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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

JESSE MCGRAW, as an individual and on
behalf of all similarly situated employees,

Plaintiff,

v.

U S MINE CORP, and DOES 1-50, inclusive,

Defendants.

Case No.: 23CV13302

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Failure to Pay All Wages, Including Overtime Wages and Minimum Wage;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Periods;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay Wages Upon Ending Employment;
6. Failure to Indemnify for Expenditures;
7. Unfair Competition (Business and Professions Code § 17200 et seq.); and
8. Violation of Labor Code §§2698-2699 (Private Attorneys General Act ("PAGA")).

DEMAND FOR JURY TRIAL

1 Plaintiff JESSE MCGRAW (hereinafter "Plaintiff"), as an individual and on behalf of all
2 others similarly situated, complains, and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class of similarly situated
5 former and current employees they seek to represent ("Plaintiff Class" or "Class Members.") Class
6 Members consist of all non-exempt, hourly-paid employees currently and/or formerly employed
7 by Defendant U S MINE CORP, (hereinafter "Defendant") during the Class Period. The term
8 "Class Period" is defined as four (4) years prior to the filing of the complaint through the date of
9 judgment. Plaintiff reserves the right to amend this complaint to reflect a different "Class Period"
10 as further discovery is conducted.

11 2. Plaintiff, individually, and on behalf of Class Members seek to represent, seek relief
12 against Defendant for: (1) the failure to pay all wages due in violation in accordance with Labor
13 Code sections 510 and 1194, as well as California Code of Regulations, Title 8, section 11160,
14 subdivision (3), including both minimum and overtime wages; (2) the failure to provide meal
15 periods or compensation in lieu thereof pursuant to Labor Code sections 226.7, 512 as well as 8
16 CCR section 11160, subd. (10); (3) the failure to provide legally compliant rest periods pursuant
17 to Labor Code sections 226.7, 512 as well as 8 CCR section 11160, subd. (11); (4) the failure to
18 pay wages of terminated or resigned employees pursuant to Labor Code sections 201, 202, 203;
19 (5) the failure to provide accurate itemized wage statements upon payment of wages pursuant to
20 Labor Code sections 226, subdivision (a), 1174, 1175; and (6) failure to indemnify/reimburse
21 employer-related business expenditures pursuant to Labor Code section 2802. Plaintiff further
22 seeks civil penalties in connection with Defendants' Labor Code violations based on Labor Code
23 section 2698 et seq., the Private Attorneys General Act of 2004 ("PAGA").

24 3. Plaintiff further seeks equitable remedies in the form of declaratory relief and
25 injunctive relief, and relief under the Business and Professions Code sections 17200 et seq. for
26 unfair business practices.

27 4. At all times relevant herein, Defendant carried out a joint scheme, business plan, or
28 policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the

1 other Defendants. Defendant has consistently maintained and enforced against Class Members the
2 following unlawful practices and policies:

- 3 a. willfully refusing to pay Plaintiff and Plaintiff Class for all hours worked,
4 including both minimum wage and overtime wage;
- 5 b. willfully refusing to permit Plaintiff and Plaintiff Class from taking rest periods
6 or compensation in lieu thereof;
- 7 c. willfully refusing to permit Plaintiff and Plaintiff Class from taking legally
8 compliant meal periods or compensation in lieu thereof
- 9 d. willfully refusing to furnish to Plaintiff and Plaintiff Class accurate itemized
10 wage statements upon payment of wages;
- 11 e. willfully refusing to compensate Plaintiff and certain members of the Plaintiff
12 Class wages due and owing at the time of Plaintiff and Plaintiff Class'
13 employment with Defendant ended; and
- 14 f. willfully refusing to indemnify Plaintiff and Class Members reasonable
15 business expenditures incurred in the scope of their duties.

16 **JURISDICTION AND VENUE**

17 5. Venue is proper in this judicial district and the County of Amador because the
18 Defendant maintains a location in this county, transact business in this county, the obligations and
19 liability arise in this county, making the subject of this action in the County of Amador, State of
20 California.

21 6. The wages, statutory penalties, monetary damages, and restitution sought by
22 Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established
23 according to proof at trial. This Court has jurisdiction over this action pursuant to California
24 Constitution, Article VI, section 10. The statutes under which this action is brought do not specify
25 any other basis for jurisdiction.

26 7. The California Superior Court has jurisdiction in the matter because the individual
27 claim is under the seventy-five thousand dollars (\$75,000.00) individual claim threshold and five
28 million dollar (\$5,000,000) aggregated jurisdictional threshold for federal court. Further, there is

no federal question at issue as the issues herein are based solely on California Statutes and law including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rules of Court, and Business and Professions Code.

THE PARTIES

A. The Plaintiff

8. Plaintiff was employed by Defendant from in or around October 2021 through September 2022. Throughout his employment, Defendant controlled Plaintiff's schedule and directed his duties each day, preventing Plaintiff from exercising any reasonable degree of discretion or independent judgment. Plaintiff is accordingly non-exempt under California labor laws and thereby entitled to civil penalties and all other rights accruing from the alleged violations described herein.

9. Plaintiff, at all relevant times herein, was an employee of the Defendant and entitled to compensation for: (1) all hours worked, (2) overtime compensation, (3) non-compliant rest and meal periods; (4) unreimbursed business expenses, and (5) penalties from Defendant. At all relevant times herein, Plaintiff was employed by Defendant during the defined Class Period in a non-exempt hourly capacity. Each of the putative Class Members is an identifiable, current, and/or former similarly situated person who was employed in non-exempt hourly position in California for Defendant during the defined Class Period.

