly situated and/or aggrieved employees of Defendant RCS Safety, LLC., d/b/a Roadway Construction Service and DOES 1 through 50, inclusive, alleges as follows:

I. INTRODUCTION

1. Plaintiff Kenneth Nesmith (“Plaintiff”) brings this class, representative, and individual action against Defendants RCS Safety, LLC., d/b/a Roadway Construction Service and DOES 1 through 50, inclusive (collectively, “Defendants”), for engaging in a pattern of wage and hour violations under the California Labor Code, the applicable Industrial Welfare Commission (“IWC”) Wage Orders, California Code of Regulations, and the California Occupational Safety and Health Act (“Cal/OSHA”).

2. Plaintiff brings this action on behalf of himself and all other similarly situated employees who were employed by Defendants in the State of California as hourly non-exempt employees during the applicable time period.

3. Plaintiff also brings this representative action pursuant to the Private Attorneys General Act of 2004 (“PAGA”) against Defendants and DOES 1 through 50, inclusive, for engaging in a pattern of wage and hour violations under the California Labor Code and the applicable IWC Wage Order. Plaintiff brings this action on behalf of all current and former non-exempt employees of Defendants in the State of California during the applicable time period.

4. Plaintiff alleges that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

5. Defendants’ systematic pattern of Labor Code, IWC Wage Order, California Code of Regulations, and California Occupational Safety and Health Act (“Cal/OSHA”) violations toward Plaintiff and other similarly situated and/or aggrieved employees in California include, but are not limited to:

- a. Failure to provide off-duty meal periods and associated premium wages;
- b. Failure to authorize and permit off-duty paid rest periods and associated premium wages;
- c. Failure to authorize and permit recovery periods and associated premium wages;
- d. Failure to provide toilet and washing facilities;

- e. Failure to pay all minimum and regular wages for all hours worked;
- f. Failure to indemnify necessary business expenses;
- g. Failure to maintain accurate records;
- h. Failure to provide accurate itemized wage statements; and
- i. Failure to timely pay all wages due during and upon separation of employment.

6. Plaintiff brings this lawsuit against Defendants seeking damages, restitution, declaratory judgment, injunctive relief, statutory penalties, and monetary relief on behalf of himself and all other similarly situated and/or aggrieved employees of Defendants in California. Plaintiff seeks to recover, *inter alia*, unpaid wages, unreimbursed expenses, interest, attorney's fees, damages, liquidated damages, penalties, and costs pursuant to Labor Code §§ 201, 202, 204, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2 1197, 1197.1, 1198, 2802, 2698, *et seq.*, the California Business and Professions Code § 17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

7. Plaintiff reserves the right to name additional named plaintiffs and/or class representatives.

II. PARTIES

A. PLAINTIFF

8. Plaintiff Kenneth Nesmith is a former hourly non-exempt employee of Defendants, who, at all relevant times, was employed as a Traffic Control Tech II and worked for Defendants in California, including in Los Angeles County.

9. Plaintiff is a resident of the State of California and currently resides in Los Angeles County.

10. At all relevant times, Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

11. Plaintiff and all similarly situated and/or aggrieved employees were regularly required to:

- a. Work without being provided compliant meal periods;
- b. Work without being provided compliant rest periods;
- c. Work without being provided compliant recovery periods;
- d. Work without being provided access to a toilet or washing station;
- e. Work without being paid for all hours worked on-the-clock;

f. Work without being reimbursed for necessary business-related expenses; and

g. Work without being provided accurate itemized wage statements.

12. Defendants willfully failed to compensate Plaintiff and all similarly situated and/or aggrieved employees for wages at the termination of their employment with Defendant.

13. As a result of this conduct, Defendants have engaged in unfair competition and unlawful business practices.

B. DEFENDANTS

14. Defendant RCS Safety, LLC., dba Roadway Construction Service is a California limited liability company operating within the State of California, with its principal place of business in Montebello, California. Defendant RCS Safety, LLC is in the business of traffic control services, including traffic control planning, providing traffic safety barricade services, obtaining city permits, and performing traffic control flagging services and emergency traffic control response.

15. Defendant employed Plaintiff and similarly situated and/or aggrieved persons as hourly employees within California. Defendant has done and does business throughout the State of California.

16. Defendants' wrongful conduct, as alleged herein, occurred in the County of Los Angeles, California.

17. Each Defendant, whether named or fictitious, is and, at all relevant times was, authorized to do business and did business in the State of California and was Plaintiff's and other similarly situated and/or aggrieved employees' "employer" or person acting on behalf of the employer as defined in and subject to the California Labor Code and the applicable IWC Wage Order.

18. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff alleges that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

19. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint.

20. Plaintiff and all other similarly situated and/or aggrieved employees are, and at all relevant times were, non-exempt employees of each Defendant, including DOES 1 through 50, within the meanings set forth in the California Labor Code and applicable IWC Wage Order.

21. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of each other Defendant.

22. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and all other similarly situated employees.

23. Each Defendant, whether named or fictitious, exercised control over Plaintiff's and other similarly situated and/or aggrieved employees' wages, hours and/or working conditions and/or or suffered or permitted Plaintiff and all other similarly situated and/or aggrieved employees to work, or engaged, thereby creating a common law employment relationship, with the Plaintiff and all other similarly situated and/or aggrieved employees. Therefore, Defendants, and each of them, employed or jointly employed the Plaintiff and all other similarly situated and/or aggrieved employees.

24. At all relevant times, each Defendant, whether named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan or policy, and the acts of each Defendants are legally attributable to the other Defendants.

25. Each Defendant, whether named or fictitious, was the alter ego of each of the other Defendants at all relevant times herein.

26. A unity of interest and ownership between each Defendant, whether named or fictitious, exists such that all Defendants acted as a single employer of Plaintiff and all other similarly situated and/or aggrieved employees.

III. JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds

1 \$25,000, and because each cause of action asserted arises under the laws of the State of California or is
2 subject to adjudication in the courts of the State of California.

3 28. This Court has personal jurisdiction over Defendants because Defendants have caused
4 injuries in the County of Los Angeles and the State of California through their acts, and by their violation
5 of the California Labor Code, California state common law, and California Business & Professions Code
6 § 17200, *et seq.*

7 29. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
8 Procedure § 395. Defendant RCS Safety, LLC., d/b/a Roadway Construction Service operates within
9 California and does business within Los Angeles County. The unlawful acts alleged herein have a direct
10 effect on Plaintiff and all Class members within the State of California and the County of Los Angeles.

11 30. This case should be classified as complex according to Rule 3.400 of the California Rules
12 of Court, and assigned to a complex litigation judge and department, as it will involve substantial
13 documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice
14 raising difficult or novel issues that will be time-consuming to resolve and would require substantial post
15 judgment judicial supervision.

16 **IV. FACTUAL BACKGROUND**

17 31. Plaintiff is a former employee of Defendants who worked in a non-exempt position from
18 approximately July 7, 2022 until May 12, 2023.

19 32. Plaintiff worked as a Traffic Control Tech II at various work sites in California, including
20 in Los Angeles County.

21 33. Plaintiff typically worked five days per week, Monday through Friday. He typically
22 worked shifts that ranged in duration from eight to ten hours, and frequently worked overtime hours and
23 was entitled to overtime pay.

24 34. Plaintiff's duties during his employment with Defendants included directing street traffic
25 around construction sites, including closing streets during construction, and providing detour routes at
26 various sites, including many throughout the Los Angeles County area.

27 35. Plaintiff was typically assigned to work at a job site with one other Traffic Control Tech.
28

1 36. Plaintiff primarily worked outside throughout the duration of his shifts, outside of the time
2 spent driving from Defendants' warehouse to the job site.

3 37. Throughout Plaintiff's employment, Defendants controlled the hours and conditions of
4 Plaintiff's and other similarly situated and/or aggrieved employees' work.

5 38. Defendants denied and continue to deny Plaintiff and other similarly situated and/or
6 aggrieved employees specific rights afforded to them under the California Labor Code and the Industrial
7 Welfare Commission ("IWC"), California Code of Regulations, and Cal/OSHA. Defendants failed to
8 provide them with legally compliant meal and rest breaks or pay them meal and rest break premiums,
9 failed to provide them with recovery periods and/or failed to pay them premiums when a recovery period
10 was not provided; failed to provide access to toilet and washing facilities; failed to pay them all minimum,
11 regular, and overtime wages owed, failed to reimburse them for all business expenses, failed to maintain
12 accurate records and issue accurate itemized wage statements, and failed to timely pay all wages, including
13 all wages due upon separation of employment.

14 39. Plaintiff and all other similarly situated and/or aggrieved employees are non-exempt
15 employees of Defendants.

