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SERGIO OLIVARES GARCIA,
and all putative class members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SERGIO OLIVARES GARCIA, an individual,)
on behalf of himself and all others similarly)
situated,)

Plaintiff,)

vs.)

QUIKRETE CALIFORNIA, LLC, a California)
limited liability company, and DOES 1-50,)
inclusive,)

Defendant.)

Lead Case No.: 23STCV30014

Consolidated for all purposes with Case No.:
24STCV03376

[Assigned for all purposes to the Hon.
William F. Highberger – SSC Dept. 10]

**FIRST AMENDED AND
CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Comply with California
Law Concerning Payment of Lawful
Wage For All Hours Worked,
Including Overtime Hours Worked**
- 2. Failure to Pay Minimum Wage**
- 3. Failure to Pay Wages Due Upon
Termination**
- 4. Failure to Provide Timely Meal
Breaks**
- 5. Failure to Provide Rest Breaks**
- 6. Failure to Reimburse for Required
Business Expenses**
- 7. Failure to Provide Accurate Itemized
Wage Statements & Violation of
Record Keeping Requirements**
- 8. Unlawful Business Practices
Bus & Prof. Code §17200**
- 9. Private Attorneys General Act
Penalties (Lab. Code §2699)**

Class Action Filed: December 7, 2023
PAGA Action Filed: February 8, 2024

FILED
Superior Court of California
County of Los Angeles
08/14/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Sanchez Deputy

1 Plaintiff SERGIO OLIVARES GARCIA (“Plaintiff”), individually, and on behalf of all
2 others similarly situated, all aggrieved employees, and as Private Attorney General for the State of
3 California, alleges as follows:

4 NATURE OF THE ACTION

5 1. This is an employment class and representative action on behalf of over 100 hourly, non-
6 exempt employees against their employer for violations of numerous wage and hour laws. Plaintiff
7 brings this employment class action complaint on behalf of himself, and all others similarly
8 situated, all aggrieved employees, and as a Private Attorney General for the State of California,
9 against QUIKRETE CALIFORNIA, LLC, and DOES 1-50, inclusive, (hereafter collectively
10 “Defendant” or “Defendants”).

11 2. Defendant QUIKRETE CALIFORNIA, LLC, is a manufacturer of packaged concrete in
12 California. Plaintiff SERGIO OLIVARES GARCIA worked as an employee for Defendant, as an
13 hourly, non-exempt employee until October 2023. Plaintiff and the proposed class earn at or near
14 minimum wage.

15 3. As described further below, Defendant has violated the California Labor Code by (1)
16 failing to comply with California Law concerning payment of lawful wage for all hours worked,
17 including overtime hours worked (§218, 510, 558, 1194, 1197, 1198, 1199); (2) failing to pay
18 minimum wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199); (3) failing to
19 pay wages due upon termination (§201, 202, 203, 256); (4) failing to provide meal breaks (§226
20 (a), 226.7, 512, 558, 1198); (5) failing to provide rest breaks (§226, 226.7, 512, 558, 1198); (6)
21 failing to reimburse for required business expenses (§1198, 2802); (7) failing to provide accurate
22 itemized wage statements and violating record keeping requirements (§226, 1174); (8) unlawful
23 and unfair business practices (Bus. & Prof. Code §17200, et. seq.); and (9) penalties under the
24 Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq. for the above violations, as
25 well as additional violations as alleged in Plaintiff’s ninth cause of action.

26 4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)
27 §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period
28 premium pay, statutory and waiting time penalties, injunctive and other equitable relief, interest,

1 and reasonable attorneys' fees and costs. Pursuant to the class and PAGA representative action
2 procedures provided for under California law, Plaintiff, on behalf of himself and proposed Class
3 Members (also referred to as "Class"), also seeks injunctive relief and restitution of all benefits
4 Defendant has received from their unlawful actions as alleged herein. Plaintiff has also provided
5 notice of these claims pursuant to §2698 et. seq., to the Labor and Workforce and Development
6 Agency ("LWDA") and now brings this First Amended Complaint, including claims for civil
7 penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 et seq. Attorney
8 General Act ("PAGA"), Labor Code §2698 *et seq.*

9 5. The "Class Period" is designated as December 7, 2019, through the date of the final
10 disposition of this action. From the start of the Class Period through the present, Defendant has
11 had a policy and/or practice of among other violations: late and/or interrupted meal breaks,
12 untimely and/or interrupted rest breaks, issuing inaccurate wage statements, and ignoring and
13 violating California wage and hour laws, in their business as more fully set forth below.

14 6. The "PAGA Period" is defined herein commences on November 30, 2022, through the
15 date of the final disposition of this action.

16 7. The "PAGA Aggrieved Employees" are defined herein as: "All current and former
17 hourly, non-exempt employees of Defendants in California, at any time during the PAGA Period."
18 Plaintiff reserves the right to amend or modify the definition of aggrieved employees with respect
19 to the issues or in any other way.

20 8. Defendant has treated all persons employed in California in such a way as to violate
21 California's laws governing conditions of employment and payment of wages owed. Plaintiff
22 asserts that Defendant has knowingly and with conscious disregard of the law refused to pay the
23 Class Members and aggrieved employees all wages owed, including overtime wages and meal and
24 rest break penalty wages. Defendant has violated numerous Labor Code provisions, as set forth
25 herein. Class Members are owed their back pay, plus interest and/or premiums and penalties under
26 Business and Professions Code section 17203 to compensate Class Members and Class Members
27 for the delay in receiving wages due.
28

9. Defendant, by and through their actions, has engaged in unfair competition, requiring restitution to persons affected and disgorgement of profits so obtained.

