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ROBERT HERNANDEZ; and
6 MIGUEL HERNANDEZ, as individuals,
and on behalf of all others similarly situated,
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 BRYAN AVILA; ROBERT HERNANDEZ;
and MIGUEL HERNANDEZ, as individuals,
11 and on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 BETTER EARTH ELECTRIC, INC. fka
15 REGAL SOLAR ELECTRIC, INC., a
16 California Corporation; ZAIN JAN, an
individual; SHAUN SHARABI, an individual;
17 and DOES 1 through 30, inclusive,

18 Defendants.
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FILED
Superior Court of California
County of Los Angeles
03/26/2024

David W. Slayton, Executive Officer / Clerk of Court

By: E. Chanes Deputy

Case No.: 23NWCV03369

[Hon. Olivia Rosales, Dept. F]

FIRST AMENDED COMPLAINT FOR DAMAGES

[Amount of Damages Exceeds \$25,000]

1. Failure to Pay Minimum Wages (Cal. Lab. Code §§ 203, 226.2, & 1197; IWC Order 16-2001, § 4);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510 & 558; IWC Order 16-2001, § 3);
3. Failure to Pay Wages for Rest Periods (Cal. Lab. Code § 226.2; IWC Order 16-2001, § 11);
4. Failure to Provide Rest Period Premium Pay (Cal. Lab. Code § 226.7; IWC Order 16-2001);
5. Failure to Provide Meal Period Premium Pay (Cal. Lab. Code §§ 226.7 & 512; IWC Order 16-2001, § 10);
6. Failure to Indemnify Employees for Necessary Business Expenses (Cal. Lab. Code § 2802; IWC Order 16-2001, § 8);
7. Failure to Provide Itemized Wage Statements (Cal. Lab. Code § 226);
8. Failure to Timely Pay Earned Wages Upon Separation of Employment (Cal. Lab. Code §§ 201 & 203);

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- 9. Failure to Timely Pay Earned Wages During Employment (Cal Lab. Code § 204);
 - 10. Failure to Keep Required Payroll Records (Cal. Lab. Code §§ 226 & 1174);
 - 11. Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*); and
 - 12. Private Attorney General Act Claim, Recovery of Civil Penalties (Cal. Lab. Code §§ 2698-2699.5).

Complaint Filed: October 19, 2023

Jury Trial Demanded

BRYAN AVILA, ROBERT HERNANDEZ, and MIGUEL HERNANDEZ, as individuals, and on behalf of all others similarly situated (hereinafter collectively referred to as "PLAINTIFFS"), hereby complain against BETTER EARTH ELECTRIC, INC., formerly known as REGAL SOLAR ELECTRIC, INC., a California Corporation, ZAIN JAN, an individual, SHAUN SHARABI, an individual, and DOES 1 through 30 (hereinafter collectively referred to as "DEFENDANTS") and allege as follows:

PARTIES AND VENUE

1. PLAINTIFFS are individuals who, at all times relevant herein, were residents of the County of Los Angeles, State of California.

2. PLAINTIFFS are informed and believe, and based thereon allege, that Defendant BETTER EARTH ELECTRIC, INC. and DOES 1-10 (hereinafter "BETTER EARTH") are and, at all times relevant herein, were a corporation duly organized under the laws of California and are conducting business in the County of Los Angeles at 16720 Marquardt Avenue, Cerritos, CA 90703. Defendant BETTER EARTH is an employer within the meaning of the California Labor Code.

3. PLAINTIFFS are informed and believe, and based thereon allege, that Defendant ZAIN JAN and DOES 11-20 (hereinafter "JAN") are and, at all times relevant herein, were an individual residing in California. At all times relevant herein, JAN was employed by BETTER

1 EARTH as the Chief Executive Officer.

2 4. PLAINTIFFS are informed and believe, and based thereon allege, that Defendant
3 SHAUN SHARABI and DOES 21-30 (hereinafter "SHARABI") are and, at all times relevant
4 herein, were an individual residing in California. At all times relevant herein, SHARABI was
5 employed by BETTER EARTH as the Secretary and Chief Financial Officer.

6 5. PLAINTIFFS are informed and believe, and based thereon allege, that
7 DEFENDANTS, are and were individuals, sole proprietorships, corporations, business entities,
8 persons, and partnerships, licensed to do business and/or actually doing business in the State of
9 California.

10 6. As such and based upon the facts and circumstances incident to DEFENDANTS'
11 business, DEFENDANTS are subject to the California Labor Code, the applicable Wage Orders
12 of the California Industrial Welfare ("IWC"), the California Business and Professions Code, and
13 other local, state, and federal laws.

14 7. PLAINTIFFS do not know the true names or capacities, whether individual,
15 partner or corporate, of the DEFENDANTS sued herein as DOES 1 through 30, inclusive, and
16 for that reason, said DEFENDANTS are sued under such fictitious names, and PLAINTIFFS
17 pray for leave to amend this complaint when the true names and capacities are known.
18 PLAINTIFFS are informed and believe and based thereon allege that each of said fictitious
19 DEFENDANTS were responsible in some way for the matters alleged herein and proximately
20 caused PLAINTIFFS to be subject to the illegal employment practices, wrongs, and injuries
21 complained of herein.

