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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SHANE ABBOTT, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

SAUNDERS CONSTRUCTION, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 24CV428659

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);

- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
(10) Violation of California Business & Professions Code §§ 17200, et seq.
(11) Violation Of The Private Attorneys General Act Labor Code §§ 2698 Et Seq.

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff SHANE ABBOTT (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Santa Clara. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of Santa Clara.

PARTIES

5. Plaintiff SHANE ABBOTT is an individual residing in the State of California.

6. Defendant SAUNDERS CONSTRUCTION, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California,

1 including the County of Santa Clara.

2 7. At all relevant times, Defendant SAUNDERS CONSTRUCTION, INC. was the
3 “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

4 8. At all times herein relevant, Defendants SAUNDERS CONSTRUCTION, INC.
5 and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
6 employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or
7 assigns, each of the other, and at all times relevant hereto were acting within the course and
8 scope of their authority as such agents, partners, joint venturers, joint employers, representatives,
9 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged
10 herein were duly committed with the ratification, knowledge, permission, encouragement,
11 authorization and/or consent of each defendant designated as a DOE herein.

12 9. The true names and capacities, whether corporate, associate, individual or
13 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said
14 defendants by such fictitious names. Plaintiff is informed and believes, and based on that
15 information and belief alleges, that each of the defendants designated as a DOE is legally
16 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
17 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
18 Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities
19 when the same have been ascertained.

20 10. Defendant SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100 will
21 hereinafter collectively be referred to as “Defendants.”

22 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
23 affected the working conditions, wages, working hours, and conditions of employment of
24 Plaintiff and the other class members so as to make each of said Defendants employers liable
25 under the statutory provisions set forth herein.

26 **CLASS ACTION ALLEGATIONS**

27 Plaintiff bring this action on his own behalf and on behalf of all other members of the
28 general public similarly situated, and, thus, seeks class certification under California Code of

Civil Procedure section 382.

12. The proposed class is defined as follows:

CLASS. All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Action to final judgment and who reside in California.

SUBCLASS A. All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Action to final judgment who earned shift differential pay/commissions/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the regular rate of pay used to calculate the overtime rate for the payment of overtime wages and who reside in California.

SUBCLASS B. All class members who were subject to Defendants' practice of rounding time recorded for purposes of calculating compensation for time worked or for calculating meal periods.

SUBCLASS C. All class members who were required by Defendants to stay on Defendants' premises for rest breaks.

13. Plaintiff reserves the right to establish additional subclasses as appropriate.

14. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the

1 interests of the other class members with whom he has a well-defined
2 community of interest.

- 3 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each
4 class member, with whom he has a well-defined community of interest
5 and typicality of claims, as demonstrated herein. Plaintiff has no interest
6 that is antagonistic to the other class members. Plaintiff's attorneys, the
7 proposed class counsel, are versed in the rules governing class action
8 discovery, certification, and settlement. Plaintiff has incurred, and during
9 the pendency of this action will continue to incur, costs and attorneys'
10 fees, that have been, are, and will be necessarily expended for the
11 prosecution of this action for the substantial benefit of each class member.
- 12 d. Superiority: A class action is superior to other available methods for the
13 fair and efficient adjudication of this litigation because individual joinder
14 of all class members is impractical.
- 15 e. Public Policy Considerations: Certification of this lawsuit as a class action
16 will advance public policy objectives. Employers of this great state violate
17 employment and labor laws every day. Current employees are often afraid
18 to assert their rights out of fear of direct or indirect retaliation. However,
19 class actions provide the class members who are not named in the
20 complaint anonymity that allows for the vindication of their rights.

21 15. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

- 24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;
- 26 b. Whether Defendants' had a corporate policy and practice of failing to pay
27 their hourly-paid or non-exempt employees within the State of California
28 for all hours worked and missed (short, late, interrupted, and/or missed

- altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants failed to use the shift differential pay/commissions/non-discretionary bonuses/non-discretionary performance pay to calculate the regular rate of pay used to calculate the overtime rate for the payment of overtime wages where Plaintiff and the other class members earned shift differential pay/commissions/non-discretionary bonuses/non-discretionary performance pay and overtime wages in the same workweek;
- e. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- f. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- j. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- k. Whether Defendants failed to reimburse Plaintiff and the other class

members for necessary business-related expenses and costs;

l. Whether Defendants' conduct was willful or reckless;

m. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;

n. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

o. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

16. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Santa Clara.

17. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately March 2023 to approximately June 2023, in the State of California.

18. Defendants hired Plaintiff and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed meal periods and/or rest breaks.

19. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiff and the other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt employees within the State of California. This pattern and practice involved, *inter alia*, failing to pay them for all regular and/or overtime wages earned and for missed meal periods and rest breaks in violation of California law.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked.

26. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to use the shift differential pay/commissions/non-discretionary bonuses/non-discretionary performance pay to calculate the regular rate of pay used to calculate the overtime rate for the payment of overtime wages where Plaintiff and the other class members earned shift differential pay/commissions/non-discretionary bonuses/non-discretionary performance pay and overtime wages in the same workweek.

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other class members all required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay when a meal period was missed, and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay when a meal period was missed.

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 knew or should have known that Plaintiff and the other class members were entitled to receive
2 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
3 member's regular rate of pay when a rest period was missed, and they did not receive all rest
4 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
5 regular rate of pay when a rest period was missed.

6 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 required Plaintiff and the other class members to remain on Defendants' premises during
8 purported rest periods, thereby failing to relieve them of all employer control.

9 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and the other class members were entitled to receive
11 at least minimum wages for compensation and that they were not receiving at least minimum
12 wages for all hours worked.

13 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 rounded the work time recorded by Plaintiff and the other class members in a manner that was
15 not fair and neutral on its face and/or that favored Defendants over time, resulting in Plaintiff and
16 the other class members being underpaid for their time worked.

17 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to receive
19 all wages owed to them upon discharge or resignation, including overtime and minimum wages
20 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
21 them at the time of their discharge or resignation.

22 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and the other class members were entitled to receive
24 all wages owed to them during their employment. Plaintiff and the other class members did not
25 receive payment of all wages, including overtime and minimum wages and meal and rest period
26 premiums, within any time permissible under California Labor Code section 204.

27 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 knew or should have known that Plaintiff and the other class members were entitled to receive

1 complete and accurate wage statements in accordance with California law, but, in fact, they did
2 not receive complete and accurate wage statements from Defendants. The deficiencies included,
3 *inter alia*, the failure to include the total number of hours worked by Plaintiff and the other class
4 members.

5 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Defendants had to keep complete and accurate payroll records
7 for Plaintiff and the other class members in accordance with California law, but, in fact, did not
8 keep complete and accurate payroll records.

9 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and the other class members were entitled to
11 reimbursement for necessary business-related expenses.

12 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that they had a duty to compensate Plaintiff and the other class
14 members pursuant to California law, and that Defendants had the financial ability to pay such
15 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
16 to Plaintiff and the other class members that they were properly denied wages, all in order to
17 increase Defendants' profits.

18 39. During the relevant time period, Defendants failed to pay overtime wages to
19 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other class
20 members were required to work more than eight (8) hours per day and/or forty (40) hours per
21 week without overtime compensation for all overtime hours worked.

22 40. During the relevant time period, Defendants failed to use the shift differential
23 pay/commissions/non-discretionary bonuses/non-discretionary performance pay to calculate the
24 regular rate of pay used to calculate the overtime rate for the payment of overtime wages where
25 Plaintiff and the other class members earned shift differential pay/commissions/non-discretionary
26 bonuses/non-discretionary performance pay and overtime wages in the same workweek.

27 41. During the relevant time period, Defendants failed to provide all requisite
28 uninterrupted meal and rest periods to Plaintiff and the other class members.

1 42. During the relevant time period, Defendants required Plaintiff and the other class
2 members to remain on Defendants’ premises during purported rest periods, thereby failing to
3 relieve them of all employer control.

4 43. During the relevant time period, Defendants failed to pay Plaintiff and the other
5 class members at least minimum wages for all hours worked.

6 44. During the relevant time period, Defendants rounded the work time recorded by
7 Plaintiff and the other class members in a manner that was not fair and neutral on its face and/or
8 that favored Defendants over time, resulting in Plaintiff and the other class members being
9 underpaid for their time worked.

