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Superior Court of California,
County of Alameda

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

MIGUEL LOMBERA, on behalf of himself and
all other Aggrieved Employees,

Plaintiff,

v.

FOUNDATION BUILDING MATERIALS
LLC, a Delaware Corporation; and DOES 1-
50, Inclusive,

Defendant,

Case No. **23CV052246**

COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (PAGA)

1 Plaintiff, MIGUEL LOMBERA, (“Plaintiff”), as a representative of the State of California
2 and the Labor and Workforce Development Agency (LWDA), and on behalf of himself and other
3 current or former Aggrieved Employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of himself and other Aggrieved Employees, to collect
7 civil penalties for Defendant’s Labor Code violations.

8 2. Defendant and employer FOUNDATION BUILDING MATERIALS LLC
9 (“Defendant”), violated numerous wage and hour laws with respect to Plaintiff and other
10 Aggrieved Employees by failing to provide, for example: failure to provide lawful meal periods,
11 lawful rest periods, failure to reimburse for expenses incurred during the course and scope of
12 employment, and unfair business practice.

13 **PARTIES**

14 **The Plaintiff**

15 3. Plaintiff is, and at all times herein mentioned was, a resident of California,
16 currently residing in Alameda.

17 4. Aggrieved Employees are all former and/or current non-exempt employees
18 holding various positions and employed by Defendant within California during the relevant time
19 period who were subject to at least one or more Labor Code violations set forth in the PAGA
20 Notice dated September 14, 2023, and attached hereto as **Exhibit A** (“Aggrieved Employees”).

21 **The Defendants**

22 5. Defendant FOUNDATION BUILDING MATERIALS LLC is a California
23 corporation which, at all relevant times mentioned herein, existing, doing business and employing
24 individuals in the County of Alameda, State of California. Plaintiff is informed and thereon
25 alleges that Defendant exercised control over Plaintiff and Aggrieved Employees’ wages, hours,
26 and working conditions.

27 6. The true names and capacities, whether individual, corporate, associate, or
28 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this

1 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
2 amend this Complaint to insert the true names and capacities of said Defendants when the same
3 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
4 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
5 therefore liable to Plaintiff as alleged hereinafter.

6 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times
7 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
8 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
9 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
10 least in part within the course and scope of said agency, employment, conspiracy, joint
11 employment, alter ego status, and/or joint venture and with the permission and consent of each of
12 the other Defendants.

13 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
14 and each of them, including those Defendants named DOES 1-50, acted in concert with one
15 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
16 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
17 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
18 each of them, including those Defendants named as DOES 1-50, formed and executed a
19 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
20 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
21 to and actually causing Plaintiff harm.

22 9. Whenever and wherever reference is made in this Complaint to any act or failure
23 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
24 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
25

26 **JURISDICTION AND VENUE**

27 10. Venue is proper in Alameda County, because Defendant maintains its locations
28 and transacts business in this county, the obligations and liability primarily arise in this county,

1 and work was primarily performed by Plaintiff and other Aggrieved Employees in this county.

2 11. The California Superior Court has jurisdiction over this matter. The individual
3 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
4 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
5 amount required for diversity removal. Further, there is no federal question at issue as the issues
6 herein are based solely on California statutes and law, including, but not limited to, the California
7 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
8 and California Rules of Court.

9 **GENERAL ALLEGATIONS**

10 12. Defendant is in the business of construction material distribution. Defendant
11 employed Plaintiff and Aggrieved Employees in California during the relevant PAGA period.
12 Aggrieved Employees are all former and/or current non-exempt employees holding various
13 positions and employed by Defendant within California during the relevant time period who
14 were subject to at least one or more Labor Code violations set forth in the PAGA Notice dated
15 September 14, 2023 and attached hereto as **Exhibit A**

16 13. Plaintiff was employed by Defendant as a non-exempt “driver” from about May
17 2021 to approximately May 2, 2023. Plaintiff’s primary duties included loading construction
18 materials with a forklift and driving those materials to construction sites,

19 14. Plaintiff and Aggrieved Employees were subject to not having all their
20 compensable work time recorded due to Defendant’s lack of adequate staffing. Not all of Plaintiff
21 and Aggrieved Employees’ compensable work time spent under the control of Defendant was
22 accounted for and compensated. Specifically, Plaintiff is informed and believes that Defendant
23 (1) adjusted clock in and clock out times to the disadvantage of Plaintiff and other Aggrieved
24 Employees by rounding up clock-in times when Plaintiff and Aggrieved Employees clocked-in
25 before the scheduled start of their respective shifts and rounded down clock-out times when
26 Plaintiff and Aggrieved Employees worked past the scheduled end time for their shifts, as well
27 as (2) requiring Plaintiff and Aggrieved Employees to continue working when ostensibly on
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1 duty-free meal periods, or requiring them to return to work before the end of their thirty-minute
2 meal periods but prohibiting them from clocking back in until the legally required thirty-minute
3 mark.

