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

HERIBERTO GONZALEZ, an individual, on  
behalf of himself the State of California, as a  
private attorney general, and all others similarly  
situated,

Plaintiff,

v.

FIRE SPRINKLER SYSTEMS, INC., a  
California corporation; and DOES 1 TO 50,

Defendants.

Case Number: CVRI2304032

**First Amended PAGA Representative Action  
Complaint For:**

1. Penalties Pursuant to the Labor Code  
Private Attorneys General Act of 2004  
("PAGA") for Violations of California  
Labor Code Sections 201, 202, 203, 204,  
210, 226, 226.2, 226.3, 226.7, 256, 510,  
512, 1174, 1174.5, 1185, 1194, 1194.2,  
1197, 1197.1, 1198, 1198.5, 1199, 2802,  
2084, and Other Provisions of the  
California Labor Code.

1 Plaintiff Heriberto Gonzalez (“Plaintiff”), on behalf of himself and the State of California, as a  
2 private attorney general, complains and alleges of defendants Fire Sprinkler Systems, Inc. and Does 1  
3 to 50 (collectively, “Defendants”), and each of them, as follows:

4 **I. INTRODUCTION**

5 1. This action is a PAGA representative action brought pursuant to the California Labor  
6 Code Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections  
7 2698 through 2699.6.

8 2. The “PAGA Period” as used herein, is defined as the period from August 4, 2022, and  
9 continuing into the present and ongoing.

10 3. This PAGA action is brought on behalf of Plaintiff, the State of California as private  
11 attorney general, and on behalf of the following groups of aggrieved employees:

12 A. All individuals who are or were employed as hourly, non-exempt, employees by  
13 Defendants in California from one year prior to August 4, 2023 and ongoing  
14 (the "Hourly Aggrieved Employees"); and

15 B. All individuals who are or were employed by Defendant in California and who  
16 were paid in whole or in part on a piece-rate basis from one year prior to the  
17 date of this letter and ongoing (the "Piece-Rate Aggrieved Employees").

18 The Hourly Aggrieved Employees and the Piece-Rate Aggrieved Employees are referred to collectively  
19 as the “Aggrieved Employees”.

20 4. Plaintiff is informed and believes and thereon alleges that the California Industrial  
21 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders  
22 4-2001 and/or 16-2001 (the “Applicable Wage Orders”) and possibly others that may be applicable.  
23 (Cal. Code of Regs., tit. 8, §§ 11040, 11160.) Plaintiff reserves the right to amend or modify the  
24 definition of “Applicable Wage Orders” with greater specificity or add additional IWC Wage Orders  
25 if additional applicable wage orders are discovered in litigation.

26 **II. JURISDICTION & VENUE**

27 5. This Court has subject matter jurisdiction over all causes of action asserted herein  
28 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section

1 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds  
2 \$25,000, and because each cause of action asserted arises under the laws of the State of California or  
3 is subject to adjudication in the courts of the State of California.

4 6. This Court has personal jurisdiction over Defendants because Defendants have caused  
5 injuries in the County of Riverside and the State of California through their acts, and by their violation  
6 of the California Labor Code and California state common law. Defendants transact millions of dollars  
7 of business within the State of California. Defendants own, maintain offices, transact business, have an  
8 agent or agents within the County of Riverside, and/or otherwise are found within the County of  
9 Riverside, and Defendants are within the jurisdiction of this Court for purposes of service of process.

10 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the  
11 Code of Civil Procedure. Defendants operate within California and do business within Riverside  
12 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of  
13 Defendants' employees identified above within Riverside County and surrounding counties where  
14 Defendants may remotely operate.

15 **III. THE PARTIES**

16 8. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen  
17 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly  
18 employee in the County of Riverside.

