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Amanda Toste
Clerk of the Superior Court
By: Brandon Chow, Deputy

STANSBURY BROWN LAW, PC
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
JESSICA FLORES (SBN 282669)
jflores@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, California 90291
Tel: (323) 204-3124

Attorneys for Plaintiff

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

EDUARDO JIMENEZ, as an individual, and
on behalf of all others similarly situated,

Plaintiff,

v.

GINO/GIUSEPPE, INC. dba G&G
CONSTRUCTION CO., a California
corporation; ARIAS/GRAZIANO
ENTERPRISES dba QUADRANT
CONCRETE, INC., a California corporation;
G&G CONSTRUCTION MANAGEMENT,
LP; a California limited partnership, and
DOES 1 through 100, inclusive,

Defendants.

Case No. 23CV-03489

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (4) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*);**
- (7) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);
AND**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

DEMAND FOR JURY TRIAL

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UNLIMITED CIVIL CASE

Plaintiff Eduardo Jimenez (hereinafter “Plaintiff”), as an individual, and on behalf of all others similarly situated, hereby brings this Second Amended Class and Representative Action Complaint against Gino/Giuseppe, Inc. dba G&G Construction Co. (“G&G Co.”), a California corporation; G&G Construction Management, LP (“G&G LP”), a California limited partnership (collectively G&G”); Arias/Graziano Enterprises dba Quadrant Concrete Inc. (“Quadrant”), a California corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff hereby brings this Second Amended Class and Representative Action Complaint for recovery of unpaid wages and penalties under California Business and Professions Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

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

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is a California resident. During the four years immediately preceding the filing of the Complaint in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt

1 employee. Plaintiff was and is a victim of Defendants’ policies and/or practices complained of
2 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
3 201-204, 226 *et seq.*, 226.7, 510, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et*
4 *seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and
5 Wage Order 16, which sets employment standards for occupations in construction.

6 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
7 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
8 continue to do) business by providing construction services in California and the United States,
9 employed Plaintiff within Merced County and the state of California and, therefore, were (and
10 are) doing business in Merced County and the State of California.

11 5. Plaintiff does not know the true names or capacities, whether individual, partner,
12 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
13 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
14 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
15 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
16 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
17 and proximately caused Plaintiff and the Classes (as defined herein) to be subjected to the
18 unlawful employment practices, wrongs, injuries and damages complained of herein.

19 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
20 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

21 7. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each and every one of
24 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
25 were acting within the course and scope of said agency and employment. Defendants, and each
26 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
27 omissions complained of herein.

28 8. At all times mentioned herein, Defendants, and each of them, were members of

and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes towards Plaintiff and all members of the Classes. Defendants are jointly and severally liable for the violations alleged herein pursuant to, among other theories of liability, Labor Code §200.3, which holds “a successor to any judgment debtor shall be liable for any wages, damages, and penalties owed to any of the judgment debtor’s former workforce pursuant to a final judgment.” During Plaintiff’s employment with Defendants, he performed work for other presently unknown entities. As such, Defendants are jointly liable with the other unknown entities for all civil legal responsibility and civil liability for the payment of wages, including sums payable to an employee or the state of California based upon any failure to pay wages, pursuant to Labor Code § 2810.3.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff worked for Defendants as a general laborer between approximately August 2021 and approximately November 30, 2022 when he was informed that Defendant G&G Co. closed its doors and was rebranding itself as Quadrant. Defendants are in the business of construction. Upon information and belief, Quadrant works out of the same building as G&G and continues to perform work in the same locations as G&G. Upon further information and belief, Quadrant employs several of the same supervisors, managers and employees previously employed by G&G and also uses the same machinery used by G&G to perform work. Also, upon information and belief, Felipe Gonzalez, the foreman who Plaintiff reported to during his employment, remained employed by Quadrant and instructed employees not to talk to attorneys after Plaintiff initiated this lawsuit. Plaintiff’s job responsibilities included grading soil, positioning rebars, and prepping areas to lay cement. Plaintiff generally worked Monday through Friday from around 7:00 a.m. until around 3:30 p.m. or from approximately 6:00 a.m. to approximately 2:30 p.m. during daylight savings time and also worked some Saturdays from 6:00 a.m. to 2:30 p.m. Plaintiff averaged approximately 8 to 9.5 hours per workday, but sometimes worked over 10.0 hours in a workday.

