

Kevin Mahoney, Esq. (SBN:235367)
kmahoney@mahoney-law.net
John Young, Esq. (SBN: 299809)
jyoung@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone No.: (562) 590-5550
Facsimile No.: (562) 590-8400

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/24/2023 at 01:48:00 PM
Clerk of the Superior Court
By Angelika Cazares, Deputy Clerk

Attorneys for Plaintiff OSKAR LIZARRAGA, as an individual, and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF SAN DIEGO

OSKAR LIZARRAGA, as an individual and
on behalf of all similarly situated employees,

Plaintiff,

v.

AMERICAN SCAFFOLD, LLC, and DOES 1
through 50, inclusive,

Defendant.

Case No.: 37-2022-00038496-CU-OE-CTL

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES

1. Failure to Pay All Wages, Including Overtime Wages (Labor Code §§ 510, 1194, 1182.12);
2. Failure to Provide Meal Periods (Labor Code §§ 226.7 And 512);
3. Failure to Provide Rest Periods (Labor Code §226.7)
4. Failure to Timely Pay Wages at Separation (Labor Code §§ 201, 202, 203);
5. Failure to Reimburse Necessary Business Expenditures (Labor Code § 2802);
6. Unfair Business Practices (Bus. Prof. Code Section 17200 et. seq.); and
7. Violation of Private Attorneys General Act (PAGA) (Labor Code §§2698-2699)

DEMAND FOR JURY TRIAL

1 Plaintiff OSKAR LIZARRAGA ("Plaintiff"), on behalf of himself, and all others similarly
2 situated, complains and alleges, on information and belief, the following:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
5 represent ("Plaintiff Class" or "Class Members") pursuant to California Code of Civil Procedure
6 section 382. Plaintiff Class consists of all non-exempt, hourly-paid employees currently and/or
7 formerly employed by Defendant AMERICAN SCAFFOLD, LLC ("Defendant"), in the State of
8 California during the Class Period. The term "Class Period" is defined as four (4) years prior to
9 the filing of the original complaint through the date of certification. Plaintiff reserves the right to
10 amend this complaint to reflect a different "Class Period" or "Plaintiff Class" as further discovery
11 is conducted.

12 2. Plaintiff, individually, and on behalf of the class he seeks to represent, seeks relief
13 against Defendant for Defendant's practice of violating the applicable wage orders, the applicable
14 Code of Regulations, and California Labor Codes, including: (1) failure to pay all wages,
15 including overtime wages; (2) failure to provide meal periods or compensation in lieu thereof; (3)
16 failure to provide rest periods or compensation in lieu thereof; (4) failure to pay wages at
17 separation; (5) failure to indemnify for expenditures or losses in discharge of duties; (6) unfair
18 business practices; as set forth more fully herein. These violations concern current and past
19 employees of Defendant.

20 3. Plaintiff brings this lawsuit seeking restitution, and monetary relief against
21 Defendant, and each of them, on behalf of Plaintiff individually, and on behalf of all similarly-
22 situated employees to recover, among other things, unpaid wages and benefits, interest, penalties,
23 liquidated damages, attorney's fees, and costs pursuant to California Labor Code sections 201,
24 202, 203, 210, 218.5, 218.6, 226 (a), 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 2802
25 and California Code of Civil Procedure section 1021.5, and applicable provisions of IWC Wage
26 Order 16-2001. Plaintiff reserves the right to name additional representatives throughout the State
27 of California.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

5. Jurisdiction is proper in this Court by virtue of the California statutes, decisional law, and regulations, and the local rules under the San Diego County Superior Court rules, including, but not limited to, the rules governing the proper court in which to file an action for an unlimited civil action. Defendant is a resident of the State of California and maintain a principal place of business in the State of California.

Plaintiff**Defendant**

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant AMERICAN SCAFFOLD, LLC is a California limited liability company that supplies scaffolding for construction sites in California, and was the employer of Plaintiff. On information and belief, and based thereon, Plaintiff alleges that Defendant maintains its principal place of business in San Diego, California and at least one of its members is a resident of California. On

1 information and belief, Plaintiff alleges that Defendant is conducting business in good standing
2 in California.

3 8. Plaintiff is ignorant of the true names, capacities, relationships and extent of
4 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
5 inclusive, but on information and belief alleges that said Defendants are legally responsible for
6 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
7 capacities of the DOE Defendants when ascertained.

