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By S. Bolden, Deputy Clerk

Attorneys for Plaintiff

KYLE TAKUMI KAINOA TOSHIMITSU

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KYLE TAKUMI KAINOA TOSHIMITSU,
an individual,

Plaintiff,

vs.

TROY ROOFING, INC, a California
corporation, TROY MUSULMAN, an
individual, and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 23STCV26556

*[Assigned for all purposes to the Hon. Upinder
S. Kalra, Dept. 51]*

**JOINT STIPULATION AND [PROPOSED]
ORDER PERMITTING PLAINTIFF TO
FILE A FIRST AMENDED COMPLAINT**

Complaint: 10/30/2023
Trial: 4/1/2025

Plaintiff Kyle Takumi Kainoa Toshimitsu ("Plaintiff"), individually and on behalf of himself and all others similarly situated, and Troy Roofing, Inc, and Troy Musulman (collectively "Defendants") via their respective counsel, agree that Plaintiff may file a First Amended Complaint ("FAC") in the form attached hereto as Exhibit 1 in this action.

The Parties further agree that if the Court approves this stipulation, Defendants shall have thirty (30) days from the date of the Court's approval to answer or otherwise respond to the FAC;

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1 The Parties also agree that by entering into this stipulation, Defendants have not waived
2 any right to file a motion or to challenge the FAC or to otherwise seek appropriate relief from the
3 Court.

4
5
6 Dated: March 5, 2024

WORRELL LAW FIRM, APC

7
8 By: /s/ Kyle C. Worrell

9 KYLE C. WORRELL

10 *Attorneys for Plaintiff*

Kyle Takumi Kainoa Toshimitsu

11 Dated: March 5, 2024

ENGELS LAW APC

12
13 By: /s/ Sean B. Janzen

14 Christopher M. Engels, Esq.

15 Sean B. Janzen, Esq.

16 *Attorneys for Defendants Troy Roofing, Inc.*
17 *and Troy Musulman*

EXHIBIT 1

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**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- (1) Retaliation in Violation of Labor Code § 1102.5
- (2) Wrongful Termination – Constructive Discharge – In Violation of Public Policy
- (3) Failure to Pay Lawful Wages (Labor Code §§ 1194, 1197, 2751-2752)
- (4) Failure to Pay Lawful Overtime Wages (Labor Code §§ 510, 1194)
- (5) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 512, 226.7)
- (6) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7)
- (7) Failure to Timely Pay Wages (Labor Code §§ 204, 210)
- (8) Failure to Timely Pay Wages at End of Employment (Waiting Time Penalties) (Labor Code §§ 201-203)
- (9) Knowing and Intentional Failure to Comply with Itemized Employee Wage

Statement Provisions (Wage Statement Violations) (Labor Code § 226)
(10) Failure to Reimburse Business Expenses (Labor Code § 2802)
(11) Failure to Pay Vacation Time at the Appropriate Rate of Pay (Labor Code §§ 203, 227.3)
(12) Failure to Maintain and Provide Employment Records (Labor Code §§ 226, 1174, 1198.5)
(13) Violations of the Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.)
(14) Violation of the Private Attorneys General Act of 2004 (“PAGA”) [Labor Code § 2698 *et seq.*]

JURY TRIAL DEMANDED

Complaint: 10/30/2023
Trial: 4/1/2025

COMES NOW Plaintiff Kyle Takumi Kainoa Toshimitsu (“Plaintiff”), who alleges and complains, based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, as follows:

I. INTRODUCTION

1. Plaintiff was employed by Defendants (defined below) and worked for them in the roofing industry throughout Southern California, including Los Angeles County, as a Project Manager and/or Sales Representative from approximately October 2019, through July 2023. Defendants operate a roofing company doing business in California including hiring California residents as employees within the State of California. Plaintiff is informed and believes that Defendants generally employs more than five (5) employees working within California.

2. At all pertinent times during the applicable limitations period Plaintiff brings this action against Defendants, Defendants have implemented a uniform policy to willfully misclassify its California Project Managers and/or Sales Representatives as “independent contractors” and/or exempt when they are plainly non-exempt employees under California law,

1 and to pay employees improperly under the applicable California Wage Orders.

2 3. Going back many years, Defendants have blatantly and intentionally misclassified
3 Plaintiff and many other Project Managers as independent contractors and/or exempt employees
4 when they are plainly non-exempt, hourly employees under California law. Under California law,
5 it is unlawful for an employer to: (1) willfully misclassify an individual as an independent
6 contractor, see Cal. Lab. Code § 226.8(a)(1); and (2) charge an individual who has been willfully
7 misclassified as an independent contractor a fee, or make any deductions from compensation, for
8 any purpose, including for goods, materials, space rental, services, or the like. See Cal. Lab. Code
9 § 226.8(a)(2). Defendants systematically committed these serious types of violations for years
10 with Plaintiff and several of his former coworkers. In so misclassifying its employees, Defendants
11 have effectively foisted upon each employee tens of thousands of dollars' worth of charges
12 annually that should have been borne by Defendants.

13 4. Defendants subjected Plaintiff and others to various additional unlawful wage and
14 hour practices, including but not limited to, as stated herein: (1) failing to pay Plaintiff proper
15 commission wages, (2) willfully misclassifying Plaintiff and others as independent contractors;
16 (3) failing to pay overtime pay and/or minimum wages; (4) failing to provide uninterrupted off-
17 duty meal periods and/or required penalties; (5) failing to provide uninterrupted off-duty rest
18 periods and/or required penalties; (6) failing to pay out accrued but unused vacation time; (7)
19 failing to timely pay all wages due upon termination; (8) failing to timely pay wages during
20 employment; (9) failing to maintain adequate records including but not limited to failing to furnish
21 accurate wage statements; (10) failing to pay or reimburse work-related expenses; (11) violating
22 California's PAGA statute; and (12) violating California's Unfair Business Practices statute.

23 5. Based on the following facts and theories, Defendants have violated and/or
24 continue to violate, among other provisions of the California Labor Code and applicable wage
25 law, California Labor Code sections 201, 202, 203, 204, 204b, 206, 206.5, 207, 210, 213, 216,
26 218.7, 221-224, 226, 226(a)-(f), 226.3, 226. 6, 226.7, 226.8, 227.3, 227.5, 230-230.8, 233-234,
27 245-249, 432, 432.5, 510, 512(a), 551, 552, 558, 558.1, 925, 1102.5, 1102.6, 1174(d), 1174.5,
28 1182.12, 1183, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198-1198.5, 1199, 2750.5, 2751-2752,

2753, 2775-2787, 2800, 2802, 2810.5, 3700-3700.5, and all applicable IWC Wage Orders including inter alia, Wage Orders 4-2001, 7-2001, 9-2001, and 16-2001.

II. THE PARTIES

6. Plaintiff is, and at all times relevant to this action, a resident of Los Angeles County, California. Plaintiff worked for Defendants throughout Southern California, including Los Angeles County, as a Project Manager and/or Sales Representative, from October 2019, to approximately July 2023.

7. Plaintiff is informed and believes that Defendant TROY ROOFING, INC. (“TROY ROOFING”), is and was, a California corporation, authorized to transact, and transacting, business in the State of California and County of Los Angeles. Plaintiff is informed and believes, and thereon alleges that, at all relevant times herein, TROY ROOFING had its headquarters and principal place of business at 1066 E Edna Pl, Covina, County of Los Angeles, State of California. Plaintiff is informed and believed, and thereon alleges that, at all times relevant herein, TROY ROOFING employed more than five (5) employees for each working day during each of twenty (20) or more calendar weeks in each relevant calendar year

8. Plaintiff is informed and believes that Defendant TROY MUSULMAN (“MUSULMAN”), is and was an individual, acting on behalf of TROY ROOFING, pursuant to California Labor Code 558.1, and had control over employee payments and wages including in his role as CEO and CFO, and was working and/or residing in California during the relevant time period. Plaintiff is informed and believes, and thereon alleges that, at all relevant times herein, MUSULMAN, acting on behalf of TROY ROOFING, had his headquarters and principal place of business at 1066 E Edna Pl, Covina, County of Los Angeles, State of California. Plaintiff is informed and believed, and thereon alleges that, at all times relevant herein, MUSULMAN employed more than five (5) employees for each working day during each of twenty (20) or more calendar weeks in each relevant calendar year.

9. Defendants TROY ROOFING and MUSULMAN are collectively known as “Defendants.”

10. The true names and capacities of the defendants named herein as Does 1 through

1 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff
2 who therefore sues such defendants by fictitious names pursuant to California Code of Civil
3 Procedure section 474. Plaintiff is informed and believes that all of the Doe defendants are
4 California residents. Plaintiff will amend this Complaint to show such true names and capacities
5 when they have been determined.

