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CHRISTIAN MICHAEL SPENCER-ROCHESTER and All Similarly Situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

CHRISTIAN MICHAEL SPENCER-ROCHESTER, an individual, on behalf of himself and all other similarly situated non-exempt former and current employees;

Plaintiffs,

v.

FISHER INDUSTRIES, a Company of Unknown Jurisdiction; FISHER SAND & GRAVEL CO., a North Dakota Corporation; SOUTHWEST CONCRETE PAVING CO., an Arizona Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23STCV26253

[Assigned for All Purposes to Hon. Judge William F. Highberger, Dept. 10]

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES:

1. **FAILURE TO PAY OVERTIME WAGES**[Cal. Lab. Code §510];
2. **FAILURE TO PROVIDE MEAL BREAKS**[Cal. Lab. Code §226.7];
3. **FAILURE TO PROVIDE REST BREAKS**[Cal. Lab. Code §226.7];
4. **FAILURE TO PROVIDE RECOVERY PERIOD BREAKS** [Cal. Lab. Code §226.7]
5. **WAITING TIME PENALTIES** [Cal. Labor Code §§ 201-203];
6. **FAILURE TO PAY ALL HOURS WORKED** [Cal. Labor Code§ 204];
7. **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS** [Cal. Lab. Code § 226];
8. **FAILURE TO INDEMNIFY EMPLOYEES** [Cal. Labor Code §§2802, et seq.]
9. **VIOLATION OF CAL. BUS. & PROF. CODE §17200, et seq.;**
10. **PRIVATE ATTORNEYS GENERAL ACT** [Cal. Lab. Code §2699, et seq.]

COMES NOW Plaintiff CHRISTIAN MICHAEL SPENCER-ROCHESTER (“Spencer-Rochester” or “Plaintiff”), an individual over the age of 18, bringing this challenge to Defendant’s lucrative, repressive and unlawful business practices on behalf of himself, the general public, and a class of all others similarly situated, for causes of action against Defendants FISHER INDUSTRIES, a Company of Unknown Jurisdiction (“FI”); FISHER SAND & GRAVEL CO., a North Dakota Corporation (“FSG”); SOUTHWEST CONCRETE PAVING CO., an Arizona Corporation (“SCP”); and DOES 1 through 10, inclusive, and DOES 1 through 10, inclusive (hereinafter collectively referred to as “Defendants”). Plaintiff submits this First Amended Complaint adding a cause of action pursuant to Cal. Labor Code section 2699.3(a)(2)(C), and alleges as follows:

JURISDICTION AND VENUE

1. Some or all of the acts complained of herein occurred in Los Angeles County, as Defendants employed the named Plaintiff and numerous other members of the Plaintiff Class in the County of Los Angeles at some or all times relevant to the facts complained of herein.

2. Further, This Court has Jurisdiction over this action because this is a class action, and the claims of the individual Plaintiff(s) and putative class members are each not in excess of \$75,000.00.

3. The amount in controversy in this matter exceeds the sum of \$25,000.00, exclusive of interest and costs. Further, the amount in controversy in this matter is less than \$5,000,000, inclusive of attorney’s fees, costs of suit, and interest.

4. Jurisdiction and venue are proper in this Court because not only did some or all of the claims alleged herein arise in Los Angeles County, but also because some or all of the Defendants were and/or are residents of Los Angeles County, and/or are doing or did business in Los Angeles County, and/or their principal place of business is in Los Angeles County, at 330 N. Brand Blvd, Glendale, 91203, at times relevant herein.

NATURE OF THE ACTION

5. This is a wage and hour violation matter being asserted on a class-wide basis on

6. By this action, Plaintiff Spencer-Rochester is seeking damages and injunctive relief pursuant to the claims and causes of action alleged in this Complaint.

7. Plaintiff Spencer-Rochester, an individual, alleges knowledge as to his own, and information and belief as to all other matters, as follows:

8. Plaintiff was, at all times mentioned herein, a resident of the County of Los Angeles, in the State of California. Plaintiff Spencer-Rochester was employed by Defendants at all times relevant to the causes of action set forth herein.

9. Defendant FI is and was, at all times mentioned herein, a Corporation of unknown jurisdiction, and is authorized and doing business in the County of Los Angeles, State of California at various locations. At all material times alleged herein, Defendant FI was subject to the laws and regulations of the State of California, including but not limited to the California Labor Code (“Cal. Labor Code” or “Labor Code”).

10. Defendant FSG is and was, at all times mentioned herein, a Corporation in the State of North Dakota, and is authorized and doing business in the County of Los Angeles, State of California at various locations. At all material times alleged herein, Defendant FSG was subject to the laws and regulations of the State of California, including but not limited to the California Labor Code (“Cal. Labor Code” or “Labor Code”).