10. Throughout the duration of Plaintiff’s employment with Defendants, Plaintiff and

1 other non-exempt employees were not paid for all hours worked, including overtime hours
2 worked. Plaintiff clocked in and out through his phone.

3 11. Approximately two to three times per month, Plaintiff had to drive to different
4 work locations during the workday for an average time of approximately twenty-five minutes.
5 While Defendants kept Plaintiff on the clock during his commute, Defendants required Plaintiff
6 to work beyond eight hours in one day to make up for the time it took him to travel from one work
7 location to another and did not compensate him for all of his overtime worked. On average,
8 Defendants required Plaintiff to work beyond eight hours approximately two to three times per
9 week. Further, Plaintiff and other non-exempt employees worked at least eight (8) hours per day.
10 However, Plaintiff's paystubs show that sometimes Plaintiff was not paid a full forty (40) hours
11 in one workweek. Plaintiff did not receive overtime compensation for all of his overtime worked.
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13 12. Defendants also required Plaintiff to carry his work-issued phone with him outside
14 of work hours for the purposes of clocking in and regularly checking his schedule to see if he
15 needed to report to work and to which location. Plaintiff also had to regularly call Defendants to
16 see if he needed to report to work. Defendants were not only aware of, but actively encouraged
17 this practice. He was never compensated for this time spent on call despite Plaintiff and other
18 aggrieved employees being restricted in their activities and locations while on call.

19 13. Defendants required Plaintiff and other non-exempt employees to clock out for
20 both of their 15-minute rest periods on each workday and they were not compensated for this
21 time. Defendants never provided Plaintiff and other non-exempt employees with an hour of pay
22 at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon
23 information and belief, during at least a portion of the class period, Defendants maintained no
24 payroll code or another mechanism for the payment of rest period premiums in the event Plaintiff
25 and other non-exempt employees were not authorized to take lawful rest periods.

26 14. Furthermore, Plaintiff and other non-exempt employees worked overtime hours,
27 but did not receive overtime compensation equal to one and one-half times their regular rates of
28 pay for all overtime hours worked.

1 15. Furthermore, Defendants failed to adequately reimburse Plaintiff and other non-
2 exempt employees for all reasonable and necessary work expenditures, including but not limited
3 to, requiring Plaintiff to purchase work shoes, pants, shirts of a specific color such as yellow or
4 orange for his work uniform and his own tools such as hammers, measuring tape and pliers.
5 Plaintiff was not ever provided any reimbursement for these necessary uses. Nor was Plaintiff
6 ever reimbursed for mileage expenses on the days that he had to drive to different work locations
7 during the workday.

8 16. Defendants failed to issue to Plaintiff and other non-exempt employees accurate
9 itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the
10 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
11 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
12 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
14 only the last four digits of his or her social security number or an employee identification number
15 other than a social security number, (8) the name and address of the legal entity that is the
16 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee.
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19 17. Defendants have maintained inaccurate payroll records, failed to timely pay all
20 wages owed to employees, and failed to timely pay separating employees at the time of their
21 separation, and issued inaccurate wage statements. This is in part a result of Defendant's failure
22 to accurately compensate Plaintiff and other non-exempt employees for all minimum and
23 overtime wages, and failure to pay premium pay for failing to authorize all required rest periods
24 on the clock.

25 18. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
26 by failing to provide Plaintiff and other aggrieved employees written notices, in the language
27 normally used to communicate employment related information to the employees, containing
28 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part

1 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
2 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
3 employer; vii) identifying information for the employer's workers' compensation insurance
4 carrier; and viii) information informing the employee of their right to accrue and use paid sick
5 leave. Despite maintaining an obligation to provide these disclosures to Plaintiff and other
6 aggrieved employees, Defendants failed to do so, in violation of Labor Code § 2810.5.