22 8. At all times herein mentioned, each of said DEFENDANTS participated in the
23 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and
24 furthermore, the DEFENDANTS, and each of them, were the agents, servants, and employees of
25 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times
26 herein mentioned, were acting within the course and scope of said agency and employment.

27 9. PLAINTIFFS are informed and believe, and based thereon allege, that at all times
28 material hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego,

1 and/or joint venturer of, or working in concert with, each of the other co-DEFENDANTS and
2 was acting within the course and scope of such agency, employment, joint venture, or concerted
3 activity. To the extent said acts, conduct, and omissions were perpetrated by certain
4 DEFENDANTS, each of the remaining DEFENDANTS confirmed and ratified said acts,
5 conduct, and omissions of the acting DEFENDANTS.

6 10. At all times herein mentioned, DEFENDANTS, and each of them, were members
7 of, and engaged in, a joint venture, partnership, and common enterprise, and acting within the
8 course and scope of, and in pursuance of, said joint venture, partnership, and common
9 enterprise.

10 11. At all times herein mentioned, the acts and omissions of various DEFENDANTS,
11 and each of them, concurred and contributed to the various acts and omissions of each and all of
12 the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At
13 all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or
14 omission complained of herein. At all times herein mentioned, DEFENDANTS, and each of
15 them, aided and abetted the acts and omissions of each and all the other DEFENDANTS in
16 proximately causing the damages as herein alleged.

17 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 12. From approximately February 2022 to September 2023, PLAINTIFFS were
19 employed by DEFENDANTS as non-exempt solar panel installers compensated on a piece-rate
20 and hourly basis and were entitled to timely pay of minimum wages, overtime wages, off-duty
21 meal and rest periods, rest period compensation, compensation for “non-productive” time, code-
22 compliant wage statements, and reimbursement for necessary expenditures.

23 13. PLAINTIFFS are informed and believe, and based thereon allege, that
24 DEFENDANTS, at all relevant times:

- 25 • failed to pay PLAINTIFFS for minimum wages, regular and overtime, for all hours
26 worked, including but not limited to, all “non-productive” time; time worked off-
27 the-clock; time spent traveling from one job location to another during the
28 workday; time spent obtaining required tools, equipment, and supplies necessary to

1 perform work; time spent loading or unloading vehicles; time spent attending
2 meetings; time spent training; and on-call time during which the employees are
3 required or expected to accept available installation jobs or are subject to adverse
4 employment consequences for declining to accept an available job.

- 5 • failed to establish a timekeeping policy to record all time worked and meal breaks
6 taken;
- 7 • failed to provide PLAINTIFFS with all mandatory off-duty meal and rest breaks;
- 8 • failed to pay PLAINTIFFS compensation for meal and rest breaks, when
9 applicable;
- 10 • failed to reimburse and/or indemnify PLAINTIFFS for employer-business related
11 expenses, including but not limited to, mileage, tools, equipment, supplies, and
12 mobile phone service and data;
- 13 • failed to provide PLAINTIFFS with code compliant wage statements, including but
14 not limited to, paystubs listing total hours worked, piece rate earned, piece rate
15 units earned, total hours of compensable rest periods, rate of compensation for
16 compensable rest periods, and gross wages for rest periods;
- 17 • failed to maintain complete and accurate payroll records for PLAINTIFFS for at
18 least three (3) years;
- 19 • failed to pay PLAINTIFFS timely wages due during and upon termination of
20 employment;
- 21 • engaged in various unfair and unlawful business practices in violation of
22 California's Unfair Competition Law, Business & Professions Code §§ 17200, *et*
23 *seq.* (the "UCL");

24 14. The foregoing acts and other acts by the DEFENDANTS violated provisions of the
25 Labor Code, including but not limited to, §§ 201, 203, 204, 226, 226.2, 226.7, 510, 512, 1197, &
26 2802, the UCL, applicable wage orders, and other laws and regulations.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay Minimum Wages**

3 **(Cal. Lab. Code §§ 203, 226.2, & 1197; IWC Order 16-2001, § 4)**

4 **(Against all DEFENDANTS)**

5 15. PLAINTIFFS incorporate by reference and reallege the above paragraphs as
6 though set forth fully herein.

7 16. Labor Code § 558.1 renders a person individually liable if they are (1) acting on
8 behalf of an employer, and (2) fail to follow wage and hour laws. Persons “acting on behalf of
9 an employer” for the purposes of Labor Code § 558.1 include owners, directors, officers, and
10 managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN
11 and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH,
12 accordingly.