10 45. During the relevant time period, Defendants failed to pay Plaintiff and the other
11 class members all wages owed to them upon discharge or resignation.

12 46. During the relevant time period, Defendants failed to pay Plaintiff and the other
13 class members all wages within any time permissible under California law, including, *inter alia*,
14 California Labor Code section 204.

15 47. During the relevant time period, Defendants failed to provide complete or
16 accurate wage statements to Plaintiff and the other class members.

17 48. During the relevant time period, Defendants failed to keep complete or accurate
18 payroll records for Plaintiff and the other class members.

19 49. During the relevant time period, Defendants failed to reimburse Plaintiff and the
20 other class members for all necessary business-related expenses and costs.

21 50. During the relevant time period, Defendants failed to properly compensate
22 Plaintiff and the other class members pursuant to California law in order to increase Defendants’
23 profits.

24 51. California Labor Code section 218 states that nothing in Article 1 of the Labor
25 Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due
26 to him [or her] under this article.”

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

4 52. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
5 through 52, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 53. California Labor Code section 1198 and the applicable Industrial Welfare
8 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
9 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
10 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

11 54. Specifically, the applicable IWC Wage Order provides that Defendants are and
12 were required to pay Plaintiff and the other class members employed by Defendants, and
13 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
14 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than
15 forty (40) hours in a workweek.

16 55. The applicable IWC Wage Order further provides that Defendants are and were
17 required to pay Plaintiff and the other class members overtime compensation at a rate of two
18 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

19 56. California Labor Code section 510 codifies the right to overtime compensation at
20 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
21 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
22 work, and to overtime compensation at twice the regular hourly rate for hours worked in excess
23 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

24 57. During the relevant time period, Plaintiff and the other class members worked in
25 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

26 58. During the relevant time period, Defendants intentionally and willfully failed to
27 pay overtime wages owed to Plaintiff and the other class members.

28 59. Defendants’ failure to pay Plaintiff and the other class members the unpaid

1 balance of overtime compensation, as required by California laws, violates the provisions of
2 California Labor Code sections 510 and 1198, and is therefore unlawful.

3 60. Pursuant to California Labor Code section 1194, Plaintiff and the other class
4 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
5 attorneys' fees.

6 **SECOND CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 226.7 and 512(a))**

8 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

9 61. Plaintiff incorporates by reference the allegations contained in paragraphs 1
10 through 61, and each and every part thereof with the same force and effect as though fully set
11 forth herein.

12 62. At all relevant times, the IWC Order and California Labor Code sections 226.7
13 and 512(a) were applicable to Plaintiff's and the other class members' employment by
14 Defendants.

15 63. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any meal or rest period mandated by an
17 applicable order of the California IWC.

18 64. At all relevant times, the applicable IWC Wage Order and California Labor Code
19 section 512(a) provide that an employer may not require, cause or permit an employee to work
20 for a work period of more than five (5) hours per day without providing the employee with a
21 meal period of not less than thirty (30) minutes, except that if the total work period per day of the
22 employee is no more than six (6) hours, the meal period may be waived by mutual consent of
23 both the employer and employee.

24 65. At all relevant times, the applicable IWC Wage Order and California Labor Code
25 section 512(a) further provide that an employer may not require, cause or permit an employee to
26 work for a work period of more than ten (10) hours per day without providing the employee with
27 a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total
28 hours worked is no more than twelve (12) hours, the second meal period may be waived by

1 mutual consent of the employer and the employee only if the first meal period was not waived.

2 66. During the relevant time period, Plaintiff and the other class members who were
3 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
4 legally-mandated meal periods by mutual consent, were required to work for periods longer than
5 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or
6 rest period.

7 67. During the relevant time period, Plaintiff and the other class members who were
8 scheduled to work for a period of time in excess of six (6) hours were required to work for
9 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
10 (30) minutes and/or rest period.

11 68. During the relevant time period, Defendants intentionally and willfully required
12 Plaintiff and the other class members to work during meal periods and failed to compensate
13 Plaintiff and the other class members the full meal period premium for work performed during
14 meal periods.