11. Defendant SCP is and was, at all times mentioned herein, a Corporation in the State of Arizona, and is authorized and doing business in the County of Los Angeles, State of California at various locations. At all material times alleged herein, Defendant SCP was subject to the laws and regulations of the State of California, including but not limited to the California Labor Code (“Cal. Labor Code” or “Labor Code”).

12. Plaintiff is ignorant of the true names of Defendant DOES 1 through 10, inclusive, and therefore sues them by the above names which are fictitious. Plaintiff will amend this complaint by inserting true names in lieu of the fictitious names, together with apt

1 and proper charging words, when the true names are ascertained. Plaintiff is informed and
 2 believes, and thereupon alleges, that each of the Defendants designated in this Complaint as
 3 DOES are responsible and liable to Plaintiff and Plaintiff Class in some manner for the
 4 events, happenings, and contentions referred to in this complaint. All references in this
 5 complaint to "Defendants" shall be deemed to include Defendants FISHER INDUSTRIES, a
 6 Company of Unknown Jurisdiction; FISHER SAND & GRAVEL CO., a North Dakota
 7 Corporation; SOUTHWEST CONCRETE PAVING CO., an Arizona Corporation; and DOES
 8 1 through 10, inclusive.

9 13. Plaintiff is informed and believes, and thereon alleges, that each Defendant,
 10 including DOES, was and is the agent, employee, servant, subsidiary, partner, member,
 11 associate, or representative of each other Defendant, including DOES, and all of the things
 12 alleged to have been done by the Defendants, and each of them, were done in the course and
 13 scope of the agency, employment, service, or representative relationship, and with the
 14 knowledge and consent of their respective principals, employers, masters, parent
 15 corporations, partners, members, associates, or representatives.

16 14. Some or all of the unlawful practices and tortious conduct complained of herein
 17 occurred in the County of Los Angeles, State of California.

18 **FACTS COMMON TO ALL CAUSES OF ACITON**

19 15. While Plaintiff and Plaintiff Class Members were employed as non-exempt
 20 construction workers, Plaintiff and the Plaintiff Class routinely worked periods of four (4)
 21 hours or more, twice per work day, without receiving two (2) full, uninterrupted, ten (10)
 22 minute rest break per every four (4) hours worked, in violation of the Cal. Labor Code and
 23 California Industrial Commission's Order 16-2001.

24 16. Further, Defendants all required Plaintiff and the proposed putative class to
 25 show up to work, on a scheduled assignment, for a fifteen (15) minute "safety meeting,"
 26 which was unpaid, yet mandatory for continued employment. As of the date of filing this
 27 complaint, Plaintiff and putative class members were never compensated for the time spent in
 28 these 15 minute safety meetings, even though attendance at said meeting was required by

1 Defendants, in violation of the Cal. Labor Code and California Industrial Welfare
2 Commission's Order 16-2001.

3 17. Defendants did not provide Plaintiff and the Plaintiff Class, All Non-Exempt
4 Construction Workers, a thirty (30) minute meal period for every five hours worked and never
5 sought a written waiver from the employees prior to depriving them of the meal breaks due
6 under the law, in violation of the Cal. Labor Code and California Industrial Welfare
7 Commission's Order 16-2001.

8 18. Defendants did not provide Plaintiff and the Plaintiff Class, All Non-Exempt
9 Construction Workers, a recovery period, proper shade, and clean drinking water, in violation
10 of the Cal. Labor Code and California Industrial Welfare Commission's Order 16-2001.

11 19. Defendants are in the business of construction, which includes, but is not
12 limited to work involving alteration, demolition, building, renovation, remodeling,
13 maintenance, improvement and repair work. Defendants are subject to California Industrial
14 Welfare Commission Wage Orders 1-2001, and 16-2001, which are applicable to
15 Manufacturing and Certain On-Site Occupations in the Construction, Drilling, Logging, and
16 Mining Industries, 8 Cal. Code Reg. §11010.

17 20. Plaintiff is informed and believes, and thereupon alleges, that during the last
18 four (4) years, not fewer than 500 individual non-exempt construction workers and laborers
19 (hereinafter referred to as "All Non-Exempt Construction Workers" or "Plaintiff Class") were
20 employed by Defendants as Non-Exempt Construction Workers including, but not limited to,
21 all non-exempt construction and manufacturing workers working at Defendants' construction
22 worksites and business locations in the state of California.

23 21. All Non-Exempt Construction Workers employed for work with Defendants
24 were hired to work for eight (8) hours or more, altering, demolishing, building, renovating,
25 remodeling, maintaining, improving, repairing, preparing, and cleaning, while not being
26 compensated for all overtime hours worked or being permitted to take their full uninterrupted
27 meal, rest, and recovery period breaks.