6 11. Plaintiff is informed and believes that at all times relevant herein, each Defendants
7 designated, including Defendants, and Does 1 through 100, was the agent, managing agent,
8 principal, owner, partner, joint venturer, representative, manager, servant, employee and/or co-
9 conspirator of each of the other defendants, and was at all times mentioned herein acting within
10 the course and scope of said agency and employment, and that all acts or omissions alleged herein
11 were duly committed with the ratification, knowledge, permission, encouragement, authorization
12 and consent of each Defendants designated herein. Defendants, if not separately noted, are
13 collectively liable under either a joint employer or a single enterprise theory, or in the alternative
14 that each is an alter ego of one another.

15 12. Defendants are, and at all times herein mentioned were, (a) conducting business
16 in the County of Los Angeles, State of California, and (b) the employer of Plaintiff consistent
17 with the California Labor Code and Industrial Welfare Commission Wage Orders (“Wage
18 Orders”).

19 13. Plaintiff further alleges that Defendants, directly or indirectly controlled or
20 affected the working conditions, wages, working hours, and conditions of employment of Plaintiff
21 so as to make each of said Defendant employers jointly liable under the statutory provisions set
22 forth herein.

23 **III. JURISDICTION AND VENUE**

24 14. This Court has jurisdiction over this action pursuant to the California Constitution
25 Article VI section 10, which grants the California Superior Court original jurisdiction in all causes
26 except those given by statute to other courts. The monetary damages and restitution sought by
27 Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established
28 according to proof at trial.

1 15. Plaintiff is a resident of Los Angeles County and is a citizen of the State of
2 California and domiciled in the State of California.

3 16. Defendants TROY ROOFING and MUSULMAN are residents of California, have
4 sufficient minimum contacts in California, and/or otherwise intentionally avails themselves of the
5 California market so as to render the exercise of jurisdiction over it by the California Courts
6 consistent with traditional notions of fair play and substantial justice.

7 17. Venue is proper in this Court because upon information and belief, one or more of
8 the Defendants reside, transact business, or have offices in this County and the acts or omissions
9 alleged herein took place in this County.

10 **IV. DESCRIPTION OF WRONGFUL EMPLOYMENT PRACTICES**

11 18. Plaintiff began working for Defendants in October 2019 until his wrongful
12 termination in July 2023. Defendants misclassified Plaintiff as an independent contractor and/or
13 exempt for years, resulting in the deprivation to Plaintiff of various protections under the
14 California Labor Code. When the company finally changed his classification to employee in
15 October 2022, despite no change in his job description or job duties (a tacit admission that
16 Defendants were improperly classifying Plaintiff as an independent contractor), it continued to
17 violate numerous provisions of the California Labor Code, including, but not limited to, failing
18 to pay commissions on sales made by Plaintiff, among other items described below. When
19 Plaintiff complained about issues regarding Defendants' payment practices, Defendants retaliated
20 against him by, among other things, reducing his pay, reducing his hours, failing to honor their
21 prior promises and obligations, and then terminating his employment.

22 19. Throughout the time period involved in this case, Defendants had the authority to
23 hire and terminate Plaintiff; to directly or indirectly control work rules, working conditions,
24 wages, working hours, and conditions of employment of Plaintiff; and to hire and terminate the
25 employment of Plaintiff.

26 20. At all times herein mentioned, Defendants were subject to the Labor Code of the
27 State of California and the applicable Industrial Welfare Commission Orders.

28 21. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in

1 an ongoing and systematic scheme of wage abuse against Plaintiff including, but not limited to,
2 misclassifying him as an independent contractor. As set forth in more detail below, this scheme
3 involved, *inter alia*, failing to pay Plaintiff for all hours worked, including minimum and overtime
4 wages. Defendant also implemented policies that prohibited Plaintiff from accurately recording
5 the actual time worked, resulting in a failure to pay Plaintiff all wages owed. In addition,
6 Defendant routinely failed to permit Plaintiff to take timely and duty-free meal periods and rest
7 periods in violation of California law. Defendant also failed to reimburse Plaintiff for all
8 necessary business-related expenses.

9 22. More specifically, Defendants violated the applicable IWC Wage Orders by
10 engaging in the following conduct described more fully below.

11 **V. EXHAUSTION**

12 23. On October 11, 2023, Plaintiff complied with the notice requirements pursuant to
13 California Labor Code § 2699.3 and gave written notice via online filing and certified mail of the
14 specific provisions alleged to have been violated to the Labor and Workforce Development
15 Agency (“LWDA”) and Defendants. A true and correct copy of the notice sent to Defendants is
16 attached hereto as **Exhibit 1** and incorporated herein by reference.

17 24. The LWDA has not provided notice of its intention to investigate Defendants’
18 violations.

19 **VI. LEGAL CLAIMS**

20 **FIRST CAUSE OF ACTION**

21 **Retaliation in Violation of Labor Code § 1102.5**

22 **(By Plaintiff Against All Defendants)**

23 25. Plaintiff incorporates by this reference the relevant allegations contained in this
24 pleading as if fully set forth herein.

25 26. Plaintiff claimed, protested, and complained about Defendants’ unlawful practices
26 and procedures of failing to properly pay wages, including commissions, at the agreed upon rate.
27 In response, Defendants retaliated against Plaintiff and ultimately terminated his employment for
28 such complaints.

1 27. Defendants retaliated against Plaintiff for disclosing information to a person with
2 authority over him or another employee who had the authority to investigate, discover or correct
3 what Plaintiff had reasonable cause to believe were violations of, or noncompliance with state or
4 federal statute(s) or local, state, or federal rule(s) or regulation(s), including, but not limited to,
5 unpaid wages conditions. Defendants' conduct violated the provisions of California Labor Code
6 section 1102.5(b).

7 28. Defendants' conduct violated the provisions of California Labor Code section
8 1102.5.

9 29. Defendants are also liable for a civil penalty not exceeding ten thousand dollars
10 (\$10,000) for each violation of Labor Code section 1102.5.

11 30. As a proximate result of the wrongful acts of Defendants, and each of them,
12 Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental
13 financial losses, including without limitation, loss of wages and benefits, and the intangible loss
14 of employment-related opportunities and damage to his professional reputation, all in an amount
15 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
16 prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or any other
17 provision of law providing for prejudgment interest.

18 31. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
19 and continues to suffer severe anxiety, worry, embarrassment, humiliation, shame, mental
20 anguish, and emotional distress. Plaintiff is informed and believes and thereon alleges that he will
21 continue to experience said emotional suffering for a period in the future he cannot presently
22 ascertain, all in an amount subject to proof at the time of trial.

23 32. The above recited actions of Defendants were done with malice, fraud, and/or
24 oppression and in reckless disregard of the rights of Plaintiff. Plaintiff is informed and believes
25 and on that basis alleges that the acts taken towards him were carried out by officers, directors,
26 and/or managing agents of Defendants and/or with the ratification and approval of officers,
27 directors, and/or managing agents of Defendants in a malicious, oppressive, and fraudulent
28 manner in order to harm Plaintiff, or with a willful and conscious disregard of Plaintiff's rights,

1 thereby causing him unjust hardship, humiliation, and/or emotional distress. Such conduct was
2 despicable and justifies an award of punitive damages against Defendants in an amount sufficient
3 to punish and make an example of Defendants, and each of them, and to deter them from engaging
4 in such conduct again in the future, in an amount according to proof at time of trial.

5 **SECOND CAUSE OF ACTION**

6 **Wrongful Termination – Constructive Discharge – In Violation of Public Policy**

7 **(By Plaintiff Against All Defendants)**

8 33. Plaintiff incorporates by this reference the relevant allegations contained in this
9 pleading as if fully set forth herein.

10 34. Throughout all times relevant herein, Defendants engaged in a number of improper
11 employment practices including, but not limited to, improper wage payments, improper wage
12 withholding and wage theft, and other conditions that made Plaintiff's employment so intolerable
13 that Plaintiff had no reasonable alternative except to resign.

14 35. Plaintiff resigned because of the intolerable working conditions set forth herein
15 that were encouraged, maintained, and approved by Defendants' management.

16 36. Defendants' adverse employment actions against Plaintiff and constructive
17 termination of Plaintiff's employment violated the public policy of the State of California against
18 retaliation for voicing complaints of illegality and improper wage payments, as stated in Article
19 I, Section 8 of the California Constitution, Labor Code sections 1102.5, and as set forth in *Vazquez*
20 *v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 831-832
21 ("California's minimum wage law represents a fundamental policy for purposes of a claim for
22 wrongful termination or constructive discharge in violation of public policy.").

23 37. As a proximate result of the wrongful acts of Defendants, and each of them,
24 Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental
25 financial losses, including without limitation, loss of salary and benefits, and the intangible loss
26 of employment-related opportunities and damage to his professional reputation, all in an amount
27 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
28 prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or any other

1 provision of law providing for prejudgment interest.

2 38. As a proximate result of the wrongful acts of Defendants, and each of them,
3 Plaintiff has suffered and continues to suffer severe anxiety, worry, embarrassment, humiliation,
4 shame, mental anguish, and emotional distress. Plaintiff is informed and believes and thereon
5 alleges that Plaintiff will continue to experience said emotional suffering for a period in the future
6 Plaintiff cannot presently ascertain, all in an amount subject to proof at the time of trial.

