

FEB 06 2024 

EXECUTIVE OFFICER & CLERK
By: T. PRINCE, DEPUTY CLERK

Tuvia Korobkin, Esq. # 268066
tuvia@abramsonlabor.com
Neil M. Larsen, Esq. # 276490
neil@abramsonlabor.com
ABRAMSON LABOR GROUP
1700 W. Burbank Blvd.
Burbank, California 91506
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SIERRA**

LEWIS DAWSON and TRISTEN DAWSON,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

FARR CONSTRUCTION CORPORATION dba
RESOURCE DEVELOPMENT CO., a
corporation; and DOES 1 through 100, inclusive,
Defendants.

Case No. **23CM0030**

**FIRST AMNEDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) **FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198)**
- (4) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- (7) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*).**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiffs Lewis Dawson and Tristen Dawson ("Plaintiffs"), on behalf of themselves and
2 all others similarly situated, hereby bring this Class and Representative Action Complaint against
3 Farr Construction Corporation dba Resource Development Co.; and Does 1 through 100, inclusive
4 (collectively, "Defendants"), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring
7 this class action for recovery of unpaid wages and penalties under California Business and
8 Professions Code section 17200, *et seq.*; Labor Code sections 201-204, 226, 226.7, 510, 512,
9 516, 558, 1194, 1198, 2802, 2804, 2698 *et seq.*; and Industrial Welfare Commission Wage Order
10 No. 16 ("Wage Order 16"), in addition to seeking declaratory relief and restitution. This class
11 action is brought pursuant to California Code of Civil Procedure section 382. This Court has
12 jurisdiction over Defendants' violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Sierra County. Defendants own, maintain offices, transact business, have an agent or
18 agents within Sierra County, and/or otherwise are found within Sierra County, and Defendants
19 are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiffs are over the age of eighteen (18). During the four years immediately
22 preceding the filing of this action and within the statute of limitations periods applicable to each
23 cause of action pled herein, Plaintiffs were employed by Defendants as non-exempt employees
24 and performed work for Defendants in California. Plaintiffs were, and are, victims of Defendants'
25 policies and/or practices complained of herein, lost money and/or property, and has been deprived
26 of the rights guaranteed by Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1194, 1198,
27 2802, 2804, 2698 *et seq.*; Business & Professions Code § 17200, *et seq.*, and Wage Order 16,
28 which sets employment standards for employees in certain on-site construction occupations.

1 4. Plaintiffs are informed and believe, and based thereon allege, that during the four
2 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as a general contracting company specializing in industrial projects, and that they
4 employed Plaintiffs and other similarly situated non-exempt employees within Sierra County and
5 the state of California.

6 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or
7 corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed
10 and believe, and thereon allege, that each of said fictitious defendants, whether individual,
11 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
12 and proximately caused Plaintiffs and the Classes (as defined in Paragraph 20) to be subject to
13 the unlawful employment practices, wrongs, injuries, and damages complained of herein.

14 6. Plaintiffs are informed and believe, and based thereon allege, that at all times
15 mentioned herein, Defendants were and are the employers of Plaintiffs and all Class members.

16 7. At all times herein mentioned, each of said Defendants participated in the acts
17 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
18 each of them, were the agents, servants, and employees of each of the other Defendants, as well
19 as the agents of all Defendants, and at all times herein mentioned were acting within the course
20 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
21 and/or otherwise ratified each of the acts or omissions alleged herein.

22 8. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
26 Class Members (as defined in Paragraph 20).

27 ///

28 ///

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff Lewis Dawson worked for Defendants as a non-exempt employee from approximately August 2022 to December 2022. Plaintiff Tristen Dawson worked for Defendants as a non-exempt employee from approximately September 2022 to December 2022.