8 **ADMINISTRATIVE PREREQUISITE**

9 9. Prior to filing this complaint, Plaintiff gave written notice by electronic filing to
10 the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA-CM-982725-
11 23), on September 20, 2023, and by certified mail to Defendant of the specified provisions alleged
12 to have been violated, including the facts and theories to support the alleged violations as required
13 by Labor Code section 2699.3.

14 10. A true and correct copy of Plaintiff's letter sent to the LWDA and Defendant, dated
15 September 20, 2023, is attached hereto as Exhibit A. As of the filing of this complaint, the LWDA
16 has not responded to Plaintiff's letter to the LWDA.

17 **GENERAL ALLEGATIONS**

18 11. This class action lawsuit arises out of an ongoing wrongful scheme by Defendant
19 to deny its employees the benefits due under California's wage and hour laws and IWC Wage
20 Orders for work performed in California. Defendant wrongfully refused to pay Plaintiff and
21 Plaintiff Class the minimum wages and overtime compensation, failed to provide lawful meal and
22 rest periods in accordance with California law, and other statutory benefits mandated by
23 California law.

24 12. Plaintiff was employed by Defendant from on or around May 2014 through on or
25 about April 2021 in the San Diego, California facility as a scaffold builder.

26 13. Plaintiff and Plaintiff Class frequently worked over eight (8) hours per day and/or
27 forty (40) hours per week. However, Defendant failed to compensate Plaintiff and Plaintiff Class
28 the legally mandated overtime rate for all work performed over eight (8) hours per day and/or

forty (40) hours per week by not giving Plaintiff and the Plaintiff Class meal and rest breaks with no work duties.

14. By failing to pay all wages owed to Plaintiff and Plaintiff Class, including failure to pay minimum wage and/or overtime wages, Defendant further failed to pay all earned and unpaid wages to their employees upon separation of employment.

15. Defendant failed to provide Plaintiff and Plaintiff Class with lawful daily meal and rest periods. Plaintiff and Plaintiff Class were not provided uninterrupted, duty-free meal breaks as the Defendant often interrupted Plaintiff and the Plaintiff Class during their meal breaks. Further, when Plaintiff and the Plaintiff Class worked shifts in excess of ten (10) hours, they were not provided with a second meal period.

16. Further, Defendant failed to provide Plaintiff and Plaintiff Class with lawful timely and uninterrupted rest periods for every four (4) hours of work or major fraction thereof. Rest breaks were not provided as Defendant did not permit Plaintiff and the Plaintiff Class to take their rest breaks. When employees worked shifts in excess of ten (10) hours, they were not provided the opportunity for a third (3rd) rest break. Even though Plaintiff and Plaintiff Class were prevented from taking lawful meal and rest periods, Defendant failed to provide them with premium compensation for unlawful meal and rest periods.

17. During the Class Period, Defendant, and each of them failed and/or refused to relieve them of all duty and permit them to be completely relieved all work responsibilities for the entirety of their meal and/or rest breaks. Specifically, Defendant would not allow uninterrupted meal and rest breaks thereby failing to provide them with uninterrupted, off-duty breaks.

18. As such, Defendant caused Plaintiff and Plaintiff Class, to work without being provided paid full ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked and without being provided a full thirty (30) minute meal periods for shifts of at least five (5) hours and a second full thirty (30) minute meal period for shifts of at least ten (10) hours during which Plaintiff Class were not relieved of all duties and free to leave the premises. Furthermore, Defendant failed and/or refused to pay any Plaintiff Class one (1) hour's pay at the

1 employees' regular rate of pay as premium compensation for failure to provide rest and/or meal
2 periods or to providing such rest and/or meal periods within the statutory time frame as a result
3 of their uniform meal and rest break policy.

4 19. Defendant failed to indemnify Plaintiff and Plaintiff Class for losses and
5 expenditures in their discharge of duties. Plaintiff and Plaintiff Class were required to use their
6 cell phones to communicate with foreman for work purposes. Plaintiff and Plaintiff Class were
7 not reimbursed for their work expenditures.

8 CLASS ALLEGATIONS

9 20. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully
10 restated herein.

11 21. Plaintiff brings this action on behalf of himself and all similarly situated persons,
12 as a class action pursuant to California Code of Civil Procedure section 382.

13 22. **Proposed Class:** Plaintiff's proposed class consists of and is defined as follows:
14 all individuals who worked for Defendant in California as a non-exempt hourly employee at any
15 time during the period from four (4) years prior to the filing of this complaint until the date of
16 judgment (the "Class Period").