7 39. The above recited wrongful acts of Defendants against Plaintiff were done with
8 malice, fraud, and/or oppression and in reckless disregard of the rights of Plaintiff. Plaintiff is
9 informed and believes and on that basis alleges that the wrongful acts taken towards him were
10 carried out by officers, directors, and/or managing agents of Defendants and/or with the
11 ratification and approval of officers, directors, and/or managing agents of Defendants in a
12 malicious, oppressive, and fraudulent manner in order to harm Plaintiff, or with a willful and
13 conscious disregard of Plaintiff's rights, thereby causing him unjust hardship, humiliation, and/or
14 emotional distress. Such conduct was despicable and justifies an award of punitive damages
15 against Defendants in an amount sufficient to deter them from engaging in such conduct again in
16 the future, in an amount according to proof at time of trial.

17 40. Plaintiff requests relief as described below.

18 **THIRD CAUSE OF ACTION**

19 **Failure to Pay Lawful Wages (Labor Code §§ 1194, 1197, 2751-2752)**

20 **(By Plaintiff Against All Defendants)**

21 41. Plaintiff incorporates by this reference the relevant allegations contained in this
22 pleading as if fully set forth herein.

23 42. At all relevant times during his employment, Plaintiff was a non-exempt employee
24 of Defendants and entitled to the benefits and protections of the California Labor Code sections
25 204, 510, 1194, and 1198, and the applicable Wage Order(s).

26 43. Employers must compensate non-exempt employees for "off-the-clock" work if
27 the employers knew or should have known that the employees were working those hours.
28 (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

1 44. Defendants required Plaintiff to work in excess of eight hours per day and/or 40
2 hours in a week. Defendants maintained policies and procedures that prevented Plaintiff from
3 reporting work hours beyond eight hours per day and 40 hours per week. Defendants failed to pay
4 Plaintiff wages for all hours worked beyond eight hours in a day and 40 hours in a week.
5 Defendants knew or should have known that Plaintiff was performing work in excess of eight
6 hours per day and 40 hours per week without separate compensation for such work.

7 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
9 failure to compensate Plaintiff for all hours worked at the correct rate(s) of pay.

10 46. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
11 amount, subject to proof, to the extent he was not paid the full amount of wages earned during
12 each pay period of his employment, including overtime wages.

13 47. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover unpaid
14 minimum wages, overtime wages, interest thereon, and awards of costs and reasonable attorneys'
15 fees, all in amounts subject to proof

16 48. Defendants have failed to maintain California compliant policies and procedures
17 related to the claims asserted by Plaintiff. This is readily apparent when evaluating Defendants'
18 commission agreements.

19 49. “Whenever an employer enters into a contract...with an employee...and the
20 contemplated method of payment...involves commissions, the contract shall be in writing and
21 shall set forth the method by which the commissions shall be computed and paid.” Labor Code
22 § 2751(a). Additionally, “[t]he employer shall give a signed copy” of a commission agreement
23 “to every employee who is a party thereto and shall obtained a signed receipt for the contract from
24 each employee.” Id., § 2751(b).

25 50. Upon information and belief, Defendants failed to provide the details of a
26 commission agreement and failed to provide a signed copy of the agreement. However, it is clear
27 from Defendants' initial commission payments to Plaintiff that Defendants agreed to pay Plaintiff
28 10% of the proceeds from the contracts he secured for Defendants. Plaintiff never signed any

documents agreeing to a reduction in this commission percentage, and Defendants retaliated against Plaintiff by, among other things, unilaterally reducing the commission amounts without a signed writing, resulting in a failure to pay all wages in an amount to be shown according to proof.

51. Defendants have failed to maintain policies that compensates Plaintiff and an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code sections 1182.12, 1194, 1197, 1197.1, and applicable wage orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. Among other things, Plaintiff was required to perform an array of “off-the-clock” work, including performing work before or after scheduled shifts and working through or during meal periods and rest periods. As a result, Defendants do not pay Plaintiff for the minimum wages worked on a daily basis, weekly basis, and/or due to untimely, interrupted, or non-duty free meal periods or rest periods.

52. The applicable IWC Wage Order, the California Minimum Wage Order, and Labor Code sections 1182.11, 1182.12, 1194, and 1197, all require that employees receive the minimum wage for all hours worked.

53. Labor Code section 1194 entitles an employee receiving less than the legal minimum wage to recover the unpaid balance of the full amount of the minimum wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

54. Labor Code section 1194.2 entitles an employee receiving less than the legal minimum wage to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

55. Defendants also violated municipal minimum wage ordinances. Municipal minimum wage ordinances across the State of California require all employees who work within the geographic boundaries of a city to be paid at least the municipal minimum wage for all hours worked.

56. Plaintiff worked in one or more cities that have municipal minimum wage ordinances.

57. By failing to compensate Plaintiff for all hours worked, Defendants has violated

one or more minimum wage ordinances, including without limitation the minimum wage ordinance(s) of Los Angeles, Los Angeles County, and Malibu, among others.

58. As a result of Defendants' unlawful acts, Plaintiff has been deprived of wages owed to him in an amount to be determined at hearing, and Plaintiff is entitled to recover such amount, plus interest thereon, liquidated damages, attorneys' fees and costs, and such other legal and equitable relief as the Arbitrator deems just and proper.

59. Plaintiff's request relief as described below.

FOURTH CAUSE OF ACTION

Failure to Pay Lawful Overtime Wages (Labor Code §§ 510, 1194)

(By Plaintiff Against All Defendants)

60. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

61. Labor Code section 510 *et seq.* requires an employer to pay 1.5 times an employee's regular rate of pay for any hours worked over eight hours in a day and/or 40 hours in a week.

62. On information and belief, Plaintiff at times worked more than eight hours in a day and more than forty hours in a week while completing services as a Project Manager and/or Sales Representative for Defendants, for which Defendants did not pay him overtime premium compensation.

63. By failing to pay overtime compensation to Plaintiff, as alleged herein, Defendants violated The applicable IWC Wage Order and Labor Code section 510 *et seq.*

64. As a result of Defendants' unlawful acts, Plaintiff has been deprived of overtime compensation in an amount to be determined at trial, and is entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under Labor Code section 1194.

65. Plaintiff requests relief as described below.

FIFTH CAUSE OF ACTION

Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 512, 226.7)

(By Plaintiff Against All Defendants)

66. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

67. California Labor Code section 512 and Work Order 5, section 12(A)-(C) require every California employer to provide all non-exempt employees a duty-free meal period of not less than 30 minutes, for a work period of more than five (5) hours, “except that if the total work period per day is not more than six (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours work is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.” Under subdivision (a) of Labor Code section 226.7, an employer shall not require an employee to work during meal periods mandated by state law. Subdivision (c) provides that “[i]f an employer fails to provide an employee a meal . . . period in compliance with an applicable statute, wage order, etc. . . . the employer shall pay the employee one (1) additional hour of pay at the employee’s regular rate of compensation for each workday that the meal . . . period is not provided.”

68. Labor Code section 512(a) requires employers to provide unpaid meal periods to all employees.

69. IWC Wage Order, section 11(A), provides that all employees working shifts of at least five hours be provided an unpaid meal period.

70. Defendants failed to authorize or permit Plaintiff to take an unpaid meal period for each shift of at least five hours.

71. On information and belief, Plaintiff regularly worked in excess of five hours a day without being provided an unpaid meal period while relieved of all duties, as required by the applicable IWC Wage Order, section 11(A) and Labor Code section 512(a).

72. Because Defendants failed to authorize and permit Plaintiff to take compliant meal periods, it is liable to Plaintiff for one hour of additional pay at the regular rate of compensation

1 for each workday that the compliant meal periods were not taken, penalties, and interest, pursuant
2 to Labor Code section 226.7(b), and the applicable IWC Wage Order, section 11(D), and
3 attorneys' fees pursuant to Labor Code section 218.5.

4 73. Plaintiff requests relief as described below.

5 **SIXTH CAUSE OF ACTION**

6 **Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof (Labor Code §**
7 **226.7)**

8 **(By Plaintiff Against All Defendants)**

9 74. Plaintiff incorporates by this reference the relevant allegations contained in this
10 pleading as if fully set forth herein.

11 75. Labor Code section 226.7 and Work Order 5 section 12(A) require every
12 California employer to authorize and permit all non-exempt employees to take rest periods at the
13 rate of ten (10) minutes net rest time per four (4) hours, or a major fraction thereon. Under
14 subdivision (a), an employer shall not require an employee to work during rest periods mandated
15 by state law. Subdivision (c) provides that "[i]f an employer fails to provide an employee a rest
16 period in compliance with an applicable statute, wage order, etc . . . the employer shall pay the
17 employee one (1) additional hour of pay at the employee's regular rate of compensation for each
18 workday that the rest . . . period is not provided."

19 76. Labor Code section 226.7 requires employers to provide paid rest periods to all
20 employees.