28 22. If a construction job or project were to come into/under Defendants' contract or

1 employ, then All Non-Exempt Construction Workers were required to work through rest,
2 meal, and recovery period breaks, and were not permitted to leave the workplace or
3 construction site, even when their shifts had finished, until the full amount of work related to
4 the job or project was completed.

5 23. Plaintiff is informed and believes, and thereupon alleges, that throughout the
6 period covered by this action, the Defendants designed and implemented a scheme that
7 required the All Non-Exempt Construction Workers to work long hours to complete special
8 projects, whereby the All Non-Exempt Construction Workers were discouraged from taking,
9 and denied, meal, rest, and recovery period breaks when the Defendants had large projects,
10 were extremely busy, and had to complete said projects in or under the times quoted to and
11 for major clients.

12 24. Plaintiff is informed and believes, and thereupon alleges, that throughout the
13 period covered by this action, Plaintiff and Plaintiff Class often worked before and after their
14 scheduled shifts in order to complete large projects, or to prepare for or complete their daily
15 work requirements. Moreover, Plaintiff alleges that the hours they were required to work
16 after their scheduled shifts ended, in order to finish large projects for major clients, were not
17 accurately accounted for or compensated.

18 25. Plaintiff is further informed and believes, and thereupon alleges, that the time
19 Plaintiff and Plaintiff Class worked before and after their scheduled shifts, in order to finish
20 large projects for major clients, were not accurately reported on their wage statements. This
21 caused Plaintiff and Plaintiff Class to be unable to properly account for the true and accurate
22 compensation owed for work performed by Plaintiff and Plaintiff Class for Defendants.

23 26. Plaintiff brings this action on behalf of himself, and on behalf of other current
24 and former All Non-Exempt Construction Workers employed by Defendants and, pursuant to
25 Business and Professions Code § 17200 et seq., on behalf of other members of the general
26 public, as set out more fully in Causes of Action 1 through 10 of this Complaint.

27 **CLASS ACTION ALLEGATIONS**

28 **FAILURE TO PROVIDE REST PERIODS**

27. While employed as Non-Exempt Construction Workers, Plaintiff and the Plaintiff Class routinely worked periods of four (4) hours or more, twice per workday, without receiving a rest break. The California Industrial Welfare Commission Order 16-2001 provides, in pertinent part, that:

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

28. Defendants' practice of requiring employees to work for four (4) hours and more without a rest period is in violation of the Industrial Welfare Commission's Wage Order, the California Labor Code and relevant laws, rules, orders, requirements and regulations of the State of California and the United States of America.

29. Defendants required and permitted its employees to work without the rest periods provided by California Labor Law for more than four (4) years. Plaintiff and the putative class are entitled to back wages to compensate them retroactively for all break periods of which they were deprived during the class period, plus all applicable penalties, in addition to one hour's compensation as prescribed by Wage Order 16-2001.

FAILURE TO PROVIDE MEAL PERIODS

30. California Wage Order 16-2001, provides as follows:

“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employees.

31. Defendants did not provide its All Non-Exempt Construction Workers, including Plaintiff and Plaintiff Class, a thirty (30) minute meal period for every five (5) hours worked and never sought a written waiver from the employees prior to depriving them

of their meal breaks due under the various laws. Defendants suffered and permitted its employees to work without the meal periods prescribed by California Labor Law for more than four (4) years. Plaintiff and the putative class are entitled to back wages to compensate them retroactively for all meal periods of which they were deprived during the class period, plus all applicable penalties, in addition to one hour's compensation.

FAILURE TO PROVIDE RECOVERY PERIODS

32. While employed as Non-Exempt Construction Workers, Plaintiff and the Plaintiff Class routinely worked periods in conditions fully exposed to the sun, at temperatures at or above 85 degrees Fahrenheit, without receiving an appropriate recovery period break, shade, or clean drinking water, as required by the California Industrial Welfare Commission and Cal. Labor Code section 227.6.

33. Defendants' practice of requiring employees to work in conditions fully exposed to the sun, at temperatures at or above 85 degrees Fahrenheit, without receiving an appropriate recovery period break, shade, or clean drinking water, was and is in violation of the Industrial Welfare Commission's Wage Orders, the Cal. Labor Code and relevant laws, rules, orders, requirements and regulations of the State of California.

34. Plaintiff and the putative class are entitled to back wages to compensate them retroactively for all recovery break periods of which they were deprived during the class period, plus all applicable penalties, in addition to one hour's compensation as prescribed by Wage Order 16-2001 and the applicable California rules and regulations.

FAILURE TO PAY WAGES OWED

35. While employed as All Non-Exempt Construction Workers, Plaintiff and the Plaintiff Class routinely worked periods of time before and after their scheduled workdays.