15 69. During the relevant time period, Defendants failed to pay Plaintiff and the other
16 class members the full meal period premium due pursuant to California Labor Code section
17 226.7.

18 70. Defendants' conduct violates applicable IWC Wage Order and California Labor
19 Code sections 226.7 and 512(a).

20 71. Pursuant to applicable IWC Wage Order and California Labor Code section
21 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
22 additional hour of pay at the employee's regular rate of compensation for each work day that the
23 meal or rest period is not provided.

24 **THIRD CAUSE OF ACTION**

25 **(Violation of California Labor Code § 226.7)**

26 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

27 72. Plaintiff incorporates by reference the allegations contained in paragraphs 1
28 through 72, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 73. At all times herein set forth, the applicable IWC Wage Order and California Labor
3 Code section 226.7 were applicable to Plaintiff's and the other class members' employment by
4 Defendants.

5 74. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any rest period mandated by an applicable
7 order of the California IWC.

8 75. At all relevant times, the applicable IWC Wage Order provides that "[e]very
9 employer shall authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period" and that the "rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof" unless the total daily work time is less than three and one-half
13 (3 ½) hours.

14 76. During the relevant time period, Defendants required Plaintiff and other class
15 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
16 period per each four (4) hour period worked.

17 77. During the relevant time period, Defendants willfully required Plaintiff and the
18 other class members to work during rest periods and failed to pay Plaintiff and the other class
19 members the full rest period premium for work performed during rest periods.

20 78. During the relevant time period, Defendants failed to pay Plaintiff and the other
21 class members the full rest period premium due pursuant to California Labor Code section 226.7.

22 79. Defendants' conduct violates applicable IWC Wage Orders and California Labor
23 Code section 226.7.

24 80. Pursuant to the applicable IWC Wage Orders and California Labor Code section
25 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
26 additional hour of pay at the employees' regular hourly rate of compensation for each work day
27 that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

3 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

4 81. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 81, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 82. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
8 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than
9 the minimum so fixed is unlawful.

10 83. During the relevant time period, Defendants failed to pay minimum wage to
11 Plaintiff and the other class members as required, pursuant to California Labor Code sections
12 1194, 1197, and 1197.1.

13 84. Defendants' failure to pay Plaintiff and the other class members the minimum
14 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
15 those sections Plaintiff and the other class members are entitled to recover the unpaid balance of
16 their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated
17 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

18 85. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class
19 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
20 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
21 minimum wages.

22 86. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
23 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
24 unpaid and interest thereon.

25 **FIFTH CAUSE OF ACTION**

26 **(Violation of California Labor Code §§ 201 and 202)**

27 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

28 87. Plaintiff incorporates by reference the allegations contained in paragraphs 1

1 through 87, and each and every part thereof with the same force and effect as though fully set
2 forth herein.

3 88. At all relevant times herein set forth, California Labor Code sections 201 and 202
4 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and if an employee quits his or her employment, his
6 or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
7 unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in
8 which case the employee is entitled to his or her wages at the time of quitting.

9 89. During the relevant time period, Defendants intentionally and willfully failed to
10 pay Plaintiff and the other class members who are no longer employed by Defendants their
11 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

12 90. Defendants' failure to pay Plaintiff and the other class members who are no longer
13 employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their
14 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

15 91. California Labor Code section 203 provides that if an employer willfully fails to
16 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
17 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
18 is commenced; but the wages shall not continue for more than thirty (30) days.

19 92. Plaintiff and the other class members are entitled to recover from Defendants the
20 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
21 pursuant to California Labor Code section 203.

22 **SIXTH CAUSE OF ACTION**

23 **(Violation of California Labor Code § 204)**

24 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

25 93. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 93, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

28 94. At all times herein set forth, California Labor Code section 204 provides that all

1 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
2 calendar month, other than those wages due upon termination of an employee, are due and
3 payable between the 16th and the 26th day of the month during which the labor was performed.

4 95. At all times herein set forth, California Labor Code section 204 provides that all
5 wages earned by any person in any employment between the 16th and the last day, inclusive, of
6 any calendar month, other than those wages due upon termination of an employee, are due and
7 payable between the 1st and the 10th day of the following month.

