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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOEL MONTELONGO, individually and
on behalf of other aggrieved employees,

Plaintiff,

vs.

SIMPSON SAND BLASTING AND
SPECIAL COATINGS, INC., a California
corporation; RYAN PATRICK SIMPSON,
an individual; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. CIVSB2405807

**FIRST AMENDED REPRESENTATIVE ACTION
COMPLAINT**

**1. LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
INDUSTRIAL WELFARE COMMISSION
WAGE ORDERS AND LABOR CODE**

**PAGA Notice Case No.: LWDA-CM-1000462-23
Submitted: December 18, 2023**

DEMAND FOR JURY TRIAL

REPRESENTATIVE ACTION COMPLAINT

1. Introduction. Plaintiff JOEL MONTELONGO (“Plaintiff”) brings this complaint against defendant SIMPSON SAND BLASTING AND SPECIAL COATINGS, INC., a California corporation; RYAN PATRICK SIMPSON, an individual; and DOES 1 through 50, inclusive (collectively, “Defendants”), based on facts that have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, which Plaintiff alleges, including on information and belief, pursuant to the laws of the State of California, for which Plaintiff prays for a judgment against Defendants awarding civil penalties, amounts of wages withheld, attorneys’ fees, litigation costs, and all other legal and equitable remedies deemed just under California law.

NATURE OF ACTION & PRELIMINARY STATEMENT

2. Cause of Action and Remedies. Defendants employed Plaintiff and other individuals to perform labor under employment policies and practices that failed to comply with Industrial Welfare Commission (“IWC”) Wage Order No. 16 (Regulating Wages, Hours and Working Conditions in the Construction, Drilling, Logging, and Mining Industries) or other applicable Wage Orders (collectively, “IWC Wage Order(s)”) and Labor Code provisions fixing the minimum wages, maximum hours, and standard conditions of labor for employees in California, which resulted, and continues to result, in illegal conduct giving rise to a representative action pursuant to Labor Code §§ 2698-2699, *et. seq.* (“PAGA”), based on Defendants’: (1) failure to provide meal periods and pay wages in lieu thereof; (2) failure to provide rest periods and pay wages in lieu thereof; (3) failure to timely pay wages during employment; (4) failure to furnish accurate itemized wage statements and to maintain accurate records; (5) failure to reimburse business expenses; and (6) failure to pay wages owed upon separation of employment.

3. First Cause of Action as a Representative Action. An employee affected by at least one Labor Code violation may pursue penalties on behalf of the state for unrelated violations by the same employer. Accordingly, Plaintiff brings the first cause of action as a representative action on behalf of the State of California, as a deputized PAGA representative, based on at least one (1) violation of IWC Wage Orders or Labor Code provisions, which Plaintiff alleges suffering as a result

of Defendants’ illegal conduct occurring within the State of California, including as alleged in Plaintiff’s December 18, 2023 notice to the Labor and Workforce Development Agency (“LWDA”) and Defendants in LWDA Case No. LWDA-CM-1000462-23, as may be amended (sometimes, “12/18/23 PAGA Notice”), which is incorporated by reference. An employee affected by at least one Labor Code violation may pursue penalties on behalf of the state for unrelated violations by the same employer.

JURISDICTION & VENUE

4. Jurisdiction. The Superior Court of California has jurisdiction over this action because Plaintiff is, or was, a California resident, and at least one of the Defendants regularly conducted business in California when Defendants’ acts and omissions caused the losses, which Plaintiff seeks to remedy in amounts yet unascertained, but subject to proof and within the jurisdiction of this Court. Furthermore, no federal question is in controversy because Plaintiff’s causes of action are based solely on California law.

5. Venue. Venue is proper in this judicial district of the County of San Bernardino because Defendants principal place of business is located in this county, and Defendants executed their illegal wage, hour, and working condition policies and practices, which are subjects of this action, in this judicial district.

PARTIES

Plaintiff, Individually, and Aggrieved Employees.

6. Plaintiff Joel Montelongo. Plaintiff worked for Defendants in California as an hourly paid employee from around July 2023 to on or around August 5, 2023.