10. During Plaintiffs' employment with Defendants, Plaintiffs and other non-exempt employees often worked over 8.0 hours in a workday and/or over 40.0 hours in a workweek in California, but Defendants failed to pay them overtime compensation at one-and-one-half times (or two times in the case of double-time) their "regular rate" of pay as required under Labor Code § 510 and Wage Order 16. Specifically, Defendants sometimes paid Plaintiffs at two different base rates of pay during the same workweek. However, in workweeks where they earned multiple rates of pay and also worked overtime, Defendants paid Plaintiffs' overtime at 1.5 times their *lower* base rate of pay – or at a rate less than even 1.5 times their lower rate of pay – and failed to incorporate Plaintiffs' higher rate of pay during the workweek into their "regular rate" when calculating overtime. Indeed, in some instances Defendants paid overtime at a rate lower than even the base rate of pay, and/or otherwise failed to pay overtime at the proper rate.

11. For example, in the pay period of October 23 – October 29, 2022, Plaintiff Lewis Dawson's wage statement reflects that he worked 40 regular hours at rates of \$81.25 (38.0 hours) and \$87.53 (2.0 hours). That same wage statement reflects that Plaintiff Lewis Dawson was paid for 3 overtime hours at a rate of just \$106.19, which is *less* than 1.5 times even his lower rate of pay for that workweek. Likewise, in the workweek of October 9 – October 15, 2022, Plaintiff Lewis Dawson's wage statement reflects that he worked 37 regular hours at a rate of \$81.25. However, that same wage statement reflects that he was paid for 6 overtime hours at a rate of \$78.52, for 2 overtime hours at a rate of \$106.19, and for 11 overtime hours at a rate of \$115.49. Each of these overtime rates is less than 1.5 times even Plaintiff Lewis Dawson's *base* rate of pay for that workweek; in fact, 6 overtime hours were paid at a rate of \$78.52, which was less than his *base* rate of pay of \$81.25.

12. Similarly, in the pay period of October 23 – October 29, 2022, Plaintiff Tristen Dawson's wage statement reflects that he worked 22 regular hours at a rate of \$61.28 and 18

1 regular hours at a rate of \$87.53, but he was paid for 3 overtime hours at a rate of \$78.52 (i.e., at
2 a rate less than 1.5 times his regular rate of pay or even 1.5 times his lower rate of pay).

3 13. The above practice violates California law. Specifically, where an employee works
4 multiple rates of pay in a workweek and also works overtime hours, the employee must be paid
5 overtime at 1.5 times the weighted average of those rates. *See* DLSE Enforcement Manual at §
6 49.2.5: “Weighted Average Method. When two rates of pay are paid during a workweek, the
7 California method for determining the regular rate of pay for calculating overtime in the
8 workweek mirrors the federal method, based upon the weighted average of all hourly rates
9 paid....The rate will be established by adding all hours worked in the week and dividing that
10 number into the total compensation for the week.” (Italics added); *see also Alvarado v. Dart*
11 *Container Corp. of Calif.*, 4 Cal.5th 542, 544 (2018) (“Not all employees earn at a fixed pay rate
12 throughout a pay period, and therefore regular rate of pay is a *weighted average* reflecting work
13 done at varying times, under varying circumstances, and at varying rates.”) (emphasis in original)
14 (citing to DLSE Enforcement Manual § 49.2.5). Thus, in workweeks where Plaintiffs worked at
15 multiple rates of pay and worked overtime, their compensation for those overtime hours should
16 have been 1.5 times the weighted average of their rates of pay. Defendants failed to calculate
17 overtime based on the weighted average, and this practice has resulted in Plaintiffs and other
18 nonexempt employees being underpaid for their overtime compensation. Indeed, Defendants
19 often failed to pay overtime at even 1.5 times Plaintiffs’ *base* rate of pay, as demonstrated above.
20 On information and belief, Defendants paid other non-exempt employees in a similar manner and
21 therefore underpaid their employees’ overtime wages.

