

Julian Burns King (Bar No. 298617)

Julian@KingSiegel.com

Elliot J. Siegel (Bar No. 286798)

Elliot@KingSiegel.com

KING & SIEGEL LLP

724 South Spring Street, Suite 201

Los Angeles, California 90014

tel: (213) 465-4802

fax: (213) 465-4803

Attorneys for Plaintiff Leopoldo Martinez-Bravo

and the Putative Class

[Additional Counsel listed on the next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

Leopoldo Martinez-Bravo,
individually and on behalf of all similarly
situated individuals,

Plaintiff,

vs.

Mike Kelley Construction, Inc., a
California corporation; **Blake Kelley,** an
indivual; and **Does 1-100,** inclusive;

Defendants,

Roberto Ramon Joya Estrada aka
Roberto R. Flores Cruz, individually
and on behalf of all similarly situated
individuals,

Plaintiff,

vs.

Mike Kelley Construction, Inc., a
California corporation; **Blake Kelley,** an
indivual; and **Does 1-100,** inclusive;

Defendants,

LEAD CASE – Martinez-Bravo

Case No.: 24CV05385

Estrada Case No.: 24CV05393

Lead Case Assigned for all purposes to:
Honorable Thomas P. Anderle, Dept. 3

**CONSOLIDATED CLASS ACTION
COMPLAINT FOR:**

- 1) Failure to Pay Minimum Wages;**
- 2) Failure to Pay Overtime Wages;**
- 3) Failure to Provide Meal Periods
or Premium Pay in Lieu Thereof;**
- 4) Failure to Provide Rest Periods or
Premium Pay in Lieu Thereof;**
- 5) Failure to Reimburse Necessary
Business Expenses;**
- 6) Failure to Provide and Maintain
Accurate Records;**
- 7) Failure to Pay Wages When Due
During Employment and at
Separation;**
- 8) PAGA Penalties; and**
- 9) Violation of California's Unfair
Competition Law**

Jury Trial Requested

1 Xavier Villegas (Bar No. 293232)
xavier@xaviervillegaslaw.com

2 **LAW OFFICE OF XAVIER VILLEGAS,**
3 **APC**

4 2390 Las Posas Road, C168
Camarillo, CA 93010
5 tel: (805) 250-7488
fax: (805) 250-7499

6 Attorneys for Plaintiff Leopoldo Martinez-
Bravo and the Putative Class

7
8 Brendan J. Burton (Bar No. 323495)
brendan@protectionlawgroup.com
9 Shadi Sahebghalam (Bar No. 343403)
shadi@protectionlawgroup.com

10 **PROTECTION LAW GROUP, LLP**
11 149 Sheldon Street
El Segundo, CA 90245
12 tel: (424) 290-3095
fax: (866) 264-7880

13 Attorneys for Plaintiff Roberto Ramon Joya
14 Estrada aka Roberto R. Flores Cruz and the
Putative Class

1 Plaintiffs Leopoldo Martinez-Bravo and Roberto Ramon Joya Estrada, on behalf of
2 themselves and all other similarly situated current and former employees (“Class Members”), by
3 and through their counsel of record, allege as follows against Mike Kelley Construction, Inc.
4 (“MKC” or Defendants”):

5 **PARTIES**

6 1. Plaintiff Leopoldo Martinez-Bravo (“Plaintiff”) is a resident of Ventura, Ventura
7 County, California. Plaintiff was as an hourly, non-exempt employee of Mike Kelley
8 Construction, Inc. working as a Construction Worker from approximately December 8, 2003 to
9 May 1, 2023. Plaintiff was subject to the policies and practices described in this Complaint at all
10 times during his employment at MKC.

11 2. Plaintiff Roberto Ramon Joya Estrada, a/k/a Roberto R. Flores Cruz, is an
12 individual residing in the County of Santa Barbara, State of California. Plaintiff Estrada worked
13 for Defendants as a General Laborer from approximately October 9, 2023 to August 29, 2024.
14 He was subject to the policies and practices described in this Complaint at all times during his
15 employment at MKC.

16 3. Defendant Mike Kelley Construction, Inc. (“MKC”) is a California corporation and
17 construction company. On information and belief, MKC has employed at least 50 hourly, non-
18 exempt employees in a variety of construction work capacities through the four years leading to
19 this Complaint in its Santa Barbara, California location. MKC is a general stock corporation
20 registered and organized under the laws of California. MKC’s principal place of business is 409 E.
21 Haley Street, Santa Barbara, CA 93101.

22 4. Defendant Blake Kelley (“Blake”) is an individual, on information and belief, he is
23 the Chief Executive Officer of MKC and a resident of the State of California, County of Santa
24 Barbara. Since Blake is a managing agent, director, and/or officer of MKC and because he violated
25 or caused to be violated the regulations and statutes described in greater detail below, he is
26 personally liable for the Labor Code violations and PAGA penalties complained of herein per
27 Labor Code section 558.1.

28 5. Plaintiffs are not currently aware of the names and true identities of defendants

Does 1-100. Plaintiffs reserve the right to amend this complaint to allege their true names and capacities when this information is available. Each Doe defendant is responsible for the damages alleged pursuant to each of the causes of action asserted, either through its own conduct, or vicariously through the conduct of others. Further references in this complaint to any named Defendants includes the fictitiously named defendants.