16 40. Plaintiff and other similarly situated and/or aggrieved employees typically worked over six
17 hours, and occasionally over ten hours, in a workday. Plaintiff and other similarly situated and/or
18 aggrieved employees have been forced by Defendants to work over five (5) hours in one day without being
19 provided a compliant thirty (30) minute uninterrupted meal break and not being compensated one (1) hour
20 of pay at their regular rate of compensation for each workday that a meal period was not provided or
21 provided after five (5) hours, all in violation of California labor laws, regulations, and the applicable IWC
22 Wage Order. Similarly, Plaintiff and similarly situated and/or aggrieved employees occasionally worked
23 over ten hours in one day without being provided a second legally compliant meal period.

24 41. While working at sites, Plaintiff and other similarly situated and/or aggrieved employees
25 were required to remain on duty for their entire shifts and forego meal periods because Defendants did not
26 schedule anyone to relieve them for a timely 30-minute off-duty meal period.

27 42. Defendants also failed to inform Plaintiff and other similarly situated and/or aggrieved
28 employees of their right to take compliant meal periods by way of a lawful policy. Defendants further

1 failed to inform Plaintiff and other similarly situated and/or aggrieved employees of their right to be
2 compensated with one (1) hour of wages at the regular rate of compensation for each missed, late,
3 interrupted and/or on-duty meal period.

4 43. Plaintiff and all other similarly situated and/or aggrieved employees were not compensated
5 with one (1) hour of wages at the regular rate of compensation for each missed, short, late or interrupted
6 meal period as required by California law.

7 44. Defendants similarly had a pattern and practice of failing to authorize and permit Plaintiff
8 and, on information and belief, other similarly situated and/or aggrieved employees to take legally
9 compliant rest periods of at least 10-minutes for every four-hour work period, or major fraction thereof.

10 45. Plaintiff and other similarly situated and/or aggrieved employees were required to remain
11 on duty through their rest breaks. Plaintiff and other similarly situated and/or aggrieved employees were
12 precluded from taking a compliant off-duty rest break because Defendants did not have enough staff
13 assigned to each site to take rest breaks while maintaining a safe work site.

14 46. Defendants failed to maintain a policy informing Plaintiff and other similarly situated
15 and/or aggrieved employees of their right to take off-duty rest breaks of at least 10-minutes for every four-
16 hour work period, or major fraction thereof, and of their right to be compensated with one (1) hour of
17 wages at the regular rate of compensation for each missed, on-duty and/or interrupted rest period.

18 47. Plaintiff and other similarly situated and/or aggrieved employees worked four-hour
19 increments (or major fractions thereof) without being provided with compliant ten (10) minute rest
20 periods. Nonetheless, Plaintiff and other similarly situated and/or aggrieved employees were not
21 compensated with one (1) hour of wages at the regular rate of compensation for each missed, on-duty
22 and/or interrupted rest period as required by California law.

23 48. Defendants failed to provide Plaintiff and other similarly situated and/or aggrieved
24 employees working outside with compliant recovery periods, because Defendants did not provide them
25 with off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees
26 Fahrenheit.

49. Defendants failed to inform Plaintiff and other similarly situated and/or aggrieved employees of their right to heat recovery periods, and their right to have off-duty access to shade and water during their shifts while working outside.

50. On information and belief, Defendants did not have any written policy or practice addressing recovery periods, in violation of California law.

51. Plaintiff and other similarly situated employees worked outside at construction work sites during their shifts. The temperature at Plaintiff and other similarly situated and/or aggrieved employees' job sites often exceeded 80 degrees. Nonetheless, Plaintiff and other similarly situated and/or aggrieved employees were not provided with any shade. Plaintiff and other similarly situated and/or aggrieved employees did not have enough coverage and/or shade space available to take compliant recovery periods and rest from the sun.

52. Although Defendants failed to provide Plaintiff and other similarly situated and/or aggrieved employees with compliant recovery periods, Defendants never paid Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees an additional hour of pay, at the regular rate of pay, as required by California law.

53. Defendants failed to comply with health and safety requirements imposed by the California Code of Regulations and IWC Wage Order. Defendants failed to provide Plaintiff and similarly situated employees with access to toilets and washing facilities in violation of Title 8, Sections 1526 and 1527 of the California Code of Regulations and Industrial Welfare Commission Wage Order 16-2001, No.10, subsection (C). Plaintiff and similarly situated employees were staffed at construction sites where there were no toilets or washing facilities, nor was there readily available transportation to nearby toilet and washing facilities.

54. Plaintiff and other similarly situated employees were not properly compensated for all hours worked at the appropriate rate of pay because Defendants required them to perform work-related duties off-the-clock. Defendants kept track of Plaintiff and other similarly situated and/or aggrieved employees' hours worked with handwritten timecards, and would consider their start time to be the time when they were dispatched from Defendants' warehouse to the job site. However, the Company instructed Plaintiff and other similarly situated and/or aggrieved employees to show up to the warehouse

1 approximately 30 minutes before their time of dispatch so that they could prepare their truck and ensure
2 it was loaded with water, ice, and equipment needed for the day. Furthermore, Plaintiff and, on information
3 and belief, other similarly situated and/or aggrieved employees were called and/or received text messages
4 from Defendants approximately five evenings per week notifying them of their site assignment for the
5 next day, after they had clocked out for the day and during their days off. Thus, Plaintiff and, on
6 information and belief, other similarly situated and/or aggrieved employees were not compensated
7 minimum, regular, and overtime wages owed and earned because they were not compensated for all hours
8 permitted and suffered to work.

9 55. Defendants failed to reimburse Plaintiff and other similarly situated and/or aggrieved
10 employees the cost of using their personal cell phones for business related purposes. Defendants informed
11 Plaintiff and other similarly situated and/or aggrieved employees of their site assignment for the next day
12 by contacting them via their cell phones. Despite being required, these cell phones were not provided by
13 Defendants. Defendants failed to reimburse Plaintiff and other similarly situated and/or aggrieved
14 employees for the costs associated with using their personal cell phones.

15 56. Defendants have failed to comply with the applicable IWC Wage Order and Labor Code §
16 226(a) by failing to provide accurate itemized statements to Plaintiff and other similarly situated and/or
17 aggrieved employees. The wage statements issued by Defendants do not list any hourly rates in effect
18 during the pay period. Furthermore, the wage statements do not include the correct number of hours
19 worked, the correct amount of premium wages earned, or the correct gross and net wages earned as
20 required under Labor Code § 226.

21 57. On information and belief, the wage statement omissions and inaccuracies are not a result
22 of an isolated and unintentional payroll error due to an inadvertent mistake, but rather a result of knowing
23 and intentional omissions by Defendants. As a result of these omissions and inaccuracies, Plaintiff and,
24 on information and belief, other similarly situated and/or aggrieved employees are not promptly and easily
25 able to determine the correct hours worked and/or determine the accurate wages due and owing without
26 reference to other documents and information.

27 58. As a direct result of the aforementioned Labor Code violations, Defendants have not paid
28 Plaintiff and, on information and belief, other similarly situated and/or aggrieved employees all wages

1 due and payable during and upon separation of employment, including minimum, regular, and overtime
2 wages for all hours worked, and meal period, rest period and recovery period premium wages, as required
3 by California law.

4 59. To this date, Defendants have not paid Plaintiff and, on information and belief, other
5 similarly situated and/or aggrieved employees all wages owed, including all minimum, regular, and
6 overtime wages, and meal and rest period premium wages, recovery period premium wages, and have not
7 reimbursed them for all necessary business expenses.

8 60. Defendants engaged in retaliation in violation of Labor Code §§ 98.6 and 1102.5. On
9 approximately May 10, 2023, Plaintiff made a protected inquiry to his union representative as to whether
10 Defendants could require him to work on Saturdays. As a result of this call, the union representative spoke
11 to Defendants and represented that they could not force employees to work on Saturdays. On
12 approximately May 12, 2023, Plaintiff's employment was terminated by Defendants. Upon information
13 and belief, Defendants terminated Plaintiff for making this inquiry to the union, thus engaging in unlawful
14 retaliation against him.

15 61. For the same reasons as those discussed above, Defendants wrongfully terminated Plaintiff
16 in violation of public policy.

17 **V. CLASS ACTION DESIGNATION**

18 62. Plaintiff re-alleges and incorporates by reference the allegations contained in the
19 paragraphs above, as though fully set forth herein.

20 63. Plaintiff brings Causes of Action One through Eight as a Class Action pursuant to
21 California Code of Civil Procedure § 382 on behalf of himself and all current and former non-exempt
22 employees of Defendants.

23 64. Plaintiff seeks to represent the following Class and Subclasses, which are defined as:

24 **The Non-Exempt Class:** "All current and former non-exempt employees of Defendant RCS
25 Safety, LLC who worked in the State of California within four (4) years prior to the filing of this
26 action to the present."

27 **The Recovery Period Subclass:** "All members of the Non-Exempt Class who worked one or more
28 shifts outdoors or in an open-air environment."

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The Waiting Time Penalties Subclass: “All members of the Non-Exempt Class who were not paid all wages owed and whose employment with Defendants ended at any time during the period commencing on the date that is within three (3) years prior to the filing of the Complaint through the present.”

65. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or limitation to particular issues.