THE PARTIES

10. Plaintiff SERGIO OLIVARES GARCIA is an individual who resides in California and worked for Defendant.

11. Defendant QUIKRETE CALIFORNIA, LLC, is a California limited liability company doing business in California with the capacity to sue and to be sued and doing business, in Los Angeles County, State of California. Defendant exercised control over the wages, hours, and/or working conditions of Plaintiff, members of the proposed class, and aggrieved employees throughout the liability period.

12. Defendant Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendant is responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff, Class Members, and aggrieved employees herein alleged were proximately caused by such Doe Defendants.

13. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

14. Venue is proper in this judicial district because Defendant conducts business in this County and Defendant has legal obligations to Plaintiff and many of the Class Members and aggrieved employees in this case that arose in this county.

1 15. The monetary damages, restitution, and statutory penalties sought by Plaintiff exceed
2 the minimal jurisdictional limits of the Superior Court and will be established according to proof
3 at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in
4 controversy, including claims for monetary damages, penalties, and attorney's fees, is more than
5 twenty-five thousand dollars (\$25,000) and less than five million dollars (\$5,000,000).

6 16. The California Superior Court has jurisdiction in this matter because Plaintiff is a
7 resident of California and Defendant is incorporated in and/or qualified to do business in California
8 and regularly conduct business in California. Further, there is no federal question at issue as the
9 claims herein are based solely on California law.

10 **CLASS ACTION ALLEGATIONS**

11 17. During the Class and PAGA Periods, Defendant committed various violations of the
12 California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in more
13 detail. Defendant enforces multiple policies that violate state law which are intended to increase its
14 own profits to the detriment of its employees.

15 18. Defendant sometimes required employees to work off the clock. For example,
16 Defendant required employees to wait in line to clock in and out at time machines. Although there
17 was more than one time machine, only one was consistently operational resulting in long lines to
18 clock in. Additionally, employees were required to arrive prior to their shifts to perform an
19 equipment check. For example, Plaintiff would consistently arrive 7-8 minutes early to perform an
20 equipment check on the forklift he was to operate for that shift. Defendant also failed to pay all
21 wages earned twice each calendar month due to these practices.

22 19. Defendant failed to pay minimum wage due to their practices.

23 20. Defendant failed to pay all compensation due at the time employment terminated. Upon
24 termination, Defendant told Plaintiff that this final check would be mailed to him or provided by
25 direct deposit, despite the fact that Plaintiff was terminated in person.

26 21. Defendant failed to maintain a policy and practice that provides its employees with
27 uninterrupted meal breaks as required by California law.
28

1 22. Defendant failed to maintain a policy and practice that provides its employees with off-
2 duty rest periods.

3 23. Defendant also failed reimburse employees for business expenses. Plaintiff, class
4 members, and aggrieved employees were required to use their cell phones for work related
5 communications, including taking photos of their worksites to send to upper management.

6 24. Defendant further failed to provide timely, accurate, itemized wage statements to
7 employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

8 25. Based upon the above allegations, Defendant engaged in unfair competition.

9 26. Plaintiff brings this action on behalf of himself, and all other persons similarly situated,
10 to recover from Defendant for failure to comply with California wage and hour laws, and for claims
11 under Business and Professions Code § 17200.

12 27. This action has been brought and may properly be maintained as a class action
13 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
14 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of 100
15 employees who have been similarly injured by Defendant's unlawful employment policies and
16 practices.

17 28. Plaintiff brings this action on their behalf and as a class action under Cal. Code of
18 Civil Procedure §382 on behalf of the following defined groups:

19 29. Proposed Class: "All persons who are employed or have been employed by Defendant
20 in the State of California as hourly, non-exempt workers during the period of the relevant statute
21 of limitations."

22 30. Proposed Sub-classes:

- 23 A. All persons who are employed or have been employed by Defendant in the State
24 of California as hourly, non-exempt workers during the period of the relevant
25 statute of limitations, who worked one or more shift in excess of five (5) hours.
26 B. All persons who are employed or have been employed by Defendant in the State
27 of California as hourly, non-exempt workers during the period of the relevant
28 statute of limitations, who worked one or more shifts in excess of six (6) hours.

1 C. All persons who are employed or have been employed by Defendant in the State
2 of California as hourly, non-exempt workers during the period of the relevant
3 statute of limitations, who worked one or more shifts in excess of eight (8)
4 hours.

5 D. All persons who are employed or have been employed by Defendant in the State
6 of California as hourly, non-exempt workers during the period of the relevant
7 statute of limitations, who worked one or more shifts in excess of three and one-
8 half hours (3 ½), but less than or equal to six (6) hours.

9 E. All persons who are employed or have been employed by Defendant in the State
10 of California as hourly, non-exempt workers during the period of the relevant
11 statute of limitations, who worked one or more shifts in excess of six (6) hours,
12 but less than or equal to ten (10) hours.

13 F. All persons who are employed or have been employed by Defendant in the State
14 of California as hourly, non-exempt workers during the period of the relevant
15 statute of limitations, who separated their employment from Defendant.

16 G. All persons who are employed or have been employed by Defendant in the State
17 of California as hourly, non-exempt workers during the period of the relevant
18 statute of limitations, who received pay for one or more pay periods.