B. The Defendant

10. Plaintiff is informed and believe and based thereon allege that Defendant is duly licensed and in the business of mining. On information and belief, Defendant was and/or is the employer of Plaintiff and the putative Plaintiff Class during the Class Period. Plaintiff also alleges that Defendant is conducting business in good standing in California.

11. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief allege that said Defendants are legally responsible for the payment of minimum wage and/or overtime compensation, rest period compensation and/or Labor Code section 203 penalties to the putative Plaintiff Class members by virtue of their unlawful

1 practices, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this
2 complaint to allege the true names and capacities of the DOE Defendants when ascertained.

3 12. Plaintiff is informed and believes, and based thereon allege, that each Defendant
4 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
6 legally attributable to the other Defendant. Furthermore, Defendant in all respects acted as the
7 employer and/or joint employer of Plaintiff and Plaintiff Class.

8 13. Plaintiff is informed and believes, and based thereon allege, that each Defendant
9 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
10 managing agent, and/or principal of the Defendant, and in performing the actions mentioned below
11 was acting, at least in part, within the course and scope of that authority as such agent, proxy,
12 servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
13 permission and consent of the Defendant. Plaintiff also allege the acts of each Defendant are legally
14 attributable to the other Defendants.

15 14. Plaintiff is informed and believes, and based thereon allege, that each of the
16 Defendants sued herein was, at all times relevant hereto, the employer, owner, shareholder,
17 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
18 agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in part,
19 within the course and scope of such employment and agency, with the express and implied
20 permission, consent, and knowledge, approval and/or ratification of the other Defendants.

21 15. The above Defendants, managing agents, and supervisors aided, abetted, condoned,
22 permitted, approved, authorized and/or ratified the unlawful acts described herein.

23 **ADMINISTRATIVE PREREQUISITE**

24 16. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
25 of action under PAGA only after giving the Labor Workforce Development Agency ("LWDA")
26 and the employer notice of the Labor Code sections alleged to have been violated, and after
27 receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed
28 without notice from the LWDA.

1 17. By this complaint, Plaintiff brings this case as a representative action seeking
2 penalties for the State of California in a representative capacity, as provided by PAGA, Labor
3 Code section 2698 et seq., to the extent permitted by law, as aggrieved employees who were
4 employed by Defendant and did not receive all wages due, was not paid overtime, was not able
5 to take lawful meal and rest breaks, did not receive all wages due at the termination of
6 employment, did not receive accurate itemized wage statements, and were not reimbursed for all
7 necessary business expenditures.

8 18. On September 7, 2023, prior to the filing of this amended complaint, Plaintiff gave
9 written notice of the specified provisions alleged to have been violated, including the facts and
10 theories to support the alleged violations, as required by Labor Code section 2699.3. This written
11 notice was given via certified mail to Defendant, and to the LWDA by electronically filing the
12 notice via the Department of Industrial Relations website. A true and correct copy of Plaintiff's
13 notice to the LWDA and Defendants, dated September 7, 2023, is attached hereto as Exhibit A.

14 19. The 65-day period for the LWDA to provide notice of its intent to investigate
15 Plaintiff's claims have been exhausted and the LWDA has failed to provide notice. As such
16 Plaintiff amends his existing complaint pursuant to Labor Code section 2699.3, subdivision
17 (a)(2)(C): "Notwithstanding any other provision of law, a plaintiff may as a matter of right
18 amend an existing complaint to add a cause of action arising under this part at any time within
19 60 days of the time periods specified in this part."

20 **GENERAL ALLEGATIONS**

21 20. Labor Code section 1194 provides that notwithstanding any agreement to work for
22 a lesser wage, an employee receiving less than the legal overtime compensation is entitled to
23 recover in a civil action the unpaid balance of their overtime compensation, including interest
24 thereon, reasonable attorneys' fees and costs of suit.

25 21. Further, Business and Professions Code section 17203 provides that any person
26 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
27 Business and Professions Code section 17204 provides that any person who has suffered actual
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1 injury and has lost money or property as a result of the unfair competition may bring an action in
2 a court of competent jurisdiction.

3 22. During all, or a portion of the Class Period, Plaintiff and each member of the
4 putative Plaintiff Class was employed by Defendant in the State of California.

5 23. Plaintiff and Class Members were non-exempt employees covered under one or
6 more Industrial Welfare Commission ("IWC") Wage Order(s), and Labor Code section 510, and/or
7 other applicable Wage Orders, regulations and statutes, and each Class Member was not subject
8 to an exemption for executive, administrative or professional employees, which imposed
9 obligations on the part of Defendant to pay Plaintiff and Class Members lawful overtime
10 compensation.

11 24. Plaintiff and Plaintiff Class were covered by one or more IWC Wage Order(s), and
12 Labor Code sections 512, 226.7 and other applicable Wage Orders, regulations and statutes which
13 imposed an obligation on the part of Defendant to pay Plaintiff and Plaintiff Class meal period
14 compensation.

15 25. Plaintiff and Plaintiff Class were covered by one or more IWC Wage Order(s), and
16 Labor Code section 226.7 and other applicable Wage Orders, regulations and statutes which
17 imposed an obligation on the part of Defendant to pay Plaintiff and Plaintiff Class rest period
18 compensation.

19 26. During the Class Period, Defendant was obligated to pay Plaintiff and Class
20 Members for all hours worked. However, Defendant had a policy and practice of not paying
21 Plaintiff and Class Members for all hours worked by requiring its employees to work off-the-clock.
22 This includes: (1) uncompensated time spent communicating with crew members and supervisors,
23 and (2) uncompensated time spent being subjected to control of Defendant prior to their scheduled
24 shifts and time worked during meal periods and beyond regularly scheduled shift hours.

