

MATTHEW GUTIERREZ, SBN 271206
mg@lawyersforlegal.com
LAWYERS FOR LEGAL RIGHTS LLP
6077 Coffee Road, Suite 4
Bakersfield, CA 93308
Telephone: (323) 676-6676
E-service: service@lawyersforlegal.com

Attorneys for Plaintiff, JEREMY DIMMICK,
and the Proposed Class

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
12/31/2024 8:26 AM
By: Alyssa Leber, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
[UNLIMITED CIVIL]

JEREMY DIMMICK, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

5E BORON AMERICAS, LLC, a corporation;
PAUL WEIBEL, an individual; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVSB2436250

CLASS ACTION

COMPLAINT FOR:

1. **Private Attorneys General Act**
2. **Failure to Pay Overtime Wages in Violation of Labor Code § 510**
3. **Failure to Provide Meal Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7**
4. **Labor Code § 203 Waiting Time Penalty**
5. **Failure to Provide Accurate Itemized Wage Statements**
6. **Failure to Reimburse and Indemnify for Expenditures**

DEMAND FOR JURY TRIAL

Plaintiff, JEREMY DIMMICK, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action on his own behalf and on behalf of all persons similarly situated. The Class that Plaintiff represents is composed of all current and former non-exempt and non-

1 management employees of Defendants, who worked in California, and were deprived uninterrupted
2 meal and rest breaks, accurate wage statements, and waiting time penalties.

3 2. This Court has jurisdiction to hear the subject matter of this complaint. This Court also
4 has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California.
5 Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

6 3. Venue is proper in any county in which an aggrieved employee worked and Labor Code
7 violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law
8 and unlawful practices alleged herein occurred and are occurring in the County of San Bernardino.

9 **PARTIES**

10 4. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

11 5. Defendant 5E BORON AMERICAS, LLC, is a limited liability company that conducted,
12 and is conducting, business in the State of California. 5E BORON AMERICAS, LLC registered the
13 address 9329 Mariposa Road, Suite 210, Hesperia, California 92344 with the California Secretary of
14 State as its principal place of business in California.

15 6. Defendant PAUL WEIBEL, is an individual who, at all relevant times, has resided in the
16 State of California. PAUL WEIBEL was the Managing Member at all relevant times and was involved
17 in the management of operations and wage and hour practices alleged herein.

18 7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
19 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
20 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
21 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
22 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's
23 injuries were proximately caused by the conduct of such defendant.

24 8. All of the Defendants, including DOES 1-10, are alleged to be co-conspirators with each
25 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
26 wrongs as alleged in this Complaint.

27 9. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
28 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the

1 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
2 others.

3 10. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
4 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
5 Defendants and was acting within the course and scope of such agency, employment, and/or joint
6 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
7 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant
8 and/or Defendants confirmed and ratified said conduct and omissions.

9 11. Plaintiff is informed and believes and on that basis alleges that at all times relevant
10 herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's
11 wages, hours and working conditions, and has the right to control the manner in which Plaintiff
12 performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and
13 permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all
14 relevant times alleged herein.

15 12. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein,
16 the Defendants, and each of them, were an integrated enterprise in that they had an interrelation of
17 operations, centralized control of labor relations, common management, and common ownership or
18 financial control.

19 CLASS ALLEGATIONS

20 13. 5E BORON AMERICAS, LLC began in August 2022 and is a mining company that
21 operates in San Bernardino County. 5E BORON AMERICAS, LLC employed Plaintiff as a non-exempt
22 worker. He worked as a Process Operator from on or about March 20, 2023, to March 20, 2024. 5E
23 BORON AMERICAS, LLC is a mining company that operates in San Bernardino County.

24 14. Plaintiff brings this class action on behalf of himself and all other similarly situated persons
25 as a class action pursuant to California Code of Civil Procedure § 382. The proposed class is both
26 ascertainable and shares a well-defined community of interest in common questions of law and fact.
27 Furthermore, this action satisfies the numerosity, commonality, typicality, adequacy, predominance and
28 superiority requirements.

