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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Alyssa Leber, DEPUTY

Attorneys for JOSE RIOS, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

JOSE RIOS on behalf of himself, all others
similarly situated, and on behalf of the
general public,

Plaintiffs,

v.

BURKE MASONRY SERVICES INC.;
and DOES 1-100,

Defendants.

Case No. CIVSB2416746

**PLAINTIFF'S FIRST AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 16-2001(11); Cal. Code Regs., tit. 8 § 11160);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 1-2001(12); Cal. Code Regs. Title 8 § 11160);
- 5) Failure to Authorize and Permit Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395);
- 6) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246);
- 7) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 8) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203);
- 9) Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802, Cal. Regs., tit. 8, § 11160(8));
- 10) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and
- 11) Violation of the Private Attorneys General Act (Lab. Code §§ 2698).

DEMAND FOR JURY TRIAL

Plaintiff Jose Rios (“Plaintiff” or “Mr. Rios”), on behalf of himself, all others similarly situated, and on behalf of the general public, complains of Defendant Burke Masonry Services Inc. (“Defendant” or “BURKE”) and/or DOES and for causes of action and alleges:

1. This is a class action pursuant to *California Code of Civil Procedure* section 382 on behalf of Plaintiff Jose Rios and all hourly, non-exempt employees who are presently or were formerly employed by Defendant and/or DOES and/or their subsidiaries or affiliated companies and/or predecessors within the State of California.

2. Defendant and/or DOES are a complete masonry firm specializing in commercial and residential projects.

3. At all times mentioned herein, Defendant and/or DOES have conducted business in San Bernardino County and elsewhere within California.

4. At all times mentioned herein, Defendant and/or DOES, within the State of California, have, among other things, employed current and former hourly, non-exempt employees to run its business.

5. Throughout the time period that includes the four (4) years prior to filing this action to the present (the “Statutory Period”), Defendant and/or DOES have maintained uniform policies that violate the wage and hour rights of Plaintiff and similarly situated hourly, non-exempt employees in the manner complained of herein.

6. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated hourly, non-exempt employees for all of the hours they worked, including, but not limited to, rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when Plaintiff and similarly situated hourly non-exempt employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties but were not paid by Defendant and/or DOES. Failing to pay for all hours worked while under Defendant’s and/or DOES’ control and/or while suffered or permitted to work has resulted in hourly, non-exempt employees being deprived of straight time and/or overtime wages.

7. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy

1 and/or practice of not paying Plaintiff and similarly situated hourly, non-exempt employees
2 for all of the hours they worked. Specifically, Defendant and/or DOES have a continuous
3 and consistent policy of requiring employees to work before clocking in, after clocking
4 out, and during meal periods. Plaintiff and hourly, non-exempt employees are not paid for
5 this time. Thus, Plaintiff and hourly, non-exempt employees are owed wages for the unpaid
6 time during with they are subject to Defendant's and/or DOES control and/or during which
7 they are not free from all work duties.

8 8. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy
9 and/or practice of not paying Plaintiff and similarly situated hourly, non-exempt employees
10 for all of the hours they worked. Defendant and/or DOES require Plaintiff and hourly, non-
11 exempt employees to use their personal vehicles for work related purposes. Plaintiff and
12 hourly, non-exempt employees would have to transport tools they used to perform work
13 for Defendant and/or DOES in their personal vehicles. Plaintiff and hourly, non-exempt
14 employees were not paid for the time it took them to get to their first job site or back from
15 their last job site.

16 9. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy
17 and/or practice of not paying Plaintiff and the Class Members for all hours worked in that
18 Defendant and/or DOES continuously and consistently clocked Plaintiff and the Class
19 Members out for a thirty (30) minute meal period and/or otherwise recorded a meal period,
20 even though Plaintiff and the Class Members work through their meal periods, were unable
21 to take meal periods, and/or were not free of all work duties and employer controls during
22 meal periods. Thus, BURKE and/or DOES shave/steal earned wages from Plaintiff and the
23 Class Members every day they work without a meal period and have time deducted.

24 10. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy
25 and/or practice of deducting a portion of the wages earned by Plaintiff and the Class
26 Members when they worked through their meal periods and/or when Defendant and/or
27 DOES recorded a meal period for Plaintiff and the Class Members when no meal period
28 was taken. Specifically, Plaintiff and the Class Members worked through their meal periods

- 1 to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby
2 denying them the right to be completely free from employer control under California law.
- 3 11. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy
4 and/or practice of not paying Plaintiff and similarly situated hourly, non-exempt employees
5 all wages owed. Defendant and/or DOES fail to properly calculate the regular rate of pay
6 for all overtime hours worked.
- 7 12. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy of
8 requiring hourly, non-exempt employees within the State of California, including Plaintiff,
9 to work through meal periods and work at least five (5) hours without a meal period and
10 failing to pay such employees one (1) hour of pay at the employees' regular rate of
11 compensation for each workday that the meal period is not provided, or other
12 compensation, as required by California's state wage and hour laws.
- 13 13. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy
14 and/or practice of requiring hourly non-exempt employees within the State of California,
15 including Plaintiff, to work for over four (4) hours, or a major fraction thereof, without a
16 ten (10) minute rest period, and failing to pay such employees one (1) hour of pay at the
17 employees' regular rate of compensation for each workday that the rest period is not
18 provided, or other compensation, as required by California's state wage and hour laws.
- 19 14. For at least four (4) years prior to the filing of this action and through to the present,
20 Defendant BURKE and/or DOES have had a consistent policy and/or practice of failing
21 to provide Plaintiff and its Non-Exempt Employees with cool down recovery periods in
22 accordance with California Code of Regulations, Title 8, section 3395.
- 23 15. Throughout the Statutory Period, Defendant and/or DOES and/or their officers and/or
24 managing agents have had a consistent policy and/or practice of failing to reimburse
25 Plaintiff and hourly, non-exempt employees for business expenses incurred in the
26 discharge of their duties. These expenses include, but are not limited to, having to use their
27 personal cell phones and personal vehicles for business purposes. They also including
28 having to purchase steel toed boots. *California Labor Code* section 2802(a) entitles