25 27. Similarly, during the Class Period, Defendant was obligated to pay Plaintiff and
26 Class Members overtime compensation for all hours worked in excess of eight (8) hours of work
27 in one (1) day or forty (40) hours in one (1) week. However, Defendant did not pay Plaintiff and
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1 Class Members proper overtime rates for overtime hours spent traveling and performing work off-
2 the-clock as required by law.

3 28. During the Class Period, Defendant was obligated to provide Plaintiff and putative
4 Class Members with a thirty (30) minute meal period for each and every work shift exceeding five
5 (5) hours, commencing no later than the end of the fifth (5th) hour of the shift. Defendant prevented
6 Plaintiff and Class Members from taking timely meal periods throughout his shifts. This was due
7 in part to Defendant's policy and practice of requiring employees to prioritize completion of work
8 tasks ahead of timely meal period compliance. Defendant failed to provide and or schedule a timely
9 duty-free meal period on or before the fifth (5th) hour of work. Further, Defendant failed to advise
10 Plaintiff and Class Members their right to take timely uninterrupted meal periods. Accordingly,
11 Plaintiff and Class Members did not receive compliant duty-free meal periods.

12 29. During the Class Period, Defendant was obligated to provide Plaintiff and Class
13 Members with a ten (10) minute rest break for every four (4) hours, or major fraction thereof,
14 worked each day. Defendant prevented Plaintiff and Class Members from taking rest breaks
15 throughout their shifts. This was due in part to Defendant's policy and practice of scheduling
16 employees to work through their rest periods, as well as Defendant's policy and practice of putting
17 pressure on employees to complete a work during their shifts.

18 30. In order to facilitate their violations of wage and hour laws pertaining to payment
19 of wages and providing meal and rest periods, Defendant failed to comply statutes and regulations
20 requiring Defendant to accurately document the beginning and end times for each work shift and
21 the start/end times for each meal period, pursuant to Labor Code section 1174, as well as 8 CCR
22 § 11160 (6).

23 31. Furthermore, Defendant failed and/or refused to pay Plaintiff and Class Members
24 one (1) hour's pay at the employees' regular rate of pay as premium compensation for Defendant's
25 failure to provide timely meal periods and lawful ten (10) minute rest periods within the statutory
26 time frames.

27 32. Plaintiff and Class Members who ended their employment with Defendant during
28 the Class Period but were not paid the above due compensation for all hours worked timely upon

1 the termination of their employment as required by Labor Code sections 201, 202, 203 are entitled
2 to penalties as provided by Labor Code section 203. As a result of Defendant's failure to pay
3 Plaintiff and Class Members all wages due during the Class Period, Defendant failed to provide
4 Plaintiff and Class Members with accurate itemized wage statements, since said statements did not
5 set forth all regular and overtime hours worked, the compensation owed for said hours, nor did the
6 statements set forth the premiums owed for non-compliant meal and rest periods.

7 33. During the Class Period, Defendant were obligated to keep and maintain accurate
8 payroll records for Plaintiff and all Class Members. Defendant's failure to keep and maintain said
9 records as described above, constitutes violations of Labor Code section 226.7, thereby incurring
10 statutory penalties.

11 34. During the Class Period, Defendant was obligated to reimburse Plaintiff and Class
12 Members for all reasonable expenditures incurred by Plaintiff and Class Members for the purpose
13 of fulfilling their job duties. Defendant failed to reimburse Plaintiff and Class Members for work-
14 related cell phone charges when Plaintiff and Class Members were required by Defendant to
15 communicate with Defendant and its employees with personal cell phones in violation of Labor
16 Code section 2802.

17 **CLASS ALLEGATIONS**

18 35. Plaintiff brings this action on behalf of himself and all other similarly situated
19 persons ("Plaintiff Class"), as a class action pursuant to Code of Civil Procedure section 382. The
20 Plaintiff Class is composed of and defined as follows: All persons who are employed or have been
21 employed by Defendant, as non-exempt hourly employee, in the State of California, within the
22 four (4) years of the filing of this complaint through the date of judgment.

23 36. Plaintiff further proposes the following subclasses:

- 24 a. All persons who are employed or have been employed by Defendant in the State
25 of California, and who, within the four (4) years of the filing of this complaint
26 to the present, have worked as non-exempt employees and were not paid all
27 wages owed, including but not limited to the legally requisite minimum wage,
28 wages at the regular time rate, overtime rate;

- 1 b. All persons who are employed or have been employed by Defendant in the State
2 of California, and who, within the four (4) years of the filing of this complaint
3 to the present, have worked as non-exempt employees and have not been
4 provided a rest period for every four (4) hours, or major fraction thereof, worked
5 per day, and were not provided compensation of one (1) hour's pay for each
6 day on which such rest period(s) was not provided;
- 7 c. All persons who are employed or have been employed by Defendant in the State
8 of California, and who, within the three (3) years of the filing of this complaint
9 to the present, have worked as non-exempt employees and have been terminated
10 or resigned, and have not been paid wages pursuant to Labor Code section 203
11 and are owed restitution and waiting time penalties for unpaid wages;
- 12 d. All persons who are employed or have been employed by Defendant in the State
13 of California, and who, within the one (1) year of the filing of this complaint to
14 the present have worked as non-exempt employees and were not provided an
15 accurate payroll record or wage statement as required under Labor Code
16 sections 226 and 1174;
- 17 e. All persons who are employed or have been employed by Defendant in the State
18 of California, and who, within the four (4) years of the filing of this complaint
19 to the present, have worked as non-exempt employees and for whom Defendant
20 failed to keep accurate payroll records;
- 21 f. All persons who are employed or have been employed by Defendant in the State
22 of California, and who, within the four (4) years of the filing of this complaint
23 to the present, have worked as non-exempt employees and were not indemnified
24 for business expenditures incurred in the scope of their employment;
- 25 g. All persons who are employed or have been employed by Defendant in the State
26 of California, and who, within the four (4) years of the filing of this complaint
27 to the present, have worked as non-exempt employees and were subjected to
28 unlawful and unfair business practices within the meaning of California's