66. Causes of Action One through Eight are appropriately suited for a class action pursuant to § 382 of the Code of Civil Procedure because the following requirements are met:

A. NUMEROSITY

67. The members of the Class and Subclasses are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of members of the Class and Subclasses, Plaintiff is informed and believes that the Class and Subclass likely consist of over 100 individuals.

68. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants’ time and payroll records and other personnel records.

B. COMMONALITY

69. Common questions of law and fact exist as to all Class Members and predominate over any questions affecting only individual members of the Class or Subclass.

70. The common questions of law and fact that predominate include, but are not limited to:

- a. Whether Defendants failed to provide the Non-Exempt Class Members with legally compliant meal periods;
- b. Whether Defendants failed to permit the Non-Exempt Class to take off-duty and paid rest periods of at least 10 minutes for every four hours worked, or major fraction thereof;
- c. Whether Defendants failed to inform the Recovery Period Subclass of their right to heat recovery periods, and their right to have off-duty access to shade during their shifts while working outside;

- d. Whether Defendants failed to provide the Recovery Period Subclass with any written policy or practice addressing recovery periods, in violation of California law;
- e. Whether Defendants failed to pay one additional hour of pay at the non-exempt employees' regular rate of compensation to the Non-Exempt Class and/or Recovery Period Subclass Members when they were not provided with compliant meal, rest and/or recovery periods;
- f. Whether Defendants failed to pay Non-Exempt Class Members at least minimum wages, regular wages and/or overtime wages owed for all hours or fractions of an hour worked and under the control of Defendants;
- g. Whether Defendants failed to properly and accurately record and maintain records of all hours worked and wages earned by Non-Exempt Class Members;
- h. Whether Defendants failed to provide Non-Exempt Class Members reimbursement for all necessary expenditures;
- i. Whether Defendants failed to provide Non-Exempt Class Members with accurate itemized wage statements showing, among other things, the total regular hours worked during the pay period, the applicable hourly rates and the corresponding number of hours worked at each hourly rate, and the correct amount of gross and net wages earned;
- j. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of their wages owed within the required time frames upon separation of employment.
- k. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and
- l. Whether Plaintiff and similarly situated employees are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

C. TYPICALITY

71. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all class members' claims arise from the same event, practice, and/or course of conduct of Defendants.

1 Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies,
2 practices and/or common course of conduct in violation of California wage and hour laws and/or illegal,
3 unfair, or fraudulent business practices.

4 72. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order
5 are typical of the Class and Subclasses because Defendants' failure to comply with the provisions of
6 California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and
7 other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies
8 sought by Plaintiff and all class members are the same.

9 **D. ADEQUACY OF REPRESENTATION**

10 73. Plaintiff has no fundamental conflict of interest with the Class or Subclasses he seeks to
11 represent. Plaintiff will adequately represent and protect the interests of all class members because it is in
12 Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties
13 due to him and putative class members.

14 74. Plaintiff retained attorneys who are experienced employment law litigators with significant
15 wage and hour and class action experience. Counsel who represent Plaintiff and the Class and Subclasses
16 are competent and experienced in litigating large employment class actions.

17 **E. SUPERIORITY OF CLASS ACTION**

18 75. A class action is a superior method of litigation for the fair and efficient adjudication of
19 this controversy. Individual joinder of all class members is not practicable. Class action treatment will
20 allow similarly situated employees to litigate their claims in the manner that is most efficient and
21 economical for the parties and the judicial system.

22 76. Plaintiff knows of no difficulty that might be encountered in the management of this suit,
23 which would preclude maintenance as a class action.

24 **VI. THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
25 **REPRESENTATIVE ACTION DESIGNATION**

26 77. The causes alleged herein are appropriately suited for a PAGA representative action
27 because:
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1 a. Pursuant to California Labor Code section 2699(a), any provision of the Labor
2 Code that provides for a civil penalty to be assessed and collected by the Labor and
3 Workforce Development Agency (“LWDA”) or any of its departments, divisions,
4 commissions, boards, agencies, or employees, for a violation of the California Labor Code,
5 may, as an alternative, be recovered through a civil action brought by an aggrieved
6 employee on behalf of himself or herself and all other current and/or former employees
7 pursuant to the procedures specified in section 2699;

8 b. This action involves allegations of violations of provisions of the California Labor
9 Code that provide or do not provide for a civil penalty to be assessed and collected by the
10 LWDA or any departments, divisions, commissions, boards, agencies, or employees;

11 c. Plaintiff is an “aggrieved employee” because he was employed by the alleged
12 violators and had one or more of the alleged violations committed against him;

13 d. On July 27, 2023, Plaintiff satisfied the procedural requirements of section 2699.3
14 by serving the LWDA electronically, and Defendant RCS Safety LLC, through its agent
15 for service of process and via certified mail, with his notice for wage and hour violations
16 and penalties, including the facts and theories to support each violation. A true and correct
17 copy of Plaintiff’s notice and proof of service is attached as **Exhibit 1**;

18 e. More than 65 days have passed since Plaintiff served notice via certified mail to the
19 LWDA and to his former employer. Therefore, Plaintiff satisfied all the administrative
20 requirements to pursue civil penalties against Defendants pursuant to Labor Code section
21 2698, *et seq*;

22 f. Plaintiff files this action pursuant to Labor Code section 2699(a) and (f) on behalf
23 of himself and all other aggrieved employees of Defendants to recover civil penalties; and

24 g. Plaintiff seeks to recover all applicable civil penalties under PAGA on behalf of
25 himself and all other aggrieved employees of Defendants in California.
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VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7, 512, and 1198 and the “Meal Periods” section of the Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

78. Labor Code § 512(a) provides, in part, that employers, including Defendants, “may not employ an employee for a work period of more than five hours per day without providing an employee with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

79. Labor Code § 226.7 requires that employers, including Defendants, provide their employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare Commission, and prohibits employers from requiring any employee “to work during any meal ... period mandated by an applicable order of the Industrial Welfare Commission.” Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a meal ... period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal ... period is not provided.”

80. Labor Code § 1198 states that the “maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

81. The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” It further states, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total

1 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
2 employer and employee only if the first meal period was not waived.”

3 82. The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the
4 employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
5 ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when
6 the nature of the work prevents an employee from being relieved of all duty and when by written
7 agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state
8 that the employee may, in writing, revoke the agreement at any time.”

9 83. The “Meal Periods” section of the applicable IWC Wage Order also states, “[i]f an
10 employer fails to provide an employee a meal period in accordance with the applicable provisions of this
11 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
12 compensation for each workday that the meal period is not provided.”

13 84. Plaintiff and the Non-Exempt Class are non-exempt employees subject to the same
14 policies, practices, and procedures governing the provision and scheduling of meal periods.

15 85. Defendants have a practice of not providing Plaintiff and the Non-Exempt Class with
16 legally compliant 30-minute off-duty meal periods before the commencement of their sixth hour of work
17 during their shifts, even though they worked more than six (6) hours during their workday. Similarly,
18 Defendants have a practice of not providing Plaintiff and the Non-Exempt Class with a second legally
19 compliant 30-minute off-duty meal periods during their shifts, whenever they worked more than six (6)
20 hours during their workday.

21 86. Plaintiff and, on information and belief, the Non-Exempt Class are unable to take compliant
22 meal periods as a result of Defendants’ policies alleged herein. For example, Defendants’ illegal policies
23 required Plaintiff and, on information and belief, the Non-Exempt Class to miss their meal periods because
24 Defendant did not schedule adequate coverage. Plaintiff and, on information and belief, the Non-Exempt
25 Class members were required to remain on duty at all times to perform work duties and maintain a safe
26 environment at the work sites.

27 87. Thus, as a result of Defendants’ policies and practices, Plaintiff’s and Non-Exempt Class
28 members’ meal periods are regularly not taken at all, or are short, on-duty, and/or late.

1 88. Plaintiff and, on information and belief, the Non-Exempt Class members have not signed
2 a valid on-duty meal period agreement at any point during their employment with Defendants.

3 89. Therefore, as a result of Defendants' conduct, including the conduct alleged herein,
4 Defendants violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order
5 when Defendants failed to provide Plaintiff and the Non-Exempt Class members a 30-minute, duty-free
6 meal period before the commencement of their sixth hour of work.

7 90. Consequently, pursuant to Labor Code § 226.7(b) and the "Meal Periods" section of the
8 Wage Order, Defendants was required to pay Plaintiff and the Non-Exempt Class one additional hour of
9 pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the
10 Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour
11 of work.

12 91. Despite this obligation, Defendants did not pay Plaintiff and, on information and belief, the
13 Non-Exempt Class one additional hour of pay at each employee's regular rate of compensation for each
14 day that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free meal
15 period before the commencement of their sixth hour of work.

16 92. Instead, on information and belief, Defendants have a common policy and practice of
17 failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their regular rate of pay
18 for the times that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-
19 free meal period before the commencement of their sixth hour of work, as required by Labor Code §
20 226.7(b) and the IWC Wage Order.