22 14. Defendants also under-paid Plaintiffs and other non-exempt employees’ overtime
23 wages when they excluded “Per Diem” or other non-discretionary payments that may not be
24 excluded from the “regular rate” of pay (collectively, these forms of pay are referred to herein as
25 “Incentive Pay”). For example, in the pay period of October 30 – November 5, 2022, Plaintiff
26 Lewis Dawson’s wage statement reflects that he worked 37 regular hours at a rate of \$78.97 per
27 hour and 3.5 overtime hours at a rate of \$103.91 per hour (i.e., less than 1.5 times his regular rate
28 of pay or base rate of pay), for a total of 40.5 hours. In that same pay period, Plaintiff Lewis

1 Dawson earned an additional \$630 as “Per Diem.” However, in calculating his overtime wages,
2 Defendants failed to incorporate the per diem pay into his “regular rate” of pay. Similarly, in the
3 same pay period ending November 5, 2022, Plaintiff Tristen Dawson’s wage statement reflects
4 he worked 9 regular hours at a rate of \$87.53, 25 regular hours at a rate of \$61.28, 3.50 overtime
5 hours at a rate of \$78.52, and earned a per diem of \$630. Defendants again failed to incorporate
6 the value of the per diem into the regular rate of pay, resulting in Plaintiffs and other non-exempt
7 employees being underpaid for their overtime and double-time hours worked.

8 15. Defendants have also failed to provide Plaintiffs and other non-exempt employees
9 with all statutorily mandated meal periods due to Defendants’ meal period policies/practices.
10 Specifically, Defendants’ policies and practices made it impracticable for Plaintiff and other non-
11 exempt employees to take a 30-minute off-duty meal period prior to the end of the fifth hour of
12 work, and consequently, Plaintiffs’ meal periods were often missed altogether or were late (i.e.,
13 commencing after 5 hours of work) and/or short (less than 30 minutes). Defendants also failed to
14 provide Plaintiffs and other non-exempt employees with a second 30-minute meal period on shifts
15 over 10.0 hours. Indeed, on many workdays Plaintiffs’ time records reflect no meal period taken.
16 In those instances that Defendants failed to provide Plaintiffs and other non-exempt employees
17 with a legally compliant meal period, Defendants have failed to pay the meal period premiums
18 required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
19 putative class period, Defendants maintained no payroll code or other mechanism for paying meal
20 period premiums when Defendants failed to provide a legally compliant meal period.

21 16. Defendants have also failed to authorize and permit rest periods to Plaintiffs and
22 other non-exempt employees. Specifically, Plaintiffs and other non-exempt employees were
23 frequently unable to take rest periods to which they were entitled as a result of the workload
24 imposed by Defendants. In those instances that Defendants failed to authorize and permit
25 Plaintiffs and other non-exempt employees to take a legally compliant rest period, Defendants
26 failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and
27 belief, during at least a portion of the putative class period, Defendants maintained no payroll
28 code or other mechanism for paying rest period premiums.

1 17. In addition, Defendants also failed to reimburse Plaintiffs and other employees for
2 expenses they incurred in the course of their employment. Specifically, Defendants required
3 Plaintiffs to use their personal cellphones to order supplies, communicate with the superintendent,
4 project managers, other employees, and customers. Plaintiffs regularly received text messages
5 and phone calls from management to discuss work-related issues. Despite requiring Plaintiffs to
6 use their personal property for work-related purposes, Defendants failed to reimburse Plaintiffs
7 for any portion of their monthly cell phone bill. As a result of the foregoing, Plaintiffs and other
8 employees are entitled to reimbursement pursuant to California Labor Code § 2802 and *Cochran*
9 *v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding that employer must
10 reimburse employees for "reasonable percentage" of their cell phone bills if employees are
11 required to use their cell phones for work purposes, even if the employees did not incur any
12 specific out-of-pocket expense in doing so).

13 18. As a result of Defendants' failure to pay all overtime and double time wages, meal
14 period premium wages, and rest period premium wages, Defendants failed to pay all wages to
15 Plaintiffs and other formerly employed non-exempt employees at the separation of their
16 employment.

17 19. As a further result of Defendants' failure to pay all overtime and double time
18 wages, meal period premium wages, and rest period premium wages, Defendants maintained
19 inaccurate payroll records, and issued inaccurate wage statements to Plaintiffs and other non-
20 exempt employees.