17 23. Plaintiff reserves the right under rule 3.764 of the California Rules of Court, to
18 amend or modify the class descriptions with greater specificity or further division into subclasses
19 or limitation to particular issues.

20 24. This action has been brought and may properly be maintained as a class action
21 under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined
22 community of interest in the litigation and the proposed Classes are easily ascertainable.

23 **A. Numerosity**

24 25. The potential members of each Class defined herein are so numerous that joinder
25 of all the members of the Class is impracticable. While the precise number of Class Members
26 have not been determined at this time, Plaintiff is informed and believes that Defendant currently
27 employs, and during the relevant time period employed, hundreds of employees in positions as
28 Defendant' non-exempt scaffold builder employees in California, who are or have been affected

1 by Defendant' unlawful practices as alleged herein.

2 26. Accounting for employee turnover during the relevant periods necessarily
3 increases this number substantially. Upon information and belief, Plaintiff alleges Defendant'
4 employment records would provide information as to the number and location of all Class
5 Members. Joinder of all members of the proposed Classes is not practicable.

6 **B. Commonality**

7 27. Common questions of law and fact predominate over any questions affecting only
8 individual Class Members. These common questions of law and fact include, without limitation:

- 9 (a) Whether Defendant failed to pay all wages, including minimum and
10 overtime wages, earned and due, to Plaintiff and Plaintiff Class;
- 11 (b) Whether Defendant violated California Labor Code Section 510 failing to
12 pay accurate wages to California Subclasses members when employees
13 worked during their meal periods;
- 14 (c) Whether Defendant violated the meal break provisions of Labor Code
15 Sections 226.7 and 512 by failing to afford Plaintiff and the Class Members
16 proper meal breaks;
- 17 (d) Whether Defendant violated the rest break provisions of Labor Code
18 Sections 226.7 and 512 by failing to afford Plaintiff Class Members proper
19 rest periods;
- 20 (e) Whether Defendant failed to pay all unpaid wages earned during the course
21 of Plaintiff and Plaintiff Class's employment upon separation of
22 employment pursuant to Labor Code sections 201 through 203;
- 23 (f) Whether Defendant violated the indemnification provisions of Labor Code
24 section 2802 when Plaintiff and Plaintiff Class were forced to buy safety
25 vests and use their personal vehicles for work purposes without
26 compensation; and
- 27 (g) Whether Defendant engaged in unfair/unlawful business practices.

28 ///

1 **C. Typicality**

2 28. Plaintiff's claims are typical of the claims of the Plaintiff Class. Plaintiff and all
3 Class Members sustained injuries and damages arising out of and caused by Defendant' common
4 course of conduct in violation of California laws, regulations, and statutes as alleged herein.

5 **D. Adequacy of Representation**

6 29. Plaintiff will fairly and adequately represent and protect the interests of all Class
7 Members. Plaintiff has no known conflicts of interest with Class Members. Counsel who
8 represents Plaintiff is competent and experienced in litigating large employment class actions.

9 **E. Superiority of Class Action**

10 30. A class action is superior to other available means for the fair and efficient
11 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
12 questions of law and fact common to each Class predominate over any questions affecting only
13 individual members of the Class. Each member of the Class has been damaged and is entitled to
14 recovery by reason of Defendant' unlawful policies and practices alleged in the complaint.

15 31. Class action treatment will allow those similarly situated persons to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial system.
17 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
18 action that would preclude its maintenance as a class action.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES**

21 **(Plaintiff and Plaintiff Class against All Defendants)**

22 32. Plaintiff incorporates all previous paragraphs of this complaint by reference as
23 though fully set forth herein.

24 33. Upon information and belief, Defendant maintains, and has maintained throughout
25 the Class Period, a consistent policy and practice of failing to pay wages, including minimum
26 wages and overtime wages, for hours actually worked.

27 34. "[A]ny employee receiving less than the legal minimum wage or the legal
28 overtime compensation applicable to the employee is entitled to recover in a civil action the

1 unpaid balance of the full amount of this minimum wage or overtime compensation, including
2 interest thereon, reasonably attorney's fees, and costs of suit." (Lab. Code, § 1194, subd. (a).) An
3 employee shall be compensated at the rate of no less than one and one-half times their regular
4 rate of pay for any work performed beyond eight (8) hours in a workday and any work performed
5 beyond forty (40) hours in a workweek. (Lab. Code, section 510, subd. (a).) An employee shall
6 be paid at the rate of no less than twice their regular rate of pay for any work performed beyond
7 twelve (12) hours in a day. (*Id.*) Payment of any wage lower than the minimum wage is unlawful.
8 (Lab. Code, § 1197.)

