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Superior Court of California
County of Los Angeles
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By: T. Carter Deputy

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Christopher Kaminski, individually and on behalf of all others
similarly situated

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

CHRISTOPHER KAMINSKI, an individual,
on behalf of himself and all others similarly
situated

CASE NO.: 24STCV14930

[Hon. Laura A. Seigle, Dept. 17]

Plaintiffs,

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

v.

OCEAN EXTERIORS INC, a California
corporation; JOSEPH FENG, an individual;
JOHN DIEKMANN, an individual; and
DOES 1 through 25, inclusive

1. Failure to Pay Overtime Wages;
2. Failure to Pay Minimum Wages;
3. Failure to Provide Meal Periods;
4. Failure to Provide Paid Rest Periods;
5. Failure to Timely Furnish Accurate Itemized Wage Statements;
6. Violation of Labor Code §§ 201 *et seq.*;
7. Paid Sick Leave Violations;
8. Violation of Labor Code § 2802;
9. Untimely Payment of Wages;
10. Unfair Business Practices (Business and Professions Code § 17200, *et seq.*; and
11. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Defendants.

1 Plaintiff, CHRISTOPHER KAMINSKI, an individual on behalf of himself and all others
2 similarly situated (hereinafter collectively referred to as “Plaintiffs”), hereby file this First
3 Amended Complaint against Defendants OCEAN EXTERIORS INC, JOSEPH FENG, JOHN
4 DIEKMANN, and DOES 1 through 25, Inclusive (hereinafter collectively referred to as
5 “Defendants”). Plaintiffs are informed and believe, and on the basis of that information and
6 belief, allege as follows:

7 I. INTRODUCTION

8 1. This is Class Action, pursuant to California Code of Civil Procedure section 382
9 on behalf of Plaintiff and other non-exempt current and former employees, employed by
10 Defendants and DOES 1 through 25, inclusive, in California. These Defendants and DOES are
11 collectively hereinafter referred to as “Defendants.” Defendants and DOES 1 through 25 were
12 joint employers of Plaintiffs in that they were operating as a joint enterprise and both suffered
13 and permitted Plaintiffs to work for each and all of them; controlled Plaintiffs’ hours and working
14 conditions; controlled Plaintiffs’ wages; made the decision to hire Plaintiff; and had control of
15 Plaintiff’s employment, and therefore jointly employed Plaintiffs.

16 2. Defendants misclassified Plaintiff and class members as independent contractors
17 when they did not meet the requirements to be independent contractors. As such, Defendants
18 failed to lawfully compensate Plaintiff and class members for all hours worked, and at the regular
19 rate of pay for overtime, meal and rest period premiums, and sick pay as required by California
20 Law.

21 3. Defendants misclassified Plaintiff and class members as independent contractors
22 when they did not meet the requirements to be independent contractors. As such, Defendants
23 failed to lawfully compensate Plaintiff and class members for all hours worked, and at the regular
24 rate of pay for overtime, meal and rest period premiums, and sick pay as required by California
25 Law.

26 4. Defendants also violated numerous provisions of the California Labor Code
27 (“Labor Code”), California Business and Professions Code (“B & P”) section 17000 et seq, the
28 applicable Wage Order(s) issued by the California Industrial Welfare Commission (hereinafter,

the “IWC Wage Order(s)”), and related common law principles for its non-exempt employees who were not misclassified as independent contractors.

5. Plaintiffs’ action seeks monetary damages, including full restitution from Defendants as a result of Defendants’ unlawful, fraudulent, and/or unfair business practices.

6. The acts complained of herein occurred, occur, and will occur; at least in part, within the time period from four (4) years preceding the filing of this complaint, up to and through the time of trial for this matter.

II. PARTIES

PLAINTIFF CHRISTOPHER KAMINSKI

7. Plaintiff CHRISTOPHER KAMINSKI (hereinafter “KAMINSKI” or “Plaintiff”) is an individual who at all times relevant hereto resided in the County of Los Angeles, State of California.

8. Plaintiff Kaminski worked for Defendants as a non-exempt hourly employee. Plaintiff Kaminski was misclassified as an independent contractor at times during his employment with Defendants. Plaintiff Kaminski is a former employee of Defendants.

DEFENDANTS

9. Defendant OCEAN EXTERIORS INC was and is a California corporation, with members that are citizens of California and duly organized, authorized, and licensed to do business in the State of California with its primary place of business in Los Angeles County, California.

10. Defendant JOSEPH FENG is an individual over the age of 18 and doing business in the State of California. Defendant Feng is an owner of Defendant Ocean Exteriors Inc and a legal employer of Plaintiff and class members.

11. Defendant JOHN DIEKMANN is an individual over the age of 18 and doing business in the State of California. Defendant Diekmann is an owner of Defendant Ocean Exteriors Inc and a legal employer of Plaintiff and class members.

12. Defendants and DOES 1 through 25 were joint employers of Plaintiffs in that they were operating as a joint enterprise, and both suffered and permitted Plaintiffs to work for each

1 and both of them; controlled Plaintiffs hours and working conditions; controlled Plaintiffs wages;
2 Defendants and DOES 1 through 25 made the decision to hire Plaintiffs and had control of
3 Plaintiffs' employment and therefore jointly employed Plaintiffs. These Defendants and DOES
4 are collectively hereinafter referred to as "Defendants."

5 DOES 1 TO 25, INCLUSIVE

6 13. DOES 1 to 25, inclusive at all times mentioned in this Complaint were doing
7 business in the State of California.

8 14. Plaintiffs do not know the true names or capacities, whether individual, partner,
9 or corporate, of DOES 1 to 25, inclusive and for that reason; DOES 1 to 25 are sued under such
10 fictitious names pursuant to California Code of Civil Procedure ("CCP") section 474.

11 15. Plaintiffs will seek leave of court to amend this Complaint to allege such names
12 and capacities as soon as they are ascertained.

13 ALL DEFENDANTS

14 16. Defendants, and each of them, are now and/or at all times mentioned in this
15 Complaint were in some manner legally responsible for the events, happenings, and
16 circumstances alleged in this Complaint.

17 17. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful
18 practices, wrongs, complaint, injuries, and/or damages alleged in the Complaint.

19 18. Defendants, and each of them, are now and/or at all times mentioned in this
20 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice
21 versa, and in doing the things alleged in this Complaint; Defendants are now and/or at all times
22 mentioned in this Complaint were acting within the course and scope of that agency, servitude
23 and/or employment.

24 19. Defendants, and each of them, are now and/or at all times mentioned in this
25 Complaint were members of and/or engaged in a joint venture, partnership, and common
26 enterprise, and were acting within the course and scope of, and in pursuance of said joint venture,
27 partnership, and common enterprise.

28 20. Defendants, and each of them, at all times mentioned in this Complaint concurred

1 and contributed to the various acts and omissions of each and every one of the other Defendants
2 in proximately causing complaint, injuries, and/or damages alleged in this Complaint.

3 21. Defendants, and each of them, at all times mentioned in this Complaint approved
4 of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions alleged
5 in this Complaint.

6 22. Defendants, and each of them, at all times mentioned in this Complaint aided and
7 abetted the acts and omissions of each and every one of the other Defendants thereby proximately
8 causing the damages alleged in this Complaint.

9 **III. JURISDICTION AND VENUE**

10 23. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of
11 the California Constitution as the causes of action are premised upon violations of California law.

12 24. The monetary damages and restitution sought exceed the minimal jurisdiction
13 limits of the Superior Court.

14 25. This Court has jurisdiction over Defendants because, upon information and belief,
15 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
16 themselves to the California economy so as to render the exercise of jurisdiction over them by
17 the California courts consistent with traditional notions of fair play and substantial justice.

18 26. Venue is proper under the Code of Civil Procedure sections 395 and 395.5 in that
19 the acts and omissions of the Defendants that form the basis of each cause of action in this
20 Complaint occurred in the County of Los Angeles, State of California, Plaintiff's injuries were
21 incurred within this jurisdiction, and that Defendants conduct business within this jurisdiction.

22 **IV. CLASS ALLEGATIONS**

23 27. This action is brought individually and on behalf of the following class pursuant
24 to Code of Civil Procedure section 382:

- 25 a. All current and former non-exempt employees, including all individuals
26 misclassified as independent contractors, who worked for Defendants in
27 California at any time from four years prior to the filing of this action through the
28 date of class certification.

1 28. Plaintiff reserves the right to establish various subclass definitions as appropriate
2 at the class certification stage, according to proof.

3 29. Numerosity (CCP § 382):

- 4 a. The potential quantity of members of the Classes as defined is so numerous that
5 joinder of all members is unfeasible and impractical.
- 6 b. The disposition of the claims of the members of the Classes through this class
7 action will benefit both the parties and this Court.
- 8 c. The quantity of members of the Classes is unknown to Plaintiffs at this time;
9 however, it is estimated that the membership of the Classes numbers greater than
10 100 individuals.
- 11 d. The quantity and identity of such members is readily ascertainable via inspection
12 of Defendants' records.

13 30. Superiority (CCP § 382): A class action is superior to other means for adjudicating
14 this dispute. Individual joinder is impractical. Class treatment will allow for common issues to
15 be resolved in a single forum, simultaneously, and without duplication of effort and expense.

16 31. Well-defined Community of Interest: Plaintiffs also meet the established
17 standards for class certification (see, e.g. Lockheed Martin Corp. v. Superior Court (2003) 29
18 Cal. 4th 1096), as follows:

- 19 a. Typicality: Plaintiff's claims are typical of the claims of all class members
20 because all class members sustained injuries and damages arising out of
21 Defendants' common course of conduct in violation of law and the injuries and
22 damages of all class members were caused by Defendants' wrongful conduct in
23 violation of law, as alleged herein:
- 24 b. Adequacy: Plaintiff:
- 25 i. is an adequate representative of the classes that Plaintiff seeks to represent;
- 26 ii. will fairly protect the interests of the members of the Classes;
- 27 iii. has no interests antagonistic to the members of the Classes; and
- 28 iv. will vigorously pursue this suit via attorneys who are competent, skilled,

and experienced in litigating matters of this type.

- c. Predominate Common Questions of Law or Fact: There are common questions of law and/or fact as to the class members which predominate over questions affecting only individual members of the classes.

V. GENERAL ALLEGATIONS

32. Defendants misclassified Plaintiff and class members as independent contractors when they did not meet the requirements of the ABC test to be independent contractors.

33. Defendants failed to lawfully pay Plaintiff and class members at the lawful minimum wage due to their practice and policy of paying Plaintiff and class members for only one completed meal plan while requiring them to continue working with the client for the remainder of the month.

FIRST CAUSE OF ACTION

Failure to Pay Overtime Wages
(Against All Defendants)

34. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

35. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code sections 204, 510, 558, 1194, and 1198, which require non-exempt employees to be timely paid overtime wages for all overtime hours worked, and which further provide a private right of action for an employer's failure to pay all overtime compensation for overtime hours worked.

36. Defendants failed in their affirmative obligation to pay Plaintiff and class members no less than one and one-half times their respective "regular rate of pay" for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

37. Plaintiff and class members are entitled to recover the following full amount of

1 the unpaid overtime: \$4,059,953.00.

2 38. Plaintiff and class members are also entitled to interest, statutory and civil
3 penalties, attorneys' fees, and costs to the extent permitted by law.

4 **SECOND CAUSE OF ACTION**

5 Failure to Pay Minimum Wages
6 (Against All Defendants)

7 39. Plaintiff incorporates by reference the allegations contained in the preceding
8 paragraphs as though fully set forth herein.

9 40. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
10 sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours
11 and Days of Work" and "Minimum Wages" sections of the applicable orders), which require
12 non-exempt employees be timely paid at least the state or local minimum wage (if higher) for
13 each hour of work, and further provide a private right of action for an employer's failure to pay
14 all minimum wages (plus liquidated damages).

15 41. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
16 members at least the lawful minimum wage for each hour worked in violation of Labor Code
17 sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours
18 and Days of Work" and "Minimum Wages" sections of the applicable orders), including payment
19 at the lawful local and county minimum wage ordinances in effect. As a result, Defendants are
20 liable for all associated damages, including liquidated damages for the minimum wage violations
21 pursuant to Labor Code section 1194.2.

22 42. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
23 minimum and regular, and overtime wages.

24 43. Plaintiff and class members are entitled to recover the following full amount of
25 the unpaid minimum wages: \$4,0271,227.00.

26 44. Plaintiff and class members are also entitled to interest, statutory and civil
27 penalties, attorneys' fees, and costs to the extent permitted by law, including under Labor Code
28 sections 1194 and 1194.2.

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THIRD CAUSE OF ACTION

Failure to Provide Meal Periods

(Against All Defendants)

45. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

46. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code sections 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

47. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

48. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

49. Plaintiff and class members are entitled to recover the following full amount of the unpaid meal period penalties: \$1,084,251.00.

50. Plaintiff and class members are also entitled to interest, statutory and civil penalties, attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

Failure to Authorize and Permit Paid Rest Periods

(Against All Defendants)

51. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

1 52. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
2 sections 226.7 and 516, which require non-exempt employees be authorized to take complaint
3 rest periods (or rest period premiums in lieu thereof), and which further provide a private right
4 of action for an employer's failure to lawfully provide all rest periods and/or pay rest period
5 premiums at the lawful regular rate of compensation.

6 53. Defendants willfully failed in their affirmative obligation to consistently authorize
7 and permit Plaintiff and class members to receive compliant, duty-free rest periods of not less
8 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of
9 Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods"
10 sections of the applicable orders).

11 54. Further, Defendants willfully failed in their affirmative obligation to consistently
12 pay Plaintiff and class members one additional hour of pay at the respective regular rate of
13 compensation for each workday that a fully compliant rest period was not provided, in violation
14 of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

15 55. Plaintiff and class members are entitled to recover the following full amount of
16 the unpaid rest period penalties: \$1,084,251.00.

17 **FIFTH CAUSE OF ACTION**

18 Failure to Timely Furnish Accurate Itemized Wage Statements
19 (Against All Defendants)

20 56. Plaintiff incorporates by reference the allegations contained in the preceding
21 paragraphs as though fully set forth herein.

22 57. This cause of action is brought by the Wage Statement Subclass pursuant to Labor
23 Code section 226(a) which requires non-exempt employees be provided accurate itemized wage
24 statements each pay period, and which further provide a private right of action for an employer's
25 failure to comply with this obligation. Additionally, Defendants violated their obligations
26 regarding wage statements for piece rate earnings under Labor Code section 226.2.

27 58. Defendants knowingly and intentionally failed in their affirmative obligation to
28 provide accurate itemized wage statements to Plaintiff and class members resulting in injury to
Plaintiff and class members. Specifically, Defendants did not issue wage statements issued to

1 Plaintiff and class members which accurately stated each pay period all of the information
2 required by Labor Code section 226(a)(1)-(9).

3 59. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
4 accurate itemized wage statements, causing confusion and concealing wage and premium
5 underpayments.

6 60. As a result, Plaintiff and class members are entitled to recover the statutory
7 penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per
8 employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per
9 employee, for a total of \$1,264,950.00.

10 61. Plaintiff and class members are also entitled to addition to interest, attorneys' fees,
11 and costs to the extent permitted by law, including under Labor Code section 226(e).

12 **SIXTH CAUSE OF ACTION**

13 Violations of Labor Code Sections 201 *et seq.*
14 (Against All Defendants)

15 62. Plaintiff incorporates by reference the allegations contained in the preceding
16 paragraphs as though fully set forth herein.

17 63. This cause of action is brought by the Waiting Time Class pursuant to Labor Code
18 sections 201 through 203, which require an employer to timely pay all wages earned upon
19 termination of employment, and which further provide a private right of action to recover
20 statutory waiting time penalties each day an employer fails to comply with this obligation, up to
21 a maximum of 30 days wages.

22 64. Defendants willfully failed and continue to fail in their affirmative obligation to
23 pay all wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately
24 upon termination of employment or within 72 hours thereafter for employees who did not provide
25 at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums
26 for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage
27 Orders.

28 65. Plaintiff and class members are entitled to recover a waiting time penalty for a
period of up to 30 days, in the following amount: \$1,454,520.00.

66. Plaintiff and class members are also entitled to interest, attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

Paid Sick Leave Violations (Against All Defendants)

67. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 [“Courts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay”].)

68. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

69. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave Class.

1 70. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid
2 sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay
3 Covid-19 Supplemental Sick Leave wages to the Paid Sick Leave Class at the correct rate in
4 violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

5 71. Pursuant to Labor Code section 248.1, Defendants were required to provide up to
6 80 hours of COVID-19 Supplemental Paid Sick Leave to employees for the period of April 20,
7 2020, to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80
8 hours of COVID-19 Supplemental Paid Sick Leave for the period of January 1, 2021, through at
9 least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and
10 requires employers to provide up to 80 hours of COVID-19 Supplemental Paid Sick Leave for
11 the period of January 1, 2022, to September 30, 2022, and may be extended thereafter.

12 72. Under Labor Code section 248.1, employees must be paid for Covid-19
13 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
14 last pay period, (2) state minimum wage, (3) local minimum wage.

15 73. Under Labor Code section 248.2, non-exempt employees must be paid
16 supplemental paid sick leave according to the highest of the following four methods:

17 (I) Calculated in the same manner as the regular rate of pay for the workweek in
18 which the covered employee uses COVID-19 supplemental paid sick leave,
19 whether or not the employee actually works overtime in that workweek.

20 (II) Calculated by dividing the covered employee's total wages, not including
21 overtime premium pay, by the employee's total hours worked in the full pay
22 periods of the prior 90 days of employment.

23 (III) The state minimum wage.

24 (IV) The local minimum wage to which the covered employee is entitled.

25 74. Labor Code section 248.6 requires employers to pay supplemental sick leave
26 using either method (I) or (II), as identified above.

27 75. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
28 Leave in the manner described above because Defendants failed to include in their sick leave

1 calculation the additional remuneration received by the Paid Sick Leave Class.

2 76. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the
3 Paid Sick Leave Class for underpaid sick leave wages, in the following amounts:

4 For employees misclassified as independent contractors: \$265,980.00;

5 For all other employees: \$59,929.00

6 Total: \$325,909.00

7 77. Plaintiff and class members are also entitled to interest, attorneys' fees, and costs.

8 **EIGHTH CAUSE OF ACTION**

9 Violation of Labor Code Section 2802

(Against All Defendants)

10 78. Plaintiff incorporates by reference the allegations contained in the preceding
11 paragraphs as though fully set forth herein.

12 79. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff
13 and the reimbursement class members for all necessary expenditures, losses, expenses, and costs
14 incurred by them in direct discharge of the duties of their employment, in violation of Labor
15 Code section 2802.

16 80. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
17 lawful reimbursements for business expenses. Plaintiff and class members are entitled to recover
18 the following amount of unreimbursed expenses of Plaintiff and class members: \$963,060.00.

19 81. Plaintiff and class members are also entitled to interest, attorneys' fees, and costs
20 to the extent permitted by law, including under Labor Code section 2802.

21 **NINTH CAUSE OF ACTION**

22 Untimely Payment of Wages in Violation of Labor Code Sections 204, 210, 218

(Against All Defendants)

23 82. Plaintiff incorporates by reference the allegations contained in the preceding
24 paragraphs as though fully set forth herein.

25 83. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
26 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each
27 pay period, and which further provide a private right of action for an employer's failure to comply
28 with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and

1 penalties due under these sections, including Labor Code § 210(c)'s statutory late payment
2 penalties.

3 84. Defendants willfully failed in their affirmative obligation to timely pay all wages,
4 including paid sick leave and meal and rest premiums, earned by Plaintiff and class members
5 twice during each calendar month on days designated in advance by the employer as regular
6 paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly
7 payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the
8 IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

9 85. Plaintiff and class members are entitled to recover the full amount of the unpaid
10 wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each
11 failure to pay each employee and \$200 for all subsequent violations and for all willful or
12 intentional violations for each failure to pay each employee, plus 25 percent of the amount
13 unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees,
14 and costs to the extent permitted by law.

15 **TENTH CAUSE OF ACTION**

16 Unfair Business Practices
17 (Against All Defendants)

18 86. Plaintiff incorporates by reference the allegations contained in the preceding
19 paragraphs as though fully set forth herein.

20 87. Defendants have engaged and continue to engage in unfair and/or unlawful
21 business practices in the State of California in violation of California Business and Professions
22 Code § 17200 by committing the foregoing wage and hour violations alleged throughout this
23 Complaint.

24 88. Defendants' dependance on these unfair and/or unlawful business practices
25 deprived Plaintiff and continue to deprive other class members of compensation to which they
26 are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
27 advantage to Defendants over competitors who have been and/or are currently employing
28 workers in compliance with California's wage and hour laws. These failures constitute unlawful,
deceptive, and unfair business acts and practices in violation of Business and Professions Code

1 section 17200 *et seq.*

2 89. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
3 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
4 restitution of the moneys as necessary and according to proof to restore all monies withheld,
5 acquired, and/or converted by Defendants pursuant to Business and Professions Code sections
6 17203 and 17208.

7 90. Plaintiff does not have an adequate remedy at law for past or future violations, to
8 the extent the statute of limitations on each of the alleged causes of action do not extend to the
9 four-year limitation provided under the UCL or to the extent the underlying Labor Code and IWC
10 Wage Order violations do not provide a private right of action.

11 91. Plaintiff and class members are entitled to injunctive relief against Defendants,
12 restitution, and other equitable relief to return all funds over which Plaintiff and class members
13 have an ownership interest and to prevent future damage and the public interest under Business
14 and Professions Code section 17200 *et seq.* Plaintiff and class members are further entitled to
15 recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code
16 of Civil Procedure section 1021.5.

17 **ELEVENTH CAUSE OF ACTION**

18 Civil Penalties Under the Private Attorneys General Act Violation of Labor Code §§ 2698 *et*
19 *seq.*

(Against All Defendants)

20 92. Plaintiff incorporates by reference the allegations contained in the preceding
21 paragraphs as though fully set forth herein.

22 93. Plaintiff brings this cause of action as a proxy for the State of California on behalf
23 of the following "aggrieved employees" pursuant to the Private Attorneys General Act
24 ("PAGA"), codified as Labor Code section 2698 *et seq.*:

- 25 a. All current and former non-exempt employees who worked for
26 Defendants in California at any time from one year prior to the postmark
27 date of the initial PAGA notice through date of trial.

1 b. All current and former non-exempt employees, including those
2 misclassified as independent contractors, who worked for Defendants in
3 California at any time from one year prior to the postmark date of the
4 initial PAGA notice through date of trial.

5 94. Plaintiff reserves the right to amend, supplement, or add to this description of the
6 aggrieved employees, according to proof.

7 95. The State of California, via the Labor and Workforce Development Agency
8 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v.*
9 *Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the
10 plaintiff files suit is always the real party in interest.”])

11 96. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
12 law,, any provision of this code that provides for a civil penalty to be assessed and collected by
13 the Labor and Workforce Development Agency or any of its departments, divisions,
14 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
15 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
16 herself and other current or former employees pursuant to the procedures specified in Section
17 2699.3.”

18 97. Labor Code section 2699(f) provides: “For all provisions of this code except those
19 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
20 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs
21 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
22 employee per pay period for the initial violation and two hundred dollars (\$200) for each
23 aggrieved employee per pay period for each subsequent violation.”

24 98. Any allegations regarding violations of the IWC Wage Orders are enforceable as
25 violations of Labor Code section 1198, which states: “[t]he employment of any employee for
26 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
27 unlawful.”

28 99. Labor Code section 2699.3 sets forth the procedure for commencing an action for

1 civil penalties under the PAGA.

2 100. On or about **February 15, 2024**, Plaintiff paid the requisite PAGA filing fee and
3 provided written notice (by online electronic filing with the LWDA and by certified mail to
4 Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to
5 support the alleged violations.

6 101. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of
7 Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though
8 fully set forth herein (the "PAGA notice").

9 102. To date, neither Plaintiff nor Plaintiff's counsel has received a response to
10 Plaintiff's written PAGA notice from the LWDA.

11 103. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
12 neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any
13 defendant providing a description of any actions taken to cure the alleged violations.

14 104. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
15 violations, without notice of cure from Defendants or notice from the LWDA of its intent to
16 investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff
17 exhausted all prerequisites and commenced this civil action under Labor Code section 2699
18 *et seq.*

19 105. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
20 Complaint, Defendants committed the following violations and are liable for all corresponding
21 civil penalties:

- 22 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§
23 1194, 1197, 1198; IWC Wage Orders.
- 24 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC
25 Wage Orders.
- 26 c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7,
27 512, 1198; IWC Wage Orders.
- 28

- d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- h. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- i. ***Misclassification of an Employee.*** Violation of Labor Code §§ 226.8.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

106. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in the following amount: \$462,400.00.

107. Plaintiff and class members are also entitled to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

On All Causes of Action

- i. For certification of this action as a class action;
- ii. For the appointment of Plaintiff as the class representative;
- iii. For appointment of the above-captioned counsel for Plaintiff as Class Counsel;
- iv. For the division of class members into appropriate classes and/or subclasses according to proof;
- v. For all recoverable pre- and post-judgment interest;

- 1 vi. For disgorgement of all amounts wrongfully obtained;
- 2 vii. For this action to be maintained as a representative action under the PAGA;
- 3 viii. For Plaintiff and counsel of record to be provided with all enforcement capabilities
- 4 as if the action were brought by the State of California or the California Division of
- 5 Labor Enforcement;
- 6 ix. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 7 x. For restitution and injunctive relief;
- 8 xi. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 9 permitted by law, including (without limitation) under Labor Code sections 218.5,
- 10 226, 1194, 2802, 2699, and Code of Civil Procedure section 1021.5;
- 11 xii. For such other relief, the Court deems just and proper.

12 **On the First Cause of Action**

13 For compensatory and consequential damages according to proof, but in no event less

14 than \$4,059,953.00.

15 **On the Second Cause of Action**

16 For compensatory and consequential damages according to proof, but in no event less

17 than \$4,0271,227.00.

18 **On the Third Cause of Action**

19 For compensatory and consequential damages according to proof, but in no event less

20 than \$1,084,251.00.

21 **On the Fourth Cause of Action**

22 For compensatory and consequential damages according to proof, but in no event less

23 than \$1,084,251.00.

24 **On the Fifth Cause of Action**

25 For compensatory and consequential damages according to proof, but in no event less

26 than \$1,264,950.00.

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On the Sixth Cause of Action

For compensatory and consequential damages according to proof, but in no event less than \$1,454,520.00.

On the Seventh Cause of Action

For compensatory and consequential damages according to proof, but in no event less than

On the Eighth Cause of Action

For compensatory and consequential damages according to proof, but in no event less than

On the Ninth Cause of Action

For compensatory and consequential damages according to proof, but in no event less than

Dated: October 9, 2025	HOSSEINI LEGAL, PC
	FERRARO VEGA EMPLOYMENT LAWYERS,
	INC.

By: /s/ Kaveh S. Hosseini
Kaveh S. Hosseini
Nicholas J. Ferraro
Lauren N. Vega
Attorney for Plaintiffs

EXHIBIT 1

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February 16, 2024

VIA ONLINE FILING

Labor and Workforce Development Agency
Attn.: PAGA Administrator
800 Capitol Mall, MIC-55
San Francisco, CA 95814
PAGAfilings@dir.ca.gov

Re: Chris Kaminski v. Ocean Exteriors Inc, et al.

Dear Representative:

Our offices represent Chris Kaminski (“Mr. Kaminski”) with respect to his claims under the California Labor Code against Ocean Exteriors Inc (“Defendant”) in Carson, California.

This letter is intended to constitute notice of claims, including notice pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code §2698, *et seq.* (“PAGA”) that Mr. Kaminski intends to bring a civil action for penalties under PAGA for California Labor Code violations committed by Defendant against Mr. Kaminski and other current and/or former Defendant’s employees in California (“Aggrieved Employees”). Mr. Kaminski’s PAGA action involves Defendant’s violation of sections 201, 202, 203, 204, 210, 226(a), 226.3, 226.7(b), 226.7(c), 226.8, 246, 247.5, 510, 512, 1174, 1174.5, 1197, 1198, 1198.5, and 2802 of the California Labor Code. This letter is being sent in compliance with California Labor Code section 2699.3.

As outlined below and throughout this complaint, Defendant violated several of California’s wage and hour laws before, during, and after Mr. Kaminski’s employment. At the forefront, Defendant willfully misclassified Mr. Kaminski and other employees as independent contractors. Defendant regularly failed to provide timely rest or meal periods or premiums, payment of the correct minimum and overtime wages, timely payment of wages, reimbursement of business expenses, sick pay, timely payment upon separation, and maintenance of payroll and time records for employees.

Defendant’s Violation of Sections 204, 210, 510, and 1194:

Defendant engaged in numerous unlawful practices which resulted in the failure to pay Mr. Kaminski and Aggrieved Employees for all time worked at the correct rates of pay, including commission and overtime compensation.



During at least the year immediately preceding the date of this letter, Mr. Kaminski and other California Defendant's employees were regularly required to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Kaminski and Aggrieved Employees to round their time worked and not accurately track their meal breaks. Mr. Kaminski and Aggrieved Employees were not compensated for this off-the-clock work, resulting in failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Kaminski and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in a week, resulting in a failure to pay overtime compensation.

During at least the year immediately preceding the date of this letter, Mr. Kaminski and other California Defendant's employees were not timely paid commissions earned. Defendant withheld earned commissions and refused to timely pay said commission. As a result, Defendant violated Labor Code sections 204 and 210.

Defendant's Violation of Section 226(a):

Section 226(a) states in pertinent part that: "An employer...shall furnish to his or her employee...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate..., (4) all deductions..., (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number..., (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period...." Additionally, the "Records" section of the applicable California Industrial Welfare Commission ("IWC") Wage Order ("Wage Order") requires accurate recordkeeping including records relating to time and pay.

During at least the year immediately preceding the date of this letter, Mr. Kaminski and Defendant's other California employees were not issued itemized wage statements or issued itemized wage statements that did not comply with the requirements under either Section 226(a), or under the requirements of the "Records" section of the applicable IWC Wage Order, a violation of Section 1198. The wage statements Defendant provided to Mr. Kaminski and other Defendant's employees in California fail to comply with the requirements of Section 226(a). As a result, the earned wages (net and gross) and deductions were not adequately listed, the corresponding number of hours worked at each hourly rate and the total hours worked including those worked as overtime hours are not adequately listed, and all applicable hourly rates and piece-rate units.

Defendant's Violation of Section 226.8:

Section 226.8 states in pertinent part that:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
 - (1) Willful misclassification of an individual as an independent contractor.
- ...



(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

Defendant exhibited a pattern and practice of hiring individuals properly classified as employees and willfully misclassifying them as independent contractors.

Defendant exhibited significant control over Mr. Kaminski and Aggrieved Employees all the while asserting Mr. Kaminski and Aggrieved Employees are merely independent contractors. However, Mr. Kaminski and those Aggrieved Employees who were engaged in outside sales were in fact non-exempt employee, entitled to the protections of the Labor Code.

Defendant's Violation of Sections 1197 and 1198:

Section 1197 provides that the payment of less than minimum wage is unlawful. Section 1198 provides that the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The "Minimum Wages" section of the applicable IWC Wage Order provides that every employer must pay to each employee on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the pay period. During at least the year immediately preceding the date of this letter, Defendant failed to pay its non-exempt California employees at least minimum wage for all time worked including, but not limited to, through its actions of: (i) failing to pay all hours worked during the pay period; (ii) failing to pay for the entirety of hours worked at the proper rate.

Defendant failed to record Mr. Kaminski's and the Aggrieved Employees' time accurately and failed to pay Mr. Kaminski and the Aggrieved Employees for all hours worked. Defendant paid Mr. Kaminski and the Aggrieved Employees hourly, yet Defendant failed to keep an accurate record of hours worked. Mr. Kaminski's and the Aggrieved Employees' lack any employee records for those engaging in outside sales. For those engaging in non-exempt roles, Mr. Kaminski's and the Aggrieved Employees' employee records do not indicate the actual time worked and instead is improperly rounded, which fails to compensate them for days they may have arrived early, left late, worked



through a meal period, or any variation to a regular workday that would be typical of a full-time employee.

Defendant's Violation of Sections 226.7(b), 226.7(c) and 1198:

Section 226.7(b) makes it unlawful for an employer to require any employee to work during any rest or recovery period mandated by the applicable IWC Wage Order, statute, regulation, standard, the Occupations Safety and Health Standards Board, or the Division of Occupations Safety and Health. Pursuant to the "Rest Periods" section of the applicable IWC Wage Order, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3.5) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages." Section 1198 moreover makes it unlawful for an employer to violate the Rest Periods section of the applicable IWC Wage Order.

During at least the year immediately preceding the date of this letter, Defendant failed to authorize and permit its California non-exempt employees to take compliant rest periods and further have failed to provide compliant recovery periods as mandated by California law. These failures arise in part due to Defendant's failure to provide for relief during breaks and improper scheduling of any such breaks. By failing to authorize and permit its California non-exempt employees to take complaint paid rest periods and recovery periods, Defendant violated Sections 226.7(b) and 1198.

Furthermore, despite Defendant regularly failing to provide its California employees with rest periods in conformance with California law, Defendant failed to pay Mr. Kaminski and the Aggrieved Employees rest period premiums equal to one hour at their regular rate of pay. Accordingly, Defendant violated section 226.7(c).

Defendant's Violation of Sections 226.7(b), 226.7(c), 512, and 1198:

Section 512 and the "Meal Periods" section of the applicable IWC Wage Order provide that no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Further, under Section 512 and the applicable IWC Wage Order, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is not more than twelve 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. The "Records" section of the applicable IWC Wage Order requires an employer to keep accurate information with respect to each employee including time records showing when the employee begins and ends each work period and meal periods. Section 1198 makes it unlawful to employ persons under conditions prohibited by the



applicable IWC Wage Order. Furthermore, Section 226.7(b) makes it unlawful for an employer to require any employee to work during any meal period mandated by the applicable IWC Wage Order.

Mr. Kaminski and the Aggrieved Employees were not paid premium pay for non-compliant meal periods. During at least the year immediately preceding the date of this letter, Defendant failed to provide duty-free meal periods in conformance with California law to Defendant's California non-exempt employees. For example, meal periods have not been provided at all, or have been late, short, or otherwise not in conformance with California law as a result of work duties and failure to permit such meal periods. By failing to provide these required meal periods to, and recording meal periods for, its California non-exempt employees, Defendant violated sections 226.7(b), 512, and 1198. Moreover, Defendant failed to maintain accurate records of meal periods pursuant to the applicable Wage Order requirements.

Furthermore, despite Defendant regularly failing to provide its California employees with compliant, duty-free meal periods in conformance with California law, Defendant failed to pay Mr. Kaminski and the Aggrieved Employees meal period premiums equal to one hour at their regular rate of pay. Accordingly, Defendant violated section 226.7(c).

Defendant's Violations/Penalties Regarding Sections 201, 201.3, 202, 203 and 204:

Sections 201 and 202 set for the timing requirements for the payment of wages due upon an employee's separate of employment. Section 201.3(b) sets for the timing requirement for the payment of wages due during an employee's employment and upon separation of employment. Section 203 furthermore provides that a waiting time penalty must be paid should the timing requirements in Sections 201, 201.3, or 202 not be complied with. Defendant did not pay Mr. Kaminski and the Aggrieved Employees all wages due during employment and upon separation of employment and by the times set forth in Sections 201, 201.3, 202, 203, and 204 as applicable, including, but not limited to, regular, minimum, overtime, premium wages, commissions, and other forms of wages. Mr. Kaminski and the Aggrieved Employees seek civil penalties for these violations.

Defendant's Violations of Section 2802:

Section 2802 states in relevant part: "(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Mr. Kaminski incurred a variety of charges, including equipment purchasing, mileage, internet, and phone usage for which he was either not reimbursed or not fully reimbursed. Accordingly, Mr. Kaminski and the Aggrieved Employees seek reimbursement for expenses incurred, interest, as well as civil penalties.

Applicable PAGA Civil Penalty:



PAGA, specifically Section 2699(a) permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violation of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Mr. Kaminski intends to bring a civil action to recover civil penalties for the violations identified above, including civil penalties pursuant to Section 2699(f) as well as those civil penalties specifically set forth within the text of the California Labor Code. These penalties are sought for violations committed against Mr. Kaminski and Defendant's other California employees.

Please feel free to contact the undersigned with any questions you may have.

Very truly yours,

HOSSEINI LEGAL, PC

Kaveh S. Hosseini

Notice provided to Defendant via Certified Mail (# 9589071052700924121918)

Ocean Exteriors Inc c/o Abbas Mirhashemi, Registered Agent
15642 Sand Canyon Avenue, Suite 54090
Irvine, CA 92619