19 9. Plaintiff brings this action on behalf of himself and the State of California, as a private  
20 attorney general, and on behalf of the following group of aggrieved employees:

21 10. Plaintiff is informed and believes and thereon alleges that Defendants were authorized  
22 to and doing business in Riverside County and is and/or was the legal employer of Plaintiff and the  
23 other Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved  
24 Employees were, and are, subject to Defendants' policies and/or practices complained of herein and  
25 have been deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203,  
26 204, 210, 226, 226.2, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1,  
27 1198, 1198.5, 1199, 2802, 2084, and others that may be applicable; California Business and Professions  
28

1 Code sections 17200 through 17210 (“UCL”); and the Applicable Wage Orders (Cal. Code of Regs.,  
2 tit. 8, §§ 11040, 11160).

3 11. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA  
4 Period, Defendants did (and continue to do) business in the State of California, County of Riverside.

5 12. Plaintiff does not know the true names or capacities, whether individual, partner, or  
6 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants  
7 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this  
8 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and  
9 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were  
10 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff  
11 and the other Aggrieved Employees to be subject to the unlawful employment practices, wrongs,  
12 injuries, and damages complained of herein.

13 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
14 herein, Defendants were and/or are the employers of Plaintiff and the other Aggrieved Employees. At  
15 all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter  
16 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,  
17 were the agents, servants, and employees of each and every one of the other Defendants, as well as the  
18 agents of all Defendants, and at all times herein mentioned were acting within the course and scope of  
19 said agency and employment. Defendants, and each of them, approved of, condoned, or otherwise  
20 ratified every one of the acts or omissions complained of herein.

21 14. At all relevant times, Defendants, and each of them, were members of and engaged in a  
22 joint venture, partnership, and common enterprise, and acting within the course and scope of and in  
23 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and  
24 believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff and  
25 the other Aggrieved Employees.

26 **IV. COMMON FACTS & ALLEGATIONS**

27 15. Plaintiff and the other Aggrieved Employees are, and were at all relevant times,  
28 employed by the Defendants within the State of California.

1           16.     The Aggrieved Employees are, and were, at all relevant times, non-exempt employees  
2 for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged  
3 in this complaint.

4           17.     Specifically, Plaintiff was employed by Defendants within the statutory PAGA Period,  
5 working as an hourly, non-exempt installer for Defendants. Plaintiff's duties included installing,  
6 designing, and assembling fire sprinkler systems.

7           **A.     PIECE-RATE VIOLATIONS**

8           18.     California Labor Code § 226.2 governs compensation paid to piece-rate employees, like  
9 Plaintiff and the Piece-Rate Aggrieved Employees.

10          19.     Under California law, Defendant was and is obligated to the Piece Rate Aggrieved  
11 Employees, including Plaintiff, separately and hourly for his and their rest break time. *See, Bluford v.*  
12 *Safeway Stores, Inc.*, (Cal. Ct. App. May 8, 2013) 216 Cal. App. 4th 864, 872–73; Labor Code § 226.2.  
13 Separate and hourly pay is also required for inspection time, fueling time, waiting time, and time spent  
14 on paperwork; *see also Gonzalez v. Downtown LA Motors, LP*, (2013) 215 Cal. App. 4th 36, 49  
15 (favorably citing and adopting Cardenas); *Bluford v. Safeway Stores, Inc.*, (Cal. Ct. App. May 8, 2013)  
16 216 Cal. App. 4th 864, 872–73; Labor Code § 226.2. Defendant cannot just pay a piece rate and assume  
17 that it covers its employees rest breaks and other nonproductive time. *Id.*; *see also* Labor Code § 226.2  
18 (codifying the listed case law).

19          20.     Plaintiff and the Piece-Rate Aggrieved Employees were not paid for non-productive  
20 time while employed by the Defendants and working piece-rate shifts. Instead, Plaintiff and the Piece-  
21 Rate Aggrieved Employees only received compensation based on the number of installations made.  
22 Plaintiff and the Piece-Rate Aggrieved Employees did not receive any compensation for non-  
23 productive time, including preparing the worksite, cleaning the worksite, etc. As a result, Plaintiff and  
24 the Piece-Rate Aggrieved Employees were denied compensation for all hours worked, in violation of  
25 Cal. Labor Code § 1194, and were denied compensation at the minimum wage in violation of Cal. Labor  
26 Code §§ 1197.