Unfair Competition Law and who suffered injury, including lost money, as a result of Defendant's unlawful and unfair business practices; and

- h. All persons who are employed or have been employed by Defendant in the State of California, and who, within the four (4) years of the filing of this complaint to the present, have worked as non-exempt employees and are entitled to recover unpaid wages, overtime compensation, rest and meal period compensation and penalties, waiting time penalties, and attorneys' fees and costs from Defendant under Labor Code section 2698 et seq.

37. Plaintiff reserves the right under Rule 1855, subdivision (b) of the California Rules of Court, to amend or modify the Plaintiff Class description with greater specificity or further division into subclasses or limitation to particular issues.

38. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

39. This Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure section 382 because:

- a. The questions of law and fact common to the Plaintiff Class predominate over any question affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Plaintiff Class;
- c. The Plaintiff Class is so numerous that it is impractical to bring all member of the Plaintiff Class before the Court;
- d. Plaintiff and the other members of the Plaintiff Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties, and

1 in obtaining adequate compensation for the damages and injuries which
2 Defendant's actions have inflicted upon the Plaintiff Class;

- 3 f. There is a community of interest in ensuring that the combined assets and
4 available insurance of the Defendant are sufficient to adequately compensate
5 members of the Plaintiff Class for the injuries sustained;
6 g. Without class certification, the prosecution of separate actions by individual
7 members of the Plaintiff Class would create a risk of:

8 i. Inconsistent or varying adjudications with respect to individual
9 members of the Plaintiff Class which would establish incompatible
10 standard of conduct for the Defendant; and/or

11 ii. Adjudications with respect to the individual members which would, as
12 a practical matter, be dispositive of the interests of other members not
13 parties to the adjudications, or would substantially impair or impede
14 their ability to protect their interests, including but not limited to the
15 potential for exhausting the funds available from those parties who is,
16 or may be, responsible Defendant(s); and

- 17 h. Defendant has acted or refused to act on grounds generally applicable to the
18 Class, thereby making final injunctive relief appropriate with respect to the
19 Class as a whole.

20 **FIRST CAUSE OF ACTION**

21 **Failure to Pay All Wages Including Minimum, Regular and Overtime Wages**

22 **(Plaintiff and Plaintiff Class Members against all Defendants)**

23 40. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
24 paragraphs of this complaint as though fully set forth herein.

25 41. Labor Code section 204 establishes the fundamental right of all employees in the
26 State of California to be paid wages, including straight time and overtime, in a timely fashion for
27 their work.
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1 42. Labor Code section 510, subdivision (a) provides that “[a]ny work in excess of
2 eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one (1)
3 workweek and the first eight (8) hours worked on the seventh (7th) day of work in any one (1)
4 workweek shall be compensated at the rate of no less than one and one-half (1 & ½) times the
5 regular rate of pay for an employee.”

6 43. Labor Code section 510, subdivision (a) further provides that “[a]ny work in excess
7 of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
8 rate of pay for an employee.”

9 44. Labor Code section 1194 and applicable IWC Wage Orders make it unlawful for
10 employers not to make required minimum wage payments, including minimum prevailing wage
11 governed by Labor Code sections 1720 et seq, as well as overtime and double time payments
12 identified in the preceding paragraphs, and that employees not paid such payments can recover
13 any monies owed through a civil action.

14 45. Defendant has willfully violated the Labor Code by failing to pay Plaintiff and
15 Plaintiff Class all wages. Plaintiff and Plaintiff Class were denied wages as a result of Defendant’s
16 policy and practice of failing to compensate Plaintiff and Plaintiff Class for all regular and
17 overtime hours worked. Further, Defendant has regularly violated the Labor Code with respect to
18 meeting the requirements of paying wages earned, including minimum wage, overtime, double-
19 time, when calculating the employees’ regular rate of pay, as herein alleged. Defendant have
20 intentionally excluded remuneration that must be included in all employees’ minimum, regular
21 and overtime rates of pay in order to avoid payment of wages and other benefits in violation of the
22 Labor Code and the applicable IWC Wage Order(s). Defendant is thereby able to reduce its
23 overhead and operating expenses and gain an unfair advantage over competing companies who
24 comply with state law.

25 46. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys’ fees,
26 costs, pursuant to Labor Code section 1194 and prejudgment interest.
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47. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

49. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide an employee meal periods in accordance with Labor Code section 512 and/or 8 CCR section 11160 (10), the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in a compliant manner.

51. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than five (5) hours in a workday.

53. Plaintiff, himself and on behalf of employees similarly situated, request 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 Defendant, and each of them, in a sum as provided by the Labor Code and/or any other statute.

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods or Compensation in Lieu Thereof

(Plaintiff and Plaintiff Class against all Defendants)

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

55. Labor Code section 226.7 and California Code of Regulations, Title 8, section 11160 (11) 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.

56. Labor Code section 226.7, subdivision (b) 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.

57. Defendant did not authorize Plaintiff and Plaintiff Class to take their ten-minute rest breaks during each four (4) hours of work. Furthermore, Plaintiff and Plaintiff Class did not receive their rest periods within the required statutory time frame. Further, Plaintiff and Plaintiff Class were required to remain on premises, receive a third rest period for shifts over ten (10) hours and often their rest breaks were interrupted. By and through its actions, Defendant intentionally and improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of Labor Code sections 226.7 and 512.

58. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than four (4) hours in a workday.

59. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff and Plaintiff Class as a result of preventing rest breaks, Plaintiff and Plaintiff Class have suffered, and

1 will continue to suffer, damages, in amounts which are presently unknown, but which exceed the
2 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

3 60. Plaintiff, himself and on behalf of employees similarly situated, request recovery
4 of rest period compensation pursuant to Labor Code section 226.7, which they are owed beginning
5 four (4) years prior to filing this complaint as well as the assessment of any statutory penalties
6 against Defendant, and each of them, in a sum as provided by the Labor Code and/or any other
7 statute.

8 **FOURTH CAUSE OF ACTION**

9 **Failure to Provide Accurate Itemized Wage Statements**

10 **(Plaintiff and Plaintiff Class against all Defendants)**

11 61. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
12 paragraphs of this complaint as though fully set forth herein.

13 62. Labor Code section 1174, subdivision (d) requires an employer to keep at a central
14 location in California or at the plant or establishment at which the employees are employed, payroll
15 records showing the hours worked daily, and the wages paid to, each employee. Plaintiff is
16 informed and believes that Defendant willfully failed to make or keep accurate records for Plaintiff
17 and Plaintiff Class.

18 63. Labor Code section 226, subdivision (a) states that, "every employer shall,
19 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
20 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
21 when wages are paid by personal check or cash, an accurate itemized statement in writing showing:
22 (1) gross wages earned; (2) total hours worked by the employee; (3) number of piece-rate units
23 earned and any applicable piece rate if employee is paid on a piece rate; (4) all deductions; (5) net
24 wages; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the
25 employee and only the last four (4) digits of his or her social security number or an employee
26 identification number other than a social security number; (8) the name and address of the legal
27 entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and
28 corresponding number of hours worked at each hourly rate by the employee."

1 64. Industrial Welfare Commission (“IWC”) Wage Order Number 4-2002, paragraph
2 6(a) requires that every employer shall keep accurate information with respect to each employee,
3 including time records showing when each employee begins and ends each work period, the total
4 daily hours worked by each employee and the total hours worked in each payroll period, and
5 applicable rates of pay. Plaintiff is informed and believe that Defendant willfully and intentionally
6 failed to make and/or keep records which accurately reflect the hours worked by Plaintiff and
7 Plaintiff Class. Specifically, Plaintiff believes that Defendant’s records do not accurately reflect
8 the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect
9 during the pay period, and the corresponding number of hours worked at each hourly rate.

10 65. Plaintiff is informed and believe that Defendant’s failure to keep accurate payroll
11 records, as described above, violated Labor Code, sections 226 and 1174, subdivision (d) and the
12 applicable wage order. Plaintiff and the Plaintiff Class are entitled to penalties of one hundred
13 dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) for each subsequent
14 violation for every pay period during which these records and information was not kept by
15 Defendant.

16 66. An employee suffering injury as a result of a knowing and intentional failure by an
17 employer to comply with Labor Code sections 226 and 1174, subdivision (a) is entitled to recover
18 the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a
19 violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent
20 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled
21 to an award of costs and reasonable attorney’s fees.

22 67. Plaintiff is informed and believes that Defendant’s failure to keep and maintain
23 accurate records and information, as described above, were willful, and Plaintiff and Plaintiff Class
24 are entitled to a statutory penalty of five hundred dollars (\$500.00) for Plaintiff and each member
25 of Plaintiff Class pursuant to Labor Code section 1174.5.

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1 **FIFTH CAUSE OF ACTION**

2 **Failure to Pay Wages of Terminated or Resigned Employees**

3 **(Plaintiff and Plaintiff Class against all Defendants)**

4 68. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
5 paragraphs of this complaint as though fully set forth herein.

6 69. Plaintiff and certain members of the Plaintiff Class who ended their employment
7 with Defendant during the Class Period, were entitled to be promptly paid lawful minimum
8 (prevailing) wages, wages for all hours worked, overtime compensation and other premiums, as
9 required by Labor Code sections 201, 202, and 203. Defendant refused and/or failed to promptly
10 compensate Plaintiff and Plaintiff Class wages owed as a result of their failure to provide meal and
11 rest periods as well as pay minimum wages, off-the-clock and/or overtime compensation. Pursuant
12 to Labor Code section 203, such Plaintiff and Plaintiff Class seek the payment of penalties pursuant
13 to Labor Code section 203, according to proof.

14 70. Accordingly, Plaintiff and Plaintiff Class are entitled to attorney's fees and costs,
15 pursuant to Labor Code section 1194 for the underlying claims related to this claim, including but
16 not limited to the recovery of unpaid overtime.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Indemnify for Expenditures**

19 **(Plaintiff and Plaintiff Class against all Defendants)**

20 71. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
21 paragraphs of this complaint as though fully set forth herein.

22 72. Labor Code section 2802 states, "An employer shall indemnify his or her employee
23 for all necessary expenditures or losses incurred by the employee in direct consequence of the
24 discharge of his or her duties" (Lab. Code, § 2802.)

25 73. As detailed above, Plaintiff and the Plaintiff Class were not reimbursed by
26 Defendant for necessary expenditures as a direct consequence of the discharge of their duties.
27 Plaintiff and Plaintiff Class were required to use their cell phone while working.
28

1 74. Defendant knowingly, willingly, and intentionally attempted to offset the cost of
2 doing business on the Plaintiff and Plaintiff Class.