36. California Labor Code §204 provides that all wages, other than those mentioned in 201, 201.3, 202, 204.1, and 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

37. Furthermore, Industrial Welfare Commission Order 16-2001 provides, in

1 pertinent part, that:

2 “Every employer shall pay to each employee, on the established
3 payday for the period involved, not less than the applicable minimum
4 wage for all hours worked in the payroll period...

5 38. While employed as All Non-Exempt Construction Workers, Plaintiff and the
6 PLANTIFF Class were caused to not receive their full pay for all work compensated, due to
7 the acts and omissions of Defendants. These acts and omissions in turn caused Plaintiff and
8 Plaintiff Class to not receive an amount equal to and in proper compensation for all hours
9 worked, in accordance with Industrial Welfare Commission Order 16-2001 and applicable
10 California rules and regulations.

11 39. Further, Defendants all required Plaintiff and the proposed putative class to
12 show up to work, on a scheduled assignment, for a fifteen (15) minute “safety meeting,”
13 which was unpaid, yet mandatory for continued employment. As of the date of filing this
14 complaint, Plaintiff and putative class members were never compensated for the time spent in
15 these 15 minute safety meetings, even though attendance at said meeting was required by
16 Defendants, in violation of the Cal. Labor Code and California Industrial Welfare
17 Commission's Order 16-2001. All of these house incurred, by nature of the eight (8) hour plus
18 work day schedules routinely assigned to all class members, must be calculated and
19 compensated at an appropriate overtime work rate.

20 40. Plaintiff and the Plaintiff Class are entitled to back pay for all of their unpaid
21 wages.

22 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

23 41. While employed as All Non-Exempt Construction Workers, Plaintiff and the
24 Plaintiff Class routinely worked periods of time before and after their scheduled workdays,
25 which were not accurately accounted for on their wage statements.

26 42. Under California Labor Code §226 and Industrial Wage Order 1-2001,
27 Defendants were obligated to keep an accurate record of the hours of labor worked by
28 Plaintiff and Plaintiff Class and to prepare and submit to Plaintiff and Plaintiff Class with

each payment of wages an itemized statement accurately showing the total hours worked by Plaintiff and Plaintiff Class.

43. Defendants, and each of them, failed to keep precise records of Plaintiff' and Plaintiff Class' hours worked, and further failed to provide accurate itemized wage statements with each payment of wages to Plaintiff and Plaintiff Class as required by law. Instead, Defendants issued untimely, false, incorrect, fraudulent, and/or no wage statements to certain employees, including without limitation, Plaintiff and Plaintiff Class.

44. Pursuant to Labor Code §226, Plaintiff and Plaintiff Class are entitled to a penalty of \$50.00 for the first violation and \$100.00 per pay period for each subsequent violation of this section, according to proof, up to a maximum amount of \$4,000.00.

SUITABILITY OF CLASS

45. The First through Eighth Causes of Action in this Complaint are being brought, and may properly be maintained, as a class action pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law, because there is a well-defined community of interest in the litigation and the proposed class is ascertainable.

46. The proposed class that Plaintiff seeks to represent for the class action causes of action (hereinafter referred to as "Plaintiff Class" or "Class Members" or "All Non-Exempt Construction Workers") is composed of:

47. Current and former All Non-Exempt Construction Workers who were employed at Defendants, in the State of California, at any time beginning four (4) years preceding the filing of the Complaint in this action through final judgment in this action.

48. There is a well-defined community of interest in the litigation and the class is ascertainable:

- a. NUMEROSITY: The Plaintiff Class is so numerous that the individual joinder of all members is impractical under the circumstances of this case. While the exact number of persons in Plaintiff Class is unknown to Plaintiff at this time, Plaintiff are informed and believes, and thereon allege, that over 500 current and former All Non-Exempt Construction Workers have been employed by

Defendants in California during the period commencing four (4) years prior to the filing of the Complaint in this action, to date.

b. COMMON QUESTIONS PREDOMINATE: Common questions of law and fact exist as to all members of the Plaintiff Class and predominate over any questions that affect only individual members of the class. The predominant common questions of law and fact include:

- i. Whether Defendants provided Plaintiff and Plaintiff Class with proper Rest, Meal, and Recovery Periods;
- ii. Whether Defendants provided Plaintiff and Plaintiff Class with shade and clean drinking water when the outside temperature reached 85 degrees Fahrenheit or above;
- iii. Whether Defendants provided Plaintiff and Plaintiff Class with accurate earnings statements and documentation of their hours worked.
- iv. Whether Defendants properly compensated Plaintiff and Plaintiff Class with all wages earned, including overtime, when due;
- v. Whether Defendants timely paid all wages due to discharged and quitting employees; and
- vi. Whether Defendants properly compensated Plaintiff and Plaintiff Class for all paid time off earned or due.

c. TYPICALITY: Plaintiff's claims are typical of the claims of the Plaintiff Class. Plaintiff and Plaintiff Class sustained damages arising out of Defendants' common practice of failing to provide meal breaks, rest breaks, recovery period breaks, proper wage statements, and proper compensation for the time they worked and paid time off they were owed.

d. ADEQUACY: Plaintiff will fairly and adequately protect the interests of the members of the class. Plaintiff's attorneys have experience in employment and class action matters and may adequately represent the class in this matter. Plaintiff has no interest that is adverse to the interests of those in the Plaintiff

Class.