13 17. Labor Code § 1197 and IWC Order 16-2001, § 4 require employers to pay their
14 employees not less than the applicable minimum wage for all "hours worked," which includes
15 all time the employee is suffered or permitted to work, whether or not required to do so, and all
16 time the employee is subject to the employer's control. (IWC Order 16-2001, § 2(J).) This
17 compensable time includes time worked off-the-clock; time spent traveling from one job
18 location to another during the workday; time spent procuring tools, equipment, and supplies
19 necessary to perform work; time spent loading or unloading vehicles; time spent attending
20 meetings; time spent training; and on-call time during which the employee is required or
21 expected to accept available installation jobs or is subject to adverse employment consequences
22 for declining to accept an available job. The applicable minimum wage is the minimum wage
23 required under state law, or the minimum wage required under an applicable local ordinance,
24 whichever is higher. Employers must also pay separate hourly compensation for "non-
25 productive" hours worked. Unlike the federal rule, under California law, the employer cannot
26 average the total compensation for a pay period to determine whether its minimum wage
27 obligations were met. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 321-325; *Gonzalez*
28 *v. Downtown L.A. Motors, LP* (2013) 215 Cal.App.4th 36, 50-54.)

1 18. At all times relevant herein, DEFENDANTS employed 26 or more employees,
2 and thus, were subject to minimum wage requirements based on that number of employees.
3 PLAINTIFFS worked the requisite number of hours required to trigger minimum wages required
4 under applicable state law or local ordinances.

5 19. Labor Code § 226.2 applies to employees who are paid on a piece-rate basis for
6 any work performed during a pay period and requires that payment be made to such employees
7 for "non-productive time" on an hourly basis separate from the compensation derived through
8 piece-rate earnings, at an hourly rate that is not less than the applicable minimum wage. The
9 statute defines "non-productive time" as "time under the employer's control, exclusive of rest
10 and recovery periods, that is not directly related to the activity being compensated on a piece-
11 rate basis."

12 20. At all times relevant herein, DEFENDANTS were obligated to compensate
13 PLAINTIFFS for their services on a piece-rate basis, with DEFENDANTS paying PLAINTIFFS
14 a specified amount per solar panel installation. DEFENDANTS did not pay all due
15 compensation to PLAINTIFFS for activities that constitute "non-productive time" within the
16 meaning of section 226.2, including travel time from one job location to another; time spent
17 procuring tools, equipment, or supplies in order to perform installation services; time spent
18 loading or unloading vehicles; time spent attending meetings; time spent training; and on-call
19 time during which the employees are required or expected to accept available installation jobs or
20 are subject to adverse employment consequences for declining to accept an available job.
21 DEFENDANTS may not "borrow" from wages paid to PLAINTIFFS for productive time to
22 meet the independent obligation to pay for all "non-productive," uncompensated hours worked.
23 Such a scheme is in direct violation of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314.

24 21. DEFENDANTS' failure to pay for the above-described non-productive time
25 constitutes a violation of Labor Code § 226.2 and a violation of the obligation to pay no less
26 than the applicable minimum wage for all hours worked as specified in Labor Code § 1197 and
27 IWC Order 16-2001, § 4(A). Under these provisions, PLAINTIFFS are entitled to payment of
28 the applicable minimum wage for all such uncompensated time.

1 22. Labor Code § 1194.2 provides that in any action filed by an employee to recover
2 unpaid minimum wages, the employee shall be entitled to recover, in addition to the unpaid
3 minimum wages, liquidated damages in an amount equal to the wages unlawfully unpaid and
4 interest thereon.

5 23. PLAINTIFFS are owed unpaid minimum wages stemming from its failure to pay
6 wages for "non-productive time" within the meaning of Labor Code § 226.2, and is therefore
7 entitled to recover, in addition to the unpaid minimum wages, liquidated damages from
8 DEFENDANTS pursuant to Labor Code § 1194.2.

9 24. Labor Code § 1197.1(a) provides for the imposition of civil penalties against an
10 employer or other person acting as an officer or agent of the employer, for paying less than the
11 applicable minimum wage for any hours worked by an employee. Section 1197.1 sets the
12 amount that must be awarded for an intentional initial violation at \$100 for each underpaid
13 employee for each pay period for which the employee was underpaid, in addition to an amount
14 sufficient to recover underpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and
15 any applicable penalties pursuant to Labor Code § 203; and the amount that must be awarded for
16 each subsequent violation, whether intentional or not, at \$250 for each underpaid employee for
17 each pay period for which the employee was underpaid, in addition to an amount sufficient to
18 recover underpaid wages, liquidated damages pursuant to Labor Code § 1194.2, and any
19 applicable penalties pursuant to Labor Code § 203.

20 25. DEFENDANTS' failure to pay at least the applicable minimum wage to
21 PLAINTIFFS for "non-productive" hours worked was intentional, within the meaning of Labor
22 Code § 1197.1 (a), and subjects DEFENDANTS to civil penalties as provided by that statute.

23 26. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

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1 Labor Code § 510 or any provision regulating hours or days of work in any IWC order. Section
2 510 sets the amount that must be awarded for an initial violation at \$50 for each underpaid
3 employee for each pay period for which the employee was underpaid in addition to an amount
4 sufficient to recover underpaid wages, and the amount that must be awarded for each subsequent
5 violation at \$100 for each underpaid employee for each pay period for which the employee was
6 underpaid in addition to an amount sufficient to recover underpaid wages.