8 96. At all times herein set forth, California Labor Code section 204 provides that all
9 wages earned for labor in excess of the normal work period shall be paid no later than the payday
10 for the next regular payroll period.

11 97. During the relevant time period, Defendants intentionally and willfully failed to
12 pay Plaintiff and the other class members all wages due to them, within any time period
13 permissible under California Labor Code section 204.

14 98. Plaintiff and the other class members are entitled to recover all remedies available
15 for violations of California Labor Code section 204.

16 **SEVENTH CAUSE OF ACTION**

17 **(Violation of California Labor Code § 226(a))**

18 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

19 99. Plaintiff incorporates by reference the allegations contained in paragraphs 1
20 through 99, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 100. At all material times set forth herein, California Labor Code section 226(a)
23 provides that every employer shall furnish each of his or her employees an accurate itemized
24 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
25 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
26 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
27 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
28 dates of the period for which the employee is paid, (7) the name of the employee and his or her

1 social security number, (8) the name and address of the legal entity that is the employer, and (9)
2 all applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee. The deductions made from payments of wages
4 shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
5 year, and a copy of the statement or a record of the deductions shall be kept on file by the
6 employer for at least three years at the place of employment or at a central location within the
7 State of California.

8 101. Defendants have intentionally and willfully failed to provide Plaintiff and the
9 other class members with complete and accurate wage statements. The deficiencies include, but
10 are not limited to: the failure to include the total number of hours worked by Plaintiff and the
11 other class members.

12 102. As a result of Defendants' violation of California Labor Code section 226(a),
13 Plaintiff and the other class members have suffered injury and damage to their statutorily-
14 protected rights.

15 103. More specifically, Plaintiff and the other class members have been injured by
16 Defendants' intentional and willful violation of California Labor Code section 226(a) because
17 they were denied both their legal right to receive, and their protected interest in receiving,
18 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

19 104. Plaintiff and the other class members are entitled to recover from Defendants the
20 greater of their actual damages caused by Defendants' failure to comply with California Labor
21 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

22 105. Plaintiff and the other class members are also entitled to injunctive relief to ensure
23 compliance with this section, pursuant to California Labor Code section 226(h).

24 **EIGHTH CAUSE OF ACTION**

25 **(Violation of California Labor Code § 1174(d))**

26 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

27 106. Plaintiff incorporates by reference the allegations contained in paragraphs 1
28 through 106, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 107. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
3 central location in the state or at the plants or establishments at which employees are employed,
4 payroll records showing the hours worked daily by and the wages paid to, and the number of
5 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
6 respective plants or establishments. These records shall be kept in accordance with rules
7 established for this purpose by the commission, but in any case shall be kept on file for not less
8 than two years.

9 Defendants have intentionally and willfully failed to keep accurate and complete payroll records
10 showing the hours worked daily and the wages paid, to Plaintiff and the other class members.

11 108. As a result of Defendants' violation of California Labor Code section 1174(d),
12 Plaintiff and the other class members have suffered injury and damage to their statutorily-
13 protected rights.

14 109. More specifically, Plaintiff and the other class members have been injured by
15 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
16 they were denied both their legal right and protected interest, in having available, accurate and
17 complete payroll records pursuant to California Labor Code section 1174(d).

18 **NINTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 2800 and 2802)**

20 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

21 110. Plaintiff incorporates by reference the allegations contained in paragraphs 1
22 through 111, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 111. Pursuant to California Labor Code sections 2800 and 2802, an employer must
25 reimburse its employee for all necessary expenditures incurred by the employee in direct
26 consequence of the discharge of his or her job duties or in direct consequence of his or her
27 obedience to the directions of the employer.

28 112. Plaintiff and the other class members incurred necessary business-related

1 expenses and costs that were not fully reimbursed by Defendants.

2 113. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
3 other class members for all necessary business-related expenses and costs.

4 114. Plaintiff and the other class members are entitled to recover from Defendants their
5 business-related expenses and costs incurred during the course and scope of their employment,
6 plus interest accrued from the date on which the employee incurred the necessary expenditures
7 at the same rate as judgments in civil actions in the State of California.