19 31. This action is brought, and may properly be maintained, as a class action under CCP
20 §382 and/or a representative action under Business & Professions Code §§17200 et seq. and Labor
21 Code §2699 because there is a well-defined community of interest in the litigation, and the
22 proposed Class and Subclasses (collectively “Class”) are easily ascertainable.

23 32. Numerosity: The Proposed Class is so numerous that joinder of all members is
24 impractical. Plaintiff is informed and believes, and on that basis alleges, that during the relevant
25 time period, Defendant employed over 100 putative Class Members who are geographically
26 dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only
27 available method for the fair and efficient adjudication of this controversy. Membership in the
28

Proposed Class can be easily ascertained by an examination and analysis of employee and payroll records, among other records within Defendant's possession and control.

33. Typicality: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff, like others similarly situated, was subjected to Defendant's common, unlawful policies, practices, and procedures described above. The Plaintiff's positions at the company was typical of those of other Class Members. Plaintiff's claims are typical of the claims of each Class Member because each have sustained damages arising out of and caused by Defendant's common course of conduct, as alleged herein. As such, Plaintiff has the same interests in this matter as all members of the Class.

34. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in complex class actions and California labor and employment litigation.

35. Commonality: Common questions of law and fact exist, including but not limited to the following:

- i. Whether Defendant violated wage and hour laws by failing to pay overtime wages;
- ii. Whether Defendant violated wage and hour laws by failing to pay minimum wage;
- iii. Whether Defendant violated wage and hour laws by failing to pay wages due upon termination;
- iv. Whether Defendant violated wage and hour laws by failing to timely meal breaks;
- v. Whether Defendant's policy and practice concerning meal breaks was unlawful;
- vi. Whether Defendant violated wage and hour laws by failing to provide rest breaks;
- vii. Whether Defendant's policy and practice concerning rest breaks was unlawful;

- 1 viii. Whether Defendant violated wage and hour laws by failing to reimburse for
2 required business expenses;
- 3 ix. Whether Defendant unlawfully failed to keep and furnish Class Members
4 with accurate, itemized records of hours worked, in violation of Labor Code
5 §§ 226 and 1174;
- 6 x. The proper measure of damages sustained and the proper measure of
7 restitution recoverable by Plaintiff, the Class Members, and Subclass
8 Members;
- 9 xi. Whether the Class Members are entitled to injunctive relief to enjoin any
10 further violations of wage and labor laws;
- 11 xii. Whether Defendant, and each of them, are/were participants in the alleged
12 unlawful and/or tortious conduct;
- 13 xiii. Whether Defendant's conduct was willful and reckless;
- 14 xiv. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff
15 Class and the appropriate amount of reimbursement, restitution, damages, or
16 other compensation; and
- 17 xv. What is the extent of liability of each Defendant, including DOE defendants,
18 to each Class and Subclass member?

19 36. Superiority: A class action is superior to other available methods of the fair and
20 efficient adjudication of the controversy, particularly in the context of wage and hour litigation
21 where the damage suffered by individual plaintiffs, while not inconsequential, makes individual
22 actions impracticable given the expenses and burdens associated with seeking individual relief.
23 Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity
24 and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning
25 employees who rely on their wages and requiring that each individual take time away from work
26 to prosecute individual actions would be inequitable and result in undue hardship for the individual
27 Class members and their families. Public policy favors efficient resolution of their claims and
28

uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

37. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendant's corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

38. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules of Court, that the absent Class and Subclass Members be notified by the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The names and address of the Class and Subclass Members are available from Defendant.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

39. In addition to the violations alleged above, which are expressly incorporated herein, Plaintiff, on behalf of himself, aggrieved employees, and the State of California as a Private Attorneys General, alleges the additional representative action allegations brought in connection with his Ninth Cause of Action for PAGA penalties.

40. Potable Drinking Water. Defendant failed to maintain a policy and practice that provides its employees with potable water as required by California law. California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of "potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge." 8 CCR § 3457(c) further requires the provision of potable drinking water and single-use cups. Plaintiff and aggrieved employees were not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the large number of employees working throughout the duration of the shift.

1 41. Pursuant to §2441, “Any violation of this section is punishable for each offense by a
2 fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by
3 imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal.
4 Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation
5 standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for
6 each violation.”

7 42. Legally Compliant Bathrooms. Rest breaks did not comply with state laws as required
8 by Labor Code §226.7 because workers had to deal with filthy bathroom conditions due to
9 Defendant’s failure to maintain clean bathrooms. Bathrooms were often dirty and lacked toilet
10 paper and seat covers, with overflowing trash bins and cockroaches.

11 43. California Labor Code §2350 requires employers to provide clean restroom facilities.
12 Defendant violated §2350 by failing to provide and maintain sanitary bathrooms for employees.

13 44. Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times,
14 operational, maintained in a clean and sanitary condition, and kept in good repair. Written records
15 of service and maintenance shall be maintained and retained for two years.” Labor Code §6712
16 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair
17 at all times, including written records of that service and maintenance.” Moreover, “any employer
18 who fails to provide the facilities required by the field sanitation standard shall be assessed a civil
19 penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code
20 §6712. Further, the public policy of the State of California as codified, expressed and mandated in
21 Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps
22 to provide a safe and secure workplace. Unfortunately, bathrooms in Defendant’s workplaces were
23 filthy, unsanitary, and non-compliant with minimum standards. The toilets were often leaky and
24 the floor unsafely wet with puddles.