27          21.     Further, Defendants' failure to provide Plaintiff and the Piece-Rate Aggrieved  
28 Employees with accurate wage statements, constitutes a violation of Labor Code §§ 226(a) and 226.2.

1 Specifically, the wage statements did not and do not include total hours worked, do not include all  
2 applicable hourly rates in effect during the pay period and the corresponding number of hours worked  
3 at each hourly rate in violation of Labor Code Section 226(a) and 226.2, do not include all non-  
4 productive time in violation of Labor Code Sections 226(a) and 226.2, and do not include the number  
5 of piece rate units earned and the applicable piece rate.

6 **B. MINIMUM WAGE VIOLATIONS**

7 22. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed  
8 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code  
9 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a  
10 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable  
11 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.  
12 (Cal. Code of Regs., tit. 8, §§ 11040, 11160.) Labor Code section 1198 makes unlawful the employment  
13 of an employee under conditions that the IWC Wage Orders prohibit.

14 23. These minimum wage standards apply to each hour that employees work. Therefore, an  
15 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging  
16 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above  
17 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

18 24. Here, Defendants failed to fully conform their pay practices to the requirements of the  
19 law during the relevant statutory periods. The Aggrieved Employees were not compensated for all  
20 hours worked including, but not limited to, all hours they were subject to the control of Defendants  
21 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Orders.  
22 Among other violations, the Aggrieved Employees were subject to the control of Defendants while off-  
23 the-clock and did not receive minimum wage for each hour worked.

24 25. v. Labor Code section 1197.1 authorizes employees who are paid less than the  
25 minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty,  
26 among other damages, as follows:  
27  
28

1 (1) “For any initial violation that is intentionally committed, one  
2 hundred dollars (\$100) for each underpaid employee for each pay period  
3 for which the employee is underpaid.”

4 (2) “For each subsequent violation for the same specific offense, two  
5 hundred fifty dollars (\$250) for each underpaid employee for each pay  
6 period for which the employee is underpaid regardless of whether the  
7 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.  
8 (a).)

9 26. As set forth above, Defendants failed to fully compensate the Aggrieved Employees for  
10 all minimum wages. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and the  
11 Aggrieved Employees are entitled to recover penalties pursuant to California Labor Code section  
12 1197.1 in addition to any other applicable penalties.

13 **C. OVERTIME VIOLATIONS**

14 27. Labor Code section 510 requires employers to compensate employees who work more  
15 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on  
16 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.  
17 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate  
18 employees at no less than twice the regular rate of pay when an employee works more than twelve  
19 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,  
20 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

21 28. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the  
22 Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the  
23 amount provided by Labor Code sections 510 or the Applicable Wage Orders.

24 29. Here, Defendants violated their duty to accurately and completely compensate the  
25 Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked hours  
26 that entitled them to overtime compensation under the law but were not fully compensated for those  
27 hours.  
28

1           30.     These actions were and are in clear violation of California’s overtime laws as set forth  
2 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,  
3 §§ 11040, 11160.) As a result of Defendants’ faulty policies and practices, the Aggrieved Employees  
4 were not compensated for all hours worked or paid accurate overtime compensation.

5           **D.     REST BREAK VIOLATIONS**

6           31.     Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants  
7 were and are required to provide the Aggrieved Employees with compensated, duty-free rest periods  
8 of not less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage  
9 Orders, an employer must authorize and permit all employees to take ten minute duty free rest periods  
10 for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§ 11040, 11160.)

11          32.     Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an  
12 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,  
13 or applicable regulation, standard, or order of the Industrial Welfare Commission . . . .” (Lab. Code, §  
14 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one  
15 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery  
16 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must  
17 factor in all nondiscretionary payments for work performed by the employee, including non-  
18 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base  
19 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage  
20 Orders set when and for how long the rest period must take place and the Labor Code establishes that  
21 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay  
22 their employees when employers fail to provide rest periods.