8 **TENTH CAUSE OF ACTION**

9 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

10 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

11 115. Plaintiff incorporates by reference the allegations contained in paragraphs 1
12 through 116, and each and every part thereof with the same force and effect as though fully set
13 forth herein.

14 116. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
15 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
16 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest
17 within the meaning of Code of Civil Procedure section 1021.5.

18 117. Defendants' activities as alleged herein are violations of California law, and
19 constitute unlawful business acts and practices in violation of California Business & Professions
20 Code section 17200, et seq.

21 118. A violation of California Business & Professions Code section 17200, et seq. may
22 be predicated on the violation of any state or federal law. In this instant case, Defendants'
23 policies and practices of requiring employees, including Plaintiff and the other class members,
24 to work overtime without paying them proper compensation violate California Labor Code
25 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,
26 including Plaintiff and the other class members, to work through their meal and rest periods
27 without paying them proper compensation violate California Labor Code sections 226.7 and
28 512(a). Defendants' policies and practices of failing to pay minimum wages violate California

1 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of
2 failing to timely pay wages to Plaintiff and the other class members violate California Labor
3 Code sections 201, 202 and 204. Defendants also violated California Labor Code sections
4 226(a), 1174(d), 2800 and 2802.

5 As a result of the herein described violations of California law, Defendants unlawfully gained
6 an unfair advantage over other businesses.

7 119. Plaintiff and the other class members have been personally injured by Defendants'
8 unlawful business acts and practices as alleged herein, including but not necessarily limited to
9 the loss of money and/or property.

10 120. Pursuant to California Business & Professions Code sections 17200, et seq.,
11 Plaintiff and the other class members are entitled to restitution of the wages withheld and retained
12 by Defendants during a period that commences four years preceding the filing of this Complaint;
13 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and
14 other applicable laws; and an award of costs.

15 **ELEVENTH CAUSE OF ACTION**

16 **(Violation of The Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.*)**

17 **(Against SAUNDERS CONSTRUCTION, INC. and DOES 1 through 100)**

18 121. Plaintiff realleges and incorporates by this reference, as though fully set forth
19 herein, the prior paragraphs of this First Amended Complaint.

20 122. The Private Attorneys General Act ("PAGA") is a mechanism by which the State
21 of California itself can enforce state labor laws through the employee suing under the PAGA
22 who does so as the proxy or agent of the state's labor law enforcement agencies. An action to
23 recover civil penalties under PAGA is fundamentally a law enforcement action designed to
24 protect the public and not to benefit private parties. The purpose of the PAGA is not to recover
25 damages or restitution, but to create a means of "deputizing" citizens as private attorneys general
26 to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was
27 ... in the public interest to allow aggrieved employees, acting as private attorneys general to
28 recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,

1 PAGA claims cannot be subject to arbitration.

2 123. Plaintiff, and such persons that may be added from time to time who satisfy the
3 requirements and exhaust the administrative procedures under the Private Attorney General Act,
4 bring this individual and Representative Action on behalf of the State of California with respect
5 to himself and all non-exempt employees who worked for Defendants in California during the
6 time period of October 31, 2022 until the present (the "AGGRIEVED EMPLOYEES").

7 124. On October 31, 2023, Plaintiff gave written notice by certified mail to the Labor
8 and Workforce Development Agency (the "Agency") and the employer of the specific provisions
9 of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
10 attached hereto and incorporated by this reference herein. The statutory waiting period for
11 Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
12 2699.3, Plaintiff may now commence an individual and representative civil action under PAGA
13 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
14 EMPLOYEES as herein defined.

15 125. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because Defendants (a) failed to pay Plaintiff and AGGRIEVED
17 EMPLOYEES minimum wages and overtime wages, (b) failed to provide Plaintiff and
18 AGGRIEVED EMPLOYEES legally required meal and rest breaks, (c) failed to pay Plaintiff
19 and AGGRIEVED EMPLOYEES at the correct regular rate of pay, (d) failed to pay Plaintiff
20 and AGGRIEVED EMPLOYEES for all time worked, and (e) failed to timely pay wages, all in
21 violation of the applicable Labor Code sections listed in Labor Code §2699.5, including but not
22 limited to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d),
23 1194, 1197, 1197.1, 1198, 2800 and 2802, and the applicable Industrial Wage Order(s), and
24 thereby gives rise to statutory penalties as a result of such conduct. Plaintiff hereby seeks
25 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
26 as the representative of the State of California for the illegal conduct perpetrated on Plaintiff and
27 the other AGGRIEVED EMPLOYEES.