1 15. **Class Definition:** Plaintiff seeks certification of a class defined as follows:

2 All current and former non-exempt and non-management employees of
3 Defendants, who worked in California, anytime within the period of August
4 16, 2022, to the present and continuing to the date determined by the Court
5 ("Class" or "Class Members").

- 6 • Subclass 1: active employees not entitled to Labor Code section 203
7 waiting time penalties.
- 8 • Subclass 2: terminated employees entitled to Labor Code section
9 203 waiting time penalties.

10 16. Excluded from the class are Defendants, including their managing agents, officers, and
11 directors and their relatives; managers responsible for complying with the statutes involved in this
12 lawsuit; any entity in which any defendant has a controlling interest; any affiliate, legal representative,
13 heir or assign of defendants. Also, excluded from the class are any federal, state, or local governmental
14 entities, any judicial officer presiding over this action and the members of his/her immediate family and
15 judicial staff, and any juror assigned to this action.

16 17. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b), to amend or
17 modify the Class description with greater specificity or further division into subclasses or limitation to
18 particular issues.

19 18. **Numerosity:** Plaintiff does not know the exact number of Class members because such
20 information is in the exclusive control of the Defendants. However, Plaintiff believes that Class members
21 are sufficiently numerous, most likely at least 50, that individual joinder of all of them as plaintiffs is
22 impracticable. The information as to the identity of the Class members can be substantially determined
23 from records maintained by Defendants and their agents.

24 19. **Commonality:** There are questions of common or general interest, of many persons, and
25 it is impracticable to bring them all before the court. These common questions include, but are not
26 limited, to the following:

- 27 a. Whether Plaintiff and the Class were entitled to premium overtime compensation
28 for hours 8-10 in a workday;
- b. Whether Plaintiff and the Class were entitled to premium overtime compensation
 for working over twelve hours in a workday;

- c. Whether Plaintiff and the Class were provided uninterrupted meal breaks;
- d. Whether Plaintiff and the Class were furnished accurate itemized wage statements;
- e. Whether Plaintiff and the Class were paid all owed final wages at termination;
- f. Whether Plaintiff and the Class were paid or reimbursed for operating expenses they incurred;
- g. Whether Plaintiff and the Class are entitled to compensatory damages, and the amount of such damages;
- h. Whether Plaintiff and the Class are entitled to statutory penalties, and the amount of such penalties; and
- i. Whether Plaintiff and the Class are entitled to injunctive relief.

20. **Typicality:** The claims of the named Plaintiff are typical of the claims of the Class. There are no material conflicts with any other members of the Class that would make class certification inappropriate. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by the Defendants' common course of conduct in violation of the law.

21. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff is aggrieved in a similar manner as the proposed Class, with the only variation being the amount of loss and damage suffered by individual employees as a result of Defendants' common conduct. Plaintiff has retained attorneys experienced in litigating large class and representative actions and complex actions, and Plaintiff will prosecute this action vigorously.

22. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' conduct. A class action will allow those similarly situated to litigate their claims in the most efficient and economical manner for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

///

GENERAL ALLEGATIONS

23. Plaintiff and the Class regularly worked 12-hour shifts. As a company-wide practice, Defendants regularly required Plaintiff and its other non-exempt employees to work more than 8 hours per day without being paid premium overtime compensation for hours 8-10 per workday. Defendants engaged in this practice due to an erroneous alternative workweek election.

24. Plaintiff and the Class at times worked over 12-hour shifts. Defendants would not pay Plaintiff or the Class premium double time compensation for such work as Defendants would alter the

25. As a company-wide practice, Defendants regularly required Plaintiff and its other non-exempt employees to work more than 5 hours without being provided with an uninterrupted 30-minute meal break.

26. As a company-wide practice, Defendants did not furnish accurate itemized wage statements to Plaintiff and its other non-exempt employees.