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9 **CLASS ACTION ALLEGATIONS**

10 19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
11 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 12 a. The Minimum Wage Class consists of all current and former non-exempt
13 employees of Defendants in California who were subject to Defendants'
14 timekeeping systems and/or practices, during the four years immediately
15 preceding the filing of this lawsuit through the present.
- 16 b. The Overtime Wage Class consists of all current and former non-exempt
17 employees of Defendants in California who worked overtime hours and were
18 subject to Defendants' timekeeping systems and/or practices, during the four years
19 immediately preceding the filing of this lawsuit through the present
- 20 c. The Rest Period Class consists of all current and former non-exempt employees of
21 Defendants in California who worked at least one shift in excess of 3.5 hours
22 during the four years immediately preceding the filing of this lawsuit through the
23 present.
- 24 d. The Wage Statement Class consists of all current and former non-exempt
25 employees of Defendants in California who received a wage statement from
26 Defendants during the one year immediately preceding the filing of this lawsuit
27 through the present.
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e. The Waiting Time Class consists of all of Defendants' formerly employed non-exempt employees in California who were subject to Defendants' timekeeping systems and/or practices, during the three years immediately preceding the filing of this lawsuit through the present.

f. The Employee Expense Class consists of all current and former non-exempt employees of Defendants who performed work in California who were not reimbursed for expenses in the performance of their job duties, including but not limited to work shoes, pants, shirts, hammers, measuring tape, pliers and mileage, during the four years immediately preceding the filing of this lawsuit to the present.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;

ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 16 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;

iii. Whether Defendants' timekeeping policies/practices resulted in the failure to

properly compensate members of the Minimum Wage Class;

iv. Whether Defendants provided all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

v. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and

vi. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

vii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;

22. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies and practices, rest period policies and practices, wage statement policies and practices, and the policies and practices regarding the timely payment of final wages. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was subject to Defendants' rest period and timekeeping policies and practices, was provided inaccurate wage statements, and was not paid all wages earned at the time of his separation of employment.

24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover,

Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

25. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27. Wage Order 16, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours he was subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 16.

28. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

29. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 16.

30. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and

1 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
2 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
3 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
4 Procedure § 1021.5.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY ALL OVERTIME WAGES**

7 **(AGAINST ALL DEFENDANTS)**

8 31. Plaintiff re-allege and incorporates by reference all previous paragraphs.

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

13 33. At all times relevant herein, Defendants were required to properly compensate
14 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
15 Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay overtime
16 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
17 in the Wage Order.

18 34. The foregoing policies and practices are unlawful and create entitlement to
19 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
20 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
21 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 16, and
22 Code of Civil Procedure § 1021.5.

23 **THIRD CAUSE OF ACTION**

24 **REST PERIOD VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

26 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 36. Wage Order 16, § 11 and California Labor Code §§ 226.2, 226.7 and 516 establish
28 the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)

minutes net rest time for each four (4) hour period worked, or major fraction thereof.

37. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods.

38. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid rest period wages and the amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. 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 termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

41. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, unpaid and/or underpaid overtime and minimum wages owed, and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay 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. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

42. Defendants' willful failure to timely pay Plaintiff and the Waiting Time Class their

1 earned wages upon separation from employment results in a continued payment of wages up to
2 thirty (30) days from the time the wages were due. Therefore, Plaintiff and the Waiting Time
3 Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees
4 and costs of suit.

5 **FIFTH CAUSE OF ACTION**

6 **WAGE STATEMENT VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
11 and the Wage Statement Class with complete and accurate wage statements reflecting the rest
12 period premiums in violation of Labor Code § 226 et seq.

13 45. Defendants' failures in furnishing Plaintiff and the Wage Statement Class with
14 complete and accurate itemized wage statements resulted in actual injury, as said failures led to,
15 among other things, the non-payment of all minimum and overtime wages, rest period premium
16 wages, and deprived them of the information necessary to identify the discrepancies in
17 Defendants' reported data.