6. At all times alleged herein, each Defendant was an agent, servant, joint employer, employee, partner, and/or joint venture of every other Defendant and was acting within the scope of the Defendants' relationship. Moreover, the conduct of every Defendant was ratified by each other Defendant.

VENUE AND JURISDICTION

7. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI, § 10 of the California Constitution. No federal question is at issue; Plaintiffs rely solely on California statutes and law, including the Labor Code and Business & Professions Code. Because Defendants conduct substantial business in Santa Barbara County, Defendants are within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own behalf may bring an action in any court of competent jurisdiction.

8. Venue as to Defendants is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. Defendants operate a business in Santa Barbara, California in the County of Santa Barbara. The unlawful acts alleged have directly affected Plaintiffs, and similarly situated employees, in Santa Barbara County, where they were employed by Defendants and earned the wages at issue in this action. Accordingly, this Court maintains appropriate jurisdiction over this dispute.

CLASS ACTION ALLEGATIONS

9. At all times relevant to this Complaint, as a matter of uniform and systemic policy, on information and belief MKC has implemented a time clock policy that impermissibly results in Class Members being denied minimum wages and overtime compensation for all hours worked. Upon information and belief, rather than paying wages based on time actually worked, MKC

1 would record the start of Class Member's shifts and meal periods based on their scheduled start
2 times rather than actual start times, resulting in underpayment when, for example, an employee
3 starts their shift a minute early. Upon information and belief, this policy results in the systemic
4 underpayment of employee wages over time and in the aggregate.

5 10. Also, as a matter of uniform and systemic policy, Defendants required Plaintiffs
6 and Class Members to provide their own tools or equipment necessary for the performance of
7 their job duties but failed to reimburse employees for these purchases and/or to pay them two
8 times minimum wage. In fact, Defendants charged employees for these tools by unlawfully
9 requiring Plaintiffs and Class Members to execute routine forms authorizing withdrawals from
10 their paychecks for purchases made using the company's account. Class Members were also
11 required to absorb other necessary costs of Defendants' business, such as by using their cellular
12 phones and/or personal vehicles to discharge their duties without reimbursement.

13 11. Additionally, as a matter of uniform and systemic policy, MKC failed to authorize
14 and/or permit non-exempt employees the right to take bona fide meal and rest breaks pursuant
15 to Labor Code § 226.7 based on, at least, the following uniform policies and practices.

16 12. *First*, Defendants implemented a policy that expressly denied employees lawful
17 rest periods by failing to permit ten minute rest time for every four hours worked, or major
18 fraction thereof. Instead, on information and belief, Defendants authorized a single 15-minute
19 rest period during the workday that was tacked on to their 30 minute meal period regardless of
20 shift length.

21 13. *Second*, on information and belief, Defendants implemented an "auto-deduct" of 30
22 minutes for meal periods regardless of whether employees took a meal period or its actual length.

23 14. *Third*, Defendants interrupted Plaintiffs and Class Members during their
24 unlawfully combined meal and rest periods due to the amount of work they required them to
25 complete during the workday and/or because they were ordered to attend to or complete work on
26 the job site but this time was not compensated and Class Members were required to report that
27 they took a 30-minute meal period irrespective of whether it was interrupted or they remained
28 under Defendants' control.

1 15. In failing to authorize and/or permit timely and/or uninterrupted meal and rest
2 periods, Defendants have also implemented a uniform policy of denying compensation in lieu of
3 meal and rest periods to its non-exempt employees. Defendants denied compensation in lieu of
4 meal and rest periods, including premium wages owed, notwithstanding their actual knowledge
5 that such employees were uniformly denied compliant meal and rest periods.

6 16. Accordingly, Plaintiffs bring this action on behalf of himself and as a class action
7 on behalf of the following defined Class:

8 17. **Non-Exempt Employee Class:**

9 *All persons who worked at least one shift as a non-exempt, direct-hire or agency*
10 *employee in the State of California from the period four years prior to the filing*
11 *of the Action and the date of trial ("Class").*

12 18. Common methods of proof exist for determining these issues on a class-wide basis,
13 including but not limited to, Defendants' employment records, payroll records, timesheets,
14 policies, and disciplinary records.

15 19. **Numerosity.** Plaintiffs are informed and believe that, during the class period, at
16 least 50 Class Members have been employed as non-exempt employees by Defendants within
17 the state of California. The number of Class Members is sufficiently numerous such that joinder
18 of all members is impossible or impracticable.

19 20. **Typicality.** Plaintiffs' claims are typical of all Class Members. Plaintiffs, like all
20 other Class Members, were subjected to the policies and practices set forth above. Plaintiffs' job
21 duties were typical of Class Members in all relevant respects.