9 35. Plaintiff and Plaintiff Class regularly worked over eight (8) hours per day and/or
10 forty (40) hours per week, due to Defendant's uniform policy and practice of not allowing Plaintiff
11 and Plaintiff Class meal breaks and interrupting Plaintiff and the Plaintiff Class's lunch breaks.
12 Further, Defendant maintained a policy and practice wherein the supervisor and or foreman
13 recorded Plaintiff's and Class Members' time for only for time spent at the assigned job site, not
14 for all hours worked. Plaintiff and Plaintiff Class performed work for Defendant prior to arriving
15 at job sites, such as loading vehicles to drive to job sites, travel time to job sites, travel time
16 between job sites, and returning to Defendant's facility after working on a job site. Accordingly,
17 Defendant failed to pay Plaintiff and Plaintiff Class all minimum wage for all hours worked or
18 overtime wages earned for all hours worked in excess of eight (8) hours per day and/or forty (40)
19 hours per week. Plaintiff and Plaintiff Class were not paid all wages earned and/or were not paid
20 the appropriate rate of pay for work performed for Defendant.

21 36. Pursuant to Labor Code sections 510, 1182.12, 1194 and 1197, Plaintiff and
22 Plaintiff Class seek the payment of all minimum wage, overtime pay and/or double time pay
23 which they earned and accrued four (4) years prior to filing this complaint, according to proof.

24 37. Additionally, Plaintiff and Plaintiff Class are entitled to prejudgment interest,
25 attorney's fees and costs of suit pursuant to Labor Code section 1194.

26 ///

27 ///

28 ///

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(Plaintiff and Plaintiff Class against All Defendant)

39. Labor Code sections 226.7 and 512, provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes.

41. As described above, and herein, Defendant, and each of them, failed to maintain a lawful meal break policy that permitted employees to be relieved of all duty and reasonably provide a full 30-minute meal period and make available to Plaintiff and Plaintiff Class such meal periods within the statutory timeframe. As a result, Plaintiff and Plaintiff Class were not provided off-duty meal periods. Defendant further failed to provide an additional meal period to employees when they worked shifts in excess of ten (10) hours. In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff and Plaintiff Class in violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

43. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than five (5) hours in a workday and/or more than ten (10) hours in a workday.

FIRST AMENDED COMPLAINT FOR DAMAGES

45. By virtue of the Defendant's failure to properly provide Plaintiff and Plaintiff Class meal periods, and/or work free meal periods to Plaintiff and Plaintiff Class thereby causing Plaintiff and Plaintiff Class to suffer, and will continue to suffer, damages in the amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

46. Defendant failed to pay an additional hour of pay to Plaintiff and Class Members when meal periods were interrupted and/or not taken as required by Labor Code section 226.7(c).

47. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of meal period compensation pursuant to *Labor Code* section 226.7 which they are owed beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory penalties against these Defendant, and each of them, in a sum as provided by the Labor Code and/or other statutes.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF
(Plaintiff and Plaintiff Class against All Defendant)

48. Plaintiff incorporates all previous paragraphs of this complaint by reference as though fully set forth herein.

49. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

50. Labor Code section 226.7(c) provides that if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

51. Defendant, and each of them, failed and/or refused to relieve Plaintiff and Plaintiff Class of all work duties. Furthermore, due to Defendant's policy of scheduling eight (8) hour shifts without any breaks and failing to provide an additional rest break to employees who worked shifts in excess of ten (10) hours, Plaintiff and Plaintiff Class did not receive adequate rest periods lasting a full ten (10) minutes. By and through their actions, Defendant intentionally and

1 improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of *Labor Code*
2 sections 226.7 and 512.

3 52. At all times relevant hereto, Plaintiff and Plaintiff Class, have worked more than
4 four (4) hours in a workday and/or more than ten (10) hours in a workday.

5 53. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff and
6 Plaintiff Class as a result of their requirement that employees perform work duties during rest
7 periods and/or forego rest periods, Plaintiff and Plaintiff Class have suffered, and will continue
8 to suffer, damages, in amounts which are presently unknown, but which exceed the jurisdictional
9 limits of this Court and which will be ascertained according to proof at trial.