25 45. Safe Working Conditions. Defendant’s workplaces would get unsafely hot due to
26 Defendant’s lack of adequate climate control in the facilities in violation of Labor Code §1198 and
27 the wage order, which requires:
28

1 A. The temperature maintained in each work area shall provide reasonable comfort
2 consistent with industry-wide standards for the nature of the process and the
3 work performed.

4 B. If excessive heat or humidity is created by the work process, the employer shall
5 take all feasible means to reduce such excessive heat or humidity to a degree
6 providing reasonable comfort.

7 46. Plaintiff explains that it was hot like an oven working for Defendant because
8 inadequate precautions were implemented in the cement mixing process resulting in employees
9 frequently getting burned and exposed to high heat. The heat in the facility was so extreme that it
10 damaged Plaintiff's cell phone.

11 47. Safe and Healthful Place of Employment. Defendant failed to maintain a policy and
12 practice that provides its employees with adequate restroom facilities as required by California
13 law. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a
14 place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401
15 provides that "every employer shall furnish and use safety devices and safeguards, and shall adopt
16 and use practices, means, methods, operations, and processes which are reasonably adequate to
17 render such employment and place of employment safe and healthful. Pursuant to Cal. Labor Code
18 §6402, no employer shall require, or permit any employee to go or be in any employment or place
19 of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer
20 shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render
21 the employment and place of employment safe, or to adopt and use methods and processes
22 reasonably adequate to render the employment and place of employment safe, or to do every other
23 thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code §
24 6404 provides that no employer shall occupy or maintain any place of employment that is not safe
25 and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall
26 comply with occupational safety and health standards, with Section 25910 of the Health and Safety
27 Code, and with all rules, regulations, and orders pursuant to this division which are applicable to
28 his own actions and conduct.

1 48. Defendant created and maintained an unsafe work environment in various ways.
2 Defendant did not require employees to have forklift licenses to operate forklifts, creating a safety
3 hazard. Forklifts would also sink when it rained making operating the forklifts dangerous. Plaintiff
4 also describes the assembly line as having pallets shifting with pieces coming out creating a hazard,
5 as well as a poor foundation resulting in vehicles sinking and requiring tow trucks. Bathrooms and
6 toilets were consistently leaking resulting in puddles and slipping hazards. The kitchen area was
7 also sometimes flooded, and rats and cockroaches were often found in the kitchen. Dirt and dust
8 would be prevalent impacting the air quality. Defendant employed their employees under unsafe
9 conditions violative of Cal-OSHA regulations and the Health and Safety Code. As a result of these
10 practices, Defendant violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for
11 failure to provide a safe and healthful environment for employees, as outlined above. Defendant is
12 liable for civil penalties pursuant to Cal. Labor Code §2699 et seq.

13 49. Suitable Seating. Labor Code section 1198 states, in pertinent part, “The employment
14 of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

15 50. The pertinent Wage Order provides that:

16 A. All working employees shall be provided with suitable seats when the nature of
17 the work reasonably permits the use of seats.

18 B. When employees are not engaged in the active duties of their employment and
19 the nature of the work requires standing, an adequate number of suitable seats
20 shall be placed in reasonable proximity to the work area and employees shall
21 be permitted to use such seats when it does not interfere with the performance
22 of their duties.

23 51. At all relevant times, Defendant failed to provide Plaintiff and aggrieved employees
24 with suitable seating during their employment as required by the applicable Wage Order. Plaintiff
25 and other aggrieved employees were not provided with seating during shifts in which they worked
26 at positions which would reasonably permit the use of seating. Accordingly, Plaintiff, on behalf of
27 himself and aggrieved employees, will pursue civil penalties under Labor Code §2698 et seq., and
28 all available remedies to the extent allowed by law for the alleged violations.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO COMPLY WITH CALIFORNIA LAW CONCERNING PAYMENT OF**
3 **LAWFUL WAGE FOR ALL HOURS WORKED INCLUDING OVERTIME HOURS**
4 **WORKED**

5 Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, Wage Orders

6 (Plaintiff Against All Defendants)

7 52. Plaintiff incorporates by reference in this cause of action each allegation of the
8 preceding paragraphs as though fully set forth herein.

9 53. Defendant's conduct described in this complaint violates the provisions of Labor Code
10 §§ 218, 510, 558, 1194, 1197, 1198, 1199, Wage Orders.

11 54. Section 2(G) of the pertinent Wage Order defines "hours worked" as "the time during
12 which an employee is subject to the control of an employer, and includes all the time the employee
13 is suffered or permitted to work, whether or not required to do so." When employees like Plaintiff
14 and his coworkers earning at or near minimum wage do not receive payment for all hours worked
15 as a result of unlawful employment practices, including waiting in line to clock in and out and
16 required off the clock tasks, the result is that they are earning less than the statutory minimum
17 wages for all hours worked. Defendant has been engaged in many unlawful employment practices
18 which resulted in underpayment for hours worked each pay period, including overtime hours
19 worked, as more fully set forth below. Defendant has also failed to pay the required minimum
20 wage for all hours worked and has failed to pay all wages owed twice per month.