- 1 Defendant and/or DOES to reimbursement for said necessary expenditures, plus interest
2 and expenses.
- 3 16. Throughout the statutory period, Defendant's and/or DOES' hourly non-exempt
4 employees, including Plaintiff, were not provided with accurate and itemized employee
5 wage statements.
- 6 17. Defendant and/or DOES fail to comply with *California Labor Code* section 226,
7 subdivision (a), by itemizing in wage statements all hourly compensation and accurately
8 reporting total hours worked by Plaintiff and the members of the proposed class. Plaintiff
9 and members of the proposed class are entitled to penalties not to exceed \$4,000 for each
10 employee pursuant to Labor Code section 226(b).
- 11 18. Defendant and/or DOES have failed to comply with IWC Wage Order 1-2001(7) by failing
12 to maintain accurate time records showing hourly compensation, when the employee
13 begins and ends each workday, when meal periods are taken, and total daily hours worked
14 by itemizing in wage statements and accurately reporting total hours worked by Plaintiff
15 and members of the proposed class.
- 16 19. Defendant's and/or DOES' failure to retain accurate records of total hours worked and
17 meal periods taken by Plaintiff and the proposed class was willful and deliberate, was a
18 continuous breach of Defendant's and/or DOES' duty owed to Plaintiff and the proposed
19 class.
- 20 20. Throughout the statutory period, Defendant's and/or DOES' employees, including Plaintiff
21 those similarly situated, were not timely paid all wages owed to them at the time of
22 termination.
- 23 21. Defendant and/or DOES are and were aware that Plaintiff and members of the proposed
24 class were not paid all straight time and overtime wages owed, nor provided meal and rest
25 periods or premium payment in compensation thereof. Defendant's and/or DOES' denial
26 of wages and other compensation due to Plaintiff and members of the proposed class was
27 willful and deliberate.
- 28 22. Throughout the Statutory Period, Defendant and/or DOES, by failing to lawfully pay

1 Plaintiff and those similarly situated all the wages they are owed, engaged in false, unfair,
2 fraudulent and deceptive business practices within the meaning of the Business and
3 Professions Code section 17200, et seq.

4 23. Throughout the Statutory Period, Defendant's and/or DOES' employees, including
5 Plaintiff and those similarly situated were not provided all straight and overtime wages
6 owed, meal periods, rest periods, and recovery periods or compensation in lieu thereof,
7 and/or sick pay/paid time off as mandated under the California Labor Code, and the
8 implementing rules and regulations of the Industrial Welfare Commissions ("IWC")
9 California Wage Orders.

10 24. Defendant and/or DOES, each and collectively, controlled the wages, hours, and working
11 conditions of Plaintiff and the proposed class, creating a joint-employer relationship over
12 Plaintiff and the proposed class.

13 25. Plaintiff, on behalf of himself and all of Defendant's and/or DOES' hourly, non-exempt
14 employees employed at any time during the Statutory Period brings this action pursuant to
15 *California Labor Code* sections 201-203, 218, 218.5, 222, 223, 224, 226, subd. (b), 226.3,
16 226.7, 233, 234, 246, 510, 512, 515, 558, 1194, 1194.2, 1197, 2802, 2698, *et seq.*, and
17 *California Code of Regulations*, Title 8, sections 11160 and 3395, seeking unpaid wages,
18 overtime, meal period, rest period, and recovery period compensation, sick pay/paid time
19 off remedies, reimbursement, illegal deductions, penalties, injunctive and other equitable
20 relief, and reasonable attorneys' fees and costs.

21 26. Plaintiff, on behalf of himself and all of Defendant's and/or DOES' hourly, non-exempt
22 employees employed at any time during the Statutory Period, pursuant to *California*
23 *Business and Professions Code* sections 17200-17208, also seeks injunctive relief,
24 restitution, and disgorgement of all benefits Defendant and/or DOES enjoyed from their
25 failure to pay all straight time wages, overtime wages, and meal, rest, and recovery period
26 compensation as well as their failure to adopt a compliant sick pay and/or paid time off
27 policy and reimbursement for employees' business expenses.

28 ///

1 I. **VENUE**

2 27. Venue as to each Defendant and/or DOE is proper in this judicial district, pursuant to
3 *California Code of Civil Procedure* section 395. Defendant and/or DOES conduct business
4 and commit *California Labor Code* violations within San Bernardino County, and each
5 Defendant and/or DOE is within California for service of process purposes. The unlawful
6 acts alleged herein have a direct effect on Plaintiff and those similarly situated within the
7 State of California and within San Bernardino County. Defendant and/or DOES employ
8 numerous hourly, non-exempt employees who perform and/or performed work for
9 Defendant in San Bernardino County, California during the Statutory Period.

10 II. **PARTIES**

11 A. **Plaintiffs.**

12 28. Throughout the Statutory Period, Plaintiff is and was a resident of California. During the
13 Statutory Period, Plaintiff was employed by Defendant and/or DOES in California as an
14 hourly, non-exempt employee. Plaintiff worked as a general laborer.

15 29. Plaintiff and the proposed class of similarly situated hourly, non-exempt employees are
16 covered by, inter alia, California IWC Occupational Wage Order No. 16-2001, and Title 8,
17 *California Code of Regulations*, section 11160.

18 30. A notice correspondence showing compliance with Labor Code Section 2699.3 was sent
19 to the LWDA and Defendant on April 19, 2024. This notice demonstrates that Plaintiff is
20 an aggrieved employee and has standing to bring a representative action on behalf of the
21 LWDA and as a private attorney general. No notice of cure by Defendant was provided
22 and no notice of investigation was received from the LWDA in the statutorily proscribed
23 sixty-five (65) day period since the mailing of the notice of the action. Accordingly,
24 Plaintiff files this action as a “Representative Action” as authorized by Labor Code Section
25 2699.3(a)(2)(C).

26 B. **Defendants.**

27 31. Defendant and/or DOES are a complete masonry firm specializing in commercial and
28 residential projects.

- 1 32. Defendant and/or DOES operate out of locations in California.
- 2 33. Defendant and/or DOES employ hourly, non-exempt employees to work at its locations.
- 3 34. Defendant and/or DOES employed Plaintiff and similarly situated hourly, non-exempt
- 4 employees in California.
- 5 35. The true names and capacities, whether individual, corporate, associate, or otherwise, of
- 6 Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues
- 7 these Defendants by such fictitious names under *California Code of Civil Procedure*
- 8 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
- 9 Defendants designated herein as a DOE is legally responsible in some manner for the
- 10 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint
- 11 to reflect the true names and capacities of the Defendants designated hereinafter as DOES
- 12 when such identities become known.
- 13 36. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or
- 14 DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or
- 15 DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
- 16 and the acts of each Defendants and/or DOES are legally attributable to the other
- 17 Defendants and/or DOES.