- e. SUPERIORITY: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of the class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The relatively minor amount of individual damages in question coupled with the expenses and burdens of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to, and burden on, the court system of adjudication of individualized litigation would be substantial and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

49. In addition to the above-listed Class Allegations, Plaintiff asserts the following causes of action, not only on his own behalf, but on behalf of the putative class members as well:

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES [Cal. Labor Code §510(a)]

(Against All Defendants)

50. Plaintiff realleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph, as though fully set forth herein.

51. Under California Labor Code § 510(a):

“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work 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."

52. During Plaintiff and Plaintiff Class' employment with Defendants on several occasions, Defendants required that Plaintiff and Plaintiff Class work, and Plaintiff and Plaintiff Class actually worked, in excess of eight (8) hours in one (1) workday and in excess of forty (40) hours in one (1) workweek. On such occasions, Defendants failed to properly compensate Plaintiff and Plaintiff Class at least one and one-half times their regular rate of pay for overtime hours worked.

53. Defendants, to this date, have not paid Plaintiff and Plaintiff Class for the overtime hours they worked.

54. As a proximate result of Defendants' failure to pay Plaintiff and Plaintiff Class overtime, pursuant to the provisions of California Labor Code § 510(a), Plaintiff and Plaintiff Class have suffered losses in earnings, and other employment benefits along with other incidental and consequential damages and losses, all in an amount to be proven at trial.

55. As a proximate result of Defendants' failure to pay Plaintiff and Plaintiff Class overtime, pursuant to the provisions of California Labor Code § 510(a), Plaintiff and Plaintiff Class have suffered and will continue to suffer economic damages in an amount to be proven at trial.

56. Pursuant to California Labor Code § 218.5, Plaintiff and Plaintiff Class requests that the court award reasonable attorney's fees and costs incurred in this action.

57. Plaintiff and Plaintiff Class also seeks damages pursuant to California Labor Code § 2699(f) and California Labor Code § 558.

SECOND CAUSE OF ACTION

FAILURE TO ALLOW MEAL BREAKS [Cal. Labor Code §226.7]

(Against All Defendants)

58. Plaintiff re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

59. California Labor Code § 226.7 requires an employer to pay an additional hour of compensation for each required meal period the employer fails to provide. Employees are

entitled to a meal period of at least thirty (30) minutes per five (5) hour work period.

60. Plaintiff and Plaintiff Class consistently worked over five (5) hour shifts. Pursuant to the Labor Code and Wage Orders 1-2001 and 16-2001, Plaintiff and Plaintiff Class were entitled to an uninterrupted meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

61. Defendants failed to provide Plaintiff and Plaintiff Class with either timely uninterrupted meal breaks of not less than thirty (30) minutes, or to provide Plaintiff and Plaintiff Class with an additional hour of compensation, at their regular rate of pay, for each meal period missed as required during the time that Plaintiff and Plaintiff Class were employed with Defendants.

62. Pursuant to California Labor Code § 226.7, Plaintiff and Plaintiff Class are entitled to damages of one (1) hour of wages per missed meal break, in a sum to be proven at trial.

63. Plaintiff and Plaintiff Class also seeks damages pursuant to California Labor Code § 2699(f) and California Labor Code § 558.

THIRD CAUSE OF ACTION

FAILURE TO ALLOW REST BREAKS [Cal. Labor Code §226.7]

(Against All Defendants)

64. Plaintiff re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

65. California Labor Code § 226.7 requires an employer to pay an additional hour of compensation for each workday where an employee fails to receive a rest period for each consecutive four (4) hour shift worked. Employees are entitled to an uninterrupted net rest period of at least ten (10) minutes per each consecutive four (4) hour work period or major fraction thereof, after the first three and one-half (3½) hours worked in a workday.

66. Plaintiff and Plaintiff Class consistently worked four (4) hour shifts. Pursuant to the California Labor Code and Wage Orders 1-2001 and 16-2001, Plaintiff and Plaintiff Class are entitled to an uninterrupted rest period of not less than ten (10) minutes for each

consecutive four (4) hour shift worked or major fraction thereof.