21 55. Off-the-Clock Hours Worked. Plaintiff and Class Members frequently worked off the
22 clock and were routinely subjected to periods wherein they were under the Defendant's control
23 but not compensated for their time. Plaintiff and Class Members were required to perform several
24 required duties off the clock. Employees were required to wait in line to clock in and out at time
25 machines. Although there was more than one time machine, only one was consistently operational
26 resulting in long lines to clock in. Additionally, employees were required to arrive prior to their
27 shifts to perform an equipment check. For example, Plaintiff would consistently arrive 7-8 minutes
28 early to perform an equipment check on the forklift he was to operate for that shift. Defendant has

1 violated Labor Code §§510 1194, 1198, 1199 and the Wage Order. Defendant is liable for civil
2 penalties pursuant to Labor Code §§558.

3 56. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
4 Plaintiff and employee all wages earned twice during each calendar month pursuant to Labor Code
5 §204(a). Defendant failed to pay all wages earned to employees as a result of the unlawful
6 employment policies and practices discussed herein. As a result of these practices, Employees
7 were underpaid for hours worked, including penalty wages, and this underpayment resulted in a
8 failure to pay all wages owed twice per month.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGE**

11 Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199

12 (Plaintiff Against All Defendants)

13 57. Plaintiff incorporates by reference in this cause of action each allegation of the
14 preceding paragraphs as though fully set forth herein.

15 58. Defendant's conduct described in this complaint violates the provisions of Labor Code
16 §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199.

17 59. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer
18 to suffer or permit a California employee to work without paying wages at the proper minimum
19 wage for all time worked as required by the applicable IWC Wage Order.

20 60. Defendant failed to pay Plaintiff and Class Members for all hours worked as a result of
21 Defendant's practices described above. Based on Defendant's unlawful conduct described above,
22 and because Plaintiff and the Class Members were paid at or near minimum wage, employer's
23 failure to pay for all hours worked, including overtime, resulted in a payment of less than the
24 minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the
25 Wage Order.

1 less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee
2 to work during any meal... period mandated by an applicable order of the Industrial Welfare
3 Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee
4 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
5 duty’ meal period and counted as time worked.”

6 68. In this case, Plaintiff and his coworkers frequently took late or short meal periods, and
7 some were missed completely. Plaintiff sometimes was required to take his lunch after his 6th hour
8 of work. He also had his meal breaks interrupted and cut short when required to return to the
9 assembly line.

10 69. The Wage Orders require employers to authorize and permit employees to take an
11 uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code
12 §1198, “the employment of any employee... under conditions of labor prohibited by the order is
13 unlawful.” Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
14 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
15 §§226.7 and 512. Defendant never paid penalty pay to Plaintiff or Class Members for
16 noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay statements were
17 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor
18 Code §226(a).

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REST BREAKS**

21 Cal. Labor Code §§ 226, 226.7, 512, 558, 1198

22 **(Plaintiff Against All Defendants)**

23 70. Plaintiff incorporates by reference in this cause of action each allegation of the
24 preceding paragraphs as though fully set forth herein.

25 71. Defendant’s conduct described in this complaint violates the provisions of Labor Code
26 §§ 226, 226.7, 512, 558, 1198.

27 72. Defendant has failed to maintain a policy and practice that provides or permits its
28 employees to take off-duty rest periods as required by California law. Employees are entitled to at

1 least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code
2 §226.7, §512 and the Wage Order.

3 73. Plaintiff explains that he and his coworkers would sometimes experience late or
4 interrupted rest periods. During night shifts, Plaintiff missed a rest period 3-4 times per week.

5 74. Defendant failed to pay Plaintiff and similarly situated employees all premium
6 compensation (one hour of pay at the employee's regular rate of pay for missed, untimely rest,
7 interrupted, or noncompliant rest periods) mandated by Labor Code §226.7 (b). As a derivative
8 claim, Plaintiff alleges that pay statements were inaccurate, failing to include required rest period
9 penalties, thus failing the requirements of Labor Code §226(a) and §1198.

10 75. Defendant failed to pay Plaintiff and similarly situated employees the premium
11 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest
12 periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period
13 violations occurred daily, however no rest period penalty pay is listed on any paystubs. Pursuant
14 to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited
15 by the order is unlawful." Accordingly, because Defendant violated Wage Order provisions
16 requiring rest breaks, Defendant violated §1198. As a result of these violations, As a derivative
17 claim, Plaintiff alleges that his pay statements were inaccurate, failing to include required rest
18 period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability
19 under Cal. Labor Code §§ 558.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES**

22 Cal. Labor Code §§ 1198, 2802

23 (Plaintiff Against All Defendants)

24 76. Plaintiff incorporates by reference in this cause of action each allegation of the
25 preceding paragraphs as though fully set forth herein.

26 77. Defendant's conduct described in this complaint violates the provisions of Labor Code
27 §§ 1198, 2802.
28

1 78. Labor Code §2802 requires employers to indemnify employees for necessary
2 expenditures or losses incurred by employees in direct consequence of the discharge of duties.

3 79. Plaintiff and Class Members are required to use their personal cell phones for work
4 related communications, including taking photos of their worksites to send to upper management.
5 Plaintiff explains that he was required to take and transmit these photos every day and he also
6 observed his coworkers complying with the same requirements. Employees also were required to
7 purchase steel-toed boots. Employees were not compensated for any of these expenses.

8 **SEVENTH CAUSE OF ACTION**

9 **PAYSTUB AND RECORD KEEPING VIOLATIONS**

10 Cal. Labor Code §§ 226, 1174

11 (Plaintiff Against All Defendants)

12 80. Plaintiff incorporates by reference in this cause of action each allegation of the
13 preceding paragraphs as though fully set forth herein.

14 81. Defendant's conduct described in this complaint violates the provisions of Labor Code
15 §§ 226, 1174.