22 21. **Adequacy.** There are no material conflicts between the claims of the
23 representative Plaintiffs and Class Members that would make class certification inappropriate.
24 Plaintiffs understand their obligation to inform the Court of any relationship, conflicts, or
25 differences with any Class Member. Plaintiffs will fairly and adequately protect the interests of
26 the Class Members. Plaintiffs are invested in redressing Defendants' illegal practices on behalf
27 of all Class Members. Moreover, Plaintiffs have retained competent counsel experienced in both
28 class action and employment litigation. Plaintiffs' attorneys, the proposed class counsel, are

versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiffs have incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

22. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendants have a common policy and/or practice of failing to accurately record non-exempt employees' time;
- b. Whether Defendants have a common policy and/or practice of rounding non-exempt employees' time records to the detriment of those employees;
- c. Whether Defendants unlawfully required Plaintiffs and Class Members to remain under Defendants' control and direction while off-the-clock;
- d. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiffs and Class Members at a minimum wage for all hours worked due to its rounding or off-the-clock policies;
- e. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiffs and Class Members required overtime wages;
- f. Whether Defendants have a common policy and/or practice of requiring employees to provide their own tools or equipment.
- g. Whether Defendants have a common policy and/or practice regarding tools or equipment that are necessary for the performance of a job.
- h. Whether Defendants have a common policy and/or practice of providing and maintaining all necessary tools or equipment that are necessary for the performance of a job to employees.
- i. Whether Defendants unlawfully failed to pay employees at least two times minimum wage.
- j. Whether Defendants have a common policy and/or practice by which they

- implemented an “auto-deduct” of 30 minutes or more for employees for meal periods regardless of whether employees took a meal period or its actual length;
- k. Whether Defendants’ auto-deduct policy and practice unlawfully deprives employees of wages earned;
- l. Whether Defendants have a common policy and/or practice of depriving Plaintiffs and Class Members of compliant, off-duty meal and/or rest periods;
- m. Whether Defendants unlawfully and/or willfully deprived Plaintiffs and Class Members of compliant, off-duty meal and/or rest periods;
- n. Whether Defendants paid Plaintiffs and Class Members all required premium wages for non-compliant meal and/or rest periods;
- o. Whether Defendants have a common policy and/or practice of failing to reimburse employees for necessary business expenditures;
- p. Whether Defendants have a common policy and/or practice of discriminating against employees who attempt to exercise their rights to or exercises their rights to use accrued and available sick time.
- q. Whether Defendants have a common policy and/or practice of subjecting employees to discipline for attempting to exercise their rights to or exercising their rights to use accrued and available sick time.
- r. Whether Defendants have a common policy and/or practice of denying employees the right to use accrued and available sick time.
- s. Whether Defendants have a common policy and/or practice of failing to maintain accurate payroll records in the State of California;
- t. Whether Defendants unlawfully and/or willfully failed to maintain accurate payroll records in the State of California;
- u. Whether Defendants have a policy and/or practice of failing to provide accurate wage statements reflecting hours worked and wages earned to Plaintiffs and Class Members;
- v. Whether Defendants unlawfully and/or willfully failed to provide accurate

wage statements reflecting hours worked and wages earned to Plaintiffs and Class Members;

w. Whether Defendants have a policy and/or practice of failing to timely pay wages during employment in violation of Labor Code §§ 204, 210.

x. Whether Defendants have a policy and/or practice of failing to pay Plaintiffs and Class Members final wages owed upon termination;

y. Whether Defendants unlawfully and/or willfully failed to promptly pay compensation due to Plaintiff and Class Members upon termination of employment in violation of Labor Code §§ 201, 202, and 203;

z. Whether Plaintiffs and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief;

aa. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the above provisions of law; and

bb. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by treating Plaintiffs and Class Members unfairly by depriving them of meal and/or rest periods, failing to provide them with compensation in lieu of meal and/or rest periods, failing to pay all regular and overtime wages earned, failed to pay two times minimum wage, failing to pay wages upon termination, failing to reimburse business expenses, failing to comply with sick leave laws, failing to furnish accurate and timely itemized wage statements upon payment of wages, and/or failing to timely pay all compensation due during employment and upon discharge.

23. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendants' conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed

1 by individual lawsuits if all Class Members sought redress. In addition, individualized litigation
2 increases the delay and expense to all parties and to the court system resulting from the complex
3 legal and factual issues of this case. Individualized litigation also presents a potential for
4 inconsistent or contradictory judgments. By contrast, the class action device presents far fewer
5 management difficulties; it allows the hearing of claims which might otherwise go unaddressed
6 because of the relative expense of bringing individual lawsuits, and it provides the benefits of
7 single adjudication, economies of scale, and comprehensive supervision by a single court.
8 Plaintiffs contemplate providing individual notice to members of the Class through Defendants'
9 records.

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 ***California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

13 ***Failure to Pay Minimum Wages for All Hours Worked***

14 **(Plaintiffs and Class Against Defendants)**

15 24. Plaintiffs repeat and incorporate by reference all allegations contained in the
16 preceding paragraphs as if fully set forth herein.

17 25. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that
18 payment of a wage less than the minimum wage as set by statute, commission, or by the general
19 prevailing rate is unlawful. Compensable work time is defined in Wage Order No. 16 as "the time
20 during which an employee is subject to the control of an employer, and includes all the time the
21 employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs.
22 tit. 8, § 11160(2)(J) (defining "Hours Worked").