67. Defendants failed to provide Plaintiff and Plaintiff Class with either timely uninterrupted rest breaks of not less than ten (10) minutes, or to provide Plaintiff and Plaintiff Class with an additional hour of compensation, at their regular rate of pay, for each rest period missed as required during the time that Plaintiff and Plaintiff Class were employed with Defendants.

68. Pursuant to California Labor Code § 226.7, Plaintiff and Plaintiff Class are entitled to damages of one (1) hour of wages per missed rest break, in a sum to be proven at trial.

69. Plaintiff and Plaintiff Class also seeks damages pursuant to California Labor Code § 2699(f) and California Labor Code § 558.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE RECOVERY PERIOD BREAKS [Cal. Labor Code §226.7]

(Against All Defendants)

70. Plaintiff re-alleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

71. California Labor Code § 226.7 requires an employer to pay an additional hour of compensation for each workday where an employee fails to receive a required recovery period break for days in which a construction worker works in weather conditions of 85 degrees Fahrenheit or above while being exposed to the sun. Further, the law requires an employer in such a situation to provide clean drinking water, shade, and an appropriate amount of time to recover.

72. Plaintiff and Plaintiff Class consistently worked when it was 85 degrees Fahrenheit in direct exposure to the sun. Moreover, Plaintiff and Plaintiff Class were not provided with clean drinking water and shade on such occasions. Pursuant to the California Labor Code and the appropriate laws, Plaintiff and Plaintiff Class are entitled to an appropriate recovery period, clean drinking water, and shade.

73. Defendants failed to provide Plaintiff and Plaintiff Class with recovery period

breaks, shade, and clean drinking water. Moreover Defendants did not provide Plaintiff and Plaintiff Class with an additional hour of compensation, at their regular rate of pay, for each recovery period missed as required during the time that Plaintiff and Plaintiff Class were employed with Defendants.

74. Pursuant to California Labor Code § 226.7, Plaintiff and Plaintiff Class are entitled to damages of one (1) hour of wages per missed recovery period break, in a sum to be proven at trial.

75. Plaintiff and Plaintiff Class also seeks damages pursuant to California Labor Code § 2699(f) and California Labor Code § 558.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES [Cal. Labor Code §§201-203]

(Against All Defendants)

76. Plaintiff realleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

77. Defendants' failure to pay wages, as alleged above, was willful in that Defendants, and each of them, knew wages to be due but failed to pay them, thus entitling Plaintiff and Plaintiff Class to penalties under California Labor Code §203, which provides that an employee's wages shall continue as penalty until paid in full, for a period of up to thirty (30) days from the time they were due.

78. Plaintiff believes, and based thereon alleges, that Defendants have failed to pay Plaintiff and Plaintiff Class in a sum certain at the time of termination and have failed to pay these sums for thirty (30) days thereafter. Pursuant to the provisions of California Labor Code §203, Plaintiff and Plaintiff Class are entitled to penalties in the amount of Plaintiff' and Plaintiff Class' daily wages, multiplied by thirty (30) days.

SIXTH CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED WHEN DUE [Cal. Labor Code §204]

(Against All Defendants)

79. Plaintiff realleges and incorporates by reference each and every allegation

1 contained in each and every aforementioned paragraph as though fully set forth herein.

2 80. Section 204 of the California Labor Code states that all wages, other than those
3 mentioned in 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are
4 due and payable twice during each calendar month, on days designated in advance by the
5 employer as the regular paydays.

6 81. As described hereinabove, Defendants failed to pay Plaintiff and Plaintiff Class
7 all wages owed for all hours worked, per pay period, in a timely manner.

8 82. Defendants therefore owe damages to Plaintiff and Plaintiff Class in the amount
9 of any remaining unpaid wages, in addition to penalties pursuant to California Labor Code
10 §210, in the amount of \$100.00 for each failure to pay Plaintiff and Plaintiff Class.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS [Cal. Labor Code §226]**

13 (Against All Defendants)

14 83. Plaintiff realleges and incorporates by reference each and every allegation
15 contained in each and every aforementioned paragraph as though fully set forth herein.

16 84. Defendants, and each of them, were obligated under Labor Code § 226 and
17 Industrial Wage Orders 1-2001 and 16-2001, to keep an accurate record of the hours of labor
18 worked by Plaintiff and Plaintiff Class and to prepare and submit to Plaintiff and Plaintiff
19 Class, with each payment of wages, an itemized statement accurately showing the total hours
20 worked by Plaintiff and Plaintiff Class.

21 85. Pursuant to Labor Code § 226, Plaintiff and Plaintiff Class are entitled to a
22 penalty of \$50.00 for the first violation and \$100.00 per pay period for each subsequent
23 violation of this section, according to proof, up to a maximum amount of \$4,000.00.