16 82. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
17 wage statements to Plaintiff and the Class Members, as well as maintain accurate records, in
18 accordance with Labor Code §§ 226 and 1174. The statements provided to Plaintiff and Class
19 Members have not accurately reflected actual gross wages earned, the correct overtime hourly rate,
20 and total hours worked. They also failed to state meal and rest period penalty payments, and
21 reimbursements for shoes and the regular use of employee phones. Such failures caused injury to
22 Plaintiff and others, by, among other things, impeding them from knowing the total hours worked
23 and the amount of wages to which they are and were entitled.

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**

3 California Business and Professions Code section 17200, et seq.

4 **(Plaintiff Against All Defendants)**

5 83. Plaintiff incorporates by reference in this cause of action each allegation of the
6 preceding paragraphs as though fully set forth herein.

7 84. Defendant knowingly committed, and upon information and belief continue to commit,
8 ongoing unlawful business practices within the meaning of the UCL, including, but not limited to
9 unlawful practices as described in the causes of action articulated above, and hereby incorporated
10 herein.

11 85. Plaintiff lost money and property as a result of Defendant's unlawful business practices
12 described above.

13 86. Pursuant to the UCL, Plaintiff and all Class Members are entitled to restitution of
14 money or property acquired by Defendant by means of such unlawful business practices, in
15 amounts not yet known, but to be ascertained at trial.

16 87. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive relief
17 against Defendant's ongoing unlawful business practices. If an injunction does not issue enjoining
18 Defendant from engaging in the unlawful business practices described above, Plaintiff and the
19 general public will be irreparably injured.

20 88. Plaintiff has no plain, speedy, and adequate remedy at law. Defendant, if not enjoined
21 by this Court, will continue to engage in the unlawful business practices described above in
22 violation of the UCL, in derogation of the rights of Plaintiff and Class Members and of the general
23 public.

24 89. Plaintiff's success in this action will result in the enforcement of important rights
25 affecting the public interest by conferring a significant benefit upon the general public.

26 90. Defendant's numerous violations of local and California law, as well as the other
27 statutory and regulatory violations alleged herein, constitute unlawful business actions and
28 practices in violation of Business and Professions Code § 17200, et seq.

91. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class Members are entitled to restitution of unpaid wages and penalty pay, among other relief alleged herein, that were withheld and retained by Defendant during a period that commences four years prior to the filing of this action. Plaintiff is further entitled to a permanent injunction requiring Defendant to comply with all provisions of California labor law, including properly paying the lawful rate of pay for all hours worked, providing rest periods to all workers as defined herein, timely paying due wages upon termination, maintaining accurate wages statements and payroll records, in addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

NINTH CAUSE OF ACTION

**STATUTORY PENALTIES PURSUANT TO
PRIVATE ATTORNEYS GENERAL ACT**

Cal. Labor Code section 2698, et seq.

(Plaintiff Against All Defendants)

92. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

93. As set forth in Plaintiff's PAGA Notice letter, attached hereto as Exhibit 1 and expressly incorporated herein, Defendant has violated the California Labor Code by (1) failing to comply with California Law concerning payment of lawful wage for all hours worked, including overtime hours worked (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 et seq.); (2) failing to pay minimum wage (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.); (3) failing to pay wages due upon termination (Cal. Lab. Code §§201, 202, 203, 256 and 2698 et seq.); (4) failing to provide meal breaks (Cal. Lab. Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq.); (5) failing to provide rest breaks, potable water and adequate restroom facilities (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 et seq., 3457, 6712); (6) failing to provide safe working conditions (Cal. Labor Code §§ 1198, Wage Order); (7) failing to provide place of employment that is safe and healthful (Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 et seq., 8 CCR 3202); (8) failing to provide suitable

1 seating (Lab. Code section 1198 and Wage Orders); (9) failing to reimburse for required business
2 expenses (Cal. Labor Code §§1198, 2802, 2699 et seq.); (10) failing to provide accurate itemized
3 wage statements (Cal. Labor Code §§ 226, 1174, 2699 et seq).

4 94. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
5 aggrieved employee, on behalf of himself and other current or former employees, may recover
6 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
7 are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved
8 employee under PAGA.

9 95. As set forth above, Defendants have committed numerous violations for which the
10 Labor Code provides for penalties, including violations of all applicable Labor Code provisions
11 set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned
12 Labor Code provisions as statutes to which §2699.3's procedural requirements must be met before
13 a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural requirements
14 specified in §2699.3 by providing written notice to the Defendants and the Labor & Workforce
15 Development Agency ("LWDA"). See **Exhibit 1** attached hereto, which is a true and correct copy
16 of the Notice correspondence showing compliance with §2699.3. No notice of intent to investigate
17 the alleged violations was provided within the statutory period. Consequently, Plaintiff has
18 exhausted administrative remedies, and on behalf of themselves and all other aggrieved current
19 and former employees of Defendants. Plaintiff, therefore, now pursues this cause of action as
20 permitted by §2698, et seq.