7. Aggrieved Employees. Plaintiff, as a deputized PAGA representative, brings PAGA allegations, individually, and on behalf of the State of California with respect to the following persons:

All persons who worked for Defendants in California as hourly, non-exempt employees at any time during the period one (1) year prior to Plaintiff’s December 18, 2023 PAGA Notice to the time it settles, ends in a final judgment, or to a date fixed by the Court (“Aggrieved Employees”).

Plaintiff reserves the right to name additional PAGA representatives.

Defendant and Does 1 Through 50, Inclusive.

8. Defendant SIMPSON SAND BLASTING AND SPECIAL COATINGS, INC.

Defendant SIMPSON SAND BLASTING AND SPECIAL COATINGS, INC. is a corporation formed and existing under the laws of California, who conducted business in California under California Secretary of State entity number 2824087, and was the employer of Plaintiff and other Aggrieved Employees within the meaning of all applicable laws and statutes.

9. Defendant RYAN PATRICK SIMPSON.

Defendant RYAN PATRICK SIMPSON is an individual residing in the State of California, and the owner, Chief Executive Officer, Chief Financial Officer, Director, and Agent for Defendant SIMPSON SAND BLASTING AND SPECIAL COATINGS, INC., and was the employer of Plaintiff and other Aggrieved Employees within the meaning of all applicable laws and statutes.

10. Does 1 Through 50. Plaintiff does not presently know the true names and capacities of DOES 1 through 50, inclusive (“DOE Defendants”), who are each in some manner responsible for, and proximately caused, Plaintiff and Aggrieved Employees’ injuries. Plaintiff therefore sues such DOE Defendants under fictitious names and shall seek leave of court to amend this complaint to allege the true names and capacities of such DOE Defendants when ascertained.

11. Defendants and Defendants’ Relationships Giving Rise to Individual, Joint, and Several Liability. Defendant SIMPSON SAND BLASTING AND SPECIAL COATINGS, INC., RYAN PATRICK SIMPSON, and each of the DOE Defendants (collectively, “Defendants”) committed acts and omissions in concert with each other and are, as a result, jointly liable for Plaintiff and Aggrieved Employees’ injuries under theories of liability, which Plaintiff pleads in the alternative consistent, and not in contradiction, with Plaintiff’s other allegations. Accordingly, whenever Plaintiff alleges any of the Defendants committed an act or omission herein, Plaintiff alleges each of the Defendants committed the act and should be held liable individually, jointly, and severally including for the reasons that follow.

11.1. Defendants’ Unity of Interest and Ownership Giving Rise to Joint Liability.

Each of the Defendants shared a unity of interest and ownership with the other Defendants such that any corporate or business individuality and separateness between them has ceased such that

Defendants are alter egos of each other and if Defendants' acts and omissions are treated as those of only one of them, then an inequitable result for Plaintiff and Aggrieved Employees would follow.

11.2. Defendants' Joint Employment Relationships Giving Rise to Joint Liability.

Each of the Defendants, directly or indirectly, or through Defendants' agents or other persons: (1) exercised control over Plaintiff and Aggrieved Employees' wages, hours, or working conditions; (2) suffered or permitted Plaintiff and Aggrieved Employees to work; or (3) engaged Plaintiff and Aggrieved Employees, thereby creating a common law employment relationship.

11.3. Defendants' Other Relationships Giving Rise to Joint Liability. Each of the

Defendants, directly or indirectly, or through agents or other persons, completely dominated the other Defendants, including in the course and scope of their relationships as alter egos, divisions, affiliates, integrated enterprisers, subsidiaries, parents, principals, associates, managers, supervisors, managing agents, directors, owners, shareholders, sisters, related entities, co-conspirators, agents, partners, joint venturers, masters, servants, clients, customers, aiders, abettors, franchisees, franchisors, joint enterprisers, predecessors in interest, successors in interest, and guarantors, and each of the Defendants directed, authorized, permitted, condoned, and ratified the other Defendants' acts and omissions.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

12. Plaintiff's Work Experiences. Plaintiff worked for Defendants in California as an hourly paid employee from around July 2023 to on or around August 5, 2023. Plaintiff performed works for Defendants including painting and sandblasting structures and transporting equipment in the position of "Industrial Painter" alongside Aggrieved Employees, who performed similar duties.