27. Plaintiff's employment ended on March 20, 2024, but Defendants did not provide his final paycheck until March 29, 2024, and it did not contain all owed wages due. As a company-wide practice, Defendants did not timely pay all owed final wages to its terminated employees.

28. As a company-wide practice, Defendants passed its operating expenses to Plaintiff and the Class and did not compensate or reimburse them.

FIRST CAUSE OF ACTION**PRIVATE ATTORNEYS GENERAL ACT****(AGAINST ALL DEFENDANTS AND DOES 1-5)**

29. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs (the allegations that are relevant and necessary to state a claim for this cause of action) as though set forth herein in full again.

30. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), "Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Cal. Lab. Code § 2699(f).

31. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

20. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Cal. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Cal. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

32. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from October 23, 2023 to present and ongoing.

Labor Code Violations §§ 510, 226.7, 512, 226, 204, 1198, 1174(d), 558, 210, 226.3, 1174.5, 201, 202, 203, 1197
§ 510

33. “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Lab. Code § 510(a).

34. Plaintiff and his co-workers regularly worked more than eight hours per workday. They were not compensated with premium overtime pay for those overtime hours worked from hours 8-10 in

1 a workday or over forty in workweek. They were not compensated with premium double-time pay for
2 those overtime hours worked more than 12 in in a workday. As such, Defendants violated Labor Code §
3 510.

4 35. California Labor Code section 510 does not provide for its own self-contained “civil
5 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
6 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
7 aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing
8 allegations for this notice is from one year preceding this letter, to present and ongoing.

9 **§ 226.7**

10 36. “An employer shall not require an employee to work during a meal or rest or recovery
11 period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
12 Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
13 Occupational Safety and Health.” Lab. Code § 226.7(b). “If an employer fails to provide an employee a
14 meal or rest or recovery period in accordance with a state law, including, but not limited to, an
15 applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the
16 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the
17 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
18 compensation for each workday that the meal or rest or recovery period is not provided.” Lab. Code §
19 226.7(c).

20 37. As a company-wide practice, Defendants regularly required Plaintiff and its other non-
21 exempt employees to work without being provided the opportunity to have an uninterrupted meal break.
22 As a company-wide practice, Defendants did not allow them the opportunity to be relieved of all duties
23 to take a meal break. As a company-wide practice, Defendants did not compensate them in lieu of
24 providing meal breaks. As such, Defendants violated California Labor Code section 226.7(b) and
25 226(c).

26 38. California Labor Code section 226.7 does not provide for its own self-contained “civil
27 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
28 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each

aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 512

39. “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Lab. Code § 512(a).

40. As set forth above, Defendants did not permit Plaintiff and other aggrieved employees uninterrupted duty-free meal periods with the opportunity to be relieved of all duties for meal breaks on the days they worked more than five hours. Defendants did not permit Plaintiff and other aggrieved employees uninterrupted second duty-free meal periods with the opportunity to be relieved of all duties for meal breaks on the days they worked more than 10 hours.

41. California Labor Code section 512 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 226

42. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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

1 or her social security number or an employee identification number other than a social security number,
2 (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in
3 effect during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee.” Lab. Code § 226(a).

5 43. Due to Defendants’ failure to account for all the time worked, Plaintiff and other
6 aggrieved employees’ itemized wage records did not show: (1) the accurate total hours worked; (2) all
7 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at
8 each hourly rate; (3) the accurate gross wages earned; and (4) the accurate net wages earned. As such,
9 Defendants violated Labor Code Section 226(a)(1)(2)(5)(9). Defendants also failed to keep itemized
10 wage statement records of the foregoing.

11 44. Labor Code Section 226 does not provide for its own self-contained “civil” penalty
12 within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for
13 each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
14 per pay period for each subsequent violation. The relevant period of the foregoing allegations for this
15 notice is from one year preceding this letter, to present and ongoing.

16 **§ 204**

17 45. Labor Code Section 204(a) provides that “All wages, other than those mentioned in
18 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable
19 twice during each calendar month, on days designated in advance by the employer as the regular
20 paydays.”