10 54. Plaintiff, himself and on behalf of employees similarly situated, request recovery
11 of rest period compensation pursuant to *Labor Code* section 226.7, which they are owed
12 beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory
13 penalties against Defendant, and each of them, in a sum as provided by the Labor Code and/or
14 any other statute.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO TIMELY PAY WAGES AT SEPARATION**

17 **(Plaintiff and Plaintiff Class against All Defendant)**

18 55. Plaintiff incorporates all previous paragraphs of this complaint by reference as
19 though fully set forth herein.

20 56. Sections 201 and 202 of the California Labor Code require Defendant to pay its
21 employees all wages due within seventy-two (72) hours of termination of employment. Section
22 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the
23 employer must, as a penalty, continue to pay the subject employees' wages until the back wages
24 are paid in full or an action is commenced. The penalty cannot exceed thirty (30) days of wages.

25 57. Plaintiff and formerly employed members of the Plaintiff Class are entitled to
26 compensation for all forms of wages earned, including, but not limited to, minimum wages,
27 overtime wages and/or double-time wages earned but not paid, compensation for unprovided rest
28 periods and unprovided meal periods, but to date have not received such compensation, therefore

1 entitling them Labor Code section 203 penalties.

2 58. As detailed above, Plaintiff is informed and believes, and thereon alleges, that
3 Defendant failed to pay all wages earned during Plaintiff and formerly employed members of the
4 Plaintiff Class's employment at the time of their separation as Defendant denied Plaintiff and
5 Plaintiff Class's timely and uninterrupted rest and meal breaks and for premium pay for meal and
6 rest breaks not provided to Plaintiff and formerly employed members of the Plaintiff Class.

7 59. More than thirty (30) days have passed since Plaintiff and formerly employed
8 Plaintiff Class Members have left Defendant's employ, and on information and belief, they have
9 not received payment pursuant to Labor Code section 203. As a consequence of Defendant's
10 willful conduct in not paying all earned wages, Plaintiff and the affected Class Members are
11 entitled to thirty (30) days wages as a penalty under Labor Code section 203 for failure to pay
12 legal wages.

13 60. Plaintiff and the affected Class Members are also entitled to thirty (30) days wages
14 as a penalty under Labor Code section 203 for willful failure to pay one (1) hour's wages in lieu
15 thereof for denied rest and meal periods, together with interest thereon and attorneys' fees and
16 costs.

17 61. Plaintiff and members of the Plaintiff Class who terminated employment with
18 Defendant within four (4) years of the filing of the complaint until the date of entry of judgment,
19 without being paid the proper payments are entitled to thirty (30) days of pay at their regular rate
20 of pay as waiting time penalties. Pursuant to Labor Code sections 203, Plaintiff and Plaintiff Class
21 seek to recover in a civil action all remedies to the fullest extent permissible including attorney's
22 fees, costs of litigation and interest.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES**

25 **(Plaintiff and Plaintiff Class against all Defendant)**

26 62. Plaintiff and Plaintiff Class reallege and incorporate by reference, as though fully
27 set forth herein, paragraphs 1 through 60 of this Complaint.

28 63. Labor Code section 2802 states, "An employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence
2 of the discharge of his or her duties”

3 64. Plaintiff and the Plaintiff Class were not reimbursed by Defendant for necessary
4 expenditures as a direct consequence of the discharge of their duties.

5 65. Defendant knowingly, willingly and intentionally attempted to offset the cost of
6 doing business on the Plaintiff and Plaintiff Class.

7 66. Defendant had a corporate practice and policy of requiring Plaintiff and Plaintiff
8 Class to shoulder the burden of Defendant’s cost of doing business by failing to reimburse
9 Plaintiff and Plaintiff Class for necessary expenditures. Specifically, Defendant had a policy
10 and/or practice of requiring Plaintiff and Class Members to use their personal cell phones for
11 work purposes.

12 67. Accordingly, Plaintiff and Plaintiff Class are entitled to an award of “necessary
13 expenditures or losses” in accordance with Cal. Labor Code § 2802, which shall also include all
14 reasonable costs, including, but not limited to, attorneys’ fees and interest.

15 **SIXTH CAUSE OF ACTION**

16 **VIOLATION OF UNFAIR COMPETITION LAW/UNFAIR-UNLAWFUL BUSINESS**
17 **PRACTICES**

18 **(Plaintiff and Plaintiff Class against All Defendant)**

19 68. Plaintiff incorporates all previous paragraphs of this complaint as though fully set
20 forth herein.

21 69. Plaintiff brings this claim individually and on behalf of Class Members.

22 70. Business and Professions Code section 17204 allows “any person who has suffered
23 injury in fact and has lost money or property as a result of such unfair competition” to prosecute
24 a civil action for violation of the UCL.