21 93. Thus, on information and belief, Defendants intentionally refused to perform their
22 obligations to provide meal periods and further failed to compensate Plaintiff and the Non-Exempt Class
23 with all owed meal premium wages at the legal regular rate of pay as set forth by Labor Code § 226.7(b)
24 and the IWC Wage Order.

25 94. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to
26 Defendants' failure to pay an additional hour of pay at their regular rate of pay for each day a legally
27 compliant meal period was not provided and the associated use and enjoyment of compensation due and
28 owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

95. Plaintiff seeks all available remedies for Defendants' violations, including, but not limited to, all wages due, monies, and interest to the extent permitted by law.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7 and 1198 and the "Rest Periods" section of the
Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

96. Labor Code § 226.7 requires employers, including Defendants, to provide to their employees, including Plaintiff, paid rest periods as mandated by the IWC Wage Orders.

97. Labor Code § 1198 states that the "maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

98. The "Rest Periods" section of the applicable IWC Wage Order states, "[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." Furthermore, "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

99. Plaintiff and the Non-Exempt Class are non-exempt employees subject to the same policies, practices, and procedures governing the provision and scheduling of rest periods.

100. Defendants have a pattern and practice of not providing Plaintiff and the Non-Exempt Class with legally compliant 10-minute off-duty rest periods for each four-hour work period, or major fraction thereof.

101. Plaintiff and, on information and belief, the Non-Exempt Class members were unable to take compliant off-duty rest periods as a result of Defendants' policies alleged herein. For example, Defendants' illegal policies required Plaintiff and, on information and belief, the Non-Exempt Class to

1 work through their rest periods or to remain on-duty because Defendant did not schedule adequate
2 coverage.

3 102. Plaintiff and, on information and belief, the Non-Exempt Class members are not authorized
4 and permitted to take compliant rest periods because they were required to remain on-duty at all times to
5 perform their work duties and maintain safe conditions for others at construction work sites.

6 103. Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a ... rest ...
7 period in accordance with a state law... the employer shall pay the employee one additional hour of pay
8 at the employee’s regular rate of compensation for each workday that the rest ... period is not
9 provided.”

10 104. Even though Plaintiff and, on information and belief, Non-Exempt Class members are not
11 authorized and permitted to take off-duty rest periods, Defendants have not paid Plaintiff and the Non-
12 Exempt Class members appropriate rest period premium wages for each day in which Defendants did not
13 authorize and permit Plaintiff and the Non-Exempt Class to take compliant rest periods, in violation of
14 Labor Code § 226.7 and the applicable IWC Wage Order.

15 105. On information and belief, Defendants have a common policy, pattern, and practice of
16 failing to compensate Plaintiff and the Non-Exempt Class with an hour of pay at their legal regular rate
17 of pay for the times that Plaintiff and the Non-Exempt Class members were not authorized to take rest
18 periods of at least 10 minutes for each four-hour work period, or major fraction thereof.

19 106. Plaintiff and the Non-Exempt Class members suffered and continue to suffer losses related
20 to Defendants’ failure to pay an additional hour of pay at their regular rate of pay for each day a rest period
21 was not provided and the associated use and enjoyment of compensation due and owing to them as a direct
22 result of Defendants’ Labor Code and IWC Wage Order violations.

23 107. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited
24 to, any and all wages due, monies, and interest, to the extent permitted by law.

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THIRD CAUSE OF ACTION

FAILURE TO PROVIDE RECOVERY PERIODS

(Violation of Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395)

(Alleged by Plaintiff Individually and on Behalf of the Recovery Period Subclass

Against All Defendants)

108. Labor Code § 226.7(a) states that “‘recovery period’ means a cooldown period afforded an employee to prevent heat illness.”

109. Labor Code § 226.7(b) states “[a]n employer shall not require an employee to work during a...recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

110. California Code of Regulations, Title 8, § 3395(d)(1) provides that:

“Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling [...]

111. California Code of Regulations, Title 8, § 3395(d)(3) further provides that:

“[e]mployees shall be allowed and encouraged to take a preventative cooldown rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.”

112. California Code of Regulations, Title 8, § 3395(i) further provides that:

“[t]he employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request.”

113. Defendants failed to establish, implement, and maintain an effective heat illness prevention plan, and failed to make any such plan available at the worksite to Plaintiff and, on information and belief, to the Recovery Period Subclass members.

1 114. Plaintiff and, on information and belief, the Recovery Period Subclass members were
2 subject to the same policies, practices, and procedures governing the provision and scheduling of recovery
3 periods.

4 115. Defendants have a pattern and practice of requiring Plaintiff and the Recovery Period
5 Subclass members to remain on duty at all times, and of not providing them with compliant and
6 appropriate recovery periods when the outdoor temperature in their respective work area exceeded 80
7 degrees Fahrenheit.

8 116. Labor Code § 226.7(d) requires employers, including Defendants, to provide Plaintiff and
9 the Recovery Period Subclass members with paid recovery periods.

10 117. Labor Code § 226.7(c) states that:

11 “[I]f an employer fails to provide an employee a...recovery period in
12 accordance with a state law, including, but not limited to, an applicable
13 statute or applicable regulation, standard, or order of the Industrial Welfare
14 Commission, the Occupational Safety and Health Standards Board, or the
15 Division of Occupational Safety and Health, the employer shall pay the
16 employee one additional hour of pay at the employee’s regular rate of
17 compensation for each workday that the...recovery period is not provided.”

18 118. Even though Plaintiff and the Recovery Period Subclass members were not authorized or
19 permitted to take off-duty recovery periods, Defendants did not pay Plaintiff and the Recovery Period
20 Subclass members the appropriate recovery period premium wages for each day that Defendants did not
21 authorize and permit Plaintiff and the Recovery Period Subclass to take compliant recovery periods, in
22 violation of Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395(d).

23 119. Defendants have a common policy, pattern, and practice of failing to inform Plaintiff and
24 the Recovery Period Subclass of their rights to receive recovery periods and to be paid an hour of pay at
25 their legal regular rate of pay for the times that Plaintiff and the Recovery Period Subclass members were
26 not authorized to take recovery periods.

27 120. On information and belief, Defendants did not have any written policy or practice
28 addressing recovery periods, in violation of California Labor Code § 226.7 and California Code of
Regulations, Title 8, § 3395(d).

///

121. Plaintiff and the Recovery Period Subclass members suffered and continue to suffer losses, injuries and damages related to Defendants' failure to inform them of their right to receive recovery periods and to pay an additional hour of pay at their regular rate of pay for each day a rest period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code, IWC Wage Order and the California Code of Regulations violations.

122. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies, and interest, to the extent permitted by law.

FOURTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM, REGULAR AND OVERTIME WAGES

(Violation of Labor Code §§ 1194, 1197, and 1198 and the "Minimum Wages" section of the Applicable IWC Wage Order)

(Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

123. Labor Code § 1197 provides, "[t]he 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 wage so fixed is unlawful."

124. The "Minimum Wages" section of the applicable IWC Wage Order provides that an employer may not pay employees less than the applicable minimum wage for all hours worked.

125. The applicable IWC Wage Order defines the term "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

126. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

127. Labor Code §§ 510, 1194, and 1199 require an employer to compensate its employees at the minimum wage rate for all hours worked and compensate its employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

1 128. Plaintiff and Non-Exempt Class members regularly worked over eight (8) hours in one
2 workday and over forty (40) hours in one workweek.

3 129. Defendants failed to pay Plaintiff and, on information and belief, Non-Exempt Class
4 members at least minimum wages for all the time spent working and under the control of Defendants. For
5 example, Defendants kept track of Plaintiff and Non-Exempt Class members' hours worked with
6 handwritten timecards, and would input their start time as the time when they were dispatched from
7 Defendants' warehouse to the job site. However, Defendants instructed Plaintiff and Non-Exempt Class
8 members to show up to the warehouse approximately 30 minutes before their time of dispatch so that they
9 could prepare their truck and load it with water, ice, and equipment needed for the day.

10 130. In addition, Plaintiff and the Non-Exempt Class members were required to answer work
11 related calls or messages after they had clocked out for the day or on their day off. Plaintiff and, on
12 information the Non-Exempt Class, were not paid any wages for the calls or messages they answered off-
13 the-clock and during their days off.

14 131. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
15 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including
16 interest thereon, reasonable attorney's fees, and costs of suit.

17 132. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount
18 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.

19 133. By their policy of requiring Plaintiff and Non-Exempt Class members to work without
20 being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a
21 workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½)
22 their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2,
23 and 1199.

24 134. Plaintiff and the Non-Exempt Class members suffered and continue to suffer losses related
25 to the use and enjoyment of compensation, wages and overtime due and owing to them as a direct result
26 of Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof at
27 trial and within the jurisdictional limitations of this Court.
28

135. Plaintiff seeks all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies, interest, liquidated damages, attorney's fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY ALL NECESSARY EXPENDITURES

(Violation of Labor Code § 2802)

(Alleged By Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

136. Labor Code § 2802 requires an employer to indemnify its employees for all necessary expenditures or losses incurred by an employee in direct consequence of the discharge of his or her duties of employment.