21 77. The applicable IWC Wage Order, section 12(A), provides in pertinent part as
22 follows: "Every employer shall authorize and permit all employees to take rest periods The
23 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
24 minutes net rest time per four (4) hours or major fraction thereof Authorized rest period time
25 shall be counted as hours worked for which there shall be no deduction from wages.

26 78. Defendants failed to authorize or permit Plaintiff to take a ten-minute paid rest
27 period for each four hours of work or major fraction thereof.

28 79. Plaintiff regularly worked in excess of three and a half hours a day without being

1 provided at least one paid 10-minute rest period in which Plaintiff was relieved of all duties, as
2 required by the applicable IWC Wage Order, section 12(A) and Labor Code section 226.7.

3 80. Because Defendants failed to authorize and permit Plaintiff to take compliant rest
4 periods, it is liable to Plaintiff for one hour of additional pay at the regular rate of compensation
5 for each workday that the compliant rest periods were not taken, penalties, and interest, pursuant
6 to Labor Code section 226.7(b), and the applicable IWC Wage Order, section 12(B), and
7 attorneys' fees pursuant to Labor Code section 218.5.

8 81. Plaintiff requests relief as described below.

9 **SEVENTH CAUSE OF ACTION**

10 **Failure to Timely Pay Wages (Labor Code §§ 204, 210)**

11 **(By Plaintiff Against All Defendants)**

12 82. Plaintiff incorporates by this reference the relevant allegations contained in this
13 pleading as if fully set forth herein.

14 83. California Labor Code section 204 provides that all wages earned by any person
15 in any employment between the 1st and 15th days, inclusive, of any calendar month, other than
16 those wages due upon termination of an employee, are due and payable between the 16th and
17 26th day of the month during which the labor was performed.

18 84. California Labor Code section 204 provides that all wages earned by any person
19 in any employment between the 16th and the last day, inclusive, of any calendar month, other
20 than those wages due upon termination of an employee, are due and payable between the 1st and
21 the 10th day of the following month.

22 85. California Labor Code section 204 provides that all wages earned for labor in
23 excess of the normal work period shall be paid no later than the payday for the next regular payroll
24 period.

25 86. During the relevant time period, Defendants intentionally and willfully failed to
26 pay Plaintiff all wages due to them, within any time period permissible under California Labor
27 Code section 204.

28 87. Plaintiff is entitled to recover all available remedies for Defendants' violations of

1 California Labor Code section 204, including statutory penalties pursuant to Labor Code section
2 210(b).

3 88. Plaintiff requests relief as described below.

4 **EIGHTH CAUSE OF ACTION**

5 **Failure to Timely Pay Wages at End of Employment (Waiting Time Penalties) (Labor**
6 **Code §§ 201-203)**

7 **(By Plaintiff Against All Defendants)**

8 89. Plaintiff incorporates by this reference the relevant allegations contained in this
9 pleading as if fully set forth herein.

10 90. Labor Code section 201 requires an employer who discharges a California
11 employee to pay all compensation due and owing to that employee immediately upon discharge.

12 91. Labor Code section 202 requires an employer to pay all compensation due and
13 owing to a California employee who quits within 72 hours of that employee quitting, unless the
14 employee provides at least 72 hours-notice of quitting, in which case all compensation is due at
15 the end of the employee's final day of work.

16 92. Labor Code section 203 provides that if an employer willfully fails to pay
17 compensation promptly upon discharge, as required by section 201 or section 202, then the
18 employer is liable for waiting time penalties in the form of continued compensation in the amount
19 of the employee's average daily wage for up to 30 work days.

20 93. Defendants willfully failed to timely pay compensation and wages, including
21 unpaid minimum wage pay, unpaid sick leave, unpaid premium pay for missed meal and rest
22 periods, to Plaintiff when Plaintiff's employment was terminated. As a result, Defendants are
23 liable to Plaintiff for waiting time penalties, together with reasonable attorneys' fees and costs,
24 under Labor Code section 203.

25 94. Plaintiff requests relief as described below.

26 **NINTH CAUSE OF ACTION**

27 **Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement**
28 **Provisions (Wage Statement Violations) (Labor Code § 226)**

1 **(By Plaintiff Against All Defendants)**

2 95. Plaintiff incorporates by this reference the relevant allegations contained in this
3 pleading as if fully set forth herein.

4 96. Labor Code Section 226 requires employers semi-monthly or at the time of each
5 payment of wages to furnish each employee with an itemized statement showing “(1) gross wages
6 earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6)
7 the inclusive dates of the period for which the employee is paid, (7) the name of the employee
8 and . . . the last four digits of his or her social security number . . . , (8) the name and address of
9 the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay
10 period and the corresponding number of hours worked at each hourly rate by the employee.

11 97. The applicable IWC Wage Order, section 7(B) requires the same statement to
12 include “(1) all deductions, (2) the inclusive dates of the period for which the employee is paid;
13 (3) the name of the employee or the employee’s social security number; and (4) the name of the
14 employer.

15 98. Labor Code section 226(e) provides that if an employer knowingly and
16 intentionally fails to provide such a statement, then the employee is entitled to recover the greater
17 of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100)
18 for each subsequent violation, up to four thousand dollars (\$4,000).

19 99. Defendants knowingly and intentionally failed to furnish Plaintiff with timely,
20 itemized statements showing all information required under Labor Code section 226(a) and the
21 applicable IWC Wage Order, section 7(B). As a result, Defendants is liable to Plaintiff for the
22 amounts provided for by Labor Code section 226(e) and for penalties, and attorneys’ fees.

23 100. Plaintiff requests relief as described below.

24 **TENTH CAUSE OF ACTION**

25 **Failure to Reimburse Business Expenses (Labor Code § 2802)**

26 **(By Plaintiff Against All Defendants)**

27 101. Plaintiff incorporates by this reference the relevant allegations contained in this
28 pleading as if fully set forth herein.

102. Labor Code section 2802 requires an employer to reimburse employees for any work-related expenses.

103. While acting on the direct instructions of Defendants and discharging duties for Defendants, Plaintiff incurred work-related expenses. Such expenses include but are not limited to fuel; tolls; vehicle repairs; vehicle depreciation; vehicle maintenance; vehicle insurance; other vehicle operating costs; truck roof racks; and cellular phone and associated data costs.

104. Plaintiff necessarily incurred these expenses and losses as a direct result of performing job duties for Defendants.

105. Defendants failed to indemnify or reimburse Plaintiff for these expenditures and losses. By requiring Plaintiff to pay expenses and cover losses that Plaintiff incurred in direct consequence of the discharge of Plaintiff's duties for Defendants and/or in obedience to Defendants' direction, Defendants violated the applicable IWC Wage Order and Labor Code section 2802.

106. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to damages in the amount of Plaintiff's suffered substantial losses, as well as pre-judgment interest, costs, and attorneys' fees for the prosecution of this action.

107. Plaintiff requests relief as described below.

ELEVENTH CAUSE OF ACTION

Failure to Pay Vacation Time at the Appropriate Rate of Pay (Labor Code § 227.3)

(By Plaintiff Against All Defendants)

108. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

109. Cal. Labor Code sections 201 & 227.3 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. Cal. Labor Code section 202 requires an employer to pay all compensation due and owing to an employee who quits within 72 hours of that employee quitting, unless the employee provides at least 72 hours notice of quitting, in which case all compensation is due at the end of the employee's final day of work. Cal. Labor Code section 203 provides that if an employer willfully

1 fails to pay compensation promptly upon discharge, as required by section 201 or section 202,
2 then the employer is liable for waiting time penalties in the form of continued compensation of
3 up to 30 workdays.

4 110. Unless otherwise provided by a collective-bargaining agreement, whenever a
5 contract of employment or employer policy provides for paid vacations, and an employee is
6 terminated without having taken off his vested vacation time, all vested vacation shall be paid to
7 him as wages at his final rate in accordance with such contract of employment or employer policy
8 respecting eligibility or time served; provided, however, that an employment contract or employer
9 policy shall not provide for forfeiture of vested vacation time upon termination.

10 111. Defendants willfully failed to timely pay compensation and wages, including
11 vested and unused vacation time to Plaintiff when Plaintiff's employment was terminated. As a
12 result, Defendants are liable to Plaintiff for the unpaid and/or underpaid vacation wages, in
13 addition to, waiting time penalties, together with reasonable attorneys' fees and costs, under Labor
14 Code section 203.

15 112. Plaintiff requests relief as described below.

16 **TWELFTH CAUSE OF ACTION**

17 **Failure to Provide Employment Records (Labor Code §§ 226, 1198.5)**

18 **(By Plaintiff Against All Defendants)**

19 113. Plaintiff incorporates by this reference the relevant allegations contained in this
20 pleading as if fully set forth herein.