25 71. Labor Code section 90.5, subdivision (a), states it is the public policy of California
26 to vigorously enforce minimum labor standards in order to ensure employees are not required to
27 work under substandard and unlawful conditions, and to protect employers who comply with the
28 law from those who attempt to gain competitive advantage at the expense of their workers by

1 failing to comply with minimum labor standards.

2 72. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4)
3 years prior to the filing of this suit, Defendant has committed acts of unfair competition as defined
4 by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business
5 practices and acts described in this complaint including but not limited to violations of Labor
6 Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1174.5, 1175, 1182.12, 1194 and 1197,
7 IWC Wage Order 16-2001, as well as other statutes.

8 73. The violations of these laws and regulations, as well as of the fundamental
9 California public policies protecting workers, serve as unlawful predicate acts and practices for
10 purposes of Business and Professions Code sections 17200 et seq.

11 74. As a result of these actions, Plaintiff, on information and belief, alleges that
12 Defendant is able to unfairly compete with other comparable companies in the State of California
13 in violation of Business and Professions Code sections 17000 et seq. and 17200 et seq. Due to
14 these unlawful, unfair and/or fraudulent business practices, Defendant has gained a competitive
15 advantage over other comparable companies doing business in the State of California.

16 75. Plaintiff's success in this action will enforce important rights affecting the public
17 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
18 of himself.

19 76. Business and Professions Code section 17203 provides that a court may make such
20 orders or judgments as may be necessary to prevent the use or employment by any person of any
21 practice which constitutes unfair competition.

22 77. Business and Professions Code section 17203 provides that the Court may restore
23 to any person in interest any money or property that may have been acquired by means of such
24 unfair competition. Plaintiff and the Plaintiff Class are entitled to restitution pursuant to Business
25 and Professions Code section 17203 for wages and payments unlawfully withheld from
26 employees, including the fair value of the meal and rest periods and other losses alleged herein,
27 during the four-year period prior to the filing of this complaint. All remedies are cumulative
28 pursuant to Business and Professions Code section 17205.

1 78. Business and Professions Code section 17202 provides: “Notwithstanding section
2 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
3 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Plaintiff Class are entitled
4 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
5 Professions Code section 17202.

6 79. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
7 a financial burden involved in pursuing this action. This action is seeking to vindicate a public
8 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
9 pay attorney’s fees from the recovery in this action. Attorney’s fees are appropriate pursuant to
10 Code of Civil Procedure section 1021.5 and otherwise.

11 **SEVENTH CAUSE OF ACTION**

12 **For Violation of the California Private Attorneys General Act (“PAGA”)**

13 **(Plaintiff against All Defendants)**

14 80. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
15 paragraphs of this complaint as though fully set forth herein.

16 81. Labor Code sections 2698-2699.5 provide that a civil penalty, assessed and
17 collected by the Labor and Workforce Development Agency or any of its departments, divisions,
18 commissions, boards, agencies or employees (collectively referred to herein as the “LWDA”) for
19 certain violations of the Labor Code, may be recovered through a civil action by an aggrieved
20 employee on behalf of himself and collectively on behalf of all other current or former employees.

21 82. Pursuant to Labor Code section 2699.3(a)(1), on September 20, 2023, Plaintiff
22 gave written notice to the LWDA and Defendant of the specified provisions alleged to have been
23 violated, including the facts and theories to support the alleged violations, as required by Labor
24 Code section 2699.3.

25 83. The Labor and Workforce Development Agency has not provided Plaintiff with
26 any notice that it intends to investigate the alleged violations, and more than 65 calendar days
27 have elapsed since the postmark date on Plaintiff’s notices.

28 84. Plaintiff has therefore exhausted the administrative requirements.

1 85. California Labor Code section 2699, subdivision (a), also known as the Private
2 Attorneys General Act of 2004 (PAGA), states: “Notwithstanding any other provision of law, any
3 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
4 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
5 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
6 a civil action brought by an aggrieved employee on behalf of themselves or herself and other
7 current or former employees pursuant to the procedures specified in Section 2699.3.”

8 86. Plaintiff is an “aggrieved employee” as defined by Labor Code section 2699(c).

9 87. Section 2699(f) of the Labor Code provides for civil penalties for violations of the
10 California Labor Code, for which a specific civil penalty is not provided. In this case, Plaintiff
11 seeks to recover civil penalties for Defendant’s violations of sections 201, 202, 203, 204, 206,
12 210, 226, 226.3, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 2802,
13 and the applicable IWC Wage Order.