137. Labor Code § 2802(b) states, "[a]ll awards made by a court ... for reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure including, but not limited to, reasonable costs and attorney's fees incurred by the employee in enforcing their rights granted pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

138. Furthermore, Labor Code § 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

139. Defendants failed to reimburse Plaintiff and, on information and belief, the Non-Exempt Class members for all necessary expenses that were incurred in the discharge of their job duties. For example, Plaintiff, and on information and belief, the Non-Exempt Class members had to monitor and use their personal cell phones for work-related purposes, including receiving their job assignments approximately five days per week.

140. Defendants did not reimburse Plaintiff and on information and belief, the Non-Exempt Class for the use of their personal cell phones.

141. Plaintiff and the Non-Exempt Class suffered and continue to suffer losses related to the use and enjoyment of monies due and owing to them as a direct result of Defendants' unlawful acts and Labor

1 Code violations in an amount to be shown according to proof at trial and within the jurisdictional
2 limitations of this Court.

3 142. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
4 to restitution, monies, interest, attorney's fees, and costs to the extent permitted by law.

5 **SIXTH CAUSE OF ACTION**

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

7 (Violation of Labor Code §§ 226 and 1198, and the "Records" section of the
8 Applicable IWC Wage Order)

9 (Alleged by Plaintiff Individually and On Behalf of the Non-Exempt Class Against All Defendants)

10 143. Labor Code § 226(a) requires that employers, including Defendants, furnish their
11 employees with each wage payment an accurate and itemized writing that shows gross wages earned, total
12 hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee
13 is paid, the name of the employee and the portion of his or her social security number, the name and
14 address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay
15 period and the corresponding number of hours worked at each hourly rate by the employee.

16 144. Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of
17 all actual damages or the amount specified in Labor Code § 226 per violation.

18 145. Labor Code § 226(e)(2)(B) states, in pertinent part, "an employee is deemed to suffer injury
19 for purposes of this subdivision if the employer fails to provide accurate and complete information as
20 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
21 promptly and easily determine from the wage statement alone one or more of the following: (i) The amount
22 of the gross wages or net wages paid to the employee during the pay period or any of the other information
23 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9)
24 of subdivision (a)."

25 146. Labor Code § 226(h) states, "An employee may also bring an action for injunctive relief to
26 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

27 147. Defendants knowingly and intentionally failed to provide Plaintiff and Non-Exempt Class
28 members an accurate itemized wage statement with each wage payment as required by Labor Code §

1 226(a). Defendants knowingly and intentionally failed to provide Plaintiff and members of the Non-
2 Exempt Class with each wage payment an accurate wage statement showing any applicable hourly rates
3 of pay. Furthermore, due to the violations discussed herein, Defendants failed to provide wage statements
4 that list the correct total regular and overtime hours worked during the pay period, the correct
5 corresponding gross and net wages earned, and all premium wages earned.

6 148. Defendants' failure to provide and maintain accurate wage statements deprived Plaintiff
7 and members of the Non-Exempt Class of the ability to promptly and easily understand and question the
8 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Plaintiff and
9 members of the Non-Exempt Class, therefore, had no way to dispute any error in the payment or
10 calculation of their wages, all of which resulted in an unjustified economic enrichment to Defendants, and
11 Plaintiff and members of the Non-Exempt Class suffered actual damages as a result.

12 149. Defendants' failure to provide accurate itemized wage statements constitutes an injury as
13 defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiff and members of the Non-Exempt Class
14 have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all
15 actual damages or the amount specified in § 226 per violation.

16 150. Plaintiff and Non-Exempt Class members suffered and continue to suffer injuries, losses
17 and actual damages as a direct result of Defendants' Labor Code violations, including lost interest on such
18 wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their
19 obligations, in an amount to be shown according to proof at trial.

20 151. Plaintiff seeks to recover all available remedies including, but not limited to damages,
21 penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

22 SEVENTH CAUSE OF ACTION

23 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

24 (Violations of Labor Code §§ 201, 202, 203)

25 (Alleged by Plaintiff Individually and On Behalf of the Waiting Time Penalties Subclass

26 Against Defendants)

27 152. Labor Code § 201 requires Defendants to immediately pay any wages, without abatement
28 or reduction, to any employee who is discharged. Labor Code § 202 requires Defendants to pay any and

1 all wages due and owing to an employee not having a written contract for a definite period, who quits his
2 or her employment, within 72 hours of the employee quitting his or her employment, unless the employee
3 has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
4 to his or her wages at the time of quitting.

5 153. For violation of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid wages
6 of an employee to continue as a penalty from the due date thereof, at the same rate until paid or until an
7 action is commenced, but the wages shall not continue for more than 30 days.

8 154. As a result of Defendants' conduct during the applicable statutory period, Defendants
9 willfully failed to pay Plaintiff and, on information and belief, the Waiting Time Penalties Subclass all
10 wages due and owing to them, including minimum wages and regular wages for all the time they were
11 suffered or permitted to work or were engaged in work under Defendants' control, as well as all meal
12 period premiums, rest period premiums, and recovery period premiums owed within the time required by
13 Labor Code §§ 201 and 202, as applicable.

14 155. To date, Plaintiff has not yet received all wages due and payable, including but not limited
15 to, minimum, regular, and overtime wages, and meal, rest, and recovery period premium wages owing to
16 him. On information and belief, members of the Waiting Time Penalties Subclass have not yet received
17 all minimum, regular, and overtime wages, and meal, rest, and recovery period premium wages due and
18 owing to them.

19 156. As a direct result of Defendants' violations alleged herein, Plaintiff and the Waiting Time
20 Penalties Subclass members suffered and continue to suffer losses related to the use and enjoyment of
21 wages due and owing to them, all to their respective damage in an amount to be shown according to proof
22 at trial and within the jurisdictional limitations of this Court.

23 157. Plaintiff seeks all available remedies for Defendants' violations to the fullest extent
24 permissible.

25 **EIGHTH CAUSE OF ACTION**

26 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**

27 (Alleged by Plaintiff Individually and on Behalf of the Non-Exempt Class

28 Against All Defendants)

158. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice...”

159. Defendants’ Labor Code and IWC Wage Order violations alleged herein constitute “unlawful, unfair or fraudulent business act or practices,” which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant meal periods; (ii) failure to provide proper rest periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant rest periods; (iii) failure to provide proper recovery periods and pay Plaintiff and the Non-Exempt Class premium wages for failure to provide compliant recovery periods; (iv) failure to pay Plaintiff and the Non-Exempt Class all regular, overtime and minimum wages for all hours suffered or permitted to work and under the control of Defendant; (v) failure to reimburse Plaintiff and the Non-Exempt Class for all necessary business expenses; (vi) failure to provide Plaintiff and the Non-Exempt Class with accurate itemized wage statements; (vii) failure to timely pay Plaintiff and members of the Waiting Time Penalties Subclass all wages owed upon separation of their employment with Defendants; and (viii) failure to provide access to toilet and washing stations to Plaintiff and the Non-Exempt Class.

160. Title 8, Section 1526 of the California Code of Regulations requires employers on construction jobsites to provide a minimum of one separate toilet facility (or, where water closets are infeasible, nonwater carriage disposal facilities) for each 20 employees or fraction thereof of each sex. The only exception to these mandates is for employees of mobile crews with readily available transportation to a nearby toilet and washing facility. As alleged above, Defendants failed to provide any portable bathroom of any kind. As such, Defendants have violated 8 CCR § 1526. This conduct therefore constitutes unlawful acts under the UCL.

161. Title 8, section 1527 of the California Code of Regulations requires employers in the construction industry to provide washing stations for all construction employees. There must be a minimum of one washing station per twenty employees or fraction thereof. The only exception to this mandate is for employees of mobile crews with readily available transportation to a nearby toilet and washing facility. Similarly, Industrial Welfare Commission Wage Order 16-2001, No. 10, subsection (C),

1 mandates that: “In all places of employment the employer shall provide an adequate supply of potable
2 water, soap, or other suitable cleansing agent and single use towels for hand washing.” As alleged,
3 Defendants failed to provide any washing stations, potable water, soap or other cleansing agent and single
4 use towels for hand washing. As such, Defendants have violated 8 CCR § 1527 and IWC Wage Order 16-
5 2001. This conduct is therefore an unlawful act under the UCL.

6 162. Defendants intentionally avoided paying Plaintiff and the Non-Exempt Class all wages
7 and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially
8 lower cost of doing business, and thus, undercut its competitors.

9 163. Defendants lowered their costs of doing business by paying Plaintiff and the Non-Exempt
10 Class an amount less than what is required by the California Labor Code and the applicable Wage Order
11 of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and the Non-Exempt Class
12 members to perform work without fair compensation and benefits.