21 114. Labor Code section 1174 states, in pertinent part, that "[e]very person employee
22 labor in this state shall . . . (c) Keep a record showing the names and addresses of all employees
23 employed . . . [and] (d) Keep, at a central location in the state . . . or establishments at which
24 employees are employed, payroll records showing the hours worked daily by and the wages paid
25 to . . . employees employed at the respective . . . establishments. These records shall be kept . . .
26 in a file for not less than three years. . . Likewise, Wage Order 5, section 7 requires that "(A)
27 [e]very employer shall keep accurate information with respect to each employee including the
28 following: (1) the full name, home address, occupation and social security number (2) Birth date

1 . . . (3) Time records showing when the employee begins and ends each work period, meal periods,
2 split shift intervals and total daily hours worked shall also be recorded . . . (5) Total hours worked
3 in the payroll period and the applicable rates of pay. This information shall be made readily
4 available to the employee upon reasonable request . . .” In addition, Labor Code section 353 also
5 requires employers to keep accurate records of all gratuities or tips they receive, directly or
6 indirectly, which may not be collected by “managers” or owners under Labor Code section 351.
7 Labor Code section 1174.5 provides that “any person employing labor who willfully fails to
8 maintain the records required under subdivision (c) of section 1174 or accurate or complete
9 records required by subdivision (d) of section 1174 . . . shall be subject to a civil penalty of five
10 hundred dollars (\$500). Subdivision (d) of section 1174.5 states that “[a]ny person, or officer or
11 agent thereof, is guilty of a misdemeanor who fails to keep any of the records required by section
12 1174.

13 115. For the reasons and bases noted here, Defendants have, among other things,
14 willfully failed to keep, maintain, or provide adequate records regarding Plaintiff.

15 116. As a result of Defendants’ violations of California Labor Code sections 201-204,
16 206, 216, and 512, 1174, Defendants are liable to Plaintiff for any applicable penalties, together
17 with reasonable attorneys’ fees and costs, under the applicable Labor Code sections.

18 117. Plaintiff requests relief as described below.

19 **THIRTEENTH CAUSE OF ACTION**

20 **Violations of the Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.)**

21 **(By Plaintiff Against All Defendants)**

22 118. Plaintiff incorporates by this reference the relevant allegations contained in this
23 pleading as if fully set forth herein.

24 119. California Business & Professions Code section 17200 prohibits unfair
25 competition in the form of any unlawful, unfair, or fraudulent business act or practice.

26 120. California Business & Professions Code section 17204 allows any person acting
27 “for the interests of itself, its members or the general public” to prosecute a civil action for
28 violation of the UCL.

1 121. Beginning in or around 2019, Defendants improperly, fraudulently, and
2 unlawfully classified Plaintiff as an “independent contractor” and thereby committed unlawful,
3 unfair, and/or fraudulent business acts and practices as defined by California Business &
4 Professions Code sections 17200, by engaging, among other things, in the following:

- 5 a. failing to indemnify Plaintiff for employment-related business expenses
6 and losses;
- 7 b. failing to pay the minimum wage to Plaintiff required under California law;
- 8 c. failing to pay overtime compensation to Plaintiff required by California
9 law;
- 10 d. failing to authorize and permit paid rest periods and unpaid meal periods;
- 11 e. failing to provide accurate itemized wage statements to Plaintiff;
- 12 f. failing to provide paid sick leave in compliance with the California Healthy
13 Workplaces, Healthy Families Act of 2014; and
- 14 g. failing to pay all wages due at termination of employment.

15 122. Defendants’ violations of these laws were unlawful, unfair, and/or fraudulent
16 predicate acts and practices for purposes of California Business and Professions Code section
17 17200.

18 123. As a direct and proximate result of Defendants’ unlawful, unfair, and/or fraudulent
19 acts and practices described herein, Defendants received and continues to hold ill-gotten gains
20 belonging to Plaintiff. As a direct and proximate result of Defendants’ unlawful business
21 practices, Plaintiff suffered economic injuries including, but not limited to, unreimbursed out-of-
22 pocket business expenses, unpaid minimum wage, unpaid compensation for missed rest and meal
23 breaks, and unpaid sick leave, among other things. Defendants have profited from these unlawful,
24 unfair, and/or fraudulent acts and practices in the amount of those business expenses and
25 compensation.

26 124. Plaintiff is entitled to restitution pursuant to California Business & Professions
27 Code sections 17203 and 17208 for all unpaid business expenses, rest and meal period
28 compensation, unpaid minimum wages, unpaid sick leave, and interest.

1 125. Plaintiff is entitled to enforce all applicable penalty provisions of the California
2 Labor Code pursuant to California Business & Professions Code section 17202.

3 126. By all of the foregoing alleged conduct, Defendants has committed, and is
4 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
5 meaning of California Business & Professions Code section 17200 *et seq.*

6 127. As a direct and proximate result of the unfair business practices described above,
7 Plaintiff has suffered significant losses and Defendants have been unjustly enriched.

8 128. Pursuant to California Business & Professions Code section 17203, Plaintiff is
9 entitled to: (a) restitution of money acquired by Defendants by means of their unfair business
10 practices; and (b) a declaration that Defendants' business practices are unfair and unlawful.

11 129. Plaintiff has assumed the responsibility of enforcement of the laws and lawful
12 claims specified herein. There is a financial burden incurred in pursuing this action which is in
13 the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to California
14 Code of Civil Procedure section 1021.5.

15 **FOURTEENTH CAUSE OF ACTION**

16 **Violations of the PAGA [California Labor Code § 2698 et seq.]**

17 **(By Plaintiff Against All Defendants)**

18 130. Plaintiff incorporates by this reference the relevant allegations contained in this
19 pleading as if fully set forth herein.

20 131. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by
21 Defendants during the applicable statutory period and suffered one or more of the Labor Code
22 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all
23 other current and former Aggrieved Employees, the civil penalties provided by PAGA, plus
24 reasonable attorney's fees and costs.

25 132. Plaintiff seeks to recover the PAGA civil penalties through a representative action
26 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal 4th 969
27 (2009). Therefore, class certification of the PAGA claims is not required.

28 133. PAGA specifically provides for a private right of action to recover civil penalties

1 for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any
2 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
3 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
4 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
5 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
6 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
7 2699(a).

8 134. Plaintiff was employed by Defendants and the Labor Code violations alleged
9 above were committed against Plaintiff during Plaintiff’s time of employment. Plaintiff is
10 therefore, an “aggrieved employee” under PAGA.

11 135. As set forth in detail above, during all times relevant to this Action, Defendants
12 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
13 Codes by:

- 14 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
15 compensation in violation of Labor Code §§ 1194 and 1198 et seq.
- 16 b. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
17 Employees, and failing to pay Plaintiff and the Aggrieved Employees an
18 additional hour of premium pay for meal period violations in violation of Labor
19 Code §§ 226.7 and 512.
- 20 c. Failing to provide, authorize, and permit Plaintiff and the Aggrieved Employees
21 to take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved
22 Employees an additional hour of premium pay for rest period violations in
23 violation of Labor Code §§ 226.7 and 512.
- 24 d. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end
25 of their employment in violation of Labor Code § 203.
- 26 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed
27 during employment in violation of Labor Code § 204.
- 28 f. Failure to provide written notice of paid sick leave and supplemental sick paid

1 sick leave in violation of Labor Code §§ 226, 246, and 1174.

2 g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
3 itemized wage statements in violation of Labor Code § 226.

4 h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved
5 Employees' work periods, meal periods, total daily hours, hours per pay period,
6 total wages and compensation, and applicable pay rates in violation of Labor Code
7 § 1174(d) and the applicable IWC Wage Order.

8 i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary
9 business-related expenses in violation of Labor Code §§ 2800 and 2802.

10 136. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff,
11 individually and on behalf of the Aggrieved Employees and the State of California, requests and
12 is entitled to recover penalties against Defendant for the Labor Code violations described above,
13 including but not limited to penalties under California Code of Regulations Title 8 section 11010,
14 penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5,
15 and 1197.1, and any and all additional penalties and sums as provided by the California Labor
16 Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount
17 to be shown according to proof at trial.

18 137. Plaintiff was compelled to retain the services of counsel to file this court action to
19 protect Plaintiff's interests and the Aggrieved Employees, and to assess and collect the civil
20 penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees
21 and costs pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

22 138. Plaintiff may amend this complaint as a matter of right pursuant to California
23 Labor Code § 2699.3 as this complaint has been filed within sixty days of the time periods
24 specified in Labor Code §2699.3.

25 139. Plaintiff requests relief as described below.

26 **VII. PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and
28 severally, as follows:

1 1. All actual, consequential, and incidental financial losses, including but not limited
2 to loss of earnings and benefits, according to proof, together with prejudgment interest pursuant to
3 the Civil Code sections 3287 and/or 3288;

4 2. Emotional distress and general damages in a sum in excess of the jurisdictional
5 minimum of the Superior Court;

6 3. Wages, civil penalties, and applicable statutory penalties;

7 4. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
8 210, 558, 558.1, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor
9 Code and/or other applicable statutes;

10 5. Prejudgment and post-judgment interest;

11 6. Attorneys' fees and costs reasonably incurred pursuant to the California Labor Code
12 sections 218.5, 226(e), 1102.5(j), and 2699(g)(1), and Code of Civil Procedure section 1021.5, or
13 any other provision allowed by law;

14 7. Punitive and/or exemplary damages;

15 8. Equitable relief in the nature of declaratory relief and restitution of all monies due
16 to Plaintiffs, disgorgement of profits from Defendants' unlawful business practices, and an
17 accounting;

18 9. Such other and further relief that the Court deems proper.