12.1. Failure to Provide Plaintiff Meal Periods and Pay Wages in Lieu Thereof.

Defendants failed to provide Plaintiff timely, duty-free meal periods during shifts over five (5) hours. Specifically, Plaintiff and other Aggrieved Employees were explicitly instructed that Defendants had an across-the-board policy that breaks of any kind were simply not allowed, and that Plaintiff and other Aggrieved Employees could resign if they had a problem with that. Despite failing to provide Plaintiff and Aggrieved Employees timely, 30-minute, duty-free meal periods, Defendants failed to pay Plaintiff and Plaintiff is informed and believed Defendants failed to pay Aggrieved Employees

one (1) hour of pay at their regular rates of compensation for each workday when a compliant meal period was not provided.

12.2. Failure to Provide Plaintiff Rest Periods and Pay Wages in Lieu Thereof.

Defendants failed to provide Plaintiff timely, duty-free rest periods during shifts over three and one-half (3 1/2) hours. Specifically, Plaintiff and other Aggrieved Employees were explicitly instructed that Defendants had an across-the-board policy that breaks of any kind were simply not allowed, and that Plaintiff and other Aggrieved Employees could resign if they had a problem with that. Despite failing to provide Plaintiff and Aggrieved Employees timely, 10-minute, duty-free rest periods, Defendants failed to pay Plaintiff and Plaintiff is informed and believed Defendants failed to pay Aggrieved Employees one (1) hour of pay at their regular rates of compensation for each workday when a compliant rest period was not provided.

12.3. Failure to Reimburse Necessary Business Expenses.

Defendants required Plaintiff and other Aggrieved Employees to spend their personal money to purchase necessary protective equipment, such as gloves, hardhats, and boots. Despite this, Defendants never reimbursed Plaintiff or other Aggrieved Employees for these business expenses.

13. Plaintiff's Work Experiences as Common, Typical, and Illustrative. Plaintiff is informed and believes Defendants regularly subjected Plaintiff to employment policies and practices that led to the inaccurate recordkeeping, break violations, and wage theft, which caused Plaintiff to suffer legal detriment, and Plaintiff's experiences were common, typical, and illustrative of Aggrieved Employees' experiences including as alleged herein.

13.1. Majority Non-Professional, Non-Executive, Non-Administrative Duties.

Plaintiff and Aggrieved Employees did not perform more than one-half of their work time during any week or pay period engaged in duties utilizing advanced knowledge, specialized intellectual instruction, invention, imagination, originality, or artistic talent that would qualify them as exempt employees under any professional, executive, or administrative exemption including within the meaning of IWC Wage Order provisions and Labor Code § 515 including because (a) their duties and responsibilities did not involve the management of the enterprise in which they were employed or of a customarily recognized department or subdivision thereof; (b) they were not licensed or certified by

the State of California nor were they primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting, nor were they primarily engaged in an occupation commonly recognized as a learned or artistic profession; and (c) their duties and responsibilities did not involve either the performance of office or non-manual work directly related to management policies or general business operations of their employer or their employer's customers, or the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein.

13.2. No Authority to Hire or Fire, No Customary or Regular Exercise of Discretion or Independent Judgment and No Work Under Only General Supervision or Requiring Special Training, Experience, or Knowledge. Plaintiff and Aggrieved Employees did not have the authority to hire or fire other employees, nor were their suggestions and recommendations as to the advancement and promotion or any other change of status of other employees given any weight. Plaintiff and Aggrieved Employees did not customarily and regularly exercise discretion and independent judgment in performing their work duties. Plaintiff and Aggrieved Employees did not perform under only general supervision or work along specialized or technical lines requiring special training, experience, or knowledge.

13.3. Majority Non-Selling Duties. Plaintiff and Aggrieved Employees did not perform more than one-half of their work time during any week or pay period engaged in duties making sales, obtaining orders, or contracts for services customarily, or predominately away from Defendants' places of business during any week or pay period that would qualify them as exempt employees under the outside salesperson exemption.

14. Defendants' Common, Illegal Policies and Practices. Plaintiff is informed and believes Defendants employed Plaintiff and Aggrieved Employees pursuant to employment agreements, policies, and practices that were partly written, partly oral, and partly implied which, in sum, failed to adequately conform with and communicate employer-obligations and employee-entitlements under IWC Wage Orders and Labor Code provisions fixing the minimum wages, maximum hours, and standard conditions of labor for employees in California, which directly and proximately caused

Plaintiff and Aggrieved Employees to suffer, and continue to suffer from, losses of earnings and other legal detriments in amounts as yet unascertained including for the common reasons that follow.