13 164. Defendants held themselves out to Plaintiff and the Non-Exempt Class members as being
14 knowledgeable about, and adhering to, the employment laws of California at all times relevant herein.
15 Plaintiff and the Non-Exempt Class members relied on and believed in Defendants’ representation
16 concerning Defendants’ adherence to the California laws, all to their detriment.

17 165. Defendants’ scheme to lower its payroll and operation costs and thus profit, by withholding
18 money owed to the class and withholding wages, compensation and benefits, which are all the property
19 of Plaintiff and the Non-Exempt Class in violation of the California Labor Code and the IWC Wage
20 Orders, as alleged herein, constitutes an “unlawful, unfair or fraudulent business act or practice,” under
21 California Business and Professions Code § 17200, *et seq.* As a result of Defendants’ unfair competition,
22 Plaintiff and the Non-Exempt Class suffered injury in fact by losing money and/or property.

23 166. Business and Professions Code § 17204, states, in relevant part, “[a]ctions for relief
24 pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost
25 money or property as a result of the unfair competition.”

26 167. Defendants acquired money and property owed to Plaintiff and the Non-Exempt Class by
27 means of an unlawful practice that constitutes unfair competition as defined by Business and Professions
28 Code § 17200, *et seq.*

1 168. Plaintiff and the Non-Exempt Class are persons in interest under Business and Professions
2 Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203
3 states, in relevant part, that “any person may pursue representative claims or relief on behalf of others only
4 if the Plaintiff meets the standing requirements of § 17204.”

5 169. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and
6 benefits as a result of Defendants’ unfair competition. Thus, pursuant to Business and Professions Code
7 §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of himself and the
8 putative classes.

9 170. Pursuant to Business and Professions Code § 17203, “[t]he court may make such orders or
10 judgments, as may be necessary to restore to any person in interest any money or property, real or personal,
11 which may have been acquired by means of such unfair competition.”

12 171. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the
13 Non-Exempt Class by committing the unlawful acts alleged herein. Thus, Defendants must make
14 restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203,
15 and restore all unpaid wages to Plaintiff and the Non-Exempt Class.

16 172. Plaintiff and the Non-Exempt Class suffered and continue to suffer loss of wages and
17 monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

18 173. Plaintiff seeks all available remedies on behalf of himself and on behalf of the Non-Exempt
19 Class members including, but not limited to, restitution of all wages and all monies owed, all in an amount
20 to be shown according to proof at trial. All such remedies are cumulative of relief available under other
21 laws, pursuant to Business & Professions Code § 17205.

22 **NINTH CAUSE OF ACTION**

23 **RETALIATION**

24 (Violation of Labor Code sections 98.6 and 1102.5)

25 (Alleged by Plaintiff Individually Against All Defendants)

26 174. Labor Code section 1102.5(b) states, “[a]n employer, or any person acting on behalf of the
27 employer, shall not retaliate against an employee for disclosing information, or because the employer
28 believes that the employee disclosed or may disclose information, to a government or law enforcement

1 agency, to a person with authority over the employee or another employee who has the authority to
2 investigate, discover, or correct the violation or noncompliance, or for providing information to, or
3 testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has
4 reasonable cause to believe that the information discloses a violation of state or federal statute, or a
5 violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether
6 disclosing the information is part of the employee's job duties." In addition to other penalties, "an
7 employer that is a corporation or limited liability Companies is liable for a civil penalty not exceeding ten
8 thousand dollars (\$10,000) for each violation of this section."

9 175. In order to establish a prima facie case of retaliation under California Labor Code
10 §1102.5(b), the plaintiff must demonstrate that he or she engaged in a protected activity as set forth in
11 Section 1102.5, that the employer subjected him or her to an adverse employment action, and a causal link
12 between the two. (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 468.)

13 176. A plaintiff who successfully prosecutes her claim for retaliation in violation of Section
14 1102.5 may recover compensatory damages, including economic and emotional distress damages.
15 (*Gardenhire v. Housing Authority of the City of Los Angeles* (2000) 85 Cal.App.4th 236, 237, 240-241.)

16 177. Labor Code § 98.6(a) provides that it is unlawful to discharge or take any adverse action
17 against an employee because the employee has exercised any rights afforded to him. An employer who
18 violated Labor Code § 98.6 is liable for a civil penalty not exceeding ten thousand dollars for each
19 violation of this section, to be awarded to the employee who suffered the violation. (Labor Code §
20 98.6(a)(3).)

21 178. Defendants employed Plaintiff.

22 179. Plaintiff engaged in the protected activity of disclosing information regarding Defendants'
23 plan to require employees to work on Saturdays to a union representative with authority to investigate and
24 correct the violation.

25 180. Plaintiff had reasonable cause to believe that the information disclosed a violation of the
26 California Labor Code.

27 181. In short proximity to Plaintiff's reporting Defendants' illegal activity, Defendants took
28 adverse employment action against Plaintiff by terminating his employment.

182. Plaintiff's disclosure of the information was a contributing factor in Defendant's decision to terminate Plaintiff's employment.

183. As a direct, foreseeable, and proximate result of Defendants' unlawful conduct, Plaintiff has sustained and continues to sustain substantial losses in earning, employment benefits, employment opportunities, and Plaintiff has suffered and continues to suffer general and special, economic and non-economic damages in an amount to be determined by a jury at trial.

TENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Alleged By Plaintiff Individually Against All Defendants)

184. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

185. At all times herein, Plaintiff was employed by Defendants and always performed his job duties fully and competently.

186. Plaintiff's inquiry to his union representative as to the legality of Defendants' plan to require him and other employees to work on Saturdays was a substantial motivating reason for Plaintiff's termination.

187. As a direct, foreseeable, and proximate result of Defendants' unlawful conduct in wrongfully terminating Plaintiff, Plaintiff has sustained and continues to sustain substantial losses in earning, employment benefits, employment opportunities, and Plaintiff has suffered and continues to suffer general and special, economic and non-economic damages in an amount to be determined by a jury at trial.

ELEVENTH CAUSE OF ACTION

REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE PRIVATE

ATTORNEYS GENERAL ACT

(Labor Code §§ 2698, *et seq.*)

(Alleged by Plaintiff individually and on behalf of all Aggrieved Employees Against all Defendants)

1 188. By and through this representative action, Plaintiff intends to represent the following
2 aggrieved employees:

3 All current and former non-exempt employees of Defendants in California during the period
4 commencing on the date that is within one year and sixty-five days prior to the filing of this
5 Complaint through and including the last date of trial (hereinafter the "PAGA Period").

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

11 190. Defendants employed Plaintiff, and Plaintiff had one or more of the alleged violations
12 committed against him. Therefore, Plaintiff is an "aggrieved employee" under PAGA because the alleged
13 violator employed him, and he had one or more of the alleged violations committed against him. As such,
14 Plaintiff is properly suited to represent the interests of other aggrieved employees in a PAGA
15 representative action.

16 191. Plaintiff seeks civil penalties pursuant to the PAGA for violations of the following Labor
17 Code provisions:

- 18 a. Failure to provide legally compliant meal periods and/or pay premium wages for
19 non-compliant meal periods in violation of Labor Code sections 204, 226.7, 512,
20 and the Meal Periods section of the applicable IWC Wage Order;
- 21 b. Failure to provide legally compliant rest periods and/or pay premium wages for
22 non-compliant rest periods in violation of Labor Code sections 204, 226.7, and the
23 Rest Periods section of the applicable IWC Wage Order;
- 24 c. Failure to provide legally compliant recovery periods and/or pay premium wages
25 for non-compliant recovery periods in violation of Labor Code sections 204, 226.7,
26 and California Code of Regulations, Title 8, § 3395;
- 27 d. Failure to timely pay all minimum, regular, and overtime wages in violation of
28 Labor Code sections 204, 210, 510, 1194, 1197, 1197.1, 1198, and the "Minimum

Wages” and the “Hours and Days of Work” sections of the applicable IWC Wage Order;

- e. Failure to indemnify for all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his duties, or of his obedience to the directions of the employer, in violation of Labor Code section 2802 and the “Uniforms and Equipment” section of the applicable IWC Wage Order;
- f. Failure to furnish accurate itemized wage statements in violation of Labor Code section 226, 226.3, and the “Records” section of the applicable IWC Wage Order;
- g. Failure to timely pay all wages due and owing upon separation of employment and/or the necessary waiting time penalties in violation of Labor Code sections 201, 202, 203, and 210;
- h. Failure to maintain accurate records in violation of Labor Code sections 226, 1174, 1174.5, and the “Records” section of the applicable IWC Wage Order; and

192. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code sections 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other aggrieved employees are entitled to, and do seek, such civil penalty.

193. For violations of Labor Code sections 510 and 512, in addition to any other recovery provided by law, Labor Code section 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC.

194. Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code § 226(a). Plaintiff and all other aggrieved employees are entitled to, and seek, such civil penalty.

195. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Plaintiff and all other aggrieved employees are entitled to, and do seek, such civil penalty.