19
20 Dated: February 8, 2024

WORRELL LAW FIRM, APC

21
22 By:



23 KYLE C. WORRELL
24 *Attorneys for Plaintiff*
25 Kyle Takumi Kainoa Toshimitsu
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WORRELL LAW FIRM, APC

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October 11, 2023

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency

Attn: PAGA Administrator

PAGAFilings@dir.ca.gov

RE: PAGA Notice Pursuant to California Labor Code § 2698, et seq.; Claims of *Kyle Toshimitsu v. Troy Roofing, Inc., and Troy Musulman*

Dear Representative:

My firm has been retained to represent the legal interests of Kyle Toshimitsu (“Mr. Toshimitsu” or “Employee”), with regard to claims concerning violations of California wage-and-hour laws during his employment with Troy Roofing, Inc., a California corporation, (including any and all affiliates, subsidiaries, parents, directors, officers, and managing employees) (collectively referred to as “Troy Roofing”). and against Troy Musulman, an individual, (“Mr. Musulman”) (collectively, “Employers”). These legal claims include but are not limited to: **failure to pay commission wages, willful misclassification, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay minimum wage, failure to timely pay wages, failure to provide written notice of paid sick leave and supplemental paid sick leave, failure to provide accurate wage statements, failure to maintain accurate time and payroll records, failure to reimburse necessary business-related expenses, and violation of California’s Private Attorneys’ General Act (“PAGA”).**

Our investigation into Mr. Toshimitsu’s potential legal claims is ongoing, and additional claims may be added.

Mr. Toshimitsu seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the PAGA, and all other remedies

available under PAGA, including an amount sufficient to recover underpaid wages pursuant to Labor Code section 558.

Mr. Toshimitsu 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.

Based on the following facts and theories, Employers have 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, 204b, 206, 206.5, 207, 210, 213, 216, 218.7, 221-224, 226, 226(a)-(f), 226.3, 226.6, 226.7, 226.8, 227.3, 227.5, 230-230.8, 233-234, 245-249, 432, 432.5, 510, 512(a), 551, 552, 558, 558.1, 925, 1102.5, 1102.6, 1174(d), 1174.5, 1182.12, 1183, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198-1198.5, 1199, 2750.5, 2751-2752, 2753, 2775-2787, 2800, 2802, 2810.5, 3700-3700.5, and all applicable IWC Wage Orders including inter alia, Wage Orders 4-2001, 7-2001, 9-2001, and 16-2001.

BRIEF FACTUAL BACKGROUND

Employers are a roofing company doing business in California including hiring California residents as employees within the State of California. Mr. Toshimitsu is informed and believes that Employer generally employs more than 10 employees working within California.

Mr. Toshimitsu began working for Employers in October 2019. Mr. Toshimitsu worked for the Company until he was forced to resign, putting in his two-weeks’ notice, which the Company then shortcut and turned into a wrongful termination on July 28, 2023. Employers misclassified Mr. Toshimitsu as an independent contractor and/or exempt for years, resulting in the deprivation to Mr. Toshimitsu of various protections under the California Labor Code.

When the company finally changed his classification to employee in October 2022, despite no change in his job description or job duties (a tacit admission that Employers were improperly classifying Mr. Toshimitsu as an independent contractor), it continued to violate numerous provisions of the California Labor Code, including failing to pay commissions on sales made by Mr. Toshimitsu, among other items described below.

The “aggrieved employees” that Mr. Toshimitsu may seek penalties on behalf of are all current and former “Project Managers,” “Sales Representatives,” or persons who held similar job titles and/or performed similar job duties, misclassified as independent contractors and/or other exemptions who worked for any of the above-referenced entities within the State of California.

SUMMARY OF THE CASE

According to the State of California, Department of Industrial Relations, when a worker is misclassified, he or she is not subject to California minimum wage and overtime protection laws. Additionally, the worker has no workers’ compensation coverage if injured on the job, no right to family leave, no unemployment insurance, no legal right to organize or join a union, and no

protection against employer retaliation. The misclassification of workers creates an unfair playing field for responsible employers who honor their lawful obligations to their employees.

Going back many years, Employers have blatantly and intentionally misclassified Mr. Toshimitsu and many other project managers as independent contractors and/or exempt employees when they are plainly non-exempt, hourly employees under California law. Under California law, it is unlawful for an employer to: (1) willfully misclassify an individual as an independent contractor, see Cal. Lab. Code § 226.8(a)(1); and (2) charge an individual who has been willfully misclassified as an independent contractor a fee, or make any deductions from compensation, for any purpose, including for goods, materials, space rental, services, or the like. See Cal. Lab. Code § 226.8(a)(2). Employers systematically committed these serious types of violations for years with Mr. Toshimitsu and several of his former coworkers. In so misclassifying its employees, Employers have effectively foisted upon each employee tens of thousands of dollars' worth of charges annually that should have been borne by Employers.

Employers subjected Mr. Toshimitsu and others to various additional unlawful wage and hour practices, including but not limited to, as stated herein: (1) failing to pay Mr. Toshimitsu proper commission wages; (2) willfully misclassifying Mr. Toshimitsu and others as independent contractors; (3) failing to pay overtime pay and/or minimum wages; (4) failing to provide uninterrupted off-duty meal periods and/or required penalties; (5) failing to provide uninterrupted off-duty rest periods and/or required penalties; (6) failing to pay out accrued but unused vacation time; (7) failing to timely pay all wages due upon termination; (8) failing to timely pay wages during employment; (9) failing to maintain adequate records including but not limited to failing to furnish accurate wage statements; (10) failing to pay or reimburse work-related expenses; (11) violating California's PAGA statute; and (12) violating California's Unfair Business Practices statute.

1. Failure to Comply with Commission Agreement Requirements and Failure to Pay Earned Commission

Throughout the relevant time period, Employers have failed to maintain California compliant policies and procedures related to the claims asserted by Mr. Toshimitsu. This is readily apparent when evaluating Employers' commission agreements.

"Whenever an employer enters into a contract...with an employee...and the contemplated method of payment...involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid." Labor Code § 2751(a). Additionally, "[t]he employer shall give a signed copy" of a commission agreement "to every employee who is a party thereto and shall obtained a signed receipt for the contract from each employee." *Id.*, § 2751(b).

Here, Employers failed to provide the details of a commission agreement and failed to provide a signed copy of the agreement. However, it is clear from Employers' initial commission payments to Mr. Toshimitsu that Employers agreed to pay Mr. Toshimitsu 10% of the proceeds from the contracts he secured for Employers. Mr. Toshimitsu never signed any documents

agreeing to a reduction in this commission percentage, and Employers' attempt to reduce the commission amounts unilaterally is improper and ineffective.

Blatant Misclassification of Employees

Employers have blatantly misclassified Mr. Toshimitsu and many other project managers as independent contractors when they are plainly nonexempt hourly employees under California law.

Under California law, every employee is legally presumed to be a non-exempt, hourly employee. *Walling v. General Industries Co.*, 330 U.S. 545 (1947). To overcome this presumption, the employer bears the burden of proving that it properly classified the worker under one of the law's recognized exemptions. *Ramirez v. Yosemite Water Co.*, 20 Cal. 4th 785, 794-95 (1999) ("the assertion of an exemption from overtime laws is considered an affirmative defense, and therefore the employer bears the burden of proving the employee's exemption"); *Furry v. East Bay Publishing LLC*, 30 Cal. App. 5th 1072 (2018). Case after case in California cites this unyielding rule: statutes governing conditions of employment are to be construed broadly in favor of protecting employees. See, e.g., *Pineda v. Bank of America*, 50 Cal. 4th 1389, 1394 (2010); *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1103 (2007).

Employers systematically misclassified their employees as independent contractors resulting in serious and frequent wage and hour violations for years with Mr. Toshimitsu and many of his former coworkers. These violations result in *per se* direct and derivative liability. These are just some of the blatant and inexcusable violations of California wage and hour law.

2. Independent Contractor Misclassification

Section 226.8 of the Labor Code imposes significant penalties on employers who willfully misclassify employees as independent contractors, and also penalizes employers who charge fees or make deductions from compensation to an individual who has been willfully misclassified as an independent contractor. The common law test to determine whether a worker is an employee or independent contractor is imprecise and requires an analysis of several factors of the employer-worker relationship. They include:

1. Who has the right to control the worker's manner and means of performing his or his duties – an independent contractor has more control over the day-to-day details of his or his job than an employee;
2. The skill required in the worker's job – independent contractors often perform highly skilled jobs;
3. Whether the worker is engaged in a distinct business or occupation – if the worker is engaged in a distinct business or occupation, it is more likely the worker is an independent contractor;
4. Whether the work is done under supervision – the more an employer is directly supervising the worker, the more likely he or she is an employee;
5. Whether the worker can be discharged at will or for cause – allowing discharge at will often weighs in favor of an employer-employee relationship;

6. Who supplies the tools, instrumentalities and place of work – if the worker supplies these, he or she is more likely an independent contractor;
7. The length of time the services are to be performed – discrete jobs are generally performed by independent contractors;
8. The method of payment, whether by time or by the job – payment by time generally signals an employee relationship;
9. Whether the work is part of the regular business of the principal – if it is, the worker is more likely an employee;
10. Whether the parties subjectively believe they are creating an employer-employee relationship

See *S. G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 48 Cal.3d 341, 350-51 (1989).