24 86. In this instance, Defendants, and each of them, either prepared and submitted to
25 Plaintiff and Plaintiff Class inaccurate wage statements, or did not prepare and submit any
26 wage statements to Plaintiff and Plaintiff Class during the relevant statutory period and during
27 the entire term of Plaintiff and Plaintiff Class' employment with Defendants.
28

EIGHTH CAUSE OF ACTION

**FAILURE TO COMPENSATE AND INDEMNIFY EMPLOYEES FOR NECESSARY
COSTS INCURRED THEREBY [Cal. Labor Code §§2802, et seq.]**

(Against All Defendants)

87. Plaintiff realleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

88. California Labor Code § 2802 states in pertinent part:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

89. Plaintiff and Plaintiff Class were consistently directed and required by Defendants to purchase items necessary for the conduction, completion, and discharge of their employment duties. This often included purchasing tools, equipment, materials, and clean drinking water for the various job, work, and construction sites of Defendants.

90. Defendants consistently, if not always, failed to indemnify Plaintiff and Plaintiff Class for the necessary items they purchased by adequately compensating them for the costs incurred by Plaintiff and Plaintiff Class when purchasing the above-mentioned necessary costs and expenditures.

91. Pursuant to California Labor Code § 2802, Plaintiff and Plaintiff Class are entitled full reimbursement of the necessary costs and expenditures they incurred, plus interest as determined from the date said necessary costs and expenditures were incurred, in a sum to be proven at trial. Plaintiff and Plaintiff Class will also seek attorneys' fees incurred by Plaintiff and Plaintiff Class for the enforcement of their rights of reimbursement, as permitted by Cal. Labor Code §2802.

92. Plaintiff and Plaintiff Class also seeks damages pursuant to California Labor

Code § 2699(f) and California Labor Code § 558.

NINTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES [Business & Professions Code §17200]

(Against All Defendants)

93. Plaintiff realleges and incorporates by reference each and every allegation contained in each and every aforementioned paragraph as though fully set forth herein.

94. California Business and Professions Code § 17200, et seq. prohibits unlawful and unfair business practices. Plaintiff and Plaintiff Class are “persons” within the meaning of California Business & Professions Code (hereinafter “B&P Code”) § 17204, and have standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

95. Wage and hour laws express fundamental public policies. California Labor Code § 90.5(a) and § 98.6 articulate the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, to ensure employees are not retaliated against for complaining of violations under the Labor Code, and to protect law-abiding employers and their employees from competitors who lower their costs by failing to comply with minimum labor standards.

96. Defendants have violated statutes and public policies, as alleged throughout this Complaint. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the California Labor Code, and have engaged in other unlawful and unfair business practices in violation of B&P Code § 17200, et seq., depriving Plaintiff of the rights, benefits, and privileges guaranteed to all employees under the law.

97. Moreover, by not properly compensating Plaintiff and Plaintiff Class, and improperly gaining extra labor by failing to provide rest and meal periods to Plaintiff and Plaintiff Class, Defendants have gained an unfair business advantage over other California companies that follow the letter of the law and do not make such ill-gotten gains, in further

1 violation of B&P Code § 17200.

2 98. Defendants, by violating wage and hour laws as described above under the
3 California Labor Code, either knew or in the exercise of reasonable care should have known
4 that their conduct was unlawful. Therefore, Defendants' conduct, as alleged herein,
5 constitutes unfair competition and unfair business practices in violation of B&P Code §
6 17200, et seq.

7 99. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and
8 Plaintiff Class have been damaged in a sum to be proven at trial.

9 100. Unless restrained by this Honorable Court, Defendants will continue to engage
10 in the unlawful conduct as alleged herein. Pursuant to the B&P Code, this Court should make
11 such orders or judgments, including the appointment of a receiver, as may be necessary to
12 prevent the use or employment, by Defendants, their agents or employees, of any unlawful or
13 deceptive practice prohibited by the B&P Code and/or, including but not limited to,
14 disgorgement of profits which may be necessary to restore Plaintiff and Plaintiff Class with
15 the money Defendants have unlawfully failed to pay.

16 **ELEVENTH CAUSE OF ACTION**

17 PRIVATE ATTORENYS GENERAL ACT [Cal. Labor Code § 2698 *et seq.*]

18 (Against all Defendants)

19 101. PLAINTIFF hereby incorporates by reference all other allegation contained in
20 this Complaint as though fully set forth herein.

21 102. PLAINTIFF and CLASS MEMBERS are aggrieved employees as defined in
22 Labor Code § 2699(a).

23 103. PLAINTIFF and CLASS MEMBERS bring this cause on behalf of themselves
24 as affected by the labor law violations alleged in this Complaint.