196. Labor Code section 1197.1 imposes a civil penalty of \$100 for each underpaid employee for each pay period for which the employee is underpaid, and a subsequent civil penalty of \$250 for each underpaid employee for each pay period for which the employee is underpaid for paying or causing an employee to be paid a wage less than the minimum wage. Plaintiff and all other aggrieved employees are entitled to, and do seek, such civil penalty.

197. Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 432, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, and 2802. Plaintiff and all other aggrieved employees are entitled to, and do seek, such civil penalty.

198. Labor Code section 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, is entitled to and seeks attorney's fees and costs.

199. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, is entitled to and seeks recovery of reasonable attorney's fees as provided by Labor Code section 218.5 and Code of Civil Procedure section 1021.5.

200. Plaintiff, in his representative capacity on behalf of himself and all other aggrieved employees, requests further relief as described in the below prayer for relief.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein, including, but not limited to, civil penalties under Labor Code sections 210, 226, 226.3, 551, 558, 1174.5, 1197.1, 2802, and 2699(f);
- b. For general damages;
- c. For special damages;
- d. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
- e. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 218.6, 226, and 1194;
- f. For civil and statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- g. For restitution as provided by Business and Professions Code § 17200, *et seq.*;
- h. For an order requiring Defendants to restore and disgorge all funds to each affected person 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 § 17200, *et seq.*;
- i. For an award of damages in the amount of unpaid compensation and monies including, but not limited to actual damages, unpaid wages, minimum wages and regular wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;
- j. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal, rest, and recovery period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;

- k. For penalties to the extent permitted pursuant to the Labor Code and the applicable IWC Wage Order including, but not limited to, waiting time penalties under Labor Code § 203 and penalties under Labor Code §§ 226 and 1198.5.
- l. For injunctive relief as provided by the Labor Code including but not limited to Labor Code § 226(h), and Business and Professions Code § 17200, *et seq.*
- m. For indemnification of all losses incurred as a result of employment with Defendants, with interest;
- n. For pre- and post-judgement interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- o. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;
- p. For an accounting to determine all money wrongfully obtained and held by Defendants;
- q. For a declaratory judgment that Defendants violated Labor Code §§ 201, 202, 204, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2 1197, 1197.1, 1198, and 2802, as well as the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the Industrial Welfare Commission; and
- r. For reasonable attorney’s fees and costs of suit to the extent permitted by law,
- s. An award of such other and further relief as this Court deems proper and just.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all Causes of Action to the extent authorized by law.

Dated: October 2, 2023

GRAHAMHOLLIS APC

Bv:


HALI M. ANDERSON
NORA J. STEINHAGEN
Attorneys for Plaintiff Kenneth Nesmith

EXHIBIT 1

July 27, 2023

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

RCS Safety, LLC. DBA Roadway Construction Service
Michelle Staley AFSOP
828 N. Banna Ave.
Glendora, CA 91741

RCS Safety, LLC. DBA Roadway Construction Service
4909 Lakewood Blvd, Ste 307
Lakewood, CA 90712-2436

RCS Safety, LLC. DBA Roadway Construction Service
900 S. Maple Ave
Montebello, CA 90640-5412

Re: Kenneth Nesmith's Wage and Hour Claims Against
RCS Safety, LLC. dba Roadway Construction Service

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

Erik Dos Santos

Nora Steinhagen

Alyssa Smith

Allison Schubert

Alex Kuner

Dawn M. Berry

Brisa Martinez

Taylor M. Gee

Dear Labor and Workforce Development Agency and RCS Safety, LLC. dba Roadway Construction Service:

Please be advised that Kenneth Nesmith ("Claimant") has retained our firm to represent him for claims against his former employer, RCS Safety, LLC. dba Roadway Construction Service ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against him and all other aggrieved employees in California. Claimant provides this notice in accordance with the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") § 2699.3. Claimant intends to file a civil action to enforce his rights under the Labor Code and seeks compensation accordingly.

*Provisionally Licensed Lawyer

July 27, 2023
Page 2

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent himself and all other current and former non-exempt employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during the relevant time period (“Aggrieved Employees”).

FACTUAL BACKGROUND

RCS Safety, LLC. d/b/a Roadway Construction Service is a California limited liability company that provides a range of traffic control services, including traffic control planning, providing traffic safety barricade services, obtaining city permits, performing traffic control flagging services and emergency traffic control response. The Company is registered in California and has its principal place of business in Montebello, California.

Claimant was employed with the Company as a Traffic Control Tech II from approximately July 7, 2022 until May 12, 2023. Claimant was typically scheduled to work five days a week, Monday through Friday, and typically worked between 40 to 55 hours per week. Claimant did not have a set schedule and received his job assignment the night before the day of his assignment. At all times, Claimant was a non-exempt employee and was paid an hourly wage of approximately \$26.18 per hour. As a Traffic Control Tech II, Claimant’s job duties included, but were not limited to, directing street traffic around construction sites, including closing streets during construction, and providing detour routes at various sites, including in the Los Angeles County area.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Aggrieved Employees specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company (1) failed to provide Claimant and other Aggrieved Employees with legally compliant meal and rest periods, as well as failed to pay Aggrieved Employees meal and rest period premiums for non-compliant meal and rest periods; (2) failed to provide recovery periods and/or pay premium wages for non-compliant recovery periods; (3) failed to provide toilet and washing facilities; (4) failed to timely pay all minimum, regular, and/or overtime wages; (5) failed to reimburse for business expenses; (6) failed to timely pay Claimant and other former Aggrieved Employees all wages due and owing upon separation of employment; (7) failed to furnish Aggrieved Employees, including Claimant, with accurate itemized wage statements; (8) failed to maintain accurate records; and (9) engaged in retaliation against Claimant.

The Company required Claimant and, on information and belief, other Aggrieved Employees to work through meal periods, receive less than thirty (30) minute meal periods, take interrupted meal periods, or did not allow them to take meal periods before the end of their fifth hour of work. During his employment with the Company, Claimant was hardly ever permitted to take a legally compliant meal period. More often than not, Claimant would be assigned to a job with only one coworker. Due to the nature of the work and the Company’s understaffing, Claimant could not leave his position to take a meal break. Claimant was not permitted to leave his job site since he was responsible for watching over and providing a closed area for contractors to work during construction, and leaving his post would mean endangering others. Despite this, the Company did not schedule sufficient workers to permit Claimant

July 27, 2023
Page 3

and Aggrieved Employees to take a compliant meal break without endangering others and being in violation of their work duties. When Aggrieved Employees did leave the worksite for a meal break, they were reprimanded for doing so. Even when three or four Aggrieved Employees were assigned to work a larger job site, Claimant and Aggrieved Employees were required to eat while working. The Company also does not keep record of meal periods on the few occasions that they are taken.

For the same reasons as those described above, the Company failed to provide Claimant and other Aggrieved employees with ten (10) minute rest breaks per every four hour work period, or major fraction thereof. Claimant and upon information and belief, other Aggrieved Employees, never received rest breaks because the demands of the job and insufficient staffing of job sites, which rendered it unsafe to leave a post and take an off-duty rest break.

Additionally, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees working outside in the sun with compliant recovery periods, because the Company did not provide them with off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. Claimant and, on information and belief, other Aggrieved Employees typically worked outside during their shift. The temperature at Claimant's and other Aggrieved Employees' job sites frequently exceeded 80 degrees Fahrenheit. At times, Aggrieved Employees were forced to work in outdoor temperatures exceeding 100 degrees Fahrenheit. Nonetheless, the Company failed to provide off-duty recovery periods of not less than five (5) minutes to prevent heat illness. Additionally, Claimant and other Aggrieved Employees were not provided with tents, canopies, or any other source of shade, nor was natural shade typically available at the job sites. On information and belief, the Company did not have any written policy or practice addressing recovery periods, in violation of California law. Thus, Aggrieved Employees, including Claimant, did not have adequate shade available to take compliant recovery periods and rest from the sun.

Although Claimant and, on information and belief, other Aggrieved Employees did not receive legally compliant meal, rest, and/or recovery periods, the Company did not pay Claimant and other Aggrieved Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Accordingly, the Company owes Claimant and other Aggrieved Employees a meal, rest, and/or recovery period premium for each workday that Claimant and other Aggrieved Employees were not provided with a compliant meal, rest, and/or recovery period.

Furthermore, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with toilet and washing facilities. Claimant and Aggrieved Employees were assigned to work at construction job sites that changed on a daily basis. The Company did not provide a separate toilet or washing facility, and there was no readily available transportation for Claimant and other Aggrieved Employees to access nearby toilet and washing facilities due to understaffing at sites.

Claimant and, on information and belief, other Aggrieved Employees were not paid all minimum, regular, and/or overtime wages owed for all the time actually worked on the designated paydays. Claimant and other Aggrieved Employees were not properly compensated for all the hours they worked

July 27, 2023

Page 4

because the Company required them to perform tasks before clocking in and after clocking out. The Company kept track of Claimant and other Aggrieved Employees' hours worked with handwritten time cards, and would input their start time as the time when they were dispatched from the warehouse to the job site. However, the Company instructed Claimant and other Aggrieved Employees to show up to the warehouse approximately 30 minutes before their time of dispatch so that they could prepare their truck and ensure it was loaded with water, ice, and equipment needed for the day. Claimant and other Aggrieved Employees were not compensated for this time spent under the Company's control before being dispatched to the work site. In addition, the Company would send Claimant and, on information and belief, other Aggrieved Employees, their job assignments for the next day the night before. Claimant and other Aggrieved Employees were not compensated for this time spent reviewing their job assignments.