7 33. As a consequence of DEFENDANTS' failure to pay required overtime
8 compensation to PLAINTIFFS, DEFENDANT is subject to civil penalties for violations
9 committed as provided by Labor Code § 558.

10 34. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Pay Wages for Rest Periods**

13 **(Cal. Lab. Code § 226.2; IWC Order 16-2001, § 11)**

14 **(Against all DEFENDANTS)**

15 35. PLAINTIFFS incorporate by reference and reallege the above paragraphs as
16 though set forth fully herein.

17 36. Labor Code § 558.1 renders a person individually liable if they are (1) acting on
18 behalf of an employer, and (2) fail to follow wage and hour laws. Persons "acting on behalf of
19 an employer" for the purposes of Labor Code § 558.1 include owners, directors, officers, and
20 managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN
21 and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH,
22 accordingly.

23 37. IWC Order 16-2001, § 11 requires every employer to authorize and permit
24 employees to take *paid* rest periods, with such rest periods expressly deemed to constitute
25 "hours worked." Under Section 11 of this IWC order, such "authorized rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof," with no duty to provide a rest period to an employee whose
28 daily work time is less than three and one-half hours. Thus, one paid rest period must be made

1 available to the employee if the employee works at least three and one-half hours but not more
2 than six hours in a day, a second paid rest period must be provided to the employee if the
3 employee works more than six hours and up to 10 hours in a day, and a third paid rest period
4 must be provided to the employee if the employee works more than ten (10) hours and up to 14
5 hours in a day, etc. Section 11 of the IWC Order expressly provides that these required rest
6 periods "shall be counted as hours worked from which there shall be no deduction from wages."
7 Because such rest periods are "counted as hours worked," they must be paid at not less than the
8 minimum wage, in accordance with § 4 of the Wage Order.

9 38. Labor Code § 226.2 requires employers to provide their employees who are
10 compensated on a piece-rate basis with separate hourly compensation for required rest periods,
11 in an amount not less than the higher of (a) the average hourly rate for each workweek under a
12 formula set out in the statute, or (b) the applicable minimum wage. Payment of piece-rate
13 compensation does not serve to provide any compensation for required rest periods.

14 39. At all times relevant herein, DEFENDANTS failed to provide any separate,
15 hourly compensation to PLAINTIFFS for required rest periods. These required rest periods have
16 been completely uncompensated by DEFENDANTS. As such, DEFENDANTS violated the
17 requirements set forth in IWC Order 16-2001 and Labor Code § 226.2 that *paid* rest periods be
18 made available to employees.

19 40. As a consequence of DEFENDANTS' failure to pay its employees for required
20 rest periods, PLAINTIFFS are entitled to payment of unpaid wages for each such required rest
21 period in an amount not less than the higher of the applicable minimum wage, or PLAINTIFFS'
22 average hourly wage rate under the formula set at Labor Code § 226.2.

23 41. As a further consequence of DEFENDANTS' failure to pay employees any wages
24 for their required rest periods, thereby violating the requirement set out in the Labor Code and
25 IWC Order for payment of not less than the minimum wage for all hours worked, PLAINTIFFS
26 are entitled to liquidated damages under Labor Code § 1194.2 in an amount equal to the unpaid
27 minimum wages plus interest.

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1 42. DEFENDANTS' failure to pay PLAINTIFFS at least the applicable minimum
2 wage for their required rest periods was intentional, within the meaning of Labor Code § 1197.1,
3 and subjects DEFENDANTS to civil penalties.

4 43. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Provide Rest Period Premium Pay**

7 **(Cal. Lab. Code § 226.7; IWC Order 16-2001, § 11)**

8 **(Against all DEFENDANTS)**

9 44. PLAINTIFFS incorporate by reference and reallege the above paragraphs as
10 though set forth fully herein.

11 45. Labor Code § 558.1 renders a person individually liable if they are (1) acting on
12 behalf of an employer, and (2) fail to follow wage and hour laws. Persons "acting on behalf of
13 an employer" for the purposes of Labor Code § 558.1 include owners, directors, officers, and
14 managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN
15 and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH,
16 accordingly.

17 46. Labor Code § 226.7(c) provides that if an employer fails to provide an employee
18 with a rest period "in accordance with a state law, including ... an applicable ... order of the
19 Industrial Welfare Commission," the employer shall pay the employee one additional hour of
20 pay at the employee's regular rate of compensation for each workday that the rest period is not
21 provided. A similar requirement is set out at IWC Order 16-2001, § 11(D).

22 47. By failing to provide any compensation to PLAINTIFFS for required rest periods,
23 DEFENDANTS failed to provide rest periods "in accordance with ... [the] applicable ... order of
24 the Industrial Welfare Commission," as specified at IWC Order 16-2001, § 11(A).

25 48. As a consequence of DEFENDANTS' failure to provide legally mandated, paid
26 rest periods to PLAINTIFFS, DEFENDANTS are subject to the premium pay provisions of
27 Labor Code § 226.7(c) and IWC Order 16-2001, § 11(D), under which PLAINTIFFS are entitled
28 to payment of one hour of rest period premium pay for each workday that a required paid rest

1 period was not provided in accordance with the wage order's requirements.