14 88. Labor Code section 558 provides for the award of civil penalties that includes the
15 amount each employee was underpaid and those underpaid wages are paid to the aggrieved
16 employees.

17 89. Plaintiff is informed and believe Defendant at all relevant times employed one or
18 more employees.

19 90. For those code sections that provide for the recovery of civil penalties, Plaintiff
20 will seek on behalf of all aggrieved employees those penalties. For those sections of the Labor
21 Code that do not specifically provide for civil penalties, Plaintiff will seek civil penalties of one
22 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
23 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
24 subsequent violation pursuant to Labor Code section 2699, subdivision (f). The “initial violation”
25 occurs during the first pay period following notice of such violations served on Defendant through
26 the letter to the LWDA.

27 91. Section 2699, subdivision (a) provides that civil penalties may be “recovered
28 through a civil action brought by an aggrieved employee on behalf of himself or herself and other

1 current or former employees.” (Code Civ. Proc., § 2699, subd. (a).) Section 2699, subdivision (g)
2 provides that an employee who prevails in a civil action under section 2699 shall be entitled to an
3 award of reasonable attorneys’ fees and costs.

4 92. The State of California, Plaintiff and aggrieved employees are, therefore, entitled
5 to civil penalties, attorneys’ fees and costs, according to proof.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

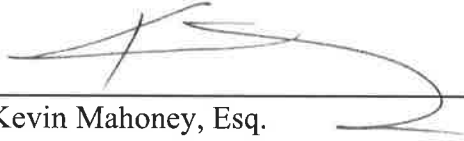
- 8 1. That the Court determine that this action may be maintained as a class action;
- 9 2. That Plaintiff be appointed the representative of the Class, as appropriate;
- 10 3. That the attorneys of record for Plaintiff whose name appears in this complaint be
11 appointed class counsel;
- 12 4. For compensatory damages in an amount according to proof with interest thereon;
- 13 5. For economic and/or special damages in an amount according to proof with
14 interest thereon;
- 15 6. For civil penalties;
- 16 7. That Defendant be found to have engaged in unfair competition in violation of
17 Business and Professions Code section 17200 *et seq.*;
- 18 8. That Defendant be ordered and enjoined to make restitution to each Class due to
19 its unfair competition, pursuant to Business and Professions Code sections 17203 and
20 17204;
- 21 9. For penalties to the extent permitted pursuant to the Labor Code, Orders of the
22 Industrial Welfare Commission including, but not limited to, waiting time penalties under
23 Labor Code section 203, and penalties under Labor Code section 226, subdivision (e),
24 226.3, 210, 226.7, and 1174.5;
- 25 10. For penalties pursuant to Labor Code sections 2698-2699;
- 26 11. For attorneys’ fees pursuant to Labor Code sections 2698-2699;
- 27 12. For costs pursuant to Labor Code sections 2698-2699;
- 28 13. For attorneys’ fees, interest, and costs of suit under Labor Code sections 218.5,

1 1194, California Code of Civil Procedure section 1021.5 and other applicable provisions
2 of law outside the Labor Code; and

3 14. For such other and further relief as the Court deems just and proper.

4 Dated: October 24, 2023

MAHONEY LAW GROUP, APC

5 
6

7 Kevin Mahoney, Esq.

8 John Young, Esq.

9 Attorneys for Plaintiff OSKAR LIZARRAGA and
10 on behalf of all employees similarly situated
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Dated: October 24, 2023


Kevin Mahoney, Esq.

John A. Young, Esq.

Attorneys for Plaintiff OSKAR LIZARRAGA and
on behalf of all employees similarly situated

EXHIBIT A



John A. Young, Esq.
Phone : (562) 590-5550
Facsimile : (562) 590-8400
jyoung@mahoney-law.net

September 20, 2023

Via Labor & Workforce Development Agency – Online Submission

LABOR AND WORKFORCE DEVELOPMENT AGENCY

<https://dir.tfaforms.net/308>

VIA U.S. MAIL & CERTIFIED MAIL# 7022 2410 0000 2418 5323

Return Receipt Requested

American Scaffold, LLC
330 N Brand Blvd.
Glendale, CA 91203

Re: *Lizarraga v. American Scaffold, LLC*

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; American Scaffold, LLC

From: Oskar Lizarraga, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Oskar Lizarraga ("Employee" or "Mr. Lizarraga"), who intend to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

Please also be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(1), and 2699.3, subdivision (c)(1), and may lead to action against American Scaffold, LLC ("Employer") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, and any and all related parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all offices, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

American Scaffold, LLC is a California limited liability company that operates a construction company conducting business in San Diego County. Mr. Lizarraga was employed by Employer as an hourly, non-exempt employee.