18 **III. CLASS ACTION ALLEGATIONS**

- 19 37. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
- 20 action pursuant to section 382 of the *California Code of Civil Procedure*. Plaintiff seeks to
- 21 represent a Class composed of and defined as follows:
- 22

23 All individuals who are employed or have been employed by

24 Defendant and/or DOES in the State of California as hourly, non-

25 exempt employees at any time during the period of the relevant

26 statute of limitations. ("Class Members")

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28 Plaintiff also seeks to represent subclasses composed of and defined as follows:

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All Class Members who worked one (1) or more shifts in excess of five (5) hours.

All Class Members who worked one (1) or more shifts in excess of six (6) hours.

All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of twelve (12) hours.

All Class Members who worked one (1) or more shifts in excess of two (2) hours.

All Class Members who worked one (1) or more shifts in excess of three and one-half (3.5) hours, but less than or equal to six (6) hours.

All Class Members who worked one (1) or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

1 All Class Members who were not permitted to use sick pay and/or
2 paid time off.

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4 All Class Members who separated their employment from
5 Defendants.

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7 All Class Members who incurred business expenses and were not
8 reimbursed.

9 All Class Members who worked in temperatures of 80 degrees or
10 higher.

11
12 All Class Members who worked in temperatures of 95 degrees or
13 higher.

14
15 38. Plaintiff reserves the right under Rule 1855, subdivision (b), *California Rules of Court*, to
16 amend or modify the Class description with greater specificity or further division into
17 subclasses or limitation to particular issues.

18 39. This action has been brought and may properly be maintained as a class action under the
19 provisions of *California Code of Civil Procedure* section 382 because there is a well-
20 defined community of interest in the litigation and the proposed Class is easily
21 ascertainable.

22 **A. Numerosity.**

23 40. The potential members of the Class as defined are so numerous that joinder of all the
24 members of the Class is impracticable. While the precise number of Class Members has
25 not been determined at this time, Plaintiff is informed and believes that Defendant and/or
26 DOES currently employ, and during the liability period employed, over one hundred (100)
27 Class Members in San Bernardino County during the liability period and who are or have
28 been affected by Defendant's and/or DOES' policies of failure to pay all straight and

overtime wages owed, failure to provide meal and/or rest periods without the appropriate legal compensation, failure to implement a lawful sick pay policy, willful failure to pay all wages due at time of separation from employment, knowing and intentional failure to provide accurate and itemized employee wage statements, and failure to reimburse for all necessary business expenses incurred in the performance of employees' jobs. Accounting for employee turnover during the relevant periods increases this number substantially. Upon information and belief, Plaintiff alleges Defendant's and/or DOES' employment records will provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

41. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

(1) Whether Defendant and/or DOES violated the *California Labor Code* and/or applicable IWC Wage Orders in failing to pay its employees all earned wages at the regular rate for all hours worked.

(2) Whether Defendant's and/or DOES' uniform policies and/or practices whereby employees were pressured and/or incentivized to forego taking meal, rest, and/or recovery periods.

(3) Whether Defendant's and/or DOES' violated *California Labor Code* section 226.7, IWC Wage Order No. 16-2001 or other applicable IWC Wage Orders, and/or *California Code of Regulations*, Title 8, section 11160, by failing to authorize, permit, and/or provide thirty (30) minute meal periods before the end of the fifth hour worked and/or failing to pay said employees one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.

(4) Whether Defendant and/or DOES violated *California Labor*

1 Code section 226.7, IWC Wage Order No. 16-2001 or other applicable IWC
2 Wage Orders, and/or *California Code of Regulations*, Title 8, section
3 11160, by failing to authorize, permit, and/or provide ten (10) minute rest
4 periods to its employees for every four (4) hours or major fraction thereof
5 worked and/or failing to pay said employees one (1) hour of pay at the
6 employee's regular rate of compensation for each work day that the rest
7 period was not authorized, permitted and/or provided.

8 (5) Whether BURKE and/or DOES violated Labor Code section
9 226.7 and/or California Code of Regulations, Title 8, section 3395, by
10 failing to authorize, permit, and/or provide recovery periods to its hourly,
11 non-exempt employees in accordance with section 3395.

12 (6) Whether Defendant and/or DOES violated *California Labor*
13 *Code* sections 233 and 234 by adopting uniform policies and/or practices
14 which counts sick leave taken pursuant to *California Labor Code* section
15 233 as an unauthorized absence that may result in discipline, discharge,
16 demotion, or termination.

17 (7) Whether Defendant and/or DOES violated *California Labor*
18 *Code* section 246 by having uniform policies and/or practices of failing to
19 provide Class Members wage statements itemizing the amount of
20 accrued/available sick leave.

21 (8) Whether Defendant and/or DOES have uniform policies
22 and/or practices of failing to provide employees accurate and itemized wage
23 statements.

24 (9) Whether Defendant and/or DOES knowingly and
25 intentionally fail to provide employees accurate and itemized wage
26 statements.

27 (10) Whether Defendant and/or DOES have uniform policies
28 and/or practices of failing to timely pay all wages owed to employees who

left Defendant's and/or DOES' employ or who were terminated.

(11) Whether Defendant and/or DOES willfully fail to pay, in a timely manner, wages owed to members of the proposed Class who left Defendant's and/or DOES' employ or who were terminated.

(12) Whether Defendant and/or DOES have uniform policies and/or practices of failing to reimburse members of the proposed Class for all necessary expenses incurred in the performance of their jobs.

42. The answer to each of these respective questions will generate a common answer capable of resolving class-wide liability in one stroke.

43. Said common questions predominate over any individualized issues and/or questions affecting only individual members.

C. Typicality.

44. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff and all members of the proposed Class sustained injuries and damages arising out of and caused by Defendant's and/or DOES' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged.

45. Plaintiff was subjected to the same uniform policies and/or practices complained of herein that affected all such employees. Thus, as Plaintiff was subjected to the same unlawful policies and practices as all employees, his claims are typical of the class he seeks to represent.

D. Adequacy of Representation.

46. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class.

47. Plaintiff is ready and willing to take the time necessary to help litigate this case.

48. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and protect the interests of the members of the Class.

49. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

1 50. Specifically, David Mara, Esq. and Jill Vecchi, Esq. are California lawyers in good
2 standing.

3 51. Counsel who represent Plaintiff are competent and experienced in litigating large
4 employment class actions.

5 52. The lawyers at Mara Law Firm have been named class counsel in numerous cases and Mr.
6 Mara's and Ms. Vecchi's practice is primarily focused on representing classes, large and
7 small, on the basis of California Labor Code and IWC Wage Order Violations similar to
8 those alleged herein. The attorneys at the firm are also frequently called upon to and do
9 author amicus briefs on behalf of the Consumer Attorneys of California on cases in the
10 appellate courts and Supreme Court of California involving important issues relating to
11 those alleged herein.