25 104. Defendants committed the following violations of the California Labor Code
26 against PLAINTIFF and CLASS MEMBERS, and, on information and belief, against other
27 current or former employees while they were employed by Defendants:

28 a. Defendants violated Labor Code § 201 and 202 by failing to pay PLAINTIFF

and CLASS MEMBERS all wages due on the date of the employee's involuntary termination or within 72 hours of receipt of notice of employee's voluntary termination.

- b. Defendants violated Labor Code § 204 by failing pay all wages due to PLAINTIFF and CLASS MEMBERS on a weekly basis, in compliance with those provisions.
- c. Defendants violated Labor Code § 246 by failing to provide PLAINTIFF and CLASS MEMBERS with the requisite accrued paid sick leave, and/or for failing to compensate said sick leave at PLAINTIFF or CLASS MEMBERS' respective regular rates of pay.
- d. Defendants violated Labor Code § 226 by failing to provide accurate itemized wage statements to PLAINTIFF and CLASS MEMBERS.
- e. Defendants violated Labor Code § 226.7 and provisions of the Industrial Welfare Commission Wage Order 17-2001 by failing to provide mandatory meal periods and rest periods.
- f. Defendants violated Labor Code § 1182, et sq. and § 1198 and provisions of Industrial Welfare Commission Wage Order 1-2001 by failing to pay PLAINTIFF and CLASS MEMBERS all wages due for all hours worked, and by failing to keep accurate information with respect to hours worked, including the actual beginning and ending of each work period and meal period.
- g. Defendants violated Labor Code § 510 by failing to pay PLAINTIFF and CLASS MEMBERS for work over eight (8) hours in a workday and forty (40) hours in a workweek.
- h. Defendants violated the Labor Code by failing to indemnify PLAINTIFF and CLASS MEMBERS for items purchased that were required and necessary to complete Defendants' work.

105. On or about July 21, 2023, Plaintiff sent notice to Defendants and the Labor and Workforce Development Agency ("LWDA"), notifying them of the specific violations

1 and the facts and theories supporting those violations. More than 65 days have passed since
2 the date the notice was submitted with the Defendants and LWDA.

3 106. Pursuant to Labor Code § 2699(a), PLAINTIFF and CLASS MEMBERS seek
4 to recover civil penalties, as otherwise provided by statute, for which Defendants are liable as
5 a result of their violations of the following Labor Code sections in an amount to be proven at
6 trial, for violations of Labor Code §§ 201, 202, 203, 204, and 246, penalties pursuant to Labor
7 Code § 210; for violations Labor Code § 226 and provisions of the applicable Industrial Wage
8 Order, penalties pursuant to Labor Code § 226.3; for violations Labor Code § 226.7, 558, and
9 provisions of the applicable Industrial Wage Order, penalties pursuant to Labor Code § 558,
10 including an amount sufficient to recover underpaid wages due Plaintiffs and Plaintiffs Class;
11 for violations Labor Code §§ 1182, 1182.12, and 1198 and provisions of the applicable
12 Industrial Wage Order, penalties pursuant to Labor Code § 1197.1; all in amounts to be
13 proven at trial.

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15 WHEREFORE, Plaintiff and Plaintiff Class request relief as hereinafter provided.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Plaintiff Class pray for judgment against Defendants, and each of them, as follows:

1. For compensatory, consequential and incidental damages (including past and future lost wages, bonuses, expenses and other losses) in an amount to be proven at trial;
2. For general damages, including money damages for mental pain, anguish, and emotional distress, in an amount to be proven at trial;
3. For special damages, according to proof;
4. For prejudgment interest;
5. For attorneys' fees pursuant to Labor Code §§ 218.5, 1194, and 2699, Code of Civil Procedure § 1021.5, and all other provisions of law authorizing an award of attorney's fees;
6. For civil penalties pursuant to California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699;
7. For waiting time penalties pursuant to California Labor Code § 203;
8. For the costs of suit herein incurred;
9. For interest on the amount of compensation due, according to proof; and
10. For such other and further relief as this Court may deem proper.

DATED: February 5, 2024

Respectfully Submitted,

SOLOUKI | SAVOY, LLP

/s/ Grant Joseph Savoy .

Grant Joseph Savoy, Esq.

Attorneys for Plaintiff

CHRISTIAN MICHAEL SPENCER-ROCHESTER and Class MEMBERS

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in the Complaint.

DATED: February 5, 2024

Respectfully Submitted,

SOLOUKI | SAVOY, LLP

/s/ Grant Joseph Savoy .
Grant Joseph Savoy, Esq.
Attorneys for Plaintiff
CHRISTIAN MICHAEL SPENCER-
ROCHESTER and Class MEMBERS