23          33.     The California Supreme Court has held that, during required rest periods, “employers  
24 must relieve their employees of all duties and relinquish any control over how employees spend their  
25 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing  
26 control over employees during rest periods requires that employees be “free to leave the employer’s  
27 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court  
28

1 explained in the context of rest breaks that employer liability attaches from adopting an unlawful  
2 policy:

3 “An employer is required to authorize and permit the amount of rest break time  
4 called for under the wage order for its industry. If it does not—if, for example,  
5 it adopts a uniform policy authorizing and permitting only one rest break for  
6 employees working a seven-hour shift when two are required—it has violated  
7 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53  
8 Cal.4th 1004, 1033.)

9 34. Here, Defendants periodically did not permit the Aggrieved Employees to take  
10 compliant duty-free rest breaks, free from Defendants’ control as required by Labor Code section  
11 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM Security Services,*  
12 *Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees  
13 of all duties and relinquish control over how employees spend their time.”].) At all relevant times, the  
14 Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods  
15 of at least ten minutes for each four hour work period, or major fraction thereof due to Defendants’  
16 unlawful rest period policies/practices. The Aggrieved Employees were often expected and required to  
17 continue working through rest periods to meet the expectations Defendants and finish the workday. In  
18 some cases when the Aggrieved Employees worked more than ten hours in a shift, Defendants failed  
19 to authorize and/or permit a third mandated rest period. As a result, the Aggrieved Employees were  
20 periodically unable to take compliant rest periods.

21 35. In such cases where Defendants did not offer the Aggrieved Employees the opportunity  
22 to receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose  
23 to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410  
24 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may not  
25 conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court,*  
26 *supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law  
27 but never authorized; if a break is not authorized, an employee has no opportunity to decline to take  
28 it.”].)

1           36. In addition to failing to authorize and permit compliant rest periods, the Aggrieved  
2 Employees were not compensated with one hour's worth of pay at their regular rate of compensation  
3 when they were not provided with a compliant rest period in accordance with Labor Code section  
4 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable  
5 Wage Orders.

6           **E. MEAL BREAK VIOLATIONS**

7           37. Labor Code section 512 and the Applicable Wage Orders require employers to provide  
8 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of  
9 work. (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of  
10 more than five hours per day without providing the employee with a meal period of not less than 30  
11 minutes . . . ."]; Cal. Code of Regs., tit. 8, §§ 11040, 11160 ["No employer shall employ any person  
12 for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . . ."].)  
13 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-  
14 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) ["An employer shall not  
15 employ an employee for a work period of more than 10 hours per day without providing the employee  
16 with a second meal period of not less than 30 minutes . . . ."].)

17           38. "An on-duty meal period is permitted only when the nature of the work prevents an  
18 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal  
19 break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must  
20 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California  
21 Department of Industrial Relations, Division of Labor Standards Enforcement ("DLSE") and courts  
22 have "found that the nature of the work exception applies: (1) where the work has some particular  
23 external force that requires the employee to be on duty at all times, and (2) where the employee is the  
24 sole employee of a particular employer." (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*  
25 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) "[I]t is the employer's obligation  
26 to determine whether the nature of the work prevents an employee from being relieved before requiring  
27 an employee to take an on-duty meal period." (*Lubin v. The Wackenhut Corp., supra*, 5 Cal.App.5th at  
28 p. 946.)

1           39.     Here, the Aggrieved Employees were never asked to sign any enforceable document  
2 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of  
3 “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5  
4 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal  
5 periods within the first five hours of work for the Aggrieved Employees.

6           40.     As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*  
7 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s  
8 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal  
9 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend  
10 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under  
11 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit  
12 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable  
13 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*  
14 *Court*, *supra*, 53 Cal.4th at p. 1033.)