21 96. Enforcement of statutory provisions enacted to protect workers and to ensure proper
22 and prompt payment of wages due to employees is a fundamental public interest in California.
23 Consequently, Plaintiff's success in this action will result in the enforcement of important rights
24 affecting the public interest and will confer a significant benefit upon the general public. Private
25 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
26 enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be against
27 the interests of justice to require payment of attorneys' fees and costs from any recover that might
28

1 be obtained herein, pursuant to, inter alia, Labor Code §§2698, et seq., and Code of Civil Procedure
2 §1021.5

3 97. In addition, if Plaintiff succeeds in enforcing these rights affecting the public interest,
4 then attorneys' fees may be awarded to Plaintiff and against Defendants under Code of Civil
5 Procedure §1021.5 and other applicable law in part, because:

6 a. A successful outcome in this action will result in the enforcement of important
7 rights affecting the public interest by requiring Defendants to comply with the wage and
8 hour laws and California's unfair business practice law;

9 b. This action will result in a significant benefit to Plaintiff, the Class, and the general
10 public by bringing to a halt unlawful and/or unfair activity;

11 c. Unless this action is prosecuted, members of the Class and general public will not
12 recover those moneys, and many of Defendants' employees would not be aware that the
13 acts and practices they were subjected to by Defendants were wrongful; and

14 d. Unless this action is prosecuted, Defendants will continue to mislead their
15 employees about the true nature of their rights and remedies under the wage and hour laws;

16 106. An award of attorneys' fees and costs is necessary for the prosecution of this action
17 and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in
18 general, by preventing Defendants from continuing to circumvent the wage and hour statutes and
19 frustrate the long-standing recognition by the California legislature and the courts that such
20 statutes, as pled herein, are not merely a matter of private concern between employer and employee
21 to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and
22 private agreements. Rather, the wage and hour statutes have been described as a matter of public
23 concern, were designed to provide minimum substantive guarantees to individual workers and are
24 essential to public welfare.

25 REQUEST FOR RELIEF

26 WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class, request judgment
27 and the following specific relief against Defendant as follows:
28

- 1 A. That the Court determine that this action may be maintained as a class action
2 under Code of Civil Procedure § 382;
- 3 B. That the Court determine that this action may be maintained as a PAGA
4 representative action under Cal. Labor Code. §2698 *et seq.*;
- 5 C. Provision of class notice to all members of the Class;
- 6 D. That Defendant is found to have violated the above-referenced provisions of the
7 Labor Code, CCR and the IWC Wage Order as to Plaintiff, Class Members,
8 relevant subclass Members, and aggrieved employees;
- 9 E. For compensatory damages, in an amount according to proof at trial, with
10 interest thereon;
- 11 F. For compensation for not being paid overtime;
- 12 G. For compensation for not being paid minimum wage;
- 13 H. For compensation for not paid all wages due upon termination;
- 14 I. For compensation for not being provided proper meal breaks;
- 15 J. For compensation for not being provided proper rest breaks;
- 16 K. For compensation for not being provided business expense reimbursement;
- 17 L. For compensation for not being paid penalty wages;
- 18 M. That Defendant's actions are found to be willful and/or in bad faith to the extent
19 necessary under §§ 201, 202, 203, and 558 of the California Labor Code for
20 willful failure to pay all compensation owed at the time of separation to Plaintiff
21 and Class Members no longer employed by Defendant;
- 22 N. That Plaintiff and Class Members receive penalties for Defendant's violation of
23 §226 and 1174 of the California Labor Code for willful failure to provide and
24 maintain the required accurate and itemized wage statements;
- 25 O. That Plaintiff and Class Members receive an award in the amount of unpaid
26 wages owed, including interest thereon, and penalties as provided in the Labor
27 Code, CCR and Wage Order, including under Labor Code §§ 203, 510, and
28 558, subject to proof at trial;

- 1 P. That Plaintiff and Class Members receive damages pursuant to §§248.5 in
2 addition to reasonable attorneys' fees, and costs of suit pursuant to Labor Code
3 § 218.5 and CCP 1021.5;
- 4 Q. That Defendant be ordered to pay restitution to Plaintiff and Class Members for
5 amounts acquired through Defendant's unlawful activities pursuant to Business
6 and Professions Code §§ 17200-05 and enjoined to cease and desist from
7 unlawful and unfair activities in violation of California Business and
8 Professions Code § 17200 et. seq.;
- 9 R. That Plaintiff and Class Members receive an award of reasonable attorneys'
10 fees and costs pursuant to Code of Civil Procedure §1021.5, Labor Code §226,
11 218.5, and 1194 and/or applicable laws;
- 12 S. That the Court award penalties pursuant to Labor Code §2698 *et seq.*;
- 13 T. That the Court issue declaratory relief that Defendant's challenged policies are
14 unlawful; and
- 15 U. That the Court order further relief, in law and equity, as it deems appropriate
16 and just.

17
18 DATED: August 13, 2024

KOUL LAW FIRM, APC

19
20 

BY: Nazo Koulloukian, Esq.

Attorneys for Plaintiff SERGIO OLIVARES
GARCIA and putative class members

EXHIBIT 1 – PAGA NOTICE LETTER



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

November 30, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

QUIKRETE CALIFORNIA, LLC
5 CONCOURSE PARKWAY SUITE 1900
ATLANTA, GA 30328

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Sergio Olivares Garcia
Employer: Quikrete California, LLC

Dear Sir or Madam:

Sergio Olivares Garcia (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for conditions of employment and wage and hour claims against his former employer, Quikrete California, LLC, a California Limited Liability Company (hereafter “Employer”).