12 53. Mara Law Firm, PC has the resources to take this case to trial and judgment, if necessary.

13 54. Mara Law Firm, PC has the experience, ability, and ways and means to vigorously
14 prosecute this case.

15 **E. Superiority of Class Action.**

16 55. A class action is superior to other available means for the fair and efficient adjudication of
17 this controversy. Individual joinder of all Class Members is not practicable, and questions
18 of law and fact common to the Class predominate over any questions affecting only
19 individual members of the Class. Each member of the Class has been damaged and is
20 entitled to recovery by reason of Defendant's and/or DOES' illegal policies and/or
21 practices of failing to pay all straight time and overtime wages owed, failing to provide
22 meal periods, failing to permit or authorize rest periods, failing to adopt a lawful sick
23 pay/paid time off policy, knowingly and intentionally failing to comply with wage
24 statement requirements, failing to pay all wages due at termination, and failing to reimburse
25 for incurred expenses.

26 56. Class action treatment will allow those similarly situated persons to litigate their claims in
27 the manner that is most efficient and economical for the parties and the judicial system.
28 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.

57. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay All

Straight Time Wages

58. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

59. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked.

60. It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

61. Plaintiff and those similarly situated Class Members were employed by Defendant and/or DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff for all hours worked and were prohibited from making deductions that had the effect of

1 reducing the agreed upon wage.

2 62. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
3 similarly situated for all hours worked. Specifically, Defendant and/or DOES have a
4 continuous and consistent policy of requiring employees to work before clocking in, after
5 clocking out, and during meal periods. Plaintiff and those similarly situated are not paid
6 for this time. Defendant's and/or DOES' failure to pay for all hours worked while under
7 Defendant's and/or DOES' control and/or while suffered or permitted to work has resulted
8 in Plaintiff and Class Members being deprived of straight time wages throughout the
9 Statutory Period.

10 63. Further, Defendant and/or DOES require Plaintiff and the Class Members to use their
11 personal vehicles for work related purposes. Plaintiff and the Class Members would have
12 to transport tools they used to perform work for Defendant and/or DOES in their personal
13 vehicles. Plaintiff and the Class Members were not paid for the time it took them to get to
14 their first job site or back from their last job site.

15 64. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff
16 and the Class Members for all hours worked in that Defendant and/or DOES continuously
17 and consistently clocked Plaintiff and the Class Members out for a thirty (30) minute meal
18 period and/or otherwise recorded a meal period, even though Plaintiff and the Class
19 Members work through their meal periods, were unable to take meal periods, and/or were
20 not free of all work duties and employer controls during meal periods. Thus, Defendant
21 and/or DOES shaves/steals earned wages from Plaintiff and the Class Members every day
22 they work without a meal period and have time deducted.

23 65. Moreover, Plaintiff and the Class Members have to work through their meal periods but
24 would nonetheless be required to clock out for thirty minutes to create the appearance of
25 lawful meal periods. If employees do not clock out for thirty minutes while they continue
26 to work, then Defendant and/or DOES alters their time records to create the appearance of
27 a lawful meal period. Thus, Plaintiff and the Class Members are owed wages for meal
28 period time during with they are subject to Defendant's and/or DOES' control and during

1 which they are not free from all work duties.

2 66. Likewise, Plaintiff and the Class Members are informed and believe and thereon allege that
3 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by deducting
4 a portion of the wages earned by Plaintiff and the Class Members when they worked
5 through their meal periods and/or when Defendant and/or DOES recorded a meal period
6 for Plaintiff and the Class Members when no meal period was taken. Specifically, Plaintiff
7 and the Class Members worked through their meal periods to satisfy their demanding work
8 duties imposed by Defendant and/or DOES, thereby denying them the right to be
9 completely free from employer control under California law.

10 67. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
11 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
12 Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost
13 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant
14 and/or DOES to fully perform their obligations under state law, all to their respective
15 damage in amounts, according to proof at trial.

16 68. As a direct result of Defendant's and/or DOES' policy of illegal wage theft, Plaintiff and
17 those similarly situated have been damaged in an amount to be proven at trial.

18 69. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
19 below.

20 **SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay**
21 **All Overtime Wages**

22 70. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
23 and every other paragraph in this Complaint herein as if fully plead.

24 71. It is fundamental that an employer must pay its employees for all time worked. *California*
25 *Labor Code* sections 218 and 218.5 provides a right of action for nonpayment of wages.
26 *California Labor Code* section 222 prohibits the withholding of part of a wage. *California*
27 *Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage
28 scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum

1 wage. *California Labor Code* section 224 only permits deductions from wages when the
2 employer is required or empowered to do so by state or federal law or when the deduction
3 is expressly authorized in writing by the employee for specified purposes that do not have
4 the effect of reducing the agreed upon wage.

5 72. *California Labor Code* section 510 states that eight (8) hours of labor constitutes a day's
6 work. Any work in excess of eight (8) hours in one workday and any work in excess of
7 forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh
8 (7th) day of work in any one workweek shall be compensated at the rate of no less than
9 one and one-half (1.5) times the regular rate of pay for an employee.

10 73. *California Labor Code* section 510 further dictates that any work in excess of twelve (12)
11 hours in one day shall be compensated at the rate of no less than two (2) times the regular
12 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
13 seventh (7th) day of a workweek shall be compensated at the rate of no less than two (2)
14 times the regular rate of pay of an employee.

15 74. Plaintiff and those similarly situated Class Members were employed by Defendant and/or
16 DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff
17 and the Class Members for all overtime hours worked and were prohibited from making
18 deductions that had the effect of reducing the agreed upon wage.

19 75. Defendant and/or DOES fail to pay for the overtime that was due, pursuant to IWC Wage
20 Order No. 16-2001, item 3(A).

21 76. Defendant and/or DOES have a continuous policy of failing to pay Plaintiff and Class
22 Members for all hours worked, including those hours worked over eight (8) hours in a day
23 and forty (40) hours in a week. Defendant and/or DOES have a continuous policy of failing
24 to pay overtime when employees worked over eight (8) hours per day and when employees
25 worked over forty (40) hours per week. Because Defendant and/or DOES fail to pay them
26 overtime wages for all overtime hours worked, Plaintiff and Class Members were deprived
27 of wages for all overtime hours worked, which resulted in Plaintiff and the Class Members
28 not being paid all overtime wages owed to them.