15           41.     During the applicable statutory periods here, the Aggrieved Employees were  
16 periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to  
17 Defendants’ unlawful meal period policy and practices. As a result of Defendants’ uniform meal period  
18 policies and practices, the Aggrieved Employees were often not permitted to take compliant first meal  
19 periods before the end of the fifth hour of work. The Aggrieved Employees were also periodically not  
20 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated Labor  
21 Code section 512 and the Applicable Wage Orders by failing to advise, authorize, or permit the  
22 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their  
23 shifts.

24           42.     Labor Code section 226.7 provides that “[a]n employer shall not require an employee  
25 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or  
26 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,  
27 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate  
28 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation

1 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of  
2 Regs., tit. 8, §§ 11040, 11160 [“If an employer fails to provide an employee a meal period in accordance  
3 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay  
4 at the employee’s regular rate of compensation for each workday that the meal period is not  
5 provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for  
6 work performed by the employee, including non-discretionary bonuses, commissions, and other forms  
7 of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*  
8 (2021) 11 Cal.5th 858, 878.)

9 43. Accordingly, for each day that the Aggrieved Employees did not receive compliant meal  
10 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section  
11 226.7 and the Applicable Wage Orders. Defendants, however, failed to pay the Aggrieved Employees  
12 applicable meal period premiums for many workdays that the employees did not receive a compliant  
13 meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage  
14 Orders.

15 **F. UNTIMELY WAGES DURING EMPLOYMENT**

16 44. Labor Code section 204 expressly requires employers who pay employees on a weekly,  
17 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the  
18 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate  
19 Labor Code section 204 subject to a penalty of:

20 “(1) For any initial violation, one hundred dollars (\$100) for each  
21 failure to pay each employee.

22 “(2) For each subsequent violation, or any willful or intentional  
23 violation, two hundred dollars (\$200) for each failure to pay each  
24 employee, plus 25 percent of the amount unlawfully withheld.” (Lab.  
25 Code, § 210, subd. (a).)

26 45. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and  
27 entirely independent and apart from, any other penalty provided in this article . . . .” (Lab. Code, § 210,  
28 subd. (a).)

1           46.     Due to Defendants’ failure to pay the Aggrieved Employees the wages described above,  
2 along with rest and meal break premiums, Defendants failed to timely pay the Aggrieved Employees  
3 within seven calendar days following the close of payroll in accordance with Labor Code section 204  
4 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No.  
5 16-CV-00405-JST) 2016 WL 1734010, at p. \*3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure  
6 to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

7           **G.     UNTIMELY WAGES AT SEPARATION**

8           47.     Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages  
9 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”  
10 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result  
11 of Defendants’ failure to pay the Aggrieved Employees for the wages described above, along with rest  
12 and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

13          48.     Due to Defendants’ faulty pay policies, those Aggrieved Employees whose employment  
14 with Defendants concluded were not compensated for each and every hour worked at the appropriate  
15 rate. Defendants have failed to pay formerly-employed Aggrieved Employees whose sums were certain  
16 at the time of termination within at least seventy-two hours of their resignation and have failed to pay  
17 those sums for thirty days thereafter.

18          **H.     FAILURE TO REIMBURSE BUSINESS EXPENSES**

19          49.     At all relevant times herein, Defendants were subject to Labor Code section 2802, which  
20 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses  
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her  
22 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from  
23 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*  
24 (2007) 42 Cal.4th 554, 562.)

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

1           51.     Thus, the Aggrieved Employees were and are entitled to reimbursement for the expenses  
2 they incurred during the course of their duties. The duty to reimburse even extends to the use of  
3 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*  
4 *Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this case  
5 is this: Does an employer always have to reimburse an employee for the reasonable expense of the  
6 mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in  
7 which the employee incurred an extra expense that he or she would not have otherwise incurred absent  
8 the job? The answer is that reimbursement is always required. Otherwise, the employer would receive  
9 a windfall because it would be passing its operating expenses on to the employee.”].)