4 15. Based on information and belief, Plaintiff believes he and Aggrieved Employees
5 were also not being reimbursed for all necessary expenses incurred in the performance of their
6 job duties. Specifically, Defendant required Plaintiff and Aggrieved Employees, regardless of
7 classification, to use their personal cellular telephones to communicate with colleagues and
8 supervisors in the course of performing their respective duties but failed to reimburse them for
9 the full use of their personal cellular devices for business purposes. Defendants also maintained
10 an inadequate reimbursement plan for Plaintiff and Aggrieved Employees.

11 16. Defendant failed to authorize and permit all required meal and rest periods for
12 Plaintiff and Aggrieved Employees because, upon information and belief, Defendant maintained
13 unlawful meal/rest period policies and practices. In order to curtail labor costs, Defendant
14 regularly did not staff enough employees to provide sufficient coverage to maintain their
15 business operations so Plaintiff and Aggrieved Employees could not both complete their
16 assigned daily duties and take complete, timely and uninterrupted meal and rest breaks.
17 Defendant prioritized completion of daily duties and customer satisfaction ahead of meal and
18 rest period compliance. Defendant failed to provide Plaintiff and Aggrieved Employees with an
19 additional hour of premium pay at the regular rate of pay for each meal/rest period violation, as
20 required by Labor Code section 226.7.

21 17. As a result of the violations described above, Plaintiff and Aggrieved Employees
22 experienced collateral or derivative violations. Specifically, Defendant failed to provide Plaintiff
23 and Aggrieved Employees accurate itemized wage statements in writing in compliance with
24 Labor Code section 226 and failed to compensate Plaintiff and Aggrieved Employees for all
25 wages owed at the time employment with Defendant had ended.

26 18. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
27 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
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1 departments, divisions, commissions, boards, agencies or employees for violation of the code
2 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
3 behalf of himself and other current or former employees pursuant to the procedures specified in
4 Labor Code section 2699.3.

5 19. For all provisions of the Labor Code except those for which a civil penalty is
6 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
7 penalty of one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
8 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
9 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

10 20. Defendant's conduct during the PAGA period with respect to Plaintiff and
11 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

12 21. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and
13 hour violations under the California Labor Code and IWC Wage Orders.

14 22. At all relevant times herein, Defendant employed Plaintiff and Aggrieved
15 Employees who were subject to the employment policies described herein, in whole or in part,
16 and therefore suffered at least one or more of the violations set forth herein.

17 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
18 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
19 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
20 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
21 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
22 and policy of not providing timely meal periods. Defendant failed to pay an additional hour of
23 pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendant's
24 unlawful policy and practice, Plaintiff and aggrieved employees did not receive all meal periods
25 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular
26 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.
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28

24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew

1 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
2 required rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
3 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
4 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
5 and policy of not providing timely rest periods. Defendant failed to pay an additional hour of
6 pay to Plaintiff and Aggrieved Employees for each rest periods were not provided or was
7 interrupted. As a result of Defendant's unlawful policy and practice, Plaintiff and Aggrieved
8 Employees did not receive all required rest periods or payment of one (1) additional hour of pay
9 at Plaintiff's and Aggrieved Employees' regular rate of pay when they did not receive a timely,
10 uninterrupted 10 minute off-duty rest period.

11 25. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
12 should have known that Defendant was required to maintain accurate records of the hours
13 worked by Plaintiff and Aggrieved Employees. In violation of the Labor Code, Defendant failed
14 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
15 off-the-clock and/or unfair rounding practices, among other things.
16

17
18
19 **FIRST CAUSE OF ACTION**

20 **(Civil Penalties Under the Private Attorneys General Act,**
21 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

22 26. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
23 Complaint as if fully alleged herein.