23 26. On information and belief, Defendants employed a timeclock policy that, over
24 time, consistently and as a matter of common policy and practice failed to pay Class Members at
25 least minimum wages for all hours worked as described above.

26 27. Instead of recording time actually worked, MKC would record the start of Class
27 Member's shifts and meal periods based on their scheduled start times rather than actual start
28 times. For instance, Plaintiff usually arrived to work and started working five minutes before the

1 start of his scheduled 7:00 a.m. shifts but Defendants only recorded the start of his shifts as
2 starting at 7:00 a.m. In other instances, depending on the job and/or work, his supervisor
3 required him to start work as early as 6:00 a.m. Upon information and belief, Defendants
4 required Class Members to engage in other off the clock work in way unknown to Plaintiffs at
5 this time.

6 28. Defendants failed to compensate Plaintiffs and the Class for all hours worked
7 because Defendants' policy and/or practice whereby they required and/or pressured Class
8 Members to arrive early to work and remain under Defendants' control while off-the-clock.

9 29. On information and belief, Defendants' policy also resulted in Class Members
10 working during their putative meal periods, but were not being paid for this time based on such
11 time either not being recorded as time worked or due to Defendants' auto-deduct policy.

12 30. Defendants' failure to pay Plaintiffs and Class Members minimum wages for all
13 hours worked violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

14 31. As a separate basis for liability under Wage Order No. 16, on information and
15 belief, Defendants failed to pay Plaintiff, and Similarly Aggrieved Employees, two (2) times
16 minimum wage¹ when requiring them to provide and maintain hand tools and equipment
17 customarily required by the particular trade or craft in conformity with Labor Code Section
18 2802. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are entitled
19 to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the
20 wages unlawfully unpaid and interest thereon, along with other applicable penalties.

21 ///

22 ///

23 ///

24 ///

25 ¹ "When the employer requires the use of tools or equipment or they are necessary for the
26 performance of a job, such tools and equipment shall be provided and maintained by the
27 employer, except that an employee whose wages are at least two (2) times the minimum wage
28 may provide and maintain hand tools and equipment customarily required by the particular
trade or craft in conformity with Labor Code Section 2802." Cal. Code. Regs. tit. 8, § 11160(8)(B)
("Uniforms and Equipment").

SECOND CAUSE OF ACTION
California Labor Code §§ 510 and 1198
Failure to Pay Overtime Wages
(Class Against Defendants)

32. Plaintiffs repeat and incorporate by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

33. California Labor Code sections 510, 1198, and Industrial Wage Order No. 16 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

34. Specifically, Industrial Wage Order No. 16 provides that Defendants were required to pay Plaintiff and Class Members working more than eight hours in a workday or more than forty hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a workday or more than forty hours in a workweek.

35. Throughout the Class Period, Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and/or in excess of 40 hours in a week because all hours worked were not recorded as compensable time as a direct consequence of Defendants' policies and practices, including without limitation its unlawful meal and rest periods, on information and belief its failure to pay for actual time worked and/or rounding and auto-deductions, and off the clock work policies and/or practices.

36. Defendants knew or should have known that their policies and practices forced Class Members to work in excess of eight hours per workday and/or 40 hours per workweek without being compensated for all hours worked. Because Class Members worked shifts of more than eight hours a day or forty hours a week, some of this work qualified for overtime premium pay. Therefore, Class Members were not paid overtime wages at the correct rate of pay for all of the overtime hours worked.

37. Pursuant to Labor Code section 1194, Class Members are entitled to recover their

1 unpaid overtime compensation, as well as interest, costs, and attorneys' fees, and applicable civil
2 penalties.

3 **THIRD CAUSE OF ACTION**

4 ***California Labor Code §§ 226.7, 512(a), and 1198***

5 ***Failure to Provide Meal Periods or Premium Pay in Lieu Thereof***

6 **(Plaintiffs and Class Against Defendants)**

7 38. Plaintiffs repeat and incorporate by reference all allegations contained in the
8 preceding paragraphs as if fully set forth herein.

9 39. Labor Code section 512(a) provides that an employer may not require, cause, or
10 permit an employee to work for a period of more than five hours per day without providing the
11 employee with a meal period of not less than thirty minutes, except that if the total work period
12 per day of the employee is not more than six hours, the meal period may be waived by mutual
13 consent of both the employer and the employee. Under California law, first meal periods must
14 start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004,
15 1041-104 (2012). An employee is also entitled to a second meal period for shifts in which the
16 employee works in excess of ten hours.

17 40. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require
18 an employee to work during any meal period mandated by an applicable order of the IWC,
19 including Industrial Wage Order No. 16. "An off-duty meal period, therefore, is one in which the
20 employee is relieved of all duty during the 30-minute meal period . . . an employer's obligation
21 is to provide an off-duty meal period: an uninterrupted 30-minute period during which the
22 employee is relieved of all duty." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035
23 (2012). The employee must also be "free to leave the premises." *Id.* at 1036.