10           52.     Here, Defendants failed to fully reimburse the Aggrieved Employees for necessary  
11 expenditures incurred as a direct consequence and requirement of performing their job duties, including  
12 the costs associated with their personal cell phone and mileage they required to perform their work.  
13 Consequently, Defendants failed to comply with Labor Code section 2802.

14           **I.     WAGE STATEMENT VIOLATIONS**

15           53.     Defendants also failed to provide accurate itemized wage statements in accordance with  
16 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision  
17 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage  
18 statement in writing showing:

- 19                   (1)     The gross wages earned;
- 20                   (2)     The total hours worked by the employee;
- 21                   (3)     The number of piece-rate units earned and any applicable piece  
22                   rate if the employee is paid on a piece rate basis;
- 23                   (4)     All deductions, provided that all deductions made on written  
24                   orders of the employee may be aggregated and shown as one item;
- 25                   (5)     The net wages earned;
- 26                   (6)     The inclusive dates of the period for which the employee is paid;
- 27
- 28

(7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;

(8) The name and address of the legal entity that is the employer; and

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

54. Due to Defendants' failure to pay the Aggrieved Employees properly as described above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

55. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Aggrieved Employees with wage statements required by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement."].)

#### **J. RECORDKEEPING VIOLATIONS**

56. Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part, as follows:

"Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee

1 for each violation in a subsequent citation, for which the employer fails to  
2 provide the employee a wage deduction statement or fails to keep the records  
3 required in subdivision (a) of Section 226. The civil penalties provided for in  
4 this section are in addition to any other penalty provided by law.” (Lab. Code, §  
5 226.3, emphasis added.)

6 57. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including  
7 Defendants, to:

8 “Keep, at a central location in the state or at the plants or establishments at which  
9 employees are employed, payroll records showing the hours worked daily by  
10 and the wages paid to, and the number of piece-rate units earned by and any  
11 applicable piece rate paid to, employees employed at the respective plants or  
12 establishments. These records shall be kept in accordance with rules established  
13 for this purpose by the commission, but in any case shall be kept on file for not  
14 less than three years. An employer shall not prohibit an employee from  
15 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,  
16 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

17 58. As explained in detail above, Defendants failed to provide the Aggrieved Employees  
18 with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately  
19 track hours worked by the Aggrieved Employees. Defendants have thus failed to keep accurate records  
20 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a),  
21 and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are  
22 “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

23 59. The failure to accurately track hours worked also resulted in a failure of Defendants to  
24 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,  
25 including Plaintiff, in violation of Labor Code section 1174, subdivision (d).

26 **V. EXHAUSTION OF REMEDIES**

27 60. Plaintiff has or will have fully and completely exhausted administrative remedies under  
28 PAGA prior to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA

1 notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified  
2 mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as  
3 prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

4 61. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by  
5 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by  
6 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the  
7 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil  
8 action pursuant to Labor Code section 2699.

9 **VI. CAUSES OF ACTION**

10 **First Cause of Action**

11 *Penalties Pursuant to PAGA for Violations of Labor Code Sections 201, 202, 203,*  
12 *204, 210, 226, 226.2, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197,*  
13 *1197.1, 1198, 1198.5, 1199, 2802, 2804 and Other Provisions of the California Labor*  
14 *Code*

15 *(Against All Defendants)*

16 62. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 63. Based on the above allegations incorporated by reference, Defendants violated Labor  
18 Code sections 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194,  
19 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the  
20 Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11160), and others that may be  
21 applicable.

22 64. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections  
23 2698 through 2699.6 because of Defendants’ violation of Labor Code sections 201, 202, 203, 204, 210,  
24 226, 226.2, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,  
25 2802, 2804 and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs.,  
26 tit. 8, §§ 11040, 11160), and others that may be applicable.

1           65. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,  
2 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time  
3 of trial subject to the following formula:

- 4           A. \$100 for the initial violation per employee per pay period; and  
5           B. \$200 for each subsequent violation per employee per pay period.