21 46. Plaintiff and his co-workers regularly worked more than eight hours per workday. They
22 were not compensated with the earned premium overtime pay for those overtime hours worked from
23 hours 8-10 per workday. As such, Defendants violated Labor Code Section 204(a) by failing to pay for
24 all the overtime premium wages on regular paydays. Labor Code Section 204 does not provide for its
25 own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to
26 provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and
27 \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of
28 the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

1 **§ 1198**

2 47. California Labor Code section 1198 provides that the maximum hours of work and the
3 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
4 standard conditions of labor for employees. California Labor Code section 1173 defines commission as
5 the IWC. Further, the “employment of any employee for longer hours than those fixed by the order or
6 under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

7 48. Sections 5 of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001,
8 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-2001,
9 and Section 4 of IWC Order No. 17-2001, provide that, “(A) Each workday an employee is required to
10 report for work and does report, but is not put to work or is furnished less than half said employee's
11 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but
12 in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of
13 pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a
14 second time in any one workday and is furnished less than two (2) hours of work on the second
15 reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which
16 shall not be less than the minimum wage.”

17 49. As set forth above, Plaintiff and aggrieved employees reported for work, but when a
18 client canceled, Defendants did not pay them reporting time wages.

19 50. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-
20 2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No.
21 15-2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed
22 more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives
23 one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in
24 the workweek.” Section 7(A) requires every employer to keep accurate time records showing when the
25 employee begins and ends each work period and the total hours worked in the payroll period. As set
26 forth above, Plaintiff and her co-workers occasionally worked more than eight hours per workday. They
27 were not compensated with the earned premium overtime pay for those overtime hours worked more
28 than eight per day. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order

No. 4- 2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which in so far 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.”

51. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 4- 2001 section 11, provide that “(A) No employer shall employ any 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. (C) Unless the 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. An —on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

52. As set forth above, on numerous occasions, Defendants did not permit Plaintiff and other aggrieved employees to have uninterrupted duty-free meal breaks with the opportunity to be relieved of all duties for meal breaks.

53. Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

54. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

55. Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

56. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each

aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 1174(d)

57. Labor Code Section 1174(d) provides that every person employing labor in this state shall keep payroll records showing the hours worked daily by and the wages paid to employees employed for not less than three years. "Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

58. Defendants failed to maintain records showing the actual and accurate hours worked by Plaintiff and Plaintiff's co-workers, aggrieved employees, in violation of Labor Code Section 1174(d). Labor Code Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 558

59. Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of an employer who violates, or causes to be violated, [Labor Code sections 510 and 512] or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty in a PAGA action as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . .

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .

60. As discussed above, Defendants violated Labor Code section 510 and the above-referenced provisions of IWC Wage Orders as applicable. As such, Defendants are subject to pay the pre-determined amount of civil penalties for the initial and subsequent violations. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

///

1 **§ 226.3**

2 61. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil
3 penalty in the amount” set forth in Labor Code section 226.3 for failing to provide the employee a wage
4 deduction statement or failing “to keep the records required in subdivision (a) of Section 226.” Lab.
5 Code § 226.3. This section “sets out a civil penalty for all violations of section 226.” *Raines v. Coastal*
6 *Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). “[A] representative PAGA claim for
7 civil penalties for a violation of section 226(a) **does not require proof of injury or a knowing and**
8 **intentional violation**. This is true even though these two elements are required to be proven when
9 bringing an individual claim for damages or statutory penalties under section 226(e).” *Raines*, at 670
10 (emphasis added). Because Defendants violated California Labor Code section 226(a), Defendants are
11 subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former
12 aggrieved employees. The relevant period of the foregoing allegations for this notice is from one year
13 preceding this letter, to present and ongoing.