1 77. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Class
2 Members for all hours worked. Defendant and/or DOES have not paid for all the time
3 Plaintiff and Class Members worked throughout the day, including, but not limited to
4 rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when the
5 employees were performing work tasks, subject to the control of Defendant and/or DOES
6 and/or otherwise had work duties but were not paid by Defendant and/or DOES. When
7 Plaintiff and the Class Members work shifts lasting over eight (8) hours, those unpaid hours
8 would qualify for the overtime rate.

9 78. Further, Defendant and/or DOES require Plaintiff and the Class Members to use their
10 personal vehicles for work related purposes. Plaintiff and the Class Members have to
11 transport tools they use to perform work for Defendant and/or DOES in their personal
12 vehicles. Plaintiff and the Class Members were not paid for the time it took them to get to
13 their first job site or back from their last job site. Because Plaintiff and the Class Members
14 ordinarily work shifts lasting over eight (8) hours, the majority of these unpaid hours would
15 qualify for the overtime rate.

16 79. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff
17 and the Class Members for all hours worked in that Defendant and/or DOES continuously
18 and consistently clocked Plaintiff and the Class Members out for a thirty (30) minute meal
19 period and/or otherwise recorded a meal period, even though Plaintiff and the Class
20 Members work through their meal periods, were unable to take meal periods, and/or were
21 not free from all work duties and employer controls during meal periods. Thus, Defendant
22 and/or DOES shave/steal earned wages from Plaintiff and the Class Members every day
23 they work without a meal period and have time deducted. Because Plaintiff and the Class
24 Members work shifts lasting over eight (8) hours, these unpaid hours would qualify for the
25 overtime rate.

26 80. Likewise, Plaintiff and the Class Members have to work through their meal periods but
27 would nonetheless be required to clock out for thirty minutes to create the appearance of
28 lawful meal periods. If employees do not clock out for thirty minutes while they continue

1 to work, then Defendant and/or DOES alters their time records to create the appearance of
2 a lawful meal period. Thus, Plaintiff and the Class Members are owed wages for meal
3 period time during with they are subject to Defendant's and/or DOES' control and during
4 which they are not free from all work duties. When Plaintiff and the Class Members work
5 over eight (8) hours in a shift, these unpaid hours must be compensated at an overtime rate.

6 81. Moreover, when Plaintiff and the Class Members did take meal periods they are not
7 relieved of all duties and/or employer control during their unpaid meal periods. Plaintiff
8 and the Class Members are informed and believe and thereon allege that Defendant and/or
9 DOES breached the legal duty to pay for all hours worked by Plaintiff and the Class
10 Members by failing to pay Plaintiff and the Class Members for meal period time when
11 Plaintiff and the Class Members were not relieved of all duties and/or employer control.
12 When Plaintiff and the Class Members work over eight (8) hours in a shift, these unpaid
13 hours must be compensated at an overtime rate.

14 82. Further, Plaintiff and the Class Members were deprived of wages for all overtime hours
15 worked because Defendant and/or DOES failed to pay Plaintiff and the Class Members at
16 the appropriate regular rate of pay for all overtime hours worked.

17 83. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
18 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
19 Class Members have suffered, and continue to suffer, substantial unpaid overtime wages,
20 and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to
21 compel Defendant and/or DOES to fully perform their obligations under state law, all to
22 their respective damage in amounts according to proof at time of trial. Defendant and/or
23 DOES commit the acts alleged herein knowingly and willfully, with the wrongful and
24 deliberate intention on injuring Plaintiff and the Class Members. Defendant and/or DOES
25 act with malice or in conscious disregard of Plaintiff's and the Class Member's rights. In
26 addition to compensation, Plaintiff is also entitled to any penalties allowed by law.

27 84. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
28 below.

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage Order No. 16-2001(11); Cal. Code Regs., tit. 8, § 11160)

85. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

86. Under *California Labor Code* section 512 and IWC Wage Order No. 16-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During these meal periods of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

87. Under *California Labor Code* section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

88. Defendant and/or DOES fail to provide full thirty (30) minute meal periods to Plaintiff and the Class Members no later than the fifth hour of work.

89. Defendant and/or DOES breach the legal duty to provide meal periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and the Class Members to work through their meal periods to satisfy the demanding workload duties imposed by Defendant and/or DOES such that Plaintiff and the Class Members were unable to take a meal period at all, on-duty or otherwise.

90. In addition, Plaintiff and the Class Members would have to work through their meal periods and could not leave the premises but would nonetheless be required to clock out for thirty minutes to create the appearance of lawful meal periods. If employees did not clock out for thirty minutes while they continued to work, then Defendant and/or DOES would alter their

1 time records to create the appearance of a lawful meal period even though no such meal
2 period was taken. Thus, Plaintiff and the Class Members did not receive lawful meal
3 periods while working for Defendant and/or DOES.

4 91. When Plaintiff and the Class Members are able to take a meal period, Plaintiff and the
5 Class Members are not relieved of all duties and/or employer control during their meal
6 periods.

7 92. Alternatively, Defendant and/or DOES breach the legal duty to provide meal periods to
8 employees by failing to provide employees with meal periods within the timeframes
9 outlined by California law. Specifically, Defendant and/or DOES fail to provide Plaintiff
10 and the Class Members with meal periods within the first five (5) continuous hours of work.
11 Plaintiff and the Class Members can only take meal periods when their foreman tells them
12 to. As such, if Plaintiff's and the Class Members' time records show late or missed meal
13 periods, this is due to Defendant and/or DOES failing to provide meal periods in
14 accordance with California law.

15 93. Further, Defendant and/or DOES instituted a consistent policy/practice of not providing
16 second meal periods to Plaintiff and all Class Members and/or providing compensation in
17 lieu thereof. Specifically, Plaintiff and the Class Members are required to work shifts over
18 ten (10) hours long but never received second meal periods.

19 94. By failing to provide compensation for such unprovided or improperly provided meal
20 periods, as alleged above, Defendant and/or DOES willfully violate the provisions of
21 *California Labor Code* sections 226.7, 512, and IWC Wage Order No. 16-2001.

22 95. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks
23 to represent have been deprived of premium wages, in amounts to be determined at trial,
24 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
25 fees and costs, pursuant to *California Labor Code* section 226.7, and IWC Wage Order
26 No. 16-2001. Plaintiff and the Class he seeks to represent did not willfully waive their right
27 to take meal periods through mutual consent with Defendant and/or DOES.

28 96. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described

below.

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 16-2001(11); Cal. Code Regs. Title 8 § 11160)

97. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein, as if fully plead.