2 49. Labor Code § 558 provides that any employer, or other person acting on behalf of
3 an employer, who violates or causes to be violated, a section of this chapter (Labor Code § 500,
4 *et seq.*) or any provision regarding hours and days of work in any order of the IWC shall be
5 subject to a civil penalty, in addition to the underpaid wages which must be paid to the affected
6 employees. Similar authorization for these civil penalties is found at IWC Order 16-2001, § 18.

7 50. The failure to pay PLAINTIFFS required rest period premium pay subjects
8 DEFENDANTS to civil penalties under Labor Code § 558 and IWC Order 16-2001, § 18.

9 51. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

10 **FIFTH CAUSE OF ACTION**

11 **Failure to Provide Meal Period Premium Pay**

12 **(Cal. Lab. Code §§ 226.7 & 512; IWC Order 16-2001, § 10)**

13 **(Against all DEFENDANTS)**

14 52. PLAINTIFFS incorporate by reference and reallege the above paragraphs as
15 though set forth fully herein.

16 53. Labor Code § 558.1 renders a person individually liable if they are (1) acting on
17 behalf of an employer, and (2) fail to follow wage and hour laws. Persons “acting on behalf of
18 an employer” for the purposes of Labor Code § 558.1 include owners, directors, officers, and
19 managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN
20 and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH,
21 accordingly.

22 54. Labor Code § 512 and IWC Order 16-2001, § 10 provide that no employer shall
23 employ any person for a work period of more than five (5) hours without a meal period of not
24 less than 30 minutes, except that when a work period of not more than six (6) hours will
25 complete the day’s work. Labor Code § 512 and IWC Order 16-2001 also provide that an
26 employer shall not employ an employee for a work period of more than ten (10) hours per day
27 without providing the employee with a second meal period of not less than 30 minutes, except
28 that if the total hours worked is no more than twelve (12) hours.

1 55. Labor Code § 226.7(c) provides that if an employer fails to provide an employee
2 with a meal period "in accordance with a state law, including ... an applicable ... order of the
3 Industrial Welfare Commission," the employer shall pay the employee one additional hour of
4 pay at the employee's regular rate of compensation for each workday that the meal period is not
5 provided. A similar requirement is set out at IWC Order 16-2001, § 10(F).

6 56. At all times relevant herein, DEFENDANTS failed to provide any separate,
7 hourly compensation to PLAINTIFFS for meal periods that DEFENDANTS failed to provide.
8 As such, DEFENDANTS violated the requirements set forth in IWC Order 16-2001 and Labor
9 Code § 226.7 requiring employers to compensate employees with one additional hour of pay for
10 each occasion that they failed to permit and authorize a mandatory duty-free meal period of no
11 less 30 minutes.

12 57. As a consequence of DEFENDANTS' failure to provide legally mandated meal
13 periods to PLAINTIFFS, DEFENDANTS are subject to the premium pay provisions of Labor
14 Code § 226.7(c) and IWC Order 16-2001, § 10(F), under which PLAINTIFFS are entitled to
15 payment of one hour of rest period premium pay for each workday that a required meal period
16 was not provided in accordance with the wage order's requirements.

17 58. Labor Code § 558 provides that any employer, or other person acting on behalf of
18 an employer, who violates or causes to be violated, a section of this chapter (Labor Code § 500,
19 *et seq.*) or any provision regarding hours and days of work in any order of the IWC shall be
20 subject to a civil penalty, in addition to the underpaid wages which must be paid to the affected
21 employees. Similar authorization for these civil penalties is found at IWC Order 16-2001, § 18.

22 59. The failure to pay PLAINTIFFS required meal period premium pay subjects
23 DEFENDANTS to civil penalties under Labor Code § 558 and IWC Order 16-2001, § 18.

24 60. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

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1 65. DEFENDANTS failed to indemnify PLAINTIFFS for one or more of the above-
2 listed incurred necessary business expenses, thereby violating Labor Code § 2802 and IWC
3 Order 16-2001, § 8. PLAINTIFFS are entitled to indemnification from DEFENDANTS for these
4 expenses in accordance with Labor Code § 2802 and IWC Order 16-2001, § 8.

5 66. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

6 **SEVENTH CAUSE OF ACTION**

7 **Failure to Provide Itemized Wage Statements**

8 **(Cal. Lab. Code § 226)**

9 **(Against all DEFENDANTS)**

10 67. PLAINTIFFS incorporate by reference and reallege the above paragraphs as
11 though set forth fully herein.

12 68. Labor Code § 558.1 renders a person individually liable if they are (1) acting on
13 behalf of an employer, and (2) fail to follow wage and hour laws. Persons “acting on behalf of
14 an employer” for the purposes of Labor Code § 558.1 include owners, directors, officers, and
15 managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN
16 and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH,
17 accordingly.