28 ///

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, individually, and on behalf of other members of the general public similarly
3 situated, requests a trial by jury.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
6 public similarly situated, prays for relief and judgment against Defendants, jointly and severally,
7 as follows:

8 **Class Certification**

- 9 1. That this action be certified as a class action;
10 2. That Plaintiff be appointed as the representative of the Class;
11 3. That counsel for Plaintiff be appointed as Class Counsel; and
12 4. That Defendants provide to Class Counsel immediately the names and most
13 current/last known contact information (address, e-mail and telephone numbers) of all class
14 members.

15 **As to the First Cause of Action**

- 16 5. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
18 all overtime wages due to Plaintiff and the other class members;
19 6. For general unpaid wages at overtime wage rates and such general and special
20 damages as may be appropriate;
21 7. For pre-judgment interest on any unpaid overtime compensation commencing
22 from the date such amounts were due;
23 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 California Labor Code section 1194; and
25 9. For such other and further relief as the Court may deem just and proper.

26 **As to the Second Cause of Action**

- 27 10. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to

1 provide all meal periods (including second meal periods) to Plaintiff and the other class
2 members;

3 11. That the Court make an award to Plaintiff and the other class members of one (1)
4 hour of pay at each employee's regular rate of compensation for each workday that a meal period
5 was not provided;

6 12. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 13. For premium wages pursuant to California Labor Code section 226.7(c);

9 14. For pre-judgment interest on any unpaid wages from the date such amounts were
10 due;

11 15. For reasonable attorneys' fees and costs of suit incurred herein; and

12 16. For such other and further relief as the Court may deem just and proper.

13 **As to the Third Cause of Action**

14 17. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
16 rest periods to Plaintiff and the other class members;

17 18. That the Court make an award to Plaintiff and the other class members of one (1)
18 hour of pay at each employee's regular rate of compensation for each workday that a rest period
19 was not provided;

20 19. For all actual, consequential, and incidental losses and damages, according to
21 proof;

22 20. For premium wages pursuant to California Labor Code section 226.7(c);

23 21. For pre-judgment interest on any unpaid wages from the date such amounts were
24 due; and

25 22. For such other and further relief as the Court may deem just and proper.

26 **As to the Fourth Cause of Action**

27 23. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to

1 Plaintiff and the other class members;

2 24. For general unpaid wages and such general and special damages as may be
3 appropriate;

4 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
5 Plaintiff and the other class members in the amount as may be established according to proof at
6 trial;

7 26. For pre-judgment interest on any unpaid compensation from the date such
8 amounts were due;

9 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Labor Code section 1194(a);

11 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

12 29. For such other and further relief as the Court may deem just and proper.

13 **As to the Fifth Cause of Action**

14 30. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
16 time of termination of the employment of Plaintiff and the other class members no longer
17 employed by Defendants;

18 31. For all actual, consequential, and incidental losses and damages, according to
19 proof;

20 32. For statutory wage penalties pursuant to California Labor Code section 203 for
21 Plaintiff and the other class members who have left Defendants' employ;

22 33. For pre-judgment interest on any unpaid compensation from the date such
23 amounts were due; and

24 34. For such other and further relief as the Court may deem just and proper.

25 **As to the Sixth Cause of Action**

26 35. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 204 by willfully failing to pay all compensation owed at the time required
28 by California Labor Code section 204 to Plaintiff and the other class members;

1 36. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 37. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due; and

5 38. For such other and further relief as the Court may deem just and proper.

6 **As to the Seventh Cause of Action**

7 39. That the Court declare, adjudge and decree that Defendants violated the record
8 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
9 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
10 wage statements thereto;

11 40. For actual, consequential and incidental losses and damages, according to proof;

12 41. For statutory penalties pursuant to California Labor Code section 226(e);

13 42. For injunctive relief to ensure compliance with this section, pursuant to California
14 Labor Code section 226(h); and

15 43. For such other and further relief as the Court may deem just and proper.