14.1. Common Failure to Create and Maintain Accurate Records. Plaintiff is informed and believes Defendants failed to create and maintain accurate books, documents, and records of Plaintiff and Aggrieved Employees' work including those required by Section 6 or 7 ("Records") of any IWC Wage Order and the Labor Code:

14.1.1. by failing to create and keep accurate records of Plaintiff and Aggrieved Employees' hours worked including time records showing when they began and ended each meal period, split shift interval, and total daily hours worked;

14.1.2. by causing Plaintiff and Aggrieved Employees to inaccurately report their compensable hours including by adopting illegal, incomplete, misleading, or otherwise inadequate written policies, which Defendants knew would cause them to inaccurately report all their hours worked;

14.1.3. by causing Plaintiff and Aggrieved Employees to refrain from accurately recording and reporting their hours worked outside of scheduled hours including by express prohibition and indirect or implied prohibitions forbidding work outside of scheduled, authorized or pre-approved hours including under threats of discipline;

14.1.4. by failing to record and report Plaintiff and Aggrieved Employees' hours worked in an amount equal to all recorded or reported hours worked by altering, editing, rounding, automatically deducting, disapproving, recording and reporting by scheduled hours, and recording and reporting hours based on recorded or reported hours in certain timekeeping or information management systems while disregarding additional recorded hours of work in other information management systems;

14.1.5. by requiring, suffering, and permitting Plaintiff and Aggrieved Employees to work or to be subject to Defendants' control during paid or unpaid time periods including so-called meal periods and rest periods that were noncompliant because they were not authorized, permitted, duty-free, and timely, and then by failing to record and report those times as hours worked;

14.1.6. by failing to provide Plaintiff and Aggrieved Employees itemized wage statements, reporting, recording, and showing their precise, actual number of hours worked for each pay period to avoid paying all wages due and to mislead, defraud, and to deprive Plaintiff and Aggrieved Employees the information needed to evaluate whether the hours recorded and reported were correct;

14.1.7. and by other illegal methods and schemes to be discovered, which are within Defendants' superior, surreptitious knowledge, amounting to policies and practices demonstrating a willful disregard and disobedience of California laws requiring employers to create and maintain accurate books, documents, and records of Plaintiff and Aggrieved Employees' work.

ADDITIONAL FACTUAL ALLEGATIONS

Failure to Provide Meal Periods and Pay Wages in Lieu Thereof (IWC Wage Order § 11 and Lab. Code §§ 226.7, 512, and 1198)

15. Pursuant to IWC Wage Order § 11 and Labor Code §§ 226.7, 512, and 1198, and other California laws, California has prohibited employers from employing a person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work, the meal period may be waived by mutual consent of the employer and the employee. California has also prohibited employers from employing a person for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. California has also required that unless 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. Moreover, if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the relevant IWC Wage Order, then the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

16. Plaintiff and Aggrieved Employees are Defendants' current and former non-exempt employees who are and were entitled to the protections of IWC Wage Order § 11 and Labor Code §§

226.7, 512, and 1198, and other California laws.

17. During the applicable statutory period, as part of Defendants' illegal recordkeeping, hours, and wage payment policies and practices, Defendants routinely failed to provide Plaintiff and Aggrieved Employees meal periods and to pay one (1) additional hour of compensation at Plaintiff and Aggrieved Employees' regular hourly rates of compensation for each workday that a meal period was not provided, as required under the foregoing provisions of the IWC Wage Order and Labor Code by, among other things: requiring, permitting or suffering Plaintiff and Aggrieved Employees to work in excess of five (5) hours from the starts of their shifts before starting a meal period; requiring, permitting or suffering Plaintiff and Aggrieved Employees to work in excess of ten (10) hours from the starts of their shifts before starting a second meal period; requiring, permitting or suffering Plaintiff and Aggrieved Employees to take on-duty meal periods of less than 30 minutes or that were otherwise not duty-free inasmuch as Defendants failed to relieve Plaintiff and Aggrieved Employees of all of their duties or maintained control over them during that time; failing to count all times that Defendants failed to provide Plaintiff and Aggrieved Employees duty-free 30-minute meal periods as time worked for the purposes of minimum wage and overtime wage payments; failing to pay Plaintiff and Aggrieved Employees one (1) hour of pay at their regular hourly rates of compensation for each workday that the meal period was not provided; and by other methods to be discovered.