Claimant worked for Employer until October of 2023. Due to unlawful conditions of employment, Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(G) of the pertinent Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers earning at or near minimum wage do not receive payment for all hours worked as a result of unlawful employment practices, including waiting in line to clock in and out and required off the clock tasks, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimant and aggrieved employees were required to perform several required duties off the clock. Employees were required to wait in line to clock in and out at time machines. Although there was more than one time machine, only one was consistently operational resulting in long lines to clock in. Additionally, employees were required to arrive prior to their shifts to perform an equipment check. For example, Claimant would consistently arrive 7-8 minutes early to perform an equipment check on the forklift he was to operate for that shift. Employer has violated Labor Code §§510 1194, 1198, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Upon termination, Employer told Claimant that this final check would be mailed to him or provided by direct deposit, despite the fact that Claimant was terminated in person.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order)

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

In this case, Claimant and his coworkers frequently took late or short meal periods, and some were missed completely. Claimant sometimes was required to take his lunch after his 6th hour of work. He also had his meal breaks interrupted and cut short when required to return to the assembly line.

The Wage Orders require employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks

of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks, Potable Water, and Adequate Restroom Facilities

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 et seq., 3457, 6712)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order.

Claimant explains that he and his coworkers would sometimes experience late or interrupted rest periods. During night shifts, Claimant missed a rest period 3-4 times per week. Additionally, rest breaks did not comply with California law because employees were denied adequate rest facilities, including clean bathrooms, and potable water.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed, untimely rest, interrupted, or noncompliant rest periods) mandated by Labor Code §226.7 (b). As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Potable Drinking Water

Rest breaks did not comply with state laws as required by Labor Code §226.7 for numerous reasons, including because employees were denied sufficient potable water.

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single-use cups. Claimant and aggrieved employees were not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the large number of employees working throughout the duration of the shift.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field

sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

Legally Compliant Bathrooms

Rest breaks did not comply with state laws as required by Labor Code §226.7 because workers had to deal with filthy bathroom conditions due to Employer’s failure to maintain clean bathrooms. Bathrooms were often dirty and lacked toilet paper and seat covers, with overflowing trash bins and cockroaches.

California Labor Code §2350 requires employers to provide clean restroom facilities. Employer violated §2350 by failing to provide and maintain sanitary bathrooms for employees.

Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years.” Labor Code §6712 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.” Moreover, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code §6712. Further, the public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps to provide a safe and secure workplace. Unfortunately, bathrooms in Employer’s workplaces were filthy, unsanitary, and non-compliant with minimum standards. The toilets were often leaky and the floor unsafely wet with puddles.

Employer failed to pay Claimant and similarly situated employees the premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on any paystubs. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Accordingly, because Employer violated Wage Order provisions requiring rest breaks, Employer violated §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Claimant alleges that his pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

Failure to Provide Safe Working Conditions **(Cal. Labor Code §1198, Wage Order)**

Employer’s workplaces would get unsafely hot due to Employer’s lack of adequate climate control in the facilities. Claimant explains that it was hot like an oven working for Employer because inadequate precautions were implemented in the cement mixing process resulting in employees frequently getting burned and exposed to high heat. The heat in the facility was so extreme that it damaged Claimant’s cell phone.

The Wage Orders require:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

By violating the wage order, Employer is liable pursuant to LC §1198 and for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer created and maintained an unsafe work environment in various ways. Employer did not require employees to have forklift licenses to operate forklifts, creating a safety hazard. Forklifts would also sink when it rained making operating the forklifts dangerous. Claimant also describes the assembly line as having pallets shifting with pieces coming out creating a hazard, as well as a poor foundation resulting in vehicles sinking and requiring tow trucks. Bathrooms and toilets were consistently leaking resulting in puddles and slipping hazards. The kitchen area was also sometimes flooded, and rats and cockroaches were often found in the kitchen. Dirt and dust would be prevalent impacting the air quality. Employer employed their

employees under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code. As a result of these practices, Employer violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for employees, as outlined above. Employer is liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure To Provide Suitable Seating
(Lab. Code section 1198 and Wage Orders)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

The pertinent Wage Order provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by the applicable Wage Order. Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating. Accordingly, Claimant, on behalf of himself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Reimburse for Required Business Expenses
(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, including taking photos of their worksites to send to upper management. Claimant explains that he was required to take and transmit these photos every day and he also observed his coworkers complying with the same requirements. Employees also were required to purchase steel-toed boots. Employees were not compensated for any of these expenses. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements
(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, the correct overtime hourly rate, and total hours worked. They also failed to state meal and rest period penalty payments, and reimbursements for shoes and the regular use of employee phones. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq*.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,


Nazo Koulloukian, Esq.
Attorney for Claimant

PROOF OF SERVICE
Case No. 23STCV30014
Garcia v. Quikrete California, LLC

I, NADIA CHAVEZ declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 3435 Wilshire Blvd. Ste. 1710, Los Angeles, California 90010.

On August 13, 2024, I served the foregoing document described as:

**FIRST AMENDED AND CONSOLIDATED CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

 X

BY E-MAIL: I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address from e-mail nadia@koullaw.com pursuant to California Rules of Court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

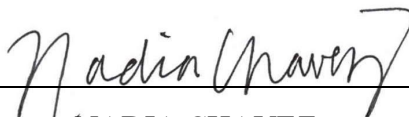
on the interested parties in this action by sending [☐] the original [or] [☒] a true copy thereof [☒]
to interested parties as follows [or] [☐] as stated on the attached service list:

James R. Evans, Jr., Esq.
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***Attorneys for Defendant,
QUIKRETE CALIFORNIA, LLC***

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this August 13, 2024, in Los Angeles, California.



NADIA CHAVEZ