3 75. Defendant has and or had a corporate practice and policy of requiring Plaintiff and
4 Plaintiff Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse
5 Plaintiff and Plaintiff Class for necessary expenditures.

6 76. Accordingly, Plaintiff and Plaintiff Class are entitled to an award of "necessary
7 expenditures or losses" in accordance with Labor Code section 2802, which shall also include all
8 reasonable costs, including, but not limited to, attorneys' fees and interest.

9 **SEVENTH CAUSE OF ACTION**

10 **Unfair Competition Law**

11 **(Plaintiff and Plaintiff Class against all Defendants)**

12 77. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
13 paragraphs of this complaint as though fully set forth herein.

14 78. Business and Professions Code section 17200 et. seq. (also referred to herein as the
15 "Unfair Business Practices Act" or "Unfair Competition Law") prohibits unfair competition in the
16 form of any unlawful, unfair or fraudulent business act or practice.

17 79. Business and Professions Code section 17204 allows "any person who has suffered
18 injury in fact and has lost money or property as a result of such unfair competition" to prosecute a
19 civil action for violation of the Unfair Competition Law ("UCL"). (Bus. & Prof. Code, § 17204.)

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

25 81. Beginning at an exact date unknown to Plaintiff, but at least four (4) years prior to
26 the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the
27 Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business
28

1 practices and acts described in this complaint, including, but not limited to, violations of Labor
2 Code sections 204, 226, 510, 1174, 1197, 1198, 226.7, 512, and 2802 as well as other statutes.

3 82. The violations of these laws and regulations, as well as of the fundamental
4 California public policies protecting workers, serve as unlawful predicate acts and practices for
5 purposes of Business and Professions Code section 17200 et. seq.

6 83. The acts and practices described above constitute unfair, unlawful and fraudulent
7 Business Practices, and unfair competition, within the meaning of Business and Professions Code
8 section 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other
9 similarly situated employees to labor for many hours without receiving meal and rest periods and
10 overtime compensation, to which they are entitled by law, while enabling Defendant to gain an
11 unfair competitive advantage over law-abiding employers and competitors.

12 84. As a result of Defendant's acts, Plaintiff and Plaintiff Class have suffered injury in
13 fact in being denied their statutorily entitled meal and rest periods and full compensation for hours
14 of labor. As a result of Defendant's unlawful acts of unfair competition, Plaintiff and Plaintiff
15 Class have lost money and property in the form of a loss of wages in an amount to be proven at
16 trial.

17 85. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
18 and Plaintiff Class have suffered lost wages in an amount to be proven at trial.

19 86. 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. Injunctive relief is necessary and appropriate to
22 prevent Defendant from repeating its unlawful, unfair and fraudulent business acts and business
23 practices alleged above.

24 87. Business and Professions Code section 17203 provides that the Court may restore
25 to any person in interest any money or property that may have been acquired by means of such
26 unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business and
27 Professions Code section 17203 for all wages and payments unlawfully withheld from employees,
28

1 including the fair value of the rest periods taken away from them, during the four-year period prior
2 to the filing of this Complaint.

3 88. Business and Professions Code section 17202 provides, “Notwithstanding section
4 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
5 forfeiture, or penal law in a case of unfair competition.” (Bus. & Prof. Code, § 17202.) Plaintiff
6 and Plaintiff Class are entitled to enforce all applicable penalty provisions of the Labor Code
7 pursuant to Business and Professions Code section 17202.

8 89. Plaintiff’s success in this action will enforce important rights affecting public
9 interest, and in that regard, Plaintiff sue on behalf of the general public, as well as himself and
10 other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution,
11 civil penalties, declaratory and injunctive relief, and all other equitable remedies owing him.
12 Plaintiff herein take upon himself enforcement of these laws and lawful claims. There is a financial
13 burden involved in pursuing this action, the action is seeking to vindicate a public right, and it
14 would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys’ fees
15 from the recovery in this action. Attorneys’ fees are appropriate pursuant to Code of Civil
16 Procedure section 1021.5 and otherwise.

17 **EIGHTH CAUSE OF ACTION**

18 **VIOLATION OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS**

19 **GENERAL ACT**

20 **(Plaintiff and Plaintiff Class against all Defendants)**

21 90. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
22 paragraphs of this complaint as though fully set forth herein.

23 91. Labor Code sections 2698-2699.5 provide that a civil penalty, assessed and
24 collected by the Labor and Workforce Development Agency or any of its departments, divisions,
25 commissions, boards, agencies or employees (“LWDA”) for certain violations of the Labor Code,
26 may be recovered through a civil action by an aggrieved employee on behalf of herself and
27 collectively on behalf of all other current or former employees.
28

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

8 93. Plaintiff and Class Members are "aggrieved employees" as defined by Labor Code
9 section 2698 et seq. in that they are all current or former employees of Defendant, and one or
10 more of the alleged violations was committed against them. The relevant PAGA time period is
11 one year from the submission of Plaintiff's notice to Defendant and the LWDA to the date of
12 judgement.

13 94. Prior to filing this complaint on September 7, 2023, Plaintiff gave written notice
14 via the LWDA's electronic filing platform and to Defendant via certified mail of the specific
15 provisions alleged to have been violated, including the facts and theories to support the alleged
16 violations as required by Labor Code section 2699.3, subdivision (a)(1). (See "Exhibit A"), which
17 are hereby incorporated by reference.

18 95. The LWDA has not provided Plaintiff with any notice that it intends to investigate
19 the alleged violations. Plaintiff do not anticipate an investigation into their claims by the LWDA.

20 96. Pursuant to Labor Code section 2699.3, notwithstanding any other provision of
21 law, Plaintiff may, as a matter of right, amend the existing complaint to add a cause of action
22 under Labor Code section 2698.