24 41. On information and believe, Defendants' timeclock policy applied to meal period
25 clock-in and clock-outs and resulted in automatic adjustments to time records for meal periods
26 that were less than 30-minutes but characterized for payroll purposes as having lasted for 30-
27 minutes. *See Donohue v. Amn Servs.*, 11 Cal.5th 58, 69 (Cal. 2021) ("By requiring premium pay
28 for any violation, no matter how minor, the structure makes clear that employers must provide

compliant meal periods whenever such a period is triggered. This corroborates the conclusion that rounding is improper []. A premium pay scheme that discourages employers from infringing on meal periods by even a few minutes cannot be reconciled with a policy that counts those minutes as negligible rounding errors.”).

42. Defendants also failed to relieve Plaintiffs and Class Members from all duty when on their meal period by requiring Plaintiffs and Class Members to comply with an unlawful and systematic policy and practice whereby Defendants also pressured Plaintiffs and Class Members to prioritize completing assigned work by interrupting their meal periods and/or by requiring them to remain on premises to attend to cement or other work during breaks. Defendants’ policies and practices resulted in Class Member meal periods being missed, interrupted by work, and taken late, or on duty.

43. Throughout the time period involved in this case, Defendants did not adequately inform Class Members of their right to take meal periods under California law. Moreover, Defendants systematically disregarded their own written policies regarding the provision and timing of meal periods for Class Members. Instead, Defendants’ actual policy and practice was to schedule Class Members in a way that prohibited them from taking timely and duty-free meal periods, and to require Class Members to work through their meal periods, for which they were not compensated.

44. Defendants did not pay Plaintiffs and Class Members all meal period premium wages at the correct rate of pay when meal periods were missed, interrupted by work, rendered on duty, or and taken late, in violation of Wage Order No. 16 and Labor Code sections 226.7 and 512(a).

45. Defendants’ conduct violates Wage Order No. 16 and Labor Code sections 512(a), 226.7, and 1198. Plaintiffs and Class Members are entitled to one additional hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided, and interest thereon, along with applicable civil penalties.

///

///

1 **FOURTH CAUSE OF ACTION**

2 ***California Labor Code §§ 226.7 and 1198***

3 ***Failure to Provide Rest Periods or Premium Pay in Lieu Thereof***

4 **(Plaintiffs and Class Against Defendants)**

5 46. Plaintiffs repeat and incorporate by reference all allegations contained in the
6 preceding paragraphs as if fully set forth herein.

7 47. At all times relevant to this complaint, Defendants knew it was obligated to provide
8 compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

9 48. Labor Code § 226.7 provides:

10 (a) No employer shall require any employee to work during any meal
11 or rest period mandated by an applicable order of the Industrial Welfare
12 Commission.

13 (b) If any employer fails to provide an employee a meal period or rest
14 period in accordance with an applicable order of the Industrial Welfare
15 Commission, the employer shall pay the employee one additional hour of
16 pay at the employee's regular rate of compensation for each work day
17 that the meal or rest period is not provided.

18 49. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an
19 employee to work during any rest or meal period mandated by an applicable order of the IWC,
20 including Wage Order No. 16. Employers must authorize and permit employees to be relieved of
21 all duty during their rest and meal periods: "A rest period, in short, must be a period of rest."²
22 *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

23 50. Wage Order No. 16 further mandates, in pertinent part, "Authorized rest period
24 time shall be counted as hours worked for which there shall be no deduction from wages." Cal.

25
26 ² Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; see also
27 Department of Industrial Relations, "Rest Periods/Lactation Accommodations," available at
28 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.")

Code. Regs. tit. 8, § 11160(11)(A) (“Rest Periods”).

51. Employees must also be free to leave the employer’s premises during their rest period. *See id.* at 270 (“In the context of a 10-minute break that employers must provide during the work period, a broad and intrusive degree of control exists when an employer requires employees to remain on call and respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time.”); *see also* Department of Industrial Relations, “Rest Periods,” available at https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.”).

52. Defendants failed to relieve Plaintiffs and Class Members from all duty when on their rest period by requiring Plaintiffs and Class Members to comply with an unlawful and systematic policy and practice that interfered with their ability to take compliant rest periods whereby they pressured Plaintiff and Class Members to prioritize completing assigned work by interrupting their rest periods and/or by prohibiting them from leaving the work premises during breaks.

53. Additionally, on information and belief, Defendants also failed to provide Plaintiffs and Class Members with the required number of rest breaks per shift as they only authorized employees to take a single 15 minute rest period that was tacked on to their meal period regardless of the length of the shift worked.³

54. Throughout the time period involved in this case, Defendants did not adequately

³ “[I]n the context of an eight-hour shift, ‘[a]s a general matter,’ one rest break should fall on either side of the meal break.” *Rodriguez v. E.M.E., Inc.*, 246 Cal.App.4th 1027, 1037 (2016). If an employer fails to provide an employee rest breaks in accordance with an applicable wage order, it must pay the employee 1 hour of pay at the employee’s regular rate of compensation for each workday that one or more rest periods are not provided. Labor Code § 226.7(c); *see, e.g.*, Wage Order No. 1–2001, §12(B) (8 Cal Code Regs §11010(12)(B)). An employer’s failure to authorize and permit rest periods may not only give rise to liability for premium pay, it may also give rise to penalties under the Labor Code Private Attorneys General Act (PAGA) (Labor Code §§ 2698–2699.8). *Kirby v. Immoos Fire Protection, Inc.*, 53 C4th 1244 (2012).