18 69. Labor Code § 226(a) requires employers provide their employees, semi-monthly
19 or at the time of payment of wages, an accurate, written itemized wage statement showing: (1)
20 gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and any
21 applicable piece rate if the employee is paid on a piece rate basis, (4) all deductions, (5) net
22 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
23 of the employee and the last four digits of the employee's social security number or some other
24 employee identification number, (8) the name and address of the legal entity that is the
25 employer, and (9) all applicable hourly rates in effect during the pay period, and the
26 corresponding number of hours worked at each hourly rate.

27 70. Labor Code § 226(e) provides that an employee suffering injury as a result of a
28 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to

1 recover the greater of all actual damages or \$50 for the initial pay period in which a violation
2 occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed
3 \$4,000 per employee. Subdivision (e) further provides that an employee is deemed to suffer an
4 injury for purposes of this statute if the employer fails to provide a wage statement, or if the
5 employer fails to provide accurate and complete information as required by one or more of the
6 nine items specified in subdivision (a) and the employee cannot promptly and easily determine,
7 from the provided wage statement alone, gross or net wages paid during the pay period, or total
8 hours worked by the employee during the pay period, or the number of piece rate units earned
9 and all applicable piece rates, or all hourly rates in effect during the pay period and the number
10 of hours worked at each hourly rate.

11 71. At all relevant times herein, DEFENDANTS provided PLAINTIFFS with wage
12 statements that failed to provide accurate and complete information as to one or more of the nine
13 items specified in Labor Code § 226(a), such that PLAINTIFFS could not promptly and easily
14 determine, from any such provided wage statements, their total hours worked during the pay
15 period, or the number of piece rate units earned and all applicable piece rates, or all of the
16 hourly rates that were in effect during the pay period and the number of hours worked at each
17 hourly rate.

18 72. DEFENDANTS' failure to comply with Labor Code § 226(a) was knowing and
19 intentional, and as a consequence of said failure, PLAINTIFFS suffered injury within the
20 meaning of Labor Code § 226(e), such that PLAINTIFFS are entitled to recover the greater of
21 all actual damages or \$50 for the initial pay period of non-compliance and \$100 for each
22 subsequent pay period of non-compliance, in an amount not to exceed \$4,000.

23 73. DEFENDANTS' failure to comply with Labor Code § 226(a) further subjects
24 them to civil penalties pursuant to Labor Code § 226.3.

25 74. Labor Code § 226.3 states that an employer who violates Labor Code § 226(a)
26 shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial
27 citation and \$1,000 per employee for violation in a subsequent citation for which the employer
28 fails to provide the employee a wage statement or fails to keep the records required by Labor

1 Code § 226(a). The civil penalties provided in this section are in addition to any other penalty
2 provided by law.

3 75. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

4 **EIGHTH CAUSE OF ACTION**

5 **Failure to Timely Pay Earned Wages Upon Separation of Employment**

6 **(Cal. Lab. Code §§ 201 & 203)**

7 **(Against all DEFENDANTS)**

8 76. PLAINTIFFS incorporate by reference and reallege the above paragraphs as
9 though set forth fully herein.

10 77. Labor Code § 558.1 renders a person individually liable if they are (1) acting on
11 behalf of an employer, and (2) fail to follow wage and hour laws. Persons “acting on behalf of
12 an employer” for the purposes of Labor Code § 558.1 include owners, directors, officers, and
13 managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN
14 and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH,
15 accordingly.

16 78. Labor Code § 201 requires an employer that discharges an employee to pay all
17 earned and unpaid wages to such employee immediately upon discharge.

18 79. Labor Code § 203(a) provides that if an employer willfully fails to pay, without
19 abatement or reduction, any wages of an employee who is discharged, the wages of the
20 employee shall continue as a penalty from the date of discharge at the same rate until paid but
21 shall not continue for more than 30 days.

22 80. DEFENDANTS’ failure to timely pay PLAINTIFFS their earned wages,
23 including minimum wages, rest period wages, meal/rest period premium wages, and/or
24 overtime wages required under IWC Wage Order 16-2001, in a timely manner upon separation
25 from employment as required by Labor Code §§ 201, was willful within the meaning of Labor
26 Code § 203. DEFENDANTS are therefore subject to statutory penalties pursuant to Labor Code
27 § 203 as to PLAINTIFFS, who was discharged on June 12, 2023.

28 81. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

1 **NINTH CAUSE OF ACTION**

2 **Failure to Timely Pay Earned Wages During Employment**

3 **(Cal Lab. Code § 204)**

4 **(Against all DEFENDANTS))**

5 82. PLAINTIFFS incorporate by reference and reallege the above paragraphs as
6 though set forth fully herein.

7 83. Labor Code § 558.1 renders a person individually liable if they are (1) acting on
8 behalf of an employer, and (2) fail to follow wage and hour laws. Persons “acting on behalf of
9 an employer” for the purposes of Labor Code § 558.1 include owners, directors, officers, and
10 managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN
11 and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH,
12 accordingly.

13 84. Labor Code § 204 requires that during the course of an employee's employment,
14 all wages earned are due and payable on the regularly scheduled payday, and no less frequently
15 than twice per month, with labor performed between the 1st and 15th days of any month to be
16 paid not later than the 26th of the month, and labor performed between the 16th and last day of
17 the month to be paid not later than the 10th day of the following month.