98. Under IWC Wage Order No. 16-2001, every employer shall authorize and permit all employees to take rest periods, “[t]he 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 worked or major fraction thereof.” IWC Wage Order 16-2001(11). The time spent on rest periods “shall be counted as hours worked for which there shall be no deduction from wages.” *Id.*

99. Under *California Labor Code* section 226.7, if the employer does not provide an employee a rest period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest break is not provided.

100. Defendant and/or DOES breach the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and Class Members to work through their rest periods to satisfy the demanding workload duties imposed by Defendant and/or DOES such that Plaintiff and the Class Members were unable to take a rest period.

101. Alternatively, Defendant and/or DOES breach the legal duty to provide rest periods to employees by failing to provide employees with rest periods within the timeframes outlined by California law. Specifically, Defendant and/or DOES do not provide Plaintiff and the Class Members with rest periods consisting of a net ten (10) minutes, nor does Defendant and/or DOES provide them with a rest period per four (4) hours worked or major fraction thereof.

102. When Plaintiff and the Class Members are able to take a rest period, Plaintiff and the Class Members are not relieved of all duties and/or employer control during their rest periods.

1 103. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks
2 to represent have been deprived of premium wages, in amounts to be determined at trial,
3 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
4 fees and costs, pursuant to *California Labor Code* section 226.7, and IWC Wage Order
5 No. 1-2001.

6 104. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
7 below.

8 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Provide**
9 **Recovery Periods (Lab. Code § 226.7; Cal. Code Regs. Title 8 § 3395)**

10 105. Plaintiff and those similarly situated Class members hereby incorporate by reference each
11 and every other paragraph in this Complaint herein, as if fully plead.

12 106. Under California Code of Regulations, Title 8, section 3395(d)(1), “[w]hen the outdoor
13 temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and
14 maintain one or more areas with shade at all times while employees are present that are
15 either open to the air or provided with ventilation or cooling.” Cal. Code of Reg. Title 8, §
16 3395(d)(1). Furthermore, “[t]he amount of shade present shall be at least enough to
17 accommodate the number of employees on recovery or rest periods, so that they can sit in
18 a normal posture fully in the shade without having to be in physical contact with each
19 other.” *Id.*

20 107. “Employees shall be allowed and encouraged to take a preventative cool-down rest in the
21 shade when they feel need to do so to protect themselves from overheating.” Cal. Code of
22 Reg. Title 8, § 3395(d)(3). “Such access to shade shall be permitted at all times.” *Id.*

23 108. Defendant and/or DOES fail to permit access to shade and preventative cool down rest
24 and/or recovery periods to Plaintiff and the Class members when the temperature reached
25 eighty (80) degrees Fahrenheit. Specifically, Plaintiff and the Class members work in areas
26 such as San Bernardino County in California during the summer and autumn months, when
27 temperatures frequently exceed eighty (80) degrees Fahrenheit. However, Defendant
28 and/or DOES do not allow and encourage Plaintiff and the Class members to take

1 preventative cool-down rest recovery periods in shaded areas when the applicable
2 temperatures are reached. Thus, Defendant and/or DOES fail to permit, allow, or encourage
3 Plaintiff and the Class members to take preventative cool down recovery periods in the
4 shade to protect against overheating when the temperature exceeds eighty (80) degrees
5 Fahrenheit.

6 109. Defendant and/or DOES fail to utilize any alternative procedures for providing access to
7 shade or equivalent protection to Plaintiff and the Class members. Defendant and/or DOES
8 fail to implement other cooling measures in lieu of shade at least as effective as shade in
9 allowing employees to cool.

10 110. Because of Defendant's and/or DOES' demanding policies on task completion times,
11 Plaintiff and those similarly situated felt that breaking to exercise their rights to take
12 recovery period breaks would sacrifice their jobs with Defendant and/or DOES.

13 111. Throughout the statutory period, Defendant's and/or DOES' uniform policies and practices
14 resulted in Plaintiff and the Class Members not receiving recovery periods.

15 112. Throughout the statutory period, Defendant and/or DOES valued productivity over
16 providing recovery periods and, because of this, recovery periods were not priorities to
17 Defendant and/or DOES.

18 113. Throughout the statutory period, Defendant's and/or DOES' policies promoting
19 productivity subjugated Plaintiff's and those similarly situated's rights to recovery periods.

20 114. Therefore, Defendant and/or DOES failed to provide preventative cool down rest and/or
21 recovery periods to Plaintiff and the Class members in accordance with California Code of
22 Regulations, Title 8, section 3395.

23 115. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks
24 to represent have been deprived of premium wages, in amounts to be determined at trial,
25 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
26 fees and costs, pursuant to Labor Code section 226.7.

27 116. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
28 below.

SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Adopt
a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246)

117. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

118. Section 246(a)(1) of the *California Labor Code* states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

119. *California Labor Code* section 246, subdivision (b)(1), provides, in pertinent part, “an employee shall accrue paid sick days at the rate of not less than one (1) hour per every thirty (30) hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later.”

120. *California Labor Code* section 246(c) states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

121. *California Labor Code* section 233(c) states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

122. *California Labor Code* section 233(d) provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

123. *California Labor Code* section 234 further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

1 124. *California Labor Code* section 246(k) provides that, “[a]n employee may determine how
2 much paid sick leave they need to use, provided that an employer may set a renewable
3 minimum increment, not to exceed two hours, for the use of paid sick leave.”

4 125. *California Labor Code* section 246(i) requires: “An employer shall provide an employee
5 with written notice that sets forth the amount of paid sick leave available, or paid time off
6 leave an employer provides in lieu of sick leave, for use on either the employee’s itemized
7 wage statement described in Section 226 or in a separate writing provided on the designated
8 pay date with the employee’s payment of wages. If an employer provides unlimited paid
9 sick leave or unlimited paid time off to an employee, the employer may satisfy this section
10 by indicating on the notice or the employee’s itemized wage statement “unlimited.”

11 126. Defendant and/or DOES fail to provide Plaintiff and Class Members with paid sick days
12 in accordance with these provisions.

13 127. Defendant and/or DOES operate under an absence control policy that counts sick leave
14 taken pursuant to *California Labor Code* section 233 as an unauthorized absence that may
15 result in discipline, discharge, demotion, or termination. Thus, Defendant’s and/or DOES’
16 sick pay policy punishes Plaintiff and Class Members by way of suspension and/or
17 termination for use of protected and appropriate sick leave.

18 128. Further, Defendant’s and/or DOES’ sick pay policy fails to pay Plaintiff and Class
19 Members sick pay for all appropriate and protected purposes enumerated in *California*
20 *Labor Code* sections 233, 234, and 246, and Defendant and/or DOES fail to itemize the
21 amount of accrued/available sick leave Plaintiff and Class Members have on wage
22 statements each pay period.