Mr. Lizarraga alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 206, 210, 221, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802 by failing to provide Mr. Lizarraga and all other aggrieved employees with meal and rest periods and premium pay, failing to pay all wages owed, including minimum wage and overtime, failing to reimbursement for necessary business expenditures and failing to provide all wages earned at end of employment. Mr. Lizarraga and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one (1) year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employer Failed to Pay Mr. Lizarraga and Other Aggrieved Employees for All Hours Worked, in Accordance with California Law, Including Both Minimum Wage and Overtime

Employer failed to pay Mr. Lizarraga and other aggrieved employees for all hours worked at the legally mandated wage rates, including minimum wage, and overtime compensation. Specifically, Mr. Lizarraga and other aggrieved employees frequently worked shifts in excess of eight (8) and twelve (12) hours per day and forty (40) hours per week. Not only were they not paid for all hours worked, but they were also not paid all hours worked at the applicable overtime rate of one and one-half times their regular rate for hours worked in excess of eight (8) in one day and forty (40) in one week and double time for hours worked in excess of twelve (12) in one day.

Employer's failure to pay minimum wage and applicable overtime rates to Mr. Lizarraga and other aggrieved employees, as detailed above, is actionable under PAGA as a violation of Labor Code sections 221, 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and the applicable IWC Wage Orders.

B. Employer Failed to Provide Meal Period to Mr. Lizarraga and Other Aggrieved Employees

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." As described above, the *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy.

Here, Employer violated and continue to violate Labor Code § 512 and IWC Wage Order 4-2002 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work to Aggrieved Employees and failed to advise all other Aggrieved Employees of their meal break rights with respect to the timing of meal breaks, failed to provide Aggrieved Employees with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. As a result of Employer's failure to authorize or permit lawful and timely meal periods, Mr. Lizarraga and the other Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

C. Employer Failed to Provide Rest Period to Mr. Lizarraga and Other Aggrieved Employees

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

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

Here, Employer did not authorize Mr. Lizarraga and Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Mr. Lizarraga and the Aggrieved Employees were required to work through rest breaks to finish their assignments. Thus, Employer violated Labor Code §226.7 by preventing the rest break aggrieved employees from receiving their breaks

D. Employer Failed to Provide Mr. Lizarraga and Other Aggrieved Employees all Wages Earned at the Time Their Employment Ended

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

E. Employer Failed to Reimburse Mr. Lizarraga and other Aggrieved Employees for All Necessary Business Expenditures Incurred in the Course of their Work Duties

California Labor Code section 2802 requires Employer to reimburse workers for "all necessary expenditures or losses incurred by the employee in direct discharge of [their] work duties." However, Employer had a policy and practice of failing to reimburse Mr. Lizarraga and other aggrieved employees for the use of their personal cell phones for work-related activities, which Employer's conduct is in violation of Labor Code section 2802 and the applicable IWC Wage Orders, and is therefore actionable under PAGA.

F. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Lizarraga becomes aware of additional compensation owed or losses incurred by Mr. Lizarraga or by any other aggrieved employee of the Employer, Mr. Lizarraga expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

MAHONEY LAW GROUP, APC

John Young
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400
Email: jyoung@mahoney-law.net

Sincerely,



John A. Young, Esq.
MAHONEY LAW GROUP, APC

PROOF OF SERVICE

Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.

On **October 24, 2023**, I served [X] true copies [] originals of the following document(s): **FIRST AMENDED COMPLAINT**. I served the document(s) on the person(s) below as follows:

Aaron Buckley, Esq.
Aaron Schu, Esq.
QUARLES & BRADY LLP
101 West Broadway | Ninth Floor
San Diego, CA 92101

Attorneys for Defendant AMERICAN
SCAFFOLD, LLC

Telephone: (619) 237-5200
Emails: aaron.buckley@quarles.com
aaron.schu@quarles.com
mark.rachel@quarles.com
deb.baranowski@quarles.com

The document(s) were served by the following means:

☒ **By e-mail:** Based upon court order or an agreement of the parties to accept service by e-mail, I caused the document(s) to be sent to the persons at the electronic service addresses listed above from the email address npierson@mahoney-law.net. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **October 24, 2023**, at Long Beach, California.



Nicole Pierson