In addition, the California Supreme Court in 2018 narrowed the circumstances where an “independent contractor” designation is appropriate by, “(1) placing the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the wage order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to establish each of the three factors embodied in the ABC test—namely (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and (B) that the worker performs work that is outside the usual course of the hiring entity's business; and (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903 (2018).

On the threshold question of the “right to control” prong of the ABC test, the employer had the right to control “the manner and means” of their work and regularly ***and consistently exercised that right*** in many ways. See 22 Cal. Code Regs. § 4304-1 (“[T]o determine whether one performs services for another as an employee, the most important factor is the right of the principal to control the manner and means of accomplishing a desired result. If the principal has the right to control the manner and means of accomplishing the desired result, whether or not that right is exercised, an employer-employee relationship exists.”); compare Cal. Lab. Code § 3353 (defined “independent contractor” as a person who renders service for a principal who has no right to “control . . . the means by which” work is accomplished). Moreover, “[w]here there is independent evidence that the principal has the right to control the manner and means of performing the service in question; it is not necessary to consider the [below] enumerated factors.”

Here, Employers legally and actually controls many of the aspects of Mr. Toshimitsu’s position, including providing training, providing support to carry out his job such as providing him with the “instrumentalities” needed to perform the job – i.e. computer hardware, software, and related equipment, and setting and enforcing various goals and other performance standards.

Proceeding to the “control” factors, nearly all of them point definitively to Mr. Toshimitsu and other project managers being deemed employees rather than independent contractors. 22 Cal. Code Regs. § 4304-1(b) (“The factors enumerated in [4304-1](a) above are indicia of the right to control”); see also Cal. Lab Code § 2750.5(c) (“A bona fide independent contractor status is further

evidenced by the presence of cumulative factors such as substantial investment other than personal services in the business, holding out to be in business for oneself, bargaining for a contract to complete a specific project for compensation by project rather than by time, control over the time and place the work is performed, supplying the tools or instrumentalities used in the work other than tools and instrumentalities normally and customarily provided by employees, hiring employees, performing work that is not ordinarily in the course of the principals work, performing work that requires a particular skill, holding a license pursuant to the Business and Professions Code, the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.”); *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522, 528 (2014) (provides list of key factors); *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations*, 48 Cal.3d 341 (1989) (same).

Many of the control factors are seen in Employers’ virtually identical treatment of project managers pre- and post- classification as independent contractors. Rather than meeting the test for different classifications, Employers’ classification systems seem borne out of convenience to the Employers only. This uniform practice has consistently deprived Mr. Toshimitsu, and other project managers working for Employers, of very important rights of California employees.

And as to the last two prongs of the “ABC” test, there is no question that Mr. Toshimitsu’s functions are **not** outside the normal business activities of Employers and that Mr. Toshimitsu is **not** engaged in any independent trade. Mr. Toshimitsu carries out the function to provide services and management of the primary business of Employers. This is an employee-employer relationship. Thus, Mr. Toshimitsu is confident that he can show that Employers intentionally and systematically misclassified its project managers as independent contractors.

According to Labor Code section 226.8, Employers are subject to a penalty up to **\$25,000.00** for each violation where they have willfully misclassified an individual as an independent contractor. This is in addition to any other penalties or fines permitted by law.

3. Failure to Pay Overtime

When an employer misclassifies an employee, the employer by definition does not offer or pay overtime to that employee. See IWC Wage Order #4, Section 1(A). As a result, the misclassified employee is entitled to recover overtime wages for all days in the last four years where the employee worked over 8 hours and for all weeks in the last four years in which the employee worked over 40 hours. Cal. Lab. Code §§510 and 1194. In addition to their liability for four years of overtime owed, Employers are also liable to Mr. Toshimitsu for four years of interest on the owed overtime (at the statutory rate of 10% per year), plus attorneys’ fees and costs. Cal. Lab. Code §1194; Cal. Lab. Code §98.1(c).

In the instant case, there is no dispute that Mr. Toshimitsu’s entire tenure with Employers is included in the 4-year period, as he was hired in October 2019, and his employment was terminated on July 28, 2023. In determining how many days Mr. Toshimitsu worked over 8 hours and how many weeks Mr. Toshimitsu worked more than 40 hours, Employers have no records to dispute Mr. Toshimitsu’s recollection.

4. Failure to Pay for Missed / Uninterrupted Meal Periods

When an employer misclassifies an employee, the employer by definition does not offer meal periods to its employees. See IWC Wage Order #4, Section 1(A); Cal. Lab. Code §226.7(e). When an employer fails to offer an uninterrupted meal period to its employee, the employer is required to pay the employee 1 hour of pay, at the employee's then-current rate-of-pay, as "premium pay." IWC Wage Order #4, Section 11(B); Cal. Lab. Code §226.7(c); *Esparza v. Safeway, Inc.*, 36 Cal. App. 5th 42, 52 (2019) (the additional hour owed by the employer is a "premium wage").

Moreover, when an employer has misclassified an employee, as Employers have done here, that employer by definition has failed to keep the hourly time cards and other records that California requires an employer to keep that show when an employee's meal period time "begins and ends." IWC Wage Order #4, Section 7(A)(3).

During the vast majority of his employment, Mr. Toshimitsu never completed a timecard, never punched a time clock, and never recorded nor kept track of when he clocked in or out for any meal periods, as required by California law. Despite having no records, Mr. Toshimitsu rarely had an uninterrupted meal period. When an employer fails to maintain accurate records (as Employers did here), the employer cannot complain about the employee's calculations of wages or premium pay owed to the employee. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1945). As The Supreme Court stated: "[W]here the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes a ... difficult problem arises. The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation...." *Id.* at 687; *Hernandez v. Mendoza*, 199 Cal. App. 3d at 727 (citing *Anderson v. Mt. Clemens Pottery* and quoting the exact text above); *Furry v. East Bay Publishing, LLC*, 30 Cal. App. 5th at 1079 (citing *Anderson v. Mt. Clemens Pottery* and quoting the exact text above).

As a result of being misclassified, and as a further result of Employers' failure to have proper time records showing Mr. Toshimitsu's actual meal period clock-out and clock-in times, Mr. Toshimitsu is entitled to meal period premium pay for each day of work during his employment with Employers.

5. Failure to Pay for Missed Rest Periods

When an employer misclassifies an employee, the employer by definition does not offer rest periods to its employees. See IWC Wage Order #4, Section 1(A); Cal. Lab. Code §226.7(e). In these instances, such as in this case, the employer is required to pay the employee 1 hour of pay, at the employee's then-current rate-of-pay, for each workday that the rest period is not provided. IWC Wage Order #4, Section 12(B); Cal. Lab. Code §226.7(c).

As a misclassified independent contractor, Mr. Toshimitsu never was offered or received a proper rest period premium during his employment. As a result of being misclassified and being denied his rest periods, Mr. Toshimitsu is entitled to rest period premium pay.

6. Failure to Pay Accrued Vacation Time

Employers' vacation policy permits employees to accrue vacation time during their employment at various rates, not subject to a limit. Here, Employers failed to track, record, calculate or pay Mr. Toshimitsu's vacation time. This violated Employers' own policy. As a result, Mr. Toshimitsu is entitled to receive the full amount of unpaid accrued vacation at his final rate of pay.

7. Unlawful Failure to Timely Pay Wages Owed Including those Due Upon Termination

Labor Code section 201 provides "if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202 provides "If an employee not having a written contract for a definite period quits his or his employment, his or his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting." Labor Code section 208 requires that all final wages be paid to an employee who is terminated at the place of discharge and to an employee who voluntarily resigns at the place where the employee has been working.

Employers have violated California Labor Code sections 201 and 202 by willfully failing to timely pay all compensation due and owing to Mr. Toshimitsu at the time employment was terminated because of, as noted herein, said unpaid overtime wages, regular wages, minimum wages, reporting time pay, one hour penalties for missed, interrupted, or untimely meal periods and rest periods, and unreimbursed work-related expenses, among others.

California Labor Code §§ 201 & 227.3 require an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. Cal. Labor Code § 202 requires an employer to pay all compensation due and owing to an employee who quits within 72 hours of that employee quitting, unless the employee provides at least 72 hours notice of quitting, in which case all compensation is due at the end of the employee's final day of work. Cal. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.

Employers' numerous failures to pay accurate and timely wages triggers liability and exposure for 203 and 226 penalties, as confirmed by the California Supreme Court in *Naranjo v. Spectrum Security Services, Inc.* 13 Cal.5th 93 (2022).