24 27. By this complaint, Plaintiff brings this case as a representative action seeking
25 penalties for himself, the Aggrieved Employees, and the State of California in a representative
26 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an Aggrieved
27 Employee who was employed by Defendant and subject to at least one of the Labor Code
28 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in

1 their notice to the LWDA and Defendants: violation of Labor Code sections 204, 512, 1174,
2 1174.5, 1182.12 1194.2, 1197, 1197.1, 1198 and 2802.

3 28. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
4 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
5 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
6 not to investigate, or after 65 days have passed without notice from the LWDA.

7 29. Prior to filing this complaint, on September 14, 2023, Plaintiff gave written notice
8 of the specific provisions alleged to have been violated, including the facts and theories to
9 support the alleged violations, as required by Labor Code section 2699.3 to Defendant
10 FOUNDATION BUILDING MATERIALS LLC. The written notice was given via certified mail
11 to Defendant, and the LWDA by electronically filing the notice via the Department of Industrial
12 Relations website. Plaintiff was given an LWDA case number of LWDA-CM-981630-23. True
13 and correct copies of Plaintiff's notices to the LWDA and Defendant are attached hereto as
14 **Exhibit A.**

15 30. The LWDA has not provided Plaintiff with any notice that it intends to investigate
16 the violations as alleged in Plaintiff's notices, and more than 65 calendar days have elapsed since
17 the postmark date on the latter notice.

18 31. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
19 of this code that provides for a civil penalty to be assessed and collected by the Labor and
20 Workforce Development Agency...for a violation of this code, may, as an alternative, be
21 recovered through a civil action brought by an Aggrieved Employee on behalf of himself or
22 herself and other current or former employees pursuant to the procedures specified in Section
23 2699.3."

24 32. As an Aggrieved Employee, Plaintiff brings this civil action to recover civil
25 penalties for Defendant's Labor Code violations.

26
27 **First Violation**

28 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

33. Under California Labor Code §512(a), “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

34. Defendant violated Labor Code § 512 by failing to provide Plaintiff and Aggrieved Employees who worked shifts of greater than five hours, uninterrupted and/or timely meal periods within the first five hours of the shifts worked. Defendant failed to pay Plaintiff one hour's pay at Plaintiff's regular rate of pay for each day Defendant failed to provide a meal period in compliance with section 512.

Second Violation

(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)

35. Under California Labor Code §226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

36. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

37. Defendant failed to authorize and permit Plaintiff and Aggrieved Employees to take rest periods and mandated by the Wage Order.

38. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

39. Defendant failed to pay Plaintiff and Aggrieved Employees who were not provided rest periods one hour of pay at their regular rate of pay.

Third Violation

1 **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802**

2 **(Against all Defendants and DOES 1 to 50, inclusive)**

3 40. Labor Code § 2802 provides that an employer shall indemnify his or her
4 employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
6 the employer.

7 41. Defendants failed to indemnify and reimburse Plaintiff for all necessary
8 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's
9 job duties.

10 42. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses
11 incurred as a result of discharging his duties, including interest.

12 43. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
13 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
14 Labor Code § 2699.

15 **Fourth Violation**

16 **Unfair Business Practices in Violation of Cal. Business Code § 17200**

17 **(Against all Defendants and DOES 1 to 50, inclusive)**

18 44. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
19 complaint as though set forth in full herein.

20 45. At all relevant times, Defendant, as the employer of Plaintiff, was subject to the
21 California Unfair Trade Practices Act, Business & Professions Code § 17200 et seq., which
22 required them to abide by the Labor Code.

23 46. Defendant engaged in unfair trade practices prohibited by Business & Professions
24 Code § 17200 *et seq.*, by committing acts prohibited by applicable Labor Code statutes, which
25 includes but is not limited to the wage and hour violations set forth in this Complaint, thus giving
26 Defendant a competitive advantage over other employers and businesses with whom Defendant
27 was in competition with and in compliance with the law.

28 47. Plaintiff is informed and believes and thereon alleges that Defendant continues to

engage in some or all of the aforementioned unfair and unlawful business practices.

48. Plaintiff seeks an injunction prohibiting Defendant from engaging in the unfair and unlawful conduct described herein.

49. Plaintiff has incurred costs and attorneys' fees in bringing this action and seeks to recover such costs under Civil Code § 1021.5 and otherwise.