21 **CLASS ACTION ALLEGATIONS**

22 20. Class Definitions: Plaintiffs bring this action on behalf of themselves and the
23 following Classes pursuant to Section 382 of the Code of Civil Procedure:

24 a. The Overtime Class consists of all of the Defendants' current and former non-
25 exempt employees who performed work for Defendants in California and who (i) worked
26 more than 8.0 hours in a workday and/or over 40.0 hours in a workweek and earned per
27 diem or other Incentive Pay during a corresponding time period; and/or (iii) worked over
28 8.0 hours in a workday and/or over 40 hours in a workweek and received overtime pay at

1 less than 1.5 times their regular rate of pay, at any time from four years immediately
2 preceding the filing of this action through the present.

3 b. The Meal Period Class consists of all of the Defendants' current and former non-
4 exempt employees in California who worked at least one shift in excess of 5.0 hours, at
5 any time from four years immediately preceding the filing of this action through the
6 present.

7 c. The Rest Period Class consists of all of the Defendants' current and former non-
8 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
9 time from four years immediately preceding the filing of this action through the present.

10 d. The Wage Statement Class consists of all members of the Overtime Class who
11 received a wage statement during the one year immediately preceding the filing of this
12 action through the present.

13 e. The Waiting Time Class consists of all members of the Overtime Class who are
14 no longer employed by Defendants and who last worked for Defendants at any time from
15 three years immediately preceding the filing of this action through the present.

16 f. The Expense Reimbursement Class consists of all of Defendants' employees
17 (exempt and non-exempt) who performed work for Defendants in California and were
18 required to use their personal property, including but not limited to personal cellular
19 phones, for work-related purposes, at any time from four years prior to the filing of this
20 action through the present.

21 21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
22 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
23 unknown to Plaintiffs at this time; however, it is estimated that the Classes number greater than
24 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
25 Defendants' employment records.

26 22. **Common Questions of Law and Fact Predominate/Well Defined Community**
27 **of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly
28 situated employees, which predominate over questions affecting only individual members

1 including, without limitation to:

- 2 i. Whether Defendants' timekeeping and payroll practices violate the
- 3 applicable Labor Code provisions including, but not limited to, Sections
- 4 510 and 1194 by requiring overtime work and not paying the Overtime
- 5 Class for said work according to California's overtime laws;
- 6 ii. Whether Defendants provided legally compliant meal periods to members
- 7 of the Meal Period Class;
- 8 iii. Whether Defendants authorized and permitted legally compliant rest
- 9 periods to members of the Rest Period Class;
- 10 iv. Whether Defendants furnished legally compliant wage statements to
- 11 members of the Wage Statement Class pursuant to Labor Code § 226;
- 12 v. Whether Defendants paid all wages due to members of the Waiting Time
- 13 Class at the time of separation of employment; and
- 14 vi. Whether Defendants properly reimbursed expenses incurred by members
- 15 of the Expense Reimbursement Class.

16 23. **Predominance of Common Questions:** Common questions of law and fact
17 predominate over questions that affect only individual members of the Classes. The common
18 questions of law set forth above are numerous and substantial and stem from Defendants' policies
19 and/or practices applicable to each individual class member, such as Defendants' timekeeping,
20 overtime, wage statement, expense reimbursement, and final wage policies/practices. As such,
21 the common questions predominate over individual questions concerning each individual class
22 member's showing as to his or her eligibility for recovery or as to the amount of his or her
23 damages.

24 24. **Typicality:** Plaintiffs' claims are typical of the claims of the Classes because
25 Plaintiffs were employed by Defendants as non-exempt employees in California during the
26 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
27 alleged herein, Plaintiffs, like the members of the Classes, were deprived of all earned overtime
28 and double-time wages, were furnished with inaccurate wage statements, were deprived of all

1 final wages upon their separation of employment from Defendants, and were not reimbursed for
2 all expenses they incurred in carrying out their job duties for Defendants.

3 25. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
4 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
5 Plaintiffs' attorneys are ready, willing, and able to fully and adequately represent the members of
6 the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted numerous wage-and-hour class
7 actions in state and federal courts in the past and are committed to vigorously prosecuting this
8 action on behalf of the members of the Classes.