16 **As to the Eighth Cause of Action**

17 44. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records
19 for Plaintiff and the other class members as required by California Labor Code section 1174(d);

20 45. For actual, consequential and incidental losses and damages, according to proof;

21 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

22 47. For such other and further relief as the Court may deem just and proper.

23 **As to the Ninth Cause of Action**

24 48. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class
26 members for all necessary business-related expenses as required by California Labor Code
27 sections 2800 and 2802;

28 49. For actual, consequential and incidental losses and damages, according to proof;

- 1 50. For the imposition of civil penalties and/or statutory penalties;
2 51. For reasonable attorneys' fees and costs of suit incurred herein; and
3 52. For such other and further relief as the Court may deem just and proper.

4 **As to the Tenth Cause of Action**

5 53. That the Court decree, adjudge and decree that Defendants violated California
6 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
7 other class members all overtime compensation due to them, failing to provide all meal and rest
8 periods to Plaintiff and the other class members, failing to pay at least minimum wages to
9 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
10 wages timely as required by California Labor Code section 201, 202 and 204 and by violating
11 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

12 54. For restitution of unpaid wages to Plaintiff and all the other class members and
13 all pre-judgment interest from the day such amounts were due and payable;

14 55. For the appointment of a receiver to receive, manage and distribute any and all
15 funds disgorged from Defendants and determined to have been wrongfully acquired by
16 Defendants as a result of violation of California Business and Professions Code sections 17200,
17 et seq.;

18 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
19 California Code of Civil Procedure section 1021.5;

20 For injunctive relief to ensure compliance with this section, pursuant to California
21 Business and Professions Code sections 17200, et seq.; and

- 22 57. For such other and further relief as the Court may deem just and proper.
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As to the Eleventh Cause of Action

59. On behalf of Plaintiff as an individual and the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004.

Dated: February 6, 2025

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay

Attorney for PLAINTIFF

EXHIBIT 1



October 31, 2023

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: SAUNDERS CONSTRUCTION, INC.

Dear Representative:

We have been retained to represent Shane Abbott against Saunders Construction, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as "Saunders") for violations of California wage-and-hour laws. Mr. Abbott seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA") and all other remedies available under PAGA.

Mr. Abbott seeks these remedies on behalf of the State of California and "aggrieved employees," as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Saunders employed Mr. Abbott as an hourly-paid, non-exempt employee from approximately March 2023 to approximately June 2023, in the State of California.

The "aggrieved employees" that Mr. Abbott may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California, including, but not limited to all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California who earned shift differentials/non-discretionary bonuses/non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate.

Based on the following facts and theories, Saunders has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, and 16-2001.

Saunders required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Saunders rounded the work time recorded by

aggrieved employees in a manner that was not fair and neutral on its face and/or that favored Saunders over time, resulting in aggrieved employees being underpaid for their time worked.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Abbott and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Abbott and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, Saunders required Mr. Abbott and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods. Saunders also required aggrieved employees to stay on work premises during rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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. During the relevant time period, Saunders failed to pay Mr. Abbott and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Saunders failed to pay Mr. Abbott and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Saunders did not provide Mr. Abbott and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Saunders were in violation of California

Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Abbott and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Abbott and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Abbott and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Abbott and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Abbott and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Saunders failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Abbott and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Saunders did not provide Mr. Abbott and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001, and 16-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, Saunders failed to pay Mr. Abbott and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which

Mr. Abbott and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, Saunders failed to pay Mr. Abbott and other aggrieved employees for two (2) hours at the employee's regular rate of pay on days in which Mr. Abbott and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Abbott and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Saunders. These costs include, but are not limited to, the use of a personal phone for work-related tasks, the use of mileage on a personal vehicle for work-related tasks, and the purchasing and maintenance of tools, equipment, and supplies.

Therefore, on behalf of all aggrieved employees, Mr. Abbott seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,



Gabriella Sole, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

Saunders Construction, Inc.
c/o Steven W. Saunders
Agent for Service of Process
1760 Monrovia Avenue, Suite A1
Costa Mesa, CA 92627