23 97. Plaintiff, individually and on behalf of all aggrieved Class Members, assert all of
24 the claims in this complaint against Defendant under the capacity of PAGA, and seeks all statutory
25 penalties available under the Labor Code.

26 98. Pursuant to Labor Code section 2698 et seq., Plaintiff, individually and on behalf
27 of all aggrieved Class Members, request and are entitled to recover from Defendants: unpaid
28 wages, overtime compensation, and penalties, reimbursement of business expenditures, waiting

1 period wages and penalties according to proof, penalties for failure to keep accurate payroll
2 records, interest, attorneys' fees and costs pursuant to Labor Code sections 201, 202, 203, 226,
3 226.7, 510, 512, 1174, 1182.12, 1194, 1197, and 2802 as well as all statutory penalties, and
4 attorneys' fees against Defendant. The aforementioned penalties include, but are not limited to,
5 the following:

- 6 a. Penalties under Labor Code section 2698 in the amount of \$100.00 for each
7 aggrieved employee per pay period for each initial violation, and \$200.00 for
8 each aggrieved employee per pay period for each subsequent violation;
- 9 b. Penalties under Code of Regulations, Title 8, Section 11070 in the amount of
10 \$50.00 for each aggrieved employee per pay period for the initial violation,
11 and \$200.00 for each aggrieved employee per pay period for each subsequent
12 violation;
- 13 c. Penalties under Labor Code section 210 in addition to and entirely independent
14 and apart from any other penalty provided in the Labor Code in the amount of
15 \$100.00 for each aggrieved employee per pay period for each initial violation,
16 and \$200.00 for each aggrieved employee per pay period for each subsequent
17 violation, plus 25% of the wage wrongly withheld; and
- 18 d. Any and all additional penalties and sums as provided by the Labor Code
19 and/or other statutes

20 99. In addition thereto, pursuant to Labor Code section 2699, subdivision (i), Plaintiff
21 seek and is entitled to seventy-five percent (75%) of all penalties obtained under Labor Code
22 section 2698 to be allocated to the Labor and Workforce Development Agency for enforcement
23 of labor laws, including the administration of this part, and for education of employers and
24 employees about their rights and responsibilities under this code, to be continuously appropriated
25 to supplement and not supplant the funding to the agency for those purposes; and twenty-five
26 percent (25%) to the aggrieved employees.

1 100. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
2 pursuant to Labor Code sections 201, 202, 203, 226.3, 226.7, 510, 511, 512, 1174, 1174.5,
3 1182.12, 1194, 1197, and 2802 and any other applicable statute.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff and Plaintiff Class pray for judgment as follows:

- 6 1. For nominal damages;
- 7 2. For compensatory damages;
- 8 3. For restitution of all monies due to Plaintiff and Plaintiff Class, and
9 disgorged profits from the unlawful business practices of Defendant;
- 10 4. For waiting time penalties pursuant to Labor Code section 203, on behalf of
11 the terminated or resigned employees;
- 12 5. For penalties pursuant to Labor Code sections 225.5, 226, 226, subd. (e),
13 226.7, 512 and 1194, and as provided for by Labor Code section 2699;
- 14 6. For interest accrued to date;
- 15 7. Injunctive relief, enjoining Defendant from engaging in the unlawful and
16 unfair business practices complained herein;
- 17 8. Declaratory relief, enjoining Defendant's practices as being unlawful and
18 unfair business practices within the meaning of Bus. & Prof. Code sections 17200,
19 et seq., and declaring Defendant has unlawfully treated Plaintiff and Plaintiff Class,
20 failed to pay all wages and overtime compensation in violation of California law,
21 failed to pay wages to former employees, Plaintiff and other certain members of
22 Plaintiff Class, failed to provide Plaintiff and Plaintiff Class accurate itemized wage
23 statements upon payment of wages, and declaring the amounts of damages,
24 penalties, equitable relief, costs, and attorneys' fees Plaintiff and Plaintiff Class are
25 entitled to;
- 26 9. For costs of suit and expenses incurred herein pursuant to Labor Code
27 sections 226 and 1194;
- 28

1 10. For reasonable attorneys' fees pursuant to Labor Code sections 226 and
2 1194; and

3 11. For all such other and further relief as the Court may deem just and proper.
4

5 Dated: November 30, 2023

MAHONEY LAW GROUP, APC

6
7 
8 _____
9 Kevin Mahoney
10 John A. Young
11 Attorneys for Plaintiff JESSE MCGRAW, as an
12 individual and on behalf of all similarly situated
13 employees
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Dated: November 30, 2023

MAHONEY LAW GROUP, APC

-26-

EXHIBIT A



John A. Young, Esq.
562.590.5550 phone
562.590.8400 facsimile
jyoung@mahoney-law.net

September 7, 2023

Via Online Submission

LABOR AND WORKFORCE DEVELOPMENT AGENCY
dir.tfaforms.net/308

VIA CERTIFIED MAIL #7019 0700 0001 7488 3539

Return Receipt Requested

U S Mine Corp
8625 State Highway 124
Ione, CA 95649

VIA CERTIFIED MAIL #7019 0700 0001 7488 3553

Return Receipt Requested

U S Mine Corp
ATTN: Amanda Cardinali
50 West Liberty St., Suite 880
Reno, CA 89501

Re: Jesse McGraw v. U S Mine Corp

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

To: Labor and Workforce Development Agency; U S Mine Corp ("Employer")

From: Jesse McGraw, on behalf of himself and all Aggrieved Employees who were subject to the Employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents Jesse McGraw ("Mr. McGraw"), who intends 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.