The Company also failed to reimburse Claimant and, on information and belief, other Aggrieved Employees, for all necessary business expenses. Claimant and other Aggrieved Employees were required to use their personal cell phones to receive their daily job assignments and communicate with dispatch, among other things, but were not provided reimbursement by the Company.

As a direct result of the aforementioned Labor Code violations, the Company did not pay Claimant and, on information and belief, other Aggrieved Employees all wages due and owing upon separation of employment, including minimum, regular, and overtime wages for all hours worked, and meal, rest, and recovery period premium wages. Claimant and other former Aggrieved Employees are therefore entitled to waiting time penalties pursuant to Labor Code § 203.

Claimant contends that the Company furnished Aggrieved Employees, including himself, with wage statements that do not comply with California law. Claimant alleges that the wage statements furnished to him and other Aggrieved Employees did not correctly show the information required by Labor Code § 226(a), including, but not limited to, the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net actual wages earned. In fact, the wage statements issued by the Company do not list pay rates at all. Due to the missing and/or incorrect information, Claimant and other Aggrieved Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

As a direct result of the Company's illegal policies and procedures, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Aggrieved Employees' actual time worked, the beginning and end of each meal period, and actual wages earned and paid, in violation of California law.

The Company also engaged in retaliation against Claimant and wrongfully terminated him in violation of Labor Code §§ 98.6 and 1102.5. Claimant made an inquiry to his union representative as to whether the Company could require him and other Aggrieved Employees to work on Saturdays. As a result of this call, the union representative spoke to a representative from the Company and discussed that

July 27, 2023
Page 5

this was not permitted. Upon information and belief, the Company terminated Claimant for making this inquiry, thus engaging in unlawful retaliation against Claimant.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Aggrieved Employees certain rights afforded them under the Labor Code and applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and other Aggrieved Employees. All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and all other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to his civil complaint.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS
AND AUTHORIZE AND PERMIT REST PERIODS**
(Labor Code §§ 226.7, 512, and the "Meal Periods" and
"Rest Periods" sections of the Applicable IWC Wage Order)

Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..." Labor Code § 226.7(c) further states, "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

Labor Code § 512(a) states, "[a]n employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...[and] shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at p. 1040 [internal citations omitted].)

July 27, 2023
Page 6

The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” Moreover, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.” The IWC Wage Order further states, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Meal Periods” section of the applicable IWC Wage Order also states, “[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. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

The “Rest Periods” section of the applicable IWC Wage Order provides, “[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work, and did not authorize and permit Claimant and other Aggrieved Employees to take legally compliant rest periods, as required by California law. The Company failed to pay Claimant and, on information and belief, other Aggrieved Employees one hour of premium wages for each day a compliant meal and/or rest period was not provided. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

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July 27, 2023
Page 7

FAILURE TO PROVIDE RECOVERY PERIODS

(Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395)

Labor Code § 226.7(a) states that “‘recovery period’ means a cooldown period afforded an employee to prevent heat illness.” Labor Code § 226.7(b) further states, “[a]n employer shall not require an employee to work during a...recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” If an employer fails to provide an employee with a recovery period in accordance with state law, “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.” (Labor Code § 226.7(c).)

California Code of Regulations, Title 8, § 3395(d)(1) states that: “Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling” California Code of Regulations, Title 8, § 3395(d)(3) further states that “[e]mployees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.”

California Code of Regulations, Title 8, § 3395(i) further provides, “[t]he employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request.”

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with compliant recovery periods. The Company also did not provide the employees with off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. The Company likewise failed to establish, implement, and maintain an effective heat illness prevention plan. Even though Claimant and Aggrieved Employees were not authorized or permitted to take lawful recovery periods, the Company did not pay the appropriate recovery period premium wages, in violation of Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395(d). Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO PROVIDE TOILET AND WASHING FACILITIES

(Labor Code §§ 6300-6400 *et seq.* and California Code of Regulations, Title 8, §§ 1526, 1527 and Title 29 § 1296.51, and the “Meal Periods” Section of IWC Wage Order 16-2001)

Labor Code sections 6300-6400 *et seq.* require that all employers take reasonable steps to provide a safe and healthful workplace. Labor Code § 6427 provides that any employer who violates any occupational safety or health standard, order, or special order and the violation is specifically determined

July 27, 2023
Page 8

not to be of a serious nature, may be assessed a civil penalty of up to twelve thousand four hundred seventy-one dollars for each violation.

California Code of Regulations, Title 8, § 1526(a) and Title 29, § 1296.51(c) provide that at construction jobsites, a minimum of one separate toilet facility shall be provided. California Code of Regulations, Title 8, § 1527(c) provides that a minimum of one washing station be provided that has an adequate supply of water for effective washing with a readily available supply of soap.

The Company failed to provide any separate toilet and washing facility, and there was no readily available transportation for Claimant to any nearby toilet and washing facility. As such, the Company violated 8 CCR §§1526-27 and 9 CCR § 1296.51.

FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the
“Minimum Wages” and “Hours and Days of Work” sections of the Applicable IWC Wage Order)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, “[t]he 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.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides that, “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203...”

Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 510 provides, “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less

July 27, 2023
Page 9

than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements.

Labor Code § 1194(a) mandates that “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code § 558 provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to pay Claimant and, on information and belief, other Aggrieved Employees all minimum, regular, and overtime wages for all time engaged in work on behalf of the Company, including before clocking in for their scheduled shifts. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Labor Code § 2802 and the “Uniforms and Equipment” section of the applicable IWC Wage Order)

Labor Code § 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code § 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

July 27, 2023
Page 10

As set forth above, the Company required Claimant and other Aggrieved Employees to use their personal cell phones in the discharge of their job duties without reimbursement. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

**FAILURE TO PAY ALL WAGES DUE AND OWING UPON SEPARATION OF
EMPLOYMENT**

(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code § 202 states, in pertinent part: "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code § 203(a) further states, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

As set forth above, the Company violated these Labor Code sections by not paying Claimant and other Aggrieved Employees all minimum, regular, and overtime wages owed, as well as meal, rest, and recovery premium wages owed, within the required time upon separation of their employment. Based on information and belief, Claimant further contends that the Company did not pay former Aggrieved Employees the required waiting time penalties for the late payment of wages. Claimant will pursue all available remedies for these alleged violations on behalf of himself and all other former Aggrieved Employees of the Company to the extent allowed by the law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part: "An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number... (8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee..."

July 27, 2023
Page 11

The “Records” section of the applicable IWC Wage Order further provides, in pertinent part: “Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.”

Labor Code § 226(e)(1) provides: “An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours actually worked by the employee, any applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 1174, 1174.5, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 1174 states, “[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments.”

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period,

July 27, 2023
Page 12

per Aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated its recordkeeping requirements by failing to accurately record employee hours worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

RETALIATION

(Labor Code §§ 98.6 and 1102.5)

Labor Code § 98.6(a) states, "[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant ... made a written or oral complaint that he or he is owed unpaid wages, ... or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her." In addition to other remedies available, an employer who violates Labor Code § 98.6 is "liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation." (Labor Code § 98.6(a)(3).)

Labor Code § 1102.5(b) states, "[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, ... to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, ... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." In addition to other penalties, "an employer that is a corporation or limited liability Companies is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section." (Labor Code § 1102.5(f).)

As set forth above, the Company engaged in retaliation against Claimant and wrongfully terminated him after he made an inquiry to his union regarding the legality of requiring him to work on Saturdays. Claimant will pursue all available remedies for the Company's violations to the extent allowed by law.

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July 27, 2023
Page 13

**CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE AND THE APPLICABLE
IWC WAGE ORDER**

(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Labor Code § 558.1(a) further states that “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” This includes the owners, officers, directors, or managing agents of the employer. (Labor Code § 558.1(b).)

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: “(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable

July 27, 2023
Page 14

penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 2802, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to provide legally compliant meal, rest, and/or recovery periods and/or timely pay premium wages; failing to timely pay all minimum, regular, and/or overtime wages; failing to reimburse for necessary business expenses; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; failing to maintain accurate records; and engaging in retaliation. As a result, the Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages, and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney’s fees and costs. Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs, and attorney’s fees, and he will continue to incur such costs as a result of the Company’s unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of himself and all other Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated, and continues to violate, the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a

July 27, 2023
Page 15

representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Respectfully,

A handwritten signature in black ink that reads "Nora Steinhagen". The signature is written in a cursive, flowing style.

Nora Steinhagen

Carrie Rogers
3555 5TH AVE STE 200
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