18. Defendants have knowingly and willfully refused to perform their obligations to provide Plaintiff and Aggrieved Employees meal periods and to pay all wages in lieu thereof in violation of IWC Wage Order § 11 and Labor Code §§ 226.7, 512, and 1198, and other California laws.

19. As a result, Defendants are subject to the civil penalty and other remedial provisions in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2), or other Labor Code provisions, for failing to provide meal periods and pay meal period premium wages.

**Failure to Provide Rest Periods and Pay Wages in Lieu Thereof
(IWC Wage Order § 12 and Lab. Code §§ 226.7, and 1198)**

20. Pursuant to IWC Wage Order § 12, Labor Code §§ 226.7 and 1198, and other

California laws, California has required employers to authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period, that rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, that a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours, and that authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. California has also required that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, then the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

21. Plaintiff and Aggrieved Employees are Defendants' current and former non-exempt employees who are and were entitled to the protections of IWC Wage Order § 12, Labor Code §§ 226.7 and 1198, and other California laws.

22. During the applicable statutory period, as part of Defendants' illegal recordkeeping, hours, and wage payment policies and practices, Defendants routinely failed to provide Plaintiff and Aggrieved Employees rest periods and to pay one (1) additional hour of compensation at Plaintiff and Aggrieved Employees' regular hourly rates of compensation for each workday that a rest period was not provided, as required under the foregoing provisions of the IWC Wage Order and Labor Code by, among other things: requiring, permitting or suffering Plaintiff and Aggrieved Employees to work in excess of three and one-half (3 1/2) hours from the starts of their shifts before starting a rest period; requiring, permitting or suffering Plaintiff and Aggrieved Employees to work in excess of six (6) hours from the starts of their shifts before starting a first or second rest period; requiring, permitting or suffering Plaintiff and Aggrieved Employees to work in excess of 10 hours from the starts of their shifts before starting a first, second or third rest period; requiring, permitting or suffering Plaintiff and Aggrieved Employees to take on-duty rest periods of less than 10 minutes or that were otherwise not duty-free inasmuch as Defendants failed to relieve Plaintiff and Aggrieved Employees of all of their duties or maintained control over them during that time; failing to count all times that Defendants failed to provide Plaintiff and Aggrieved Employees duty-free 10-minute rest periods as time worked for the purposes of minimum wage and overtime wage payments; failing to pay Plaintiff and

1 Aggrieved Employees one (1) hour of pay at their regular hourly rates of compensation for each
2 workday that the rest period was not provided; and by other methods to be discovered.

3 23. Defendants have knowingly and willfully refused to perform their obligations to
4 provide Plaintiff and Aggrieved Employees rest periods and to pay all wages in lieu thereof in
5 violation of to IWC Wage Order § 12, Labor Code §§ 226.7 and 1198, and other California laws.

6 24. As a result, Defendants are subject to the civil penalty and other remedial provisions in
7 Labor Code §§ 210, 558, 1197.1, and 2699(f)(2), or other Labor Code provisions, for failing to
8 authorize and permit rest periods and pay rest period premium wages.

9 **Failure to Pay Timely Wages During Employment**
10 **(IWC Wage Order § 4 and Lab. Code §§ 204 and 1198)**

11 25. Pursuant to IWC Wage Order § 4, Labor Code §§ 204 and 1198, and other California
12 laws, California has required employers to pay to each employee, on the established payday for the
13 period involved, not less than the applicable minimum wage for all hours worked in the payroll
14 period, whether the remuneration is measured by time, piece, commission, or otherwise, and at a
15 minimum all wages due for all labor performed between the 1st and 15th days of any calendar month
16 between the 16th and 26th day of the month during which the labor was performed.

17 26. Plaintiff and Aggrieved Employees are Defendants' current and former non-exempt
18 employees who are and were entitled to the protections of IWC Wage Order § 4, Labor Code §§ 204
19 and 1198, and other California laws.