9 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves
10 an important public interest in establishing minimum working conditions and standards in
11 California. These laws and labor standards protect the average working employee from
12 exploitation by employers who have the responsibility to follow the laws and who may seek to
13 take advantage of superior economic and bargaining power in setting onerous terms and
14 conditions of employment. The nature of this action and the format of laws available to Plaintiffs
15 and members of the Classes make the class action format a particularly efficient and appropriate
16 procedure to redress the violations alleged herein. If each employee were required to file an
17 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
18 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
19 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
20 an individual remedy would discourage the assertion of lawful claims by employees who would
21 be disinclined to file an action against their former and/or current employer for real and justifiable
22 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
23 prosecution of separate actions by individual class members would create a substantial risk of
24 inconsistent or varying verdicts or adjudications with respect to the individual class members
25 against Defendants herein; and which would establish potentially incompatible standards of
26 conduct for Defendants. Further, the claims of the individual members of the Classes are not
27 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
28 costs and expenses attending thereto. As such, the Classes identified in Paragraph 20 are

maintainable under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

27. Plaintiffs re-allege and incorporate by reference all prior paragraphs.

28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked, and which provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

29. At all times relevant herein, Defendants were required to properly compensate Plaintiffs and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. As alleged herein, Defendants caused Plaintiffs and Overtime Class members to work overtime and double-time hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

30. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiffs and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

///

///

///

1 **SECOND CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 31. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

5 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 failed in their affirmative obligation to provide all their hourly non-exempt employees, including
7 Plaintiffs and members of the Meal Period Class, with all required meal periods in accordance
8 with the mandates of the California Labor Code and Wage Order 16, for the reasons set forth in
9 this Complaint.

10 33. As a result, Defendants owe premium compensation for meal period violations,
11 including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 16, Labor
12 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

13 **THIRD CAUSE OF ACTION**

14 **REST PERIOD VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

16 34. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

17 35. Labor Code §§ 226.7 and 516, and Wage Order 16, § 11 establish the right of
18 employees to be authorized and permitted a rest period of at least ten (10) minutes for each four
19 (4) hour period worked, or major fraction thereof.

20 36. As alleged herein, Defendants have failed to authorize and permit Plaintiffs and
21 Rest Period Class members to take their legally entitled rest periods. Defendants have also failed
22 to compensate Plaintiffs and Rest Period Class members with a rest period premium for each rest
23 period to which they were entitled while working.

24 37. The foregoing violations create an entitlement to recovery by Plaintiffs and Rest
25 Period Class members in a civil action for the unpaid amount of rest period premiums owing,
26 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
27 Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, §
28 1 of the California Constitution.

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

38. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

39. Plaintiffs are informed and believe, and based thereon allege, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all hours worked, all applicable rates of pay, all hours worked at each rate of pay, gross wages earned and net wages earned, in violation of Labor Code § 226(a).

40. Defendants' failure to furnish Plaintiffs and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their overtime and deprived them of the information necessary to identify and reconcile the discrepancies in Defendants' reported data.

41. Defendants' failures create an entitlement to recovery by Plaintiffs and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

42. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

43. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

44. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to timely pay Plaintiffs and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid overtime and double-time wages.

45. Further, Plaintiffs are informed and believe, and based thereon allege, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiffs and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

46. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiffs and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiffs and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

47. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

48. At all relevant times, Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

49. At all relevant times, Defendants were subject to Labor Code § 2804, which states, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

///

50. Due to Defendants' unlawful policy and practice of requiring employees to use their personal property, including but not limited to personal cell phones, for work purposes, and their failure to reimburse Plaintiffs and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

51. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiffs and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

52. Plaintiffs and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

53. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiffs and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

54. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

55. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiffs and the Classes all overtime wages due, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

56. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiffs and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

///

57. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiffs, for themselves and on behalf of the members of the Classes, seek full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

58. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

59. Plaintiffs were compelled to retain counsel to file this action to protect the interests of the Classes, to obtain restitution and injunctive relief on behalf of current employees, and to enforce important rights affecting the public interest. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

60. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

61. Defendants have committed several Labor Code violations against Plaintiffs and other aggrieved employees. Plaintiffs are “aggrieved employees” within the meaning of Labor Code § 2698 *et seq.* Plaintiffs, acting on behalf of themselves and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per