18 85. Pursuant to Labor Code § 210, the failure to pay wages to employees as required
19 by Labor Code § 204 subjects the person or entity that failed to pay such wages to a civil penalty
20 of \$100 for each failure to pay each employee for any initial non-willful and non-intentional
21 violation, and a civil penalty of \$200 plus 25 percent of the amount unlawfully withheld from
22 each employee for each failure to pay each employee for any initial willful or intentional
23 violation or for any subsequent non-willful and non-intentional violation.

24 86. DEFENDANTS’ failure to pay required minimum wages, rest period wages,
25 meal/rest period premium pay, and overtime wages to PLAINTIFFS on the pay days for which
26 such wages were due under Labor Code § 204 violated the requirements of that statute, and
27 these violations were willful or intentional, thereby subjecting DEFENDANTS to civil penalties
28 under Labor Code § 210.

1 87. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

2 **TENTH CAUSE OF ACTION**

3 **Failure to Keep Required Payroll Records**

4 **(Cal. Lab. Code §§ 226 & 1174)**

5 **(Against all DEFENDANTS)**

6 88. PLAINTIFFS incorporate by reference and reallege the above paragraphs as
7 though set forth fully herein.

8 89. Labor Code § 558.1 renders a person individually liable if they are (1) acting on
9 behalf of an employer, and (2) fail to follow wage and hour laws. Persons “acting on behalf of
10 an employer” for the purposes of Labor Code § 558.1 include owners, directors, officers, and
11 managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN
12 and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH,
13 accordingly.

14 90. Labor Code § 1174 requires all employers to keep payroll records showing the
15 hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
16 any applicable piece rate paid to, employees employed at their respective plants or
17 establishments for not less than three (3) years.

18 91. DEFENDANTS violated Labor Code §§ 226 and 1174 by willfully failing to keep
19 required payroll records showing the actual compensation earned, total deductions taken, and the
20 hours worked on a daily basis by PLAINTIFFS.

21 92. DEFENDANTS are, therefore, liable for civil and statutory penalties pursuant to
22 Labor Code §§ 226, 1174.5 and 2698.

23 93. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

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101. PLAINTIFFS are informed and believe, and based thereon allege, that at all times herein mentioned DEFENDANTS have engaged in unlawful, deceptive, and unfair business practices as proscribed by California Business and Professions Code § 17200 *et seq.*, including those set forth herein above thereby depriving PLAINTIFFS and other members of the general public the minimum working condition standards and conditions due to them under the California laws and Industrial Welfare Commission wage orders as specifically described therein.

102. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

TWELFTH CAUSE OF ACTION

Recovery of Civil Penalties

(Cal. Lab. Code §§ 2698-2699.5)

(Against all DEFENDANTS)

103. PLAINTIFFS incorporate by reference and reallege the above paragraphs as though set forth fully herein.

104. Labor Code § 558.1 renders a person individually liable if they are (1) acting on behalf of an employer, and (2) fail to follow wage and hour laws. Persons “acting on behalf of an employer” for the purposes of Labor Code § 558.1 include owners, directors, officers, and managing agents. As such, PLAINTIFFS pray for judgment against individual Defendants JAN and SHARABI, as managing agents of BETTER EARTH, in addition to BETTER EARTH, accordingly.

105. PLAINTIFFS are aggrieved employees as defined in Labor Code Section 2699(a).

106. PLAINTIFFS bring this claim on behalf of the California Labor and Workforce Development Agency ("LWDA") under the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code §§ 2698-2699.5. In pursuing their PAGA claim, PLAINTIFFS represents the same legal right and interest as state labor law enforcement agencies. PAGA permits PLAINTIFFS to recover civil penalties that otherwise would have been assessed and collected by the LWDA and other state agencies.

107. PLAINTIFFS claim herein all penalties permitted by the California Labor Code Private Attorneys General Act of 2004 (“PAGA,” Labor Code § 2698, et seq.), on behalf of themselves, and on behalf of all similarly situated employees, for the alleged Labor Code violations described and set forth above.

108. Defendants JAN and SHARABI, as managing agents of BETTER EARTH, are personally liable for the PAGA penalties awarded herein to PLAINTIFFS pursuant to the provisions of Labor Code section 558.1, and PLAINTIFFS pray for judgment against said individual accordingly.

109. PLAINTIFFS have complied with the procedures for bringing suit specified by Labor Code § 2699.3. By letter dated November 1, 2023, PLAINTIFFS gave written notice by certified mail to all the DEFENDANTS of the Labor Code violations alleged herein, including the facts and theories to support the alleged violation, and on that same date submitted said PAGA notice to the LWDA via its on-line notice submittal procedure. A true and correct copy of PLAINTIFFS' notice is attached hereto as "**Exhibit A**" and incorporated herein by this reference. More than 60 days have passed from the date of PLAINTIFFS' notice. The LWDA has not notified PLAINTIFFS within such time that it intends to investigate PLAINTIFFS' claims. Pursuant to § 2699.3(a)(2)(A), PLAINTIFFS are now entitled to recover civil penalties for DEFENDANTS' violations.