1 inform Class Members of their right to take rest periods under California law. Moreover,
2 Defendants systematically disregarded their own written policies regarding the provision and
3 timing of rest periods for Class Members. Instead, Defendants' actual policy and practice was to
4 schedule Class Members in a way that prohibited them from taking timely and duty-free rest
5 periods, and to require Class Members to work through their meal periods, for which they were
6 not compensated.

7 55. Defendants did not pay Plaintiffs and Class Members all rest period premium
8 wages at the correct rate of pay when rest periods were missed, interrupted by work, or rendered
9 on duty, in violation of Wage Order No. 16 and Labor Code sections 226.7 and 512(a).

10 56. Pursuant to Wage Order No. 16 and Labor Code § 226.7(b), Plaintiffs and Class
11 Members are entitled to recover from Defendants an additional hour of pay at their regular rates
12 of pay for each shift that a compliant rest period was not provided. Defendants were aware that
13 its actions were a violation of applicable law but consistently refused to pay premium pay as
14 required by law.

15 **FIFTH CAUSE OF ACTION**

16 ***California Labor Code § 2802***

17 ***Failure to Reimburse Necessary Business Expenses***

18 **(Plaintiffs and Class Against Defendants)**

19 57. Plaintiffs repeat and incorporate by reference every allegation in this complaint as
20 if fully set forth herein.

21 58. Labor Code section 2802 provides that "[a]n employer shall indemnify his or his
22 employee for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of his or his duties, or of his or his obedience to the directions of
24 the employer." Lab. Code § 2802.

25 59. Defendants implemented a tool purchasing policy that consistently, and as a
26 matter of common policy and practice, required Plaintiffs and Class Members to provide their
27 own tools or equipment necessary for the performance of their jobs but failed to reimburse them
28 for these costs. Further, Defendants unlawfully required Plaintiffs and Class Members to execute

1 routine forms authorizing withdrawals from their paychecks for purchases made using the
2 company's account for tools and equipment, illegally pushing the costs of this necessary
3 equipment onto the Class.

4 60. Defendants also failed to reimburse Plaintiffs and Class Members for all business-
5 related expenses that were necessary to perform their job, including requiring Plaintiff and the
6 Class to use of their personal cell phones for Defendant's business and/or personal vehicles while
7 driving between jobsites during their shifts. *See Cochran v. Schwan's Home Services, Inc.*, 228
8 Cal. App. 4th 1137 (2014).

9 61. By unlawfully failing to pay Plaintiffs and Class Members, Defendants are liable for
10 the costs Plaintiffs and Class Members incurred plus attorneys' fees and costs. Lab. Code § 2802.

11 **SIXTH CAUSE OF ACTION**

12 ***California Labor Code §§ 226(a)/(f)/(h), 226.3, and 1174(d)***

13 ***Failure to Provide and Maintain Accurate Records***

14 **(Plaintiffs and Class Against Defendants)**

15 62. Plaintiffs repeat and incorporate by reference all allegations contained in the
16 preceding paragraphs as if fully set forth herein.

17 63. Labor Code § 226 requires employers to furnish employees with an accurate,
18 itemized statement in writing showing, among other things, (1) gross wages earned; (2) total
19 hours worked by the employee (for hourly-paid, non-exempt employees); (3) net wages earned;
20 and (4) all applicable hourly rates in effect during the pay period and the corresponding number
21 of hours worked at each hourly rate by the employee.

22 64. At all times relevant to this complaint, Defendants' failure to pay premium wages
23 for missed meal and rest periods and minimum and/or overtime wages for work-off-the-clock,
24 or on information and belief rounded time, rendered Class Members' wage statements
25 inaccurate by failing to accurately reflect gross and net wages earned, as well as actual time
26 worked.

27 65. Injury. Defendants knowingly and intentionally failed to comply with Labor Code
28 § 226, causing injury and damages to Plaintiffs and Class Members. Plaintiffs and all those

1 similarly situated were injured by these failures because, among other things, they were confused
2 about whether they were paid properly and/or they were misinformed about how much
3 compensation was owed.

4 66. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a
5 result of not being provided with an accurate itemized wage statement is entitled to recover the
6 greater of all actual damages suffered or fifty (\$50) dollars for the initial violation and one
7 hundred (\$100) dollars for each subsequent violation, up to \$4,000. Pursuant to Labor Code §§
8 226(e) and (g), Plaintiffs and all others similarly situated are also entitled to injunctive relief to
9 ensure Defendants' compliance with Labor Code § 226, as well as attorney's fees and costs of
10 suit.

11 67. As a separate basis for liability under California's Private Attorneys General Act,
12 Defendants failed to timely provide Plaintiff, and Similarly Aggrieved Employees, records in
13 response to his payroll records request per Labor Code § 226⁴ and personnel records per Labor
14 Code § 1198.5.⁵

15 **SEVENTH CAUSE OF ACTION**

16 ***California Labor Code §§ 201, 202, 203, 204, 210***

17 **Failure to Pay Wages When Due During Employment and at Separation** 18 **(Plaintiffs and Class Against Defendants)**

19 68. Plaintiffs incorporate by reference all allegations contained in the preceding
20 paragraphs as if fully set forth herein.