23 129. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Class he seeks
24 to represent have been incurred damages, in amounts to be determined at trial, and are
25 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees
26 and costs, pursuant to *California Labor Code* sections 233(e) and 246.

27 130. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
28 below.

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 246, 1174, 1175; IWC Wage Order No. 16-2001; Cal. Code Regs., Title 8, § 11160)

131. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

132. *California Labor Code* section 226(a) requires Defendant and/or DOES to, inter alia, itemize in wage statements and accurately report the total hours worked and total wages earned. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226, subdivision (a), on each and every wage statement provided to Plaintiff and members of the proposed Class.

133. *California Labor Code* section 1174 requires Defendant and/or DOES to maintain and preserve, in a centralized location, records showing the daily hours worked by and the wages paid to its employees. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 1174. The failure of Defendant and/or DOES, and each of them, to comply with *California Labor Code* section 1174 is unlawful pursuant to *California Labor Code* section 1175.

134. Defendant and/or DOES fail to maintain accurate time records - as required by IWC Wage Order No. 16-2001(6), and *California Code of Regulations* Title 8 section 11160 - showing, among other things, when the employee begins and ends each work period, the total daily hours worked in itemized wage statements, total wages, bonuses and/or incentives earned, and all deductions made.

135. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with *California Labor Code* section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for

- 1 which the employer is correcting its initial report of hours worked.”
- 2 136. Defendant and/or DOES have knowingly and intentionally failed to provide Plaintiff and
- 3 the Class Members with accurate itemized wage statements which show: “(1) gross wages
- 4 earned, (2) total hours worked by the employee, . . . (4) all deductions, provided that all
- 5 deductions made on written orders of the employee may be aggregated and shown as one
- 6 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
- 7 paid, (7) the name of the employee and only the last four digits of his or her social security
- 8 number or an employee identification number other than a social security number, (8) the
- 9 name and address of the legal entity that is the employer and, if the employer is a farm
- 10 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
- 11 legal entity that secured the services of the employer, and (9) all applicable hourly rates in
- 12 effect during the pay period and the corresponding number of hours worked at each hourly
- 13 rate by the employee[.]” Cal. Lab. Code § 226(a).
- 14 137. Defendant and/or DOES have knowingly and intentionally failed to comply with
- 15 *California Labor Code* section 226(a) by failing to list all of the required information on
- 16 each and every wage statement provided to Plaintiff and Class Members.
- 17 138. In every pay period during the period of the relevant statute of limitations, Defendant
- 18 and/or DOES knowingly and intentionally did not include the gross and net wages earned
- 19 on wage statements. Defendant and/or DOES therefore knowingly and intentionally fail to
- 20 itemize the gross and net wages earned on Plaintiff’s and the Class Members’ wage
- 21 statements throughout the relevant statute of limitations.
- 22 139. Defendant and/or DOES knowingly and intentionally did not include the gross wages
- 23 earned on wage statements. Defendant and/or DOES therefore knowingly and intentionally
- 24 fail to itemize the gross wages earned on Plaintiff’s and the Class Members’ wage
- 25 statements.
- 26 140. In every pay period during the period of the relevant statute of limitations, Defendant
- 27 and/or DOES knowingly and intentionally did not itemize the total hours worked on wage
- 28 statements as *California Labor Code* section 226, subsection (a), requires. In every pay

1 period during the period of the relevant statute of limitations, Defendant and/or DOES
2 knowingly and intentionally did not include the total hours worked on wage statements.
3 Defendant and/or DOES therefore knowingly and intentionally failed to itemize the total
4 hours worked on Plaintiff's and the Class Members' wage statements. Further, Plaintiff
5 and the Class Members are unable to determine the total hours worked based on the data
6 provided on their wage statements.

7 141. In every pay period during the period of the relevant statute of limitations, Defendant
8 and/or DOES knowingly and intentionally did not itemize the total hours worked on
9 Plaintiff's and the Class Members' wage statements. As discussed herein, Defendant and/or
10 DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly
11 situated hourly, non-exempt employees for all of the hours they worked, including, but not
12 limited to, rounding, before "shifts" start, after "shifts" end, and/or any other time in the
13 day when Plaintiff and similarly situated hourly non-exempt employees were performing
14 work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work
15 duties but were not paid by Defendant and/or DOES. For example, Plaintiff and the Class
16 Members are not paid for commute time or for time spent working during unpaid meal
17 periods. Thus, Plaintiff and the Class Members are owed wages for the unpaid time during
18 with they are subject to Defendant's and/or DOES' control and/or during which they are
19 not free from all work duties. As Defendant and/or DOES knew or had reason to know
20 Plaintiff and the Class Members were owed compensation for this time, Defendant and/or
21 DOES knowingly and intentionally failed to comply with *California Labor Code* Section
22 226, subdivision (a).

23 142. In every pay period during the period of the relevant statute of limitations, Defendant
24 and/or DOES knowingly and intentionally did not include all meal, rest, and recovery
25 period premiums owed on wage statements. Defendant and/or DOES therefore knowingly
26 and intentionally fail to itemize all meal, rest, and recovery period premiums owed on
27 Plaintiff's and the Class Members' wage statements throughout the relevant statute of
28 limitations.

1 143. In addition, Defendant and/or DOES fail to include all overtime hours worked by Plaintiff
2 and the Class Members on wage statements and itemize those overtime hours at the proper
3 regular rate.

4 144. Defendant and/or DOES also fail to provide Plaintiff and Class Members with written
5 notice that sets forth the amount of sick leave available for use, either in employees'
6 itemized wage statements or in a separate writing provided to employees on the designated
7 pay date.

8 145. As a result of the knowing and intentional failure by Defendant and/or DOES to comply
9 with itemized employee wage statement provisions, Plaintiff and the Class Members have
10 been able to reconstruct only a reasonable estimate of the hours worked and have, therefore,
11 not received full compensation.

12 146. As a direct result of Defendant's and/or DOES' unlawful acts, Plaintiff and the Class he
13 intends to represent have been damaged and are entitled to recovery of such amounts, plus
14 interest thereon, attorneys' fees, and costs, pursuant to *California Labor Code* section 226.

15 147. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
16 below.

17 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Pay All**
18 **Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-203)**

19 148. Plaintiff and those similarly situated Class members hereby incorporate by reference each
20 and every other paragraph in this Complaint herein as if fully plead.

21 149. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
22 and/or DOES, Defendants and/or DOES did not timely pay him all straight time wages
23 owed at the time of his termination.

24 150. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
25 and/or DOES, Defendant and/or DOES did not timely pay him all overtime wages owed at
26 the time of his termination.