110. Accordingly, on behalf of all aggrieved employees, PLAINTIFFS seek recovery of civil penalties owed by DEFENDANTS as result of such violations pursuant to Labor Code § 2699.

111. Additionally, due to DEFENDANTS' conduct in willfully treating employees as independent contractors, DEFENDANTS are liable for penalties pursuant to California Labor Code § 226.8, in addition to any other penalties or fines permitted by law.

112. WHEREFORE, PLAINTIFFS request relief as hereinafter provided.

PRAYER

WHEREFORE, PLAINTIFFS hereby pray that the Court enter judgment on behalf of themselves and the rest of the aggrieved employees and against all DEFENDANTS as follows:

- 1 (a) For unpaid wages owed to PLAINTIFFS and interest thereon pursuant to
2 Labor Code §§ 218.6 & 1194, as follows:
- 3 (i) Minimum wages pursuant to Labor Code § 1197 & IWC Order 16-
4 2001 § 4;
- 5 (ii) Overtime wages pursuant to Labor Code § 510 & IWC Order 16-
6 2001 § 3;
- 7 (iii) Rest period wages pursuant to Labor Code § 226.2 & IWC Order
8 16-2001 § 11;
- 9 (iv) Rest period premium wages pursuant to § 226.7 & IWC Order 16-
10 2001 § 11;
- 11 (v) Meal period premium wages pursuant to § 226.7 & IWC Order 16-
12 2001 § 10; and
- 13 (vi) Liquidated damages pursuant to Labor Code § 1194.2;
- 14 (b) For unreimbursed business expenses incurred by PLAINTIFFS and
15 interest thereon, pursuant to Labor Code § 2802 and IWC Order 16-2001 §
16 8;
- 17 (c) For statutory penalties due to DEFENDANTS' failure to provide
18 PLAINTIFFS with complete and accurate itemized wage statements
19 pursuant to Labor Code § 226(e);
- 20 (d) For civil penalties payable to PLAINTIFFS and the State for the following
21 violations:
- 22 (i) Pursuant to Labor Code § 1197.1 for DEFENDANTS' minimum
23 wage violations;
- 24 (ii) Pursuant to Labor Code § 558 and § 18 of IWC Order 16-2001 for
25 DEFENDANTS' overtime, rest period, and meal period violations;
- 26 (iii) Pursuant to Labor Code § 210 for DEFENDANTS' failure to pay
27 minimum wages, rest period wages, rest period premium pay, meal
28

- 1 period premium pay, and overtime wages to PLAINTIFFS on the
2 pay days when such wages were due under Labor Code § 204;
- 3 (iv) Pursuant to Labor Code § 226.3 for DEFENDANTS' failure to
4 provide employees with wage statements that comply with the
5 requirements of Labor Code § 226(a); and
- 6 (v) Pursuant to Labor Code § 2699(f) for DEFENDANTS' failure to
7 reimburse PLAINTIFFS for necessary business expenses as required
8 by Labor Code § 2802;
- 9 (vi) Pursuant to Labor Code §§ 226, 1174.5 and 2698 DEFENDANTS'
10 failure to keep required payroll records for PLAINTIFFS for at least
11 three (3) years;
- 12 (e) For an accounting, under administration of PLAINTIFFS and subject to
13 Court review;
- 14 (f) That DEFENDANTS be ordered and enjoined to pay restitution to
15 PLAINTIFFS due to DEFENDANTS' unlawful activities and
16 disgorgement of ill-gotten profits pursuant to Cal. Bus & Prof. Code §§
17 17200, *et seq.*;
- 18 (g) For all penalties permitted by the Labor Code;
- 19 (h) For such pre- & post-judgment interest at the legal rate;
- 20 (i) For reasonable attorneys' fees and costs of suit pursuant to Labor Code §§
21 218.5, 218.6, 226(e), 1193.6, 1194, & 2802 and Cal. Civ. Code § 1021.5;
- 22 (j) For punitive damages in an amount to be determined according to proof at
23 trial;
- 24 (k) For all penalties permitted under California's PAGA statute (Labor Code
25 §§ 2698, *et seq.*);
- 26 (l) For a declaration of the rights and interests of the parties; and

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1 (m) For such other and further relief, in law or equity, as the Court deems just
2 and proper.
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4 Dated: March 26, 2024

RIZIO LIPINSKY LAW FIRM PC

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7 DAREN H. LIPINSKY
8 TAYLOR E. DEROSA
9 KEVIN E. COLLINS
10 Attorneys for PLAINTIFFS, BRYAN AVILA;
11 ROBERT HERNANDEZ; and MIGUEL
12 HERNANDEZ, as individuals, and on behalf of all
13 others similarly situated,
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11 **DEMAND FOR JURY TRIAL**

12 PLAINTIFFS request a trial by jury on all applicable claims.
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14 Dated: March 26, 2024

RIZIO LIPINSKY LAW FIRM PC

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