21 69. Labor Code § 201 provides, in relevant part, that:

22 If an employee not having a written contract for a definite period quits his
23

24 ⁴ California Labor Code Section 226(c) states, in pertinent part, "An employer who receives a
25 written or oral request to inspect or receive a copy of records pursuant to subdivision (b)
26 pertaining to a current or former employee shall comply with the request as soon as practicable,
but no later than 21 calendar days from the date of the request."

27 ⁵ California Labor Code Section 1198.5(b)(1) states, in pertinent part, "The employer shall make
28 the contents of those personnel records available for inspection to the current or former
employee, or his or her representative...not later than 30 calendar days from the date the
employer receives a written request[.]"

1 or her employment, his or her wages⁶ shall become due and payable not
2 later than 72 hours thereafter, unless the employee has given 72 hours
3 previous notice of his or her intention to quit, in which case the employee
4 is entitled to his or her wages at the time of quitting. Notwithstanding any
5 other provision of law, an employee who quits without providing a 72-hour
6 notice shall be entitled to receive payment by mail if he or she so requests
7 and designates a mailing address. The date of the mailing shall constitute
8 the date of payment for purposes of the requirement to provide payment
9 within 72 hours of quitting.

10 70. Defendants do not include definite periods of service in their contracts of
11 employment for Class Members employed at their California plant(s). Plaintiffs' contract of
12 employment did not include a definite term.

13 71. Labor Code § 203 provides:

14 If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with § 201, 201.5, 202, and 205.5, any wages of an employee
16 who is discharged or who quits, the wages of the employee shall continue
17 as a penalty from the due date thereof at the same rate until paid or until
18 an action therefor is commenced; but the wages shall not continue for
19 more than 30 days.

20 72. Labor Code § 204 provides that all wages, other than those mentioned in Section
21 201 and 202, are due and payable twice during each calendar month, on days designated in
22 advance by the employer as regular paydays.

23 73. Failure to Timely Pay Wages Due. As set forth above, Defendants failed to timely
24

25 ⁶ Labor Code § 200 defines “wages” as “all amounts for labor performed by employees of every
26 description, whether the amount is fixed or ascertained by the standard of time, task, piece,
27 commission basis, or other method of calculation.” “Labor” is defined as “labor, work, or service
28 . . . if the labor to be paid for is performed personally by the person demanding payment.”
Additionally, in *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93 (2022), the
California Supreme Court held that failure to pay premiums for violating the California Labor
Code’s meal and rest break provisions constitutes “wages” for purposes of waiting time penalties.

1 pay the minimum wages, overtime wages, and meal and rest period premiums resulting from its
2 deficient timekeeping and meal and rest period policies on its regularly scheduled pay days.

3 74. Relief. Defendants' failure to pay Plaintiffs and those Class Members wages on
4 their regularly scheduled pay dates subjects Defendants to civil penalties in the amount of \$100 per
5 employee per initial violation and \$200 per employee for every subsequent violation of Labor
6 Code § 204 pursuant to Labor Code § 210.

7 75. Failure to Pay Upon Termination. Plaintiffs and many Class Members have left
8 Defendants' employ during the Class Period. As discussed above, Defendants knowingly failed
9 to pay Plaintiffs and Class Members all earned wages upon termination. Instead, Defendants
10 willfully and intentionally refused to pay the earned rest and/or meal period premiums and
11 earned minimum wages as alleged herein to Plaintiffs and Class Members in violation of Labor
12 Code §§ 201 and 202.

13 76. Relief. Defendants' failure to pay Plaintiffs and those Class Members who are no
14 longer employed by Defendants their wages earned and unpaid at the time of discharge, or
15 within seventy-two (72) hours of their leaving Defendants' employment, violates Labor Code
16 §§ 201 and 202. Plaintiffs and Class Members are therefore entitled to recover from Defendants
17 the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
18 30-day maximum penalty under Labor Code § 203.

19 **EIGHTH CAUSE OF ACTION**

20 ***California Labor Code §§ 558, 2698, et seq.***

21 ***Private Attorneys General Act ("PAGA") Penalties***

22 ***(Plaintiffs and Class Against Defendants)***

23 77. Plaintiffs incorporate by reference all the allegations of this Complaint as though
24 fully set forth herein.

25 78. Entitlement to Penalties. Under the California Private Attorneys General Act
26 ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action
27 as a private attorney general, on behalf of herself and other current or former employees as well
28 as the general public, to recover penalties for an employer's violations of the Labor Code and

1 IWC Wage Orders.

2 79. Plaintiffs are “Aggrieved Employees” under PAGA, as they were employed by
3 Defendants during the applicable statutory period and suffered the Labor Code violations alleged
4 herein. Accordingly, they seeks to recover, on behalf of themselves and all other current and
5 former aggrieved employees of Defendants, the civil penalties provided by PAGA, including civil
6 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 206.5, 210, 226, 226.3,
7 226.7, 227.3 233, 246, 248, 248.2, 248.5, 510, 512, 558, 1182.12, 1174, 1194, 1194.2, 1197, 1197.1,
8 1198, 1401, 2802, and Industrial Wage Order No. 16, plus reasonable attorneys’ fees and costs.