14 **§ 1174.5**

15 62. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails
16 to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject
17 to a civil penalty of five hundred dollars (\$500). As discussed above, Defendants violated Labor Code
18 Labor Code Section 1174(d). Defendants willfully failed to maintain records showing the accurate hours
19 worked daily by the aggrieved employees. Thus, Defendants are subject to civil penalties. The relevant
20 period of the foregoing allegations for this notice is from one year preceding this letter, to present and
21 ongoing.

22 **§ 201-203**

23 63. Due to the overtime and break violations, Plaintiff did not timely receive all of his final
24 pay within the required timeframe from his discharge date. Defendants also failed to provide Plaintiff
25 his final pay on the date of discharge. Thus, Defendants violated Labor Code sections 201-
26 203. Defendants also did this to other aggrieved employees. Labor Code Sections 201-203 do not
27 provide for their own self-contained civil penalty within the statute. Thus, Labor Code Section
28 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the

initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

Exhaustion of Administrative Remedies

64. On April 30, 2024, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-1025504-24. The notice was sent by certified mail on or about May 1, 2024, to 5E BORON AMERICAS LLC and PAUL WEIBEL, tracking number is 9214890260895005515885. Plaintiff submitted a fee waiver to the LWDA.

65. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendants have not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510

(AGAINST ALL DEFENDANTS AND DOES 1-5)

66. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs (the allegations that are relevant and necessary to state a claim for this cause of action) as though set forth herein in full again.

67. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney’s fees. Cal. Lab. Code § 1194(a).

68. “Any work in excess of eight hours in one workday and any work in excess of 40 hours

1 in any one workweek and the first eight hours worked on the seventh day of work in any one workweek
2 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
3 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
4 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
5 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay
6 of an employee.” Cal. Lab. Code § 510(a).

7 69. Plaintiff and the Class worked more than eight hours per workday and more than 40
8 hours per workweek and were not properly compensated at an overtime rate for those overtime hours
9 worked more than eight per day and 40 per week. Plaintiff and the Class at times worked more than
10 twelve hours per workday and were not properly compensated at an overtime rate for those overtime
11 hours worked more than twelve per day. As such, Defendants violated Labor Code sections 510 and
12 1198 because they violated Industrial Welfare Commission Orders, as applicable.

13 70. Any “person acting on behalf of an employer, who violates, or causes to be violated, any
14 provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare
15 Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the
16 employer for such violation.” Cal. Lab. Code § 558.1(a).

17 71. If the defendant does not keep accurate records of the hours worked by the plaintiff, then
18 the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those
19 hours. CACI 2703. As a direct and proximate result of the violations of law by Defendants, Plaintiff
20 and the Class worked a substantial number of hours without receiving overtime compensation, at the
21 applicable rate, from Defendants, in accordance with California law.

22 72. Plaintiff and the Class have been damaged in an amount equal to the compensation to
23 which they were entitled but was unlawfully deprived by Defendants, subject to proof at trial.

24 73. Pursuant to California Labor Code section 1194(a) Plaintiff and the Class are entitled to
25 interest at the legal rate on the overtime wages owed to Plaintiff and the Class by Defendants.

26 74. Pursuant to California Labor Code section 1194(a), Plaintiff and the Class are entitled to
27 an award of attorneys’ fees, and costs.

28 ///

THIRD CAUSE OF ACTION

**FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF IN
VIOLATION OF LABOR CODE § 226.7
(AGAINST ALL DEFENDANTS AND DOES 1-5)**

75. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs (the allegations that are relevant and necessary to state a claim for this cause of action) as though set forth herein in full again.

76. California Labor Code section 226.7 provides that “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Cal. Lab. Code § 226.7(b).

77. “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code § 226.7(c).

78. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 4-2001 section 11, provide that “No employer shall employ any 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.”

79. California Labor Code section 512(a) provides that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

80. Defendants regularly required Plaintiff and the Class to work more than 5 hours without being provided with a duty-free meal period with relief of all duties. Defendants did not compensate them in lieu of providing Plaintiff with meal breaks.