PRAYER FOR RELIEF

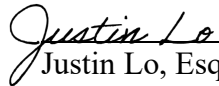
WHEREFORE, Plaintiff prays for the following relief:

1. For penalties in an amount according to proof;
2. For reasonable attorney's fees and costs pursuant to PAGA; and
3. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

Dated: November 27, 2023

WORK LAWYERS PC

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Justin Lo, Esq.

Attorney for Plaintiff MIGUEL LOMBERA and
Aggrieved Employees

EXHIBIT A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Labor Code § 2699.3)

DATE September 14, 2023

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California
Workforce Development Agency
PAGAfilings@dir.ca.gov

SUBJECT: *Miguel Lombera v. Foundation Building Materials LLC.; ET AL* —
NOTICE OF LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.

Dear Representative:

The office represents Miguel Lombera (“Mr. Lombera”) with respect to her claims against Foundation Building Materials LLC, a limited liability company (“Employers”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employers by certified mail.

Employers are a corporation doing business in the State of California. Employers jointly employed Mr. Lombera from approximately May 2021 to approximately May 2, 2023, as a non-exempt employee. During his employment with Employers, Mr. Lombera was employed as a “Driver” at Employers’ company located at 2520 Red Hill Avenue, Santa Ana, CA 92705.

Mr. Lombera intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“PAGA”). Mr. Lombera is seeking penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employers (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employers violated several of California’s wage and hour laws during Mr. Lombera employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800



and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including inter alia, IWC Wage Order No. 5. The claims made on behalf of Mr. Lombera and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Mr. Lombera and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employers regularly required Mr. Lombera and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Lombera and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Lombera and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Lombera and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Mr. Lombera and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Mr. Lombera and Aggrieved Employees, which resulted in a failure to pay Mr. Lombera and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Mr. Lombera and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Mr. Lombera and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Mr. Lombera and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys’ fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS



Employers failed to provide Mr. Lombera and Aggrieved Employees with legally compliant 30-minute meal periods. Employers required Mr. Lombera and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Mr. Lombera and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Mr. Lombera and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Lombera and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Lombera and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Mr. Lombera and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Mr. Lombera and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Lombera and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Mr. Lombera and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Lombera and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Mr. Lombera and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Lombera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.



3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.

Employers failed to authorize and permit Mr. Lombera and Aggrieved Employees take legally compliant 10-minute periods. Employers required Mr. Lombera and Aggrieved Employees to work through rest periods. Mr. Lombera and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Lombera and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Lombera and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Lombera and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Mr. Lombera and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Mr. Lombera and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Lombera and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Mr. Lombera and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Lombera and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Mr. Lombera and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), and 1198.



Mr. Lombera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Lombera and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Mr. Lombera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES.

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Lombera and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 201(a), 202(a) and 203(a).

Ms. Armendariz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, the wage statements provided to Mr. Lombera and Aggrieved Employees never included the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Mr. Lombera and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

7. FAILURE TO MAINTAIN ACCURATE RECORDS.

Employers have failed to maintain accurate records relating to Mr. Lombera and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).



Mr. Lombera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

8. FAILURE TO REIMBURSE NECESSARY EXPENDITURES.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of her or her job duties or in direct consequence of her or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Mr. Lombera and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the use of Mr. Lombera and Aggrieved Employees of their personal cellular phone to send and receive messages, and calls with supervisors to understand their duties and the scope of work. Employer's provided a reimbursement that was insufficient to fully reimbursement Mr. Lombera and Aggrieved Employees for the use of their personal cellular phones.

Accordingly, Employers violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Mr. Lombera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

9. FAILURE TO PAY VACATION TIME.

Pursuant to California Labor Code section 227.3, ". . .whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off her vested vacation time, all vested vacation shall be paid to him as wages at her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served." During the relevant time period, Employers failed to pay Mr. Lombera and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employers have violated California Labor Code section 227.3.

Mr. Lombera and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; California Labor Code section 227 penalties; and attorneys' fees and costs.



Sincerely,

Justin Lo

JUSTIN LO ESQ.

Notice provided to Employer via Certified Mail

1505 Corporation Cogency Global Inc
Erin Haggerty
Agent for Service of Process
Foundation Building Materials LLC
1325 J St Ste 1550, Sacramento, CA

Notice provided to Employer via Certified Mail

Foundation Building Materials LLC
Human Resources / Legal Dept.
2520 Red Hill Avenue
Santa Ana, CA 92705