Theories of Labor Code Violations and Remedies

U S Mine Corp ("USMC" or "Employer") conducts business throughout California and was the Employer of Mr. McGraw. USMC owns and operates a mining company headquartered in Ione, California.

Mr. McGraw worked for Employer from 2021 until on or around September 13, 2022.

Mr. McGraw alleges that Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1174, 1194, and 2802 by:

- a) Failing to pay Mr. McGraw and Aggrieved Employees for all hours worked;
- b) failing to provide Mr. McGraw and Aggrieved Employees with compliant meal periods or premium compensation in lieu thereof;
- c) failing to provide Mr. McGraw and Aggrieved Employees with accurate itemized wage statements;
- d) failing to reimburse Mr. McGraw and Aggrieved Employees all business expenditures; and
- e) failing to pay Mr. McGraw and Aggrieved Employees all wages due to them upon separation of employment.

Mr. McGraw and the similarly Aggrieved Employees are identifiable current, and/or former hourly non-exempt employees who worked for Employer in California during the liability period of one year prior to the filing of this notice with the LWDA.

A. Employer failed to pay Mr. McGraw and Aggrieved Employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 510, subdivision (a), provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

Employer failed to compensate Mr. McGraw and Aggrieved Employees at the legally mandated wage rates for all hours worked in violation of California law. Specifically, Mr. McGraw and Aggrieved Employees routinely worked more than forty (40) hours in any given workweek; however, Employer manipulated the timesheets showing the hours worked by Mr. McGraw and Aggrieved Employees which resulted in Mr. McGraw and Aggrieved Employees being under compensated to the benefit of Defendants. Further, Employer required Mr. McGraw and Aggrieved Employees to be responsive to supervisors via their personal cell phones while off-the-clock.

Employer’s failure to pay Mr. McGraw and Aggrieved Employees for all hours worked, including applicable minimum wage and overtime rates, as detailed above is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employer failed to provide Mr. McGraw and Aggrieved Employees with compliant meal and periods or premium compensation in lieu thereof

Mr. McGraw alleges that he and Aggrieved Employees were routinely not provided with timely, 30-minute off-duty meal periods, as required by the Labor Code. Mr. McGraw and other Aggrieved Employees were typically not allowed to take their meal periods within the first five hours worked. Employer failed to maintain a policy or practice of providing meal and rest periods for Employees as they were not always allowed to take their meal and rest periods in a timely manner. Mr. McGraw and other Aggrieved Employees allege that they did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) If a meal period was provided, Mr. McGraw and Aggrieved Employees' meal periods were regularly interrupted. When employees failed to receive their meal break, they did not receive premium pay as compensation for the missed meal breaks.

Mr. McGraw further alleges that he and other Aggrieved Employees did not receive duty-free, uninterrupted rest periods for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Employer prevented Mr. McGraw and other Aggrieved Employees from taking rest breaks throughout their shifts. Mr. McGraw and other Aggrieved Employees were also directed to combine rest breaks.

When employees were prevented from taking rest and meal periods, they did not receive premium pay for the missed meal and rest periods. Employer's conduct, which is in violation of the Labor Code, is also actionable under PAGA.

C. Employer failed to provide Mr. McGraw and Aggrieved Employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, the corresponding number of hours worked at each hourly rate, and the name and address of the legal entity that is the employer. Labor Code section 1174 further requires employers to keep accurate payroll records that include "the hours worked daily" by employees.

By failing to pay Mr. McGraw and Aggrieved Employees for all hours worked during meal breaks and premium compensation for missed and/or late meal periods, and by manipulating the timesheets of Mr. McGraw and Aggrieved Employees, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate total number of hours worked which resulted in inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Employer's conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

D. Employer failed to pay Mr. McGraw and aggrieved employees all wages earned and owed upon separation of employment

Pursuant to Labor Code section 201, subdivision (a), “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202, subdivision (a) provides, “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

At the time that Mr. McGraw and aggrieved employees resigned or were terminated, Employer failed to compensate them for all wages earned and owed at the applicable overtime rate as well as premiums for missed rest periods.

Labor Code section 203, subdivision (a), states that “[i]f an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Accordingly, Mr. McGraw and aggrieved employees are entitled to thirty days of waiting time penalties.

E. Employer Failed to Reimburse Mr. McGraw and Other Aggrieved Employees for Necessary Business Expenditures, in Violation of California Law

Based on currently available information and records, Employer did not reimburse Mr. McGraw and other aggrieved employees for necessary business expenditures, including, but not limited to, the cost of a cellular phone monthly plan, which is in violation of Labor Code section 2802, the applicable wage order, and actionable under PAGA. Mr. McGraw and Aggrieved Employees were required by Employer to use their personal cell phones to communicate with crew members and or supervisors. Employers did not have a policy or practice to reimburse employees for the required use of their personal cell phones. Employer’s conduct is not compliant with Labor Code section 2802 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. McGraw becomes aware of additional compensation owed or losses incurred by Mr. McGraw or by any other aggrieved employee of the Employer, Mr. McGraw 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 A. Young, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
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 **November 30, 2023**, I served [X] true copies [] originals of the following document(s): **FIRST AMENDED COMPLAINT FOR DAMAGES**. I served the document(s) on the person(s) below as follows:

Richard D. Marca, Esq.
VARNER & BRANDT, LLP
3750 University Ave., Ste. 610
Riverside, CA 92501

Attorneys for Defendant U.S. MINE CORP.

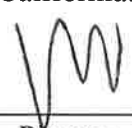
Telephone: (951) 274-7777
Email: richard.marca@varnerbrandt.com

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 **November 30, 2023**, at Long Beach, California.



Nicole Pierson