20 27. During the relevant statutory period, as part of Defendants' illegal wage payment
21 policies and practices, Defendants routinely deprived Plaintiff and Aggrieved Employees of all timely
22 wage payments during their employment by failing to compensate Plaintiff and Aggrieved
23 Employees, at minimum, with all wages due for all labor performed between the 1st and 15th days of
24 any calendar month between the 16th and 26th day of the month during which the labor was
25 performed; by failing to compensate Plaintiff and Aggrieved Employees with all wages due for all
26 labor performed between the 16th and last days of any calendar month by the 1st and 10th day of the
27 following calendar month, and by failing to compensate Plaintiff and Aggrieved Employees with all
28 wages due, for labor in excess of the normal work period, by no later than the payday of the next

1 regular payroll period as required under California law.

2 28. Defendants have knowingly and willfully refused to perform their obligations to
3 compensate Plaintiff and Aggrieved Employees with timely wage payments during their employment
4 for all hours worked in violation of IWC Wage Order § 4, Labor Code §§ 204 and 1198, and other
5 California laws.

6 29. As a result, Defendants are subject to the civil penalty and other remedial provisions in
7 Labor Code §§ 210, 1197.1, and 2699(f)(2), or other Labor Code provisions, for failing to pay timely
8 wages during employment.

9 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

10 **(Lab. Code §§ 201, 201.3, 202, 203, and 1198)**

11 30. Pursuant to Labor Code §§ 201(a), 201.3, 202, 203, and 1198, and other California
12 laws, California has required employers to pay their employees all wages earned and unpaid at the
13 time of discharge, or if an employee quits, not later than 72 hours thereafter, unless the employee has
14 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
15 to his or her wages at the time of quitting, and that if an employer willfully fails to timely pay any
16 wages of an employee who is discharged or who quits, the wages of the employee shall continue as a
17 penalty from the due date thereof at the same rate until paid or until an action therefor is commenced;
18 but the wages shall not continue for more than 30 days. California has also required that if a
19 temporary services employer assigns an employee to work for a client, then that employee's wages
20 are due and payable no less frequently than weekly, regardless of when the assignment ends, and
21 wages for work performed during any calendar week shall be due and payable not later than the
22 regular payday of the following calendar week unless the employee works for a client on a day-to-
23 day basis while assembling and reporting back to the temporary services employer's location or
24 unless the employee is assigned to work for a client engaged in a trade dispute, in which cases, that
25 employee's wages are due and payable at the end of each day, regardless of when the assignment
26 ends.

27 31. Plaintiff and Aggrieved Employees are Defendants' current and former non-exempt
28 employees who are and were entitled to the protections of Labor Code §§ 201(a), 201.3, 202, 203,

1 and 1198, and other California laws.

2 32. During the relevant statutory period, as part of Defendants' illegal wage payment
3 policies and practices, Defendants routinely deprived Plaintiff and Aggrieved Employees of all timely
4 wage payments due to discharged and quitting employees by either failing to compensate Plaintiff
5 and Aggrieved Employees all earned and unpaid wages immediately at the time of discharge as
6 required under Labor Code § 201 or by failing to pay earned and unpaid wages no later than 72 hours
7 after the employee quit his or her employment, unless the employee provided 72 hours previous
8 notice of his or her intention to quit, in which case the employee was entitled to his or wages at the
9 time of quitting as required under Labor Code § 202, and by failing to pay Plaintiff and Aggrieved
10 Employees waiting time penalties in the form of continued compensation to the employee at the same
11 rate for up to 30 workdays as required under Labor Code § 203.

12 33. Defendants have knowingly and willfully refused to perform their obligations to
13 compensate Plaintiff and Aggrieved Employees for wage payments due to discharged and quitting
14 employees in violation of Labor Code §§ 201(a), 201.3, 202, 203, and 1198, and other California
15 laws.

16 34. As a result, Defendants are subject to the civil penalty and other remedial provisions in
17 Labor Code Labor Code §§ 210, 1197.1, and 2699(f)(2), or other Labor Code provisions, for failing
18 to timely pay all wages at termination.