6           66. Moreover, under Labor Code section 256, the Aggrieved Employees are entitled to  
7 penalties “in an amount not exceeding 30 days pay as waiting time under the terms of Section 203”  
8 through PAGA. (Lab. Code, §§ 256, 2699.)

9           67. These penalties must be allocated seventy-five percent to the Labor and Workforce  
10 Development Agency (“LWDA”) and twenty-five percent to the affected employees. These penalties  
11 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*  
12 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*  
13 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at \*9,  
14 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section  
15 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also  
16 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL  
17 2373372, at \*17 fn. 70 [noting that federal courts applying California law have found that “PAGA  
18 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for  
19 different Labor Code violations.”], internal quotation marks omitted).

20           68. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all  
21 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section  
22 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code  
23 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.  
24 780, 788.)

25           69. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default  
26 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny  
27 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount  
28 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand

1 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails  
2 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of  
3 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the  
4 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and  
5 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,  
6 subdivision (e).

7         70. Labor Code section 210 provides that “in addition to, an entirely independent and apart  
8 from, any other penalty provided in this article, every person who fails to pay the wages of each  
9 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any  
10 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each  
11 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure  
12 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty  
13 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover  
14 penalties under Labor Code section 210 through PAGA.

15         71. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and  
16 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is  
17 intentionally committed for each underpaid employee for each pay period for which the employee is  
18 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific  
19 offense for each underpaid employee for each pay period for which the employee is underpaid  
20 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and  
21 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant  
22 to Labor Code section 1197.1.

23         72. Plaintiff was compelled to retain the services of counsel to file this action to protect his  
24 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed  
25 by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which Plaintiff is also entitled  
26 to recover under Labor Code section 2699, subdivision (g)(1).  
27  
28

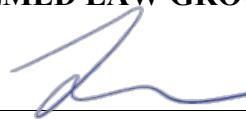
1 **VII. PRAYER FOR RELIEF**

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

- 4 1. For penalties and other relief allowable under Labor Code § 2699, *et seq.* all Aggrieved  
5 Employees because of Defendants' violation of Labor Code § 1198; and IWC Wage  
6 Orders 4-2001, and/or 16-2001;
- 7 2. A civil penalty against Defendants in the amount of \$100 for the initial violation and  
8 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California  
9 Labor Code for all Aggrieved Employees;
- 10 3. An award of reasonable attorney's fees against Defendants as specified in Labor Code  
11 § 2699(g)(1), for all the work performed by the undersigned counsel in connection with  
12 the PAGA claims;
- 13 4. An award of all costs incurred by the undersigned counsel for Plaintiff in connection  
14 with Plaintiff's and the Aggrieved Employees' claims against Defendants as provided  
15 for in Labor Code § 2699(g)(1); and
- 16 5. For such other and further relief, this Court may deem just and proper.

17 Dated: October 10, 2023

**MELMED LAW GROUP P.C.**



**JONATHAN MELMED**

Attorneys for Plaintiff and the Aggrieved  
Employees

**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF RIVERSIDE**

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to the action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, October 19, 2023, I served the foregoing document(s) described as:

- **First Amended PAGA Representative Action Complaint**

By causing a true copy thereof to be sent to the following individuals and/or parties:

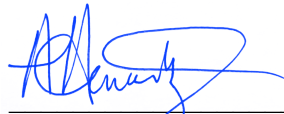
Kyle D. Kring  
kkring@kringandchung.com  
Kerri N. Kramer  
kkramer@kringandchung.com  
**KARING & CHUNG**  
38 Corporate Park  
Irvine, California 92606  
Phone: (949) 261-7700  
Fax: (949) 261-8800

*Attorneys for Defendant Fire Sprinkler Systems, Inc.*

**[X] BY ELECTRONIC MAIL.** Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused such the document(s) described above to be sent from my email address to the persons listed above. I did not receive, within a reasonable time after the transmission, any electronic message or indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 19, 2023, in Los Angeles, California.

  
\_\_\_\_\_  
Alma Hernandez