Pursuant to Labor Code 1199, "Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days,

or by both, who does any of the following: (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission. (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Employers willfully failed and refused to timely pay compensation and wages, including unpaid expenses and sums wrongfully withheld from compensation, to Mr. Toshimitsu. These unpaid amounts are outstanding. Employers willfully failed to pay all compensation due upon termination of employment as required under California Labor Code sections 201 and 202. Pursuant to sections 203 and 256 of the Labor Code, Mr. Toshimitsu and similarly situated individuals are now entitled to recover up to thirty (30) days of wages due to Employers’ willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. In addition, because Employers violated California Labor Code sections 201, 202, and 203, Employers are liable for civil penalties pursuant to California Labor Code section 2698 *et seq.*

8. Failure to Timely Pay Wages Due During Employment

Labor Code section 204(a) provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination, are due and payable between the 16th and 26th day of the month during which the labor was performed. Labor Code §204(a) further provides 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, are due and payable between the 1st and 10th day of the following month. Labor Code §204(c) provides that it is a violation of Labor Code §204(a) when the payment of wages for weekly, biweekly, or semimonthly payroll are paid “more than seven calendar days following the close of the payroll period.”

As discussed above, because Employers misclassified and treated Mr. Toshimitsu as an independent contractor for nearly his entire employment, and Employers failed to compensate Mr. Toshimitsu for the overtime he was owed and for the meal and rest period premium pay that he was owed. Given that Employers failed to pay these wages owed at all to Mr. Toshimitsu, then it necessarily follows that Employers also failed to pay these wages on time to Mr. Toshimitsu, as required by Labor Code §204. The total amount of wages unpaid and still owed to Mr. Toshimitsu (for overtime and meal and rest period premium pay) – and, thus, the amount of wages not timely paid to Mr. Toshimitsu in violation of Labor Code section 204 is still owed along with a 25% penalty of the amounts withheld.

9. Failure to Provide Accurate Wage Statements

When an employer misclassifies an employee, by definition the employer fails to provide accurate wage statements to the misclassified employee. See IWC Wage Order #4, Section 1(A); Cal. Lab. Code §226(a). This is so because the pay stubs for do not show “the total hours worked by the employee,” which is required by law for an employee who should have been classified as non-exempt. Cal. Lab. Code §226(a). Moreover, as demonstrated above, a misclassified employee should have been paid any owed overtime and meal/rest period premium pay each pay period due

to the misclassification. But, that legally-owed pay was not paid to the misclassified employee, which means by definition that the paystubs Mr. Toshimitsu was given – for his paychecks that were missing this overtime pay and meal/rest period premium pay – were inaccurate.

10. Damages Owed to Mr. Toshimitsu for Failing to Reimburse Business Expenses

Labor Code §2802(a) provides, “An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his obedience to the directions of the employer...” Cal. Lab. Code §2802(a) (emphasis supplied); *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 951 (2008). As the California Supreme Court stated, “California has a strong public policy that favors the indemnification of employees by their employers for claims and liabilities resulting from the employees’ acts within the course and scope of their employment.” *Edwards*, 44 Cal. 4th at 952.¹ In order to ensure that this broad right to employee indemnification is meaningful and enforceable, Labor Code §2802(c) defines an employee’s “necessary expenditures or losses” as “all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee in enforcing the rights granted by this section [Labor Code §2802(a)].” Cal. Lab. Code §2802(c) (emphasis added).

Under California law, there is no question that an employee’s personal cell phone and data plan are “necessary expenditures or losses” under Labor Code §2802(a) when the employer requires the employee to use his or his personal cellphone for work. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1143-44 (2014). As the Court stated in *Cochran*, “To show liability under section 2802, an employee need only show that he or she was required to use a personal cellphone to make work-related calls, and he or she was not reimbursed.” *Id.* at 1145. If the employee makes that showing, then the employer is required to reimburse the employee for the reasonable expense of the mandatory use of a personal cell phone.” *Id.* at 1144.

Similarly, other personal items used by an employee for work purposes are entitled to the same benefit. The duty to make reimbursement to the employee under Labor Code §2802(a) arises when “the employer knows, or has reason to know,” that the employee has incurred the expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009).

11. Failure to Keep Accurate and Complete Payroll Records

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.

¹ So strong and fundamental is the public policy behind employee indemnification in Labor Code §2802(a) that a separate statute, Labor Code Section §2804, voids any agreement between an employer and employee that attempts to waive the employee’s right to indemnity. Cal. Lab. Code §2804; *Edwards*, 44 Cal. 4th at 951.

During the relevant time period, Employers failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid, to Mr. Toshimitsu and other aggrieved employees.

12. Failure to Provide Personnel File and Payroll Records

California Labor Code sections 1198.5 requires an employer to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. The employer is required to make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request.

Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the employer receives the request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request. Except as provided in paragraph (2) of subdivision (c), the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer, if the requester is the employee.

If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employee.

In addition, an employer who receives a written or oral request to inspect or receive a copy of records pursuant to Labor Code section 226, subdivision (b), pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

During the relevant time period, Employers failed to comply with reasonable requests for records from Mr. Toshimitsu, and potentially other aggrieved employees, to inspect and receive copies of their employment records.

13. Failure to Provide Written Notice of Sick Leave Available – Labor Code § 246

California Labor Code section 246(i) states that an “employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement as described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.”

Here, Employers knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Mr. Toshimitsu in accordance with Labor Code sections 226(a) and 246(i), and to keep accurate records as required by § 1174(d). The wage statements provided to Mr. Toshimitsu and the records maintained by Employers have not accurately reflected the amounts of available paid sick leave, vacation, or paid time off. Such failures caused injury to Mr. Toshimitsu, by, among other things, depriving him of the rights afforded by the 2022 COVID-19 Supplemental Paid Sick Leave law, and by impeding them from knowing the accurate amounts of available paid sick leave, vacation, or paid time off.

Employers’ failure to provide this information, among others, constitutes a separate violation of the California Labor Code.

14. PAGA Violations – Labor Code § 2699, et seq.

PAGA specifically provides for a private right of action to recover civil penalties for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a).

Here, during the relevant time period, Employers violated the PAGA with respect to the employment of Mr. Toshimitsu and other aggrieved employees.

CONCLUSION

Employers have violated or caused to be violated a number of California wage and hour laws. Therefore, on behalf of himself, and for all aggrieved employees, Mr. Toshimitsu 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 an amount sufficient to recover underpaid wages pursuant to Labor Code section 558.

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If you have any questions or require additional information, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'K. Worrell', with a stylized flourish at the end.

Kyle C. Worrell, Esq.
WORRELL LAW FIRM, APC
Attorneys for Kyle Toshimitsu

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

TROY MUSULMAN, as agent for service of process for Troy Roofing, Inc.
RE: Troy Roofing, Inc.
1066 East Edna Place
Covina, CA 91724

TROY MUSULMAN, an individual, acting on behalf of Troy Roofing, Inc., pursuant to
California Labor Code 558.1
RE: Troy Roofing, Inc.
1066 East Edna Place
Covina, CA 91724

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[PROPOSED] ORDER

The Court, having reviewed the above stipulation of the Parties, and good cause appearing, orders that the Parties’ request for leave to file a First Amended Complaint (“FAC”) is GRANTED as follows:

Plaintiff’s FAC attached as Exhibit 1 to the Stipulation is deemed filed as of the date of this order;

Defendants have thirty (30) days from the date of the Court’s approval to answer or otherwise respond to the FAC;

Defendants have not waived any right to file a motion or to challenge the FAC or to otherwise seek appropriate relief from the Court.

IT IS SO ORDERED.

DATED: _____

The Honorable Upinder S. Kalra
Judge of the Superior Cour

PROOF OF SERVICE

CALIFORNIA SUPERIOR COURT, COUNTY OF ORANGE

CASE NAME: *TOSHIMITSU v. TROY ROOFING, INC. ET AL.*

CASE NO.: 23STCV26556

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is: 1717 Old Tustin Avenue, Unit E, Santa Ana, CA 92705.

On **March 5, 2024**, I caused the following document(s) described as:

JOINT STIPULATION AND [PROPOSED] ORDER PERMITTING PLAINTIFF TO FILE A FIRST AMENDED COMPLAINT

to be served on all interested parties in this action as follows:

ENGLES LAW APC

Christopher M. Engles, Esq. (SBN 304855)

Sean B. Janzen, Esq. (SBN 293246)

Sarah K. O'Brien, Esq. (SBN 299408)

555 Anton Blvd., Suite 150

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Attorneys for Defendants:

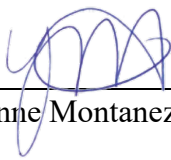
TROY ROOFING, INC., a California corporation, TROY MUSULMAN. an individual.

[XX] BY E-MAIL OR ELECTRONIC TRANSMISSION

Based on a Court order or on an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) described above to be sent from e-mail address staff@worrell-law.com to the persons at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[XX] STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **March 5, 2024**, at Santa Ana, California.



Yvonne Montanez