1 employee per pay period for those violations of the Labor Code for which no civil penalty is
2 specifically provided, based on the following Labor Code violations:

- 3 a. Failing to pay Plaintiffs and other aggrieved employees all overtime and/or
4 double-time compensation earned, in violation of Labor Code §§ 204, 510, 558,
5 1194, and 1198;
- 6 b. Failing to provide meal period to Plaintiffs and other aggrieved employees in
7 violation of Labor Code § 512;
- 8 c. Failing to authorize and permit Plaintiffs and other aggrieved employees to take
9 all legally entitled rest periods in violation of Labor Code § 226.7;
- 10 d. Failing to reimburse Plaintiffs and other aggrieved employees for all work-related
11 expenses, in violation of Labor Code §§ 2802, 2804, and 1198.
- 12 e. Failing to furnish Plaintiffs and other aggrieved employees with accurate and
13 complete itemized wage statements, in violation Labor Code § 226;
- 14 f. Failing to pay all wages owed to Plaintiffs and other aggrieved former employees
15 at their separation of employment, in violation of Labor Code §§ 201-203;
- 16 g. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved
17 employees, in violation of Labor Code §§ 1174 and 1198.

18 62. On or about August 30, 2023 and November 15, 2023, Plaintiffs notified
19 Defendant Farr Construction Corporation dba Resource Development Co., via certified mail, and
20 the California Labor and Workforce Development Agency ("LWDA") via its website, of
21 Defendants' violations of the California Labor Code and Plaintiffs' intent to bring a claim for
22 civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the
23 California Labor Code identified in paragraph 61 (a)-(e) above. Now that sixty-five days have
24 passed from Plaintiffs' initial notifying of Defendants and the LWDA of these violations,
25 Plaintiffs have exhausted their administrative requirements for bringing a claim under the Private
26 Attorneys General Act with respect to these violations.

27 63. Based on the foregoing, Plaintiffs seek to represent themselves, the State of
28 California, and all aggrieved employees as defined by Labor Code § 2699(c), which includes all

1 current and former employees who worked for Defendants in California at any time from one
2 year prior to the submission of Plaintiffs' PAGA notice to the present.

3 64. Plaintiffs were compelled to retain the services of counsel to file this court action
4 to protect their interests and the interests of other aggrieved employees, and to assess and collect
5 the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs,
6 which they are entitled to recover under California Labor Code § 2699(g).

7 **PRAYER**

8 WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose
9 behalf this suit is brought against Defendants, as follows:

- 10 1. For an order certifying the proposed Classes;
- 11 2. For an order appointing Plaintiffs as representatives of the Classes;
- 12 3. For an order appointing counsel for Plaintiffs as counsel for the Classes;
- 13 4. Upon the First Cause of Action, for compensatory, consequential, general, and
14 special damages according to proof pursuant to Labor Code §§ 204, 510, 511, 558, 1194, and
15 1198;
- 16 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
17 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
- 18 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
19 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
- 20 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code §
21 226, *et seq.*;
- 22 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
23 Labor Code §§ 201-203;
- 24 9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and
25 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 26 10. Upon the Seventh Cause of Action, for restitution to Plaintiffs and members of the
27 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
28 practices declared by this Court to be in violation of Bus. & Prof Code § 17200, *et seq.*;

1 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiffs, other
2 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
3 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay
4 each employee and \$200.00 for each subsequent violation or willful or intentional violation
5 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
6 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
7 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
8 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
9 pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each
10 subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
11 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
12 period for those violations of the Labor Code for which no civil penalty is specifically provided,
13 pursuant to Labor Code § 2699(f);

14 12. Prejudgment interest on all due and unpaid wages and other damages pursuant to
15 Cal. Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the
16 California Constitution;

17 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 226(e), 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

19 14. For such other and further relief the Court may deem just and proper.

20
21 Date: February 6, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

22 By:

Tuvia Korobkin
Tuvia Korobkin
Attorney for Plaintiff

1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: February 6, 2024

Respectfully submitted,
ABRAMSON LABOR GROUP

5
6 By: Tuvia Korobkin

7 Tuvia Korobkin
8 Attorney for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28