9 80. Representative Action. Plaintiffs seek to recover the PAGA civil penalties through
10 a representative action as permitted by PAGA and the California Supreme Court in *Arias v.*
11 *Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not
12 required, but Plaintiffs may choose to seek certification of the PAGA claims.

13 81. Penalties. Plaintiffs, the Aggrieved Employees, and the State of California are
14 entitled to recover the maximum civil penalties allowed by law for the violations of the Labor
15 Code and IWC Wage Order No. 16 as alleged in this Complaint. Plaintiffs and Aggrieved
16 Employees are therefore entitled to civil penalties to be paid by Defendants and allocated as
17 required by PAGA in the following formula: (a) in an amount set forth as a civil penalty in the
18 underlying statute; or (b) \$100 per initial violation per employee per pay period, and \$200 for
19 each subsequent violation per employee per pay period.

20 82. Procedural Requirements Met. On April 24, 2024, Plaintiff Leopoldo Martinez-
21 Bravo electronically filed a notice of claims with the LWDA and sent a copy to Defendants by
22 certified mail. On September 25, 2024, Plaintiff electronically filed an Amended notice of claims
23 with the LWDA and sent a copy to Defendants by certified mail. Plaintiff has not received notice
24 from the LWDA that it was exercising jurisdiction over the allegations set forth in the notice. As
25 of 65 days from date of electronic filing, all requirements for administrative exhaustion for
26 bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2). A true and correct
27 copy of Plaintiff’s PAGA Notice is attached herein as **Exhibit A**.

1 **NINTH CAUSE OF ACTION**

2 ***California Business and Professions Code §§ 17200, et seq.***

3 ***Violation of California's Unfair Competition Law***

4 ***(Plaintiffs and Class Against Defendants)***

5 83. Plaintiffs repeat and incorporate by reference every allegation in this complaint as
6 if fully set forth herein.

7 84. Defendants are each a "person" as defined by California Business & Professions
8 Code § 17201, as it is a natural person, corporation, firm, partnership, joint stock company,
9 and/or association.

10 85. Unlawful Business Practices. Defendants' knowing violations of the Labor Code
11 and IWC Wage Order No. 16 constitute an unlawful business practice as set forth in Business &
12 Professions Code § 17200, *et seq.*

13 86. Defendants' failure to abide by the laws discussed herein provide Defendants an
14 unfair advantage over their competitors at the expense of their workers. Instead, Defendants cut
15 corners in the name of higher profits and at the expense of employee well-being. Defendants'
16 action thereby constitutes an unfair, fraudulent, and/or unlawful business practice under
17 Business & Professions Code § 17200, *et seq.*

18 87. Relief. Plaintiffs bring this cause of action seeking equitable and injunctive relief
19 to stop Defendants' willful and ongoing misconduct, and to seek restitution of the amounts
20 Defendants acquired through the unfair, unlawful, and fraudulent business practices described
21 herein. In addition, Plaintiffs seek an award of costs and attorneys' fees pursuant to California
22 Code of Civil Procedure § 1021.5.

23 **DEMAND FOR JURY TRIAL**

24 Pursuant to California Code of Civil Procedure § 631, Plaintiffs demand a trial by jury
25 on all issues so triable.

26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully pray judgment as follows:

3 A. For an Order:

4 a. Certifying the Class;

5 b. Appointing Plaintiffs as representatives of the Class;

6 c. Appointing Plaintiffs' counsel as Class Counsel;

7 B. For actual and liquidated damages according to proof at trial;

8 C. For statutory and civil penalties and special damages, according to proof at trial;

9 D. For pre- and post-judgment interest on monetary damages;

10 E. For preliminary and permanent injunctive relief;

11 F. For reasonable attorney's fees and costs and expert fees and costs as allowed by
12 law; and

13 G. For such other relief as this Court deems just and proper.
14
15

16 Dated: January 14, 2025

17 Respectfully submitted,
18 **KING & SIEGEL LLP**

19 By: /s/ Elliot J. Siegel
20 Elliot J. Siegel, Esq.
21 Attorney for Plaintiff Leopoldo Martinez-Bravo
and the Putative Class

22 Dated: January 14, 2025

23 Respectfully submitted,
24 **LAW OFFICE OF XAVIER VILLEGAS,**
25 **APC**

26 By: /s/ Xavier Villegas
27 Xavier Villegas, Esq.
28 Attorney for Plaintiff Leopoldo Martinez-Bravo
and the Putative Class

1 Dated: January 14, 2025

Respectfully submitted,
PROTECTION LAW GROUP

2
3 By: /s/ Shadi Sahebghalam
4 Brendan J. Burton, Esq.
5 Shadi Sahebghalam, Esq.
6 Attorney for Plaintiff Roberto Ramon Joya
7 Estrada aka Roberto R. Flores Cruz and the
8 Putative Class
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28