18 46. Defendants' failures create an entitlement to recovery by Plaintiff and the Wage
19 Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226
20 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit
21 according to California Labor Code § 226 et seq.

22 **SIXTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

24 **(AGAINST ALL DEFENDANTS)**

25 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 48. Defendants have engaged and continue to engage in unfair and/or unlawful
27 business practices in California in violation of California Business and Professions Code § 17200
28

et seq., by failing to pay Plaintiff and the Classes all minimum and overtime wages, failing to provide all required rest periods, or pay premium payments in lieu thereof, failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and members of the Waiting Time class all final wages due upon separation of employment.

49. Defendants’ utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive 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.

50. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seek full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

51. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

52. Plaintiff is compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants’ current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys’ fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

54. At all relevant times herein, 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

1 his or her obedience to the directions of the employer...”

2 55. Due to Defendants’ unlawful policy and practice of requiring employees to
3 purchase work shoes, pants, shirts of a specific color such as yellow or orange for their work
4 uniform and their own tools such as hammers, measuring tape and pliers in the performance of
5 their job duties, Defendants have violated Labor Code § 2802. Employees were also not
6 reimbursed for mileage expenses in the performance of their job duties in violation of Labor Code
7 § 2802.

8 56. Plaintiff and the members of the Employee Expense Class are entitled to attorneys’
9 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

10 57. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
11 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
12 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
13 from the date on which they incurred the initial necessary expenditure.
14

15 **EIGHTH CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **(AGAINST ALL DEFENDANTS)**

18 58. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
19 fully set forth herein.

20 59. Defendants have committed several Labor Code violations against Plaintiff,
21 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
22 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
23 employees, brings this representative action against Defendants to recover the civil penalties due
24 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
25 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
26 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
27 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
28 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each

initial violation and \$100 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 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 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for necessary business expenditures incurred by Plaintiff, the Employee Expense Class, and other aggrieved employees in violation of Labor Code §§ 2800, 2802 and 2804;
- e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least

- twice during each calendar month in violation of Labor Code § 204;
- h. Failing to pay Plaintiff and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday in violation of Labor Code § 205;
- i. Failing to permit and authorize Plaintiff and other non-exempt to exercise the use of their accrued paid sick leave days in violation of Labor Code § 245.5;
- j. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Plaintiff and other aggrieved employees in violation of Labor Code § 2810.5; and
- k. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

60. On August 25, 2023, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 59 (a)-(k). Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

61. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1198 and Wage Order 16 § 4(A);
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and Wage Order 16 § 3(A);
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;
11. Upon the Eighth Cause of Action, for (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 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 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 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

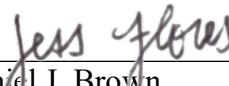
each initial violation and \$200 for each subsequent violation per employee per pay period for the violations of the Labor Code Sections cited in Labor Code § 2699.5.

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §226, and Code of Civil Procedure § 1021.5; and

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

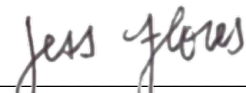
Dated: March 20, 2024
Respectfully submitted,
STANSBURY BROWN LAW, PC

By: 
Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: March 20, 2024
Respectfully submitted,
STANSBURY BROWN LAW, PC

By: 
Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On March 20, 2024 I served the document listed below on the parties in this action as follows:

- SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 20, 2024 at Frazier Park, California.

Isabella C. Aguinaga

Isabella C. Aguinaga

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SERVICE LIST

Sutton Hague Law Corporation
Jared Hague, Esq.
jared@suttonhague.com
service@suttonhague.com
6671 S Las Vegas Blvd, Suite 210
Las Vegas, Nevada 89119

Attorneys for Defendants Gino/Giuseppe, Inc. DbA G&G Construction Co., Arias/Graziano Enterprises DbA Quadrant Concrete, Inc. and G&G Construction Management, LP.