27 151. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant
28 and/or DOES, Defendants and/or DOES did not timely pay him meal, rest, and/or recovery

1 period premiums owed at the time of his termination.

2 152. Numerous members of the Class are no longer employed by Defendant and/or DOES. They
3 were either fired or they quit Defendant's and/or DOES' employ. Defendant and/or DOES
4 did not pay all timely wages owed at the time of their termination. Defendant and/or DOES
5 did not pay all premium wages owed at the time of their termination.

6 153. *California Labor Code* sections 201 and 202 provide that if an employer discharges an
7 employee, the wages earned and unpaid at the time of discharge are due and payable
8 immediately, and if an employee quits his or her employment, his or her wages shall
9 become due and payable no later than seventy-two (72) hours thereafter, unless the
10 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which
11 case the employee is entitled to his or her wages at the time of quitting.

12 154. During the relevant time period, Defendant and/or DOES intentionally and willfully fail to
13 pay Plaintiff's and the Class Members' who are no longer employed by Defendant and/or
14 DOES their wages that were earned and unpaid within seventy-two (72) hours of their
15 leaving Defendant's and/or DOES' employ in violation of *California Labor Code* sections
16 201 and 202.

17 155. *California Labor Code* section 203 provides that, if an employer willfully fails to pay,
18 without abatement or reduction, in accordance with *California Labor Code* sections 201,
19 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages
20 of the employee shall continue at the same rate, for up to thirty (30) days from the due date
21 thereof, until paid or until an action therefore is commenced.

22 156. Defendant and/or DOES fail to provide Plaintiff and formerly employed Class Members
23 all their final wages at their time of termination in accordance with *California Labor Code*
24 sections 201 and 202.

25 157. As discussed herein, Defendant and/or DOES have had a consistent policy and/or practice
26 of not paying Plaintiff and similarly situated hourly, non-exempt employees for all of the
27 hours they worked, including, but not limited to, rounding, before "shifts" start, after
28 "shifts" end, and/or any other time in the day when Plaintiff and similarly situated hourly

1 non-exempt employees were performing work tasks, subject to the control of Defendant
2 and/or DOES and/or otherwise had work duties but were not paid by Defendant and/or
3 DOES. For example, Plaintiff and the Class Members are not paid for commute time and
4 for time spent working during unpaid meal periods. Failing to pay for all hours worked
5 while under Defendant's and/or DOES' control and/or while suffered or permitted to work
6 resulted in hourly, non-exempt employees being deprived of straight time and/or overtime
7 wages.

8 158. Additionally, Defendant and/or DOES fail to pay all meal, rest, and recovery period
9 premiums owed to Plaintiff and Class Members.

10 159. Defendant's and/or DOES' failure to pay Class Members who are no longer employed by
11 Defendant and/or DOES all wages that were earned and unpaid at the time of termination
12 or within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ is in
13 violation of *California Labor Code* sections 201 and 202.

14 160. Defendant and/or DOES fail to pay Plaintiff and Class Members a sum certain at the time
15 of their termination or within seventy-two (72) hours of their resignation and have failed
16 to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of *California*
17 *Labor Code* section 203, Plaintiff and Class Members are entitled to a penalty in the amount
18 of their daily wage, multiplied by thirty (30) days.

19 161. Defendant's and/or DOES' failure to pay said wages to Plaintiff and members of the Class
20 he seeks to represent, was willful in that Defendant and/or DOES and each of them knew
21 the wages to be due, but failed to pay them.

22 162. As a consequence of Defendant's and/or DOES' willful conduct in not paying wages owed
23 at the time of separation from employment, Plaintiff and members of the proposed Class
24 are entitled to thirty (30) days' worth of wages as a penalty under *California Labor Code*
25 section 203, together with interest thereon and attorneys' fees and costs.

26 163. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
27 below.

28 ///

NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Failure to Reimburse/Illegal Deductions (Lab. Code §§ 221, 2802; IWC Wage Order No. 16-2001; Cal. Code Regs., Title 8, § 11160)

164. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

165. *California Labor Code* section 2082 provides: “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.... [which] shall include[s] all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

166. Under *California Labor Code* section 221, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

167. Plaintiff and Class Members incurred expenses in the discharge of their duties without receiving reimbursement from Defendant and/or DOES. These expenses include, but are not limited to, the purchase of tools for use in performing Plaintiff’s and Class Members’ job duties. These tools include but are not limited to a hammer, saw, plyers, wire reel, and belt.

168. In addition, Defendant and/or DOES require Plaintiff and Class Members to use to use their personal cell phones for business purposes but failed to reimburse this expense. Defendant and/or DOES require employees to clock-in and clock-out on a smartphone application called ExactTime. Plaintiff and Class Members had to use their personal cell phones for this process as well as for calls and/or text messages to communicate with their managers and supervisors throughout the day.

169. Further, Defendant and/or DOES require Plaintiff and Class Members to purchase and wear steel toed boots. Defendant and/or DOES fail to reimburse Plaintiff and Class Members for this expense.

170. Moreover, Defendant and/or DOES require employees to use their personal vehicles for

1 business purposes. Defendant and/or DOES require Plaintiff and Class Members to use
2 their personal vehicles to travel to and from the locations of Defendant's and/or DOES'
3 customers but failed to reimburse Plaintiff and Class Members for this use.

4 171. *California Labor Code* section 2802(a) entitles Defendant and/or DOES to reimbursement
5 for said necessary expenditures, plus interest and expenses.

6 172. Defendant and/or DOES have failed to indemnify or in any manner reimburse Plaintiff and
7 Class Members for these expenditures and losses.

8 173. By requiring Plaintiff and Class Members to pay expenses and cover losses that they
9 incurred in direct consequence of the discharge of their duties for Defendant and/or DOES
10 and/or in obedience of Defendant's and/or DOES' direction, Defendant and/or DOES have
11 violated and continues to violate *California Labor Code* section 2802.

12 174. As a direct and proximate result of Defendant's and/or DOES' conduct, Plaintiff and Class
13 Members have suffered substantial losses according to proof, as well as pre-judgment
14 interest, costs, and attorneys' fees for the prosecution of this action, which losses are
15 compensable under *California Labor Code* section 2802.

16 175. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
17 below.

18 **TENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of**
19 **Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)**

20 176. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
21 and every other paragraph in this Complaint herein as if fully plead.

22 177. Defendant and/or DOES failure to pay all straight time and overtime wages earned, failure
23 to provide compliant meal, rest, and/or recovery periods, and/or premium pay
24 compensation in lieu thereof