19 **Failure to Furnish Accurate Itemized Wage Statements and to Maintain Accurate Records**
20 **(IWC Wage Order § 7 and Lab. Code §§ 226(a), 226(e)(2)(B), 1174(d), and 1198)**

21 35. Pursuant to IWC Wage Order § 7, Labor Code §§ 226(a), 226(e)(2)(B), 1174(d), and
22 1198, and other California laws, California has required employers to maintain accurate payroll
23 records showing the hours worked daily by and the wages paid to, and the number of piece-rate units
24 earned by and any applicable piece rate paid to, employees employed at the respective plants or
25 establishments, and at minimum semimonthly or at the time of each payment of wages furnish each
26 of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2)
27 total hours worked by the employee, (3) the number of piece-rate units earned and any applicable
28 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6)

1 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
2 only the last four digits of his or her social security number or an employee identification number
3 other than a social security number, (8) the name and address of the legal entity that is the employer,
4 and (9) all applicable hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate by the employee. California law has stated that an employee is
6 deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and
7 complete information as required by any one or more of items of the foregoing nine (9) enumerated
8 items and the employee cannot promptly and easily determine from the wage statement alone, *inter*
9 *alia*, the amount of the gross wages or net wages paid to the employee during the pay period or any of
10 the other information required to be provided on the itemized wage statement pursuant to enumerated
11 items (2) to (4), inclusive, (6), and (9).

12 36. Plaintiff and Aggrieved Employees are Defendants' current and former non-exempt
13 employees who are and were entitled to the protections of IWC Wage Order § 7, Labor Code §§
14 226(a), 226(e)(2)(B), 1174(d), and 1198, and other California laws.

15 37. During the relevant statutory period, as part of Defendants' illegal recordkeeping and
16 wage payment policies and practices, Defendants routinely deprived Plaintiff and Aggrieved
17 Employees of their entitlements to timely and accurate itemized wage statements in writing showing
18 each employee's gross wages earned, total hours worked, the number of piece-rate units earned and
19 any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages
20 earned, the inclusive dates of the period for which the employee is paid, the name of the employee
21 and only the last four digits of his or her social security number or employee identification number,
22 the name and address of the legal entity or entities employing Plaintiff and Aggrieved Employees,
23 and all applicable hourly rates in effect during each pay period and the corresponding number of
24 hours worked at each hourly rate as required under California law. Defendants have also failed to
25 maintain and to permit inspection of records of Plaintiff and Aggrieved Employees work required
26 under the foregoing provisions of the IWC Wage Order and Labor Code.

27 38. Defendants have knowingly and willfully refused to perform their obligations to
28 provide Plaintiff and Aggrieved Employees with timely and accurate wage statements and to

maintain and to permit inspection of records of Plaintiff and Aggrieved Employees work required in violation of IWC Wage Order § 7 and Lab. Code §§ 226(a), 226(e)(2)(B), 1174(d), and 1198, and other California laws.

39. As a result, Defendants are subject to the civil penalty and other remedial provisions in Labor Code §§ 226.3, 1197.1, and 2699(f)(2), or other Labor Code provisions, for failing to furnish accurate itemized wage statements and to maintain accurate records.

Failure to Reimburse Business Expenses

(Lab. Code § 2802)

40. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequences of the discharge of his or her duties.”

41. Plaintiff and other Aggrieved Employees have incurred reasonable and necessary expenses in the course of completing their job duties, including buying their own protective equipment, which were never reimbursed by Defendants.

42. An employer that knows or has reason to know that an employee has incurred work-related expenses must reimburse the employee, even if the employee does not request reimbursement.

43. Plaintiff and other Aggrieved Employees are entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and costs, under Labor Code § 2802.

FIRST CAUSE OF ACTION

Private Attorneys General Act of 2004 (PAGA) Remedies for IWC Wage Order and Labor

Code Violations

(Lab. Code §§ 2698-2699, *et. seq.*)

(Against all Defendants)

44. Plaintiff incorporates and realleges as if fully stated herein all facts and allegations, in any paragraph of this complaint, consistent with this cause of action.

45. Pursuant to Labor Code §§ 2698-2699, *et. seq.*, also known as PAGA, California has stated notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency

(LWDA) or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in §§ 2699¹ and 2699.3.² Labor Code § 2699(c) provides that an “aggrieved employee” is any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed. Furthermore, an employee affected by at least one Labor Code violation may pursue penalties on behalf of the state for unrelated violations by the same employer. (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.)

46. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of the State of California with respect to Plaintiff and other current and former employees of Defendants pursuant to the procedures specified in Labor Code § 2699.3 because Defendants employed Plaintiff and the alleged violations of the IWC Wage Orders and Labor Code were committed against Plaintiff during the applicable statutory periods. Defendants, at all relevant times alleged in this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s rights by violating various provisions of the IWC Wage Orders and Labor Code as set forth above.

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

² Labor Code § 2699 subdivision (a), provides: “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.4, 6310, 6311, and 6399.7.”

48. Accordingly, Plaintiff brings this action to recover civil penalties and for other remedies through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969, for an award of civil penalties, amounts of wages withheld, attorneys' fees, litigation costs, and all other legal and equitable remedies deemed just under California law.

WHEREFORE, Plaintiff, individually, and on behalf of the State of California with respect to Aggrieved Employees respectfully pray for relief against Defendants, and each of them, as follows:

2. Pursuant to Labor Code § 210, for Defendants’ violations of IWC Wage Order § 4 and Labor Code §§ 201.3 and 204, Plaintiff prays for an award and Defendants’ payment of civil penalties “[f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “[f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

1 3. Pursuant to Labor Code § 226.3, Defendants’ violations of IWC Wage Orders and
2 Labor Code § 226(a), Plaintiff prays for an award and Defendants’ payment of civil penalties “in the
3 amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one
4 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
5 employer fails to provide the employee a wage deduction statement or fails to keep the records
6 required in subdivision (a) of Section 226.”

7 4. Pursuant to Labor Code § 558(a), for Defendants’ violations of IWC Wage Orders and
8 Labor Code §§ 512 and IWC Wage Order § 3 or other applicable IWC Wage Orders, Plaintiff prays
9 for an award of Defendants’ payment of civil penalties “[f]or any initial violation, fifty dollars (\$50)
10 for each underpaid employee for each pay period for which the employee was underpaid” and “[f]or
11 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
12 period for which the employee was underpaid in addition to an amount sufficient to recover
13 underpaid wages.”

14 5. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d), Plaintiff
15 prays for an award of Defendants’ payment of civil penalties are subject to a civil penalty of five
16 hundred dollars (\$500).

17 6. Pursuant to Labor Code § 1198.5(k), for Defendants’ violations of Labor Code §§ 226,
18 432 and 1198.5 and other applicable provisions of the Labor Code and IWC Wage Order § 7 or other
19 applicable IWC Wage Orders, Plaintiff prays for an award of Defendants’ payment of civil penalties
20 of “seven hundred fifty dollars (\$750) from the employer.”

21 7. Pursuant to Labor Code § 1197.1, for Defendants’ violations of Labor Code § 2802
22 and other applicable provisions of the Labor Code and IWC Wage Order or other applicable IWC
23 Wage Orders, Plaintiff prays for an award of Defendants’ payment of civil penalties of \$100 for each
24 initial violation and \$250 for each subsequent violation, “regardless of whether the initial violation is
25 intentionally committed.”

26 8. In the alternative, and in keeping with Labor Code § 2699(f), which provides that for
27 all Labor Code violations for which a civil penalty is not specifically provided, the following civil
28 penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for

1 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation, PLAINTIFFS seek such civil penalties under Labor Code § 2699(f) for
3 Defendants' violations of Labor Code provisions for which a civil penalty is not specifically provided
4 including, but not limited to, for Defendants' violations of Labor Code §§ 201, 201.3, 202, 203, 204,
5 226, 226(a), 226(c) 226.7, 512, 1174(d), 1198, 2802, and the applicable IWC Wage Order provisions
6 alleged herein.

7 9. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, California Civil
8 Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest.

9 10. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1) and/or
10 any other applicable provisions providing for attorney's fees and costs including California Code of
11 Civil Procedure § 1021.5.

12 11. For such further relief that the Court may deem just and proper.

13
14 DATED: May 22, 2024

15 **LOYR, APC**

16
17 By: 

18 Young W. Ryu, Esq.
19 Zachariah E. Moura, Esq.
20 Kee Seok Mah, Esq.
21 Harley M. Phleger, Esq.
22 Attorneys for PLAINTIFF
23 JOEL MONTELONGO
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DEMAND FOR JURY TRIAL

PLAINTIFF demands a trial by jury for themselves on all claims so triable.

DATED: May 22, 2024

LOYR, APC

By: _____



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