81. Pursuant to Labor Code section 226.7 and 512, Plaintiff and the Class are entitled to compensation of one additional hour of pay at Plaintiff's regular rate of compensation for each workday that the meal period was not provided.

82. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Cal. Lab. Code § 558.1(a).

FOURTH CAUSE OF ACTION

LABOR CODE § 203 WAITING TIME PENALTY

(AGAINST ALL DEFENDANTS AND DOES 1-5)

83. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs (the allegations that are relevant and necessary to state a claim for this cause of action) as though set forth herein in full again.

84. Defendants willfully failed to timely pay Plaintiff and the Class all owed wages on their last dates of work, in violation of Cal. Labor Code § 201, and failed to pay them the additional continuing wages as a penalty from the original due date, in violation of California Labor Code § 203.

85. Plaintiff and the Class have been harmed by Defendants' conduct and are entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and costs.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS AND DOES 1-5)

86. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs (the allegations that are relevant and necessary to state a claim for this cause of action) as though set forth herein in full again.

87. California Labor Code section 226(a) provides that every employer shall, at the time of

each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing accurate: (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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 other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . ." A copy of the itemized statement shall be kept on file by the employer for at least three years. Cal. Lab. Code § 226(a). A "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by Labor Code Section 226(a). Cal. Lab. Code § 226(a).

88. Defendants knowingly and intentionally failed to provide an itemized statement in writing showing *accurate* information required by Labor Code section 226(a).

89. "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Cal. Lab. Code § 226(e)(1).

90. An employee is deemed to suffer injury for purposes of section 226(e) if the employer fails to provide an itemized wage statement showing the accurate gross wages earned and total hours worked, and the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or total hours worked. Cal. Lab. Code § 226(e)(2)(B)(i).

91. As a result of the knowing and intentional failure to provide compliant wage statements, Plaintiff has suffered an injury pursuant to section 226(e). As a result, Defendants are liable to Plaintiff and the Class for the amounts provided by California Labor Code § 226(e).

92. Pursuant to California Labor Code § 226(e), Plaintiff and the Class are also entitled to an award of reasonable attorneys' fees and costs.

93. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Cal. Lab. Code § 558.1(a).

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES (AGAINST ALL DEFENDANTS AND DOES 1-10)

94. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs (the allegations that are relevant and necessary to state a claim for this cause of action) as though set forth herein in full again.

95. California Labor Code § 2802(a) provides that "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"

96. California Labor Code "Section 2802 is designed to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

97. Defendants violated Labor Code Section 2802 by passing on their operating expenses to Plaintiff and the Class, in violation of Labor Code § 2802(a).

98. Plaintiff and the Class have been damaged by Defendants' failure to pay or reimburse work expenses in an amount according to proof at trial.

99. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff and the Class are entitled to payment or reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

100. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Cal. Lab. Code § 558.1(a).

PRAYER

WHEREFORE, Plaintiff prays:

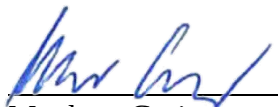
1. Certification of all Causes of Action as a class action on behalf of the proposed Class.
2. For a declaration and order that Defendants are financially responsible for notifying the Class about the pendency of this action.
3. Designation of Named Plaintiff as Class Representative and Plaintiff’s attorneys as Counsel for the Class.
4. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
5. For compensatory special damages, in an amount according to proof at the time of trial.
6. For statutory penalties pursuant to the California Labor Code.
7. For injunctive relief in the form of an order enjoining the Defendants from continuing violations of the Labor Code.
8. For reasonable attorneys’ fees pursuant to the California Labor Code, Government Code and Code of Civil Procedure.
9. For costs of suit including expert witness fees.
10. For prejudgment interest.
11. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff JEREMY DIMMICK hereby demands a trial by jury.

Dated: December 27, 2024

LAWYERS FOR LEGAL RIGHTS LLP

By: 

Matthew Gutierrez
Attorneys for Plaintiff, JEREMY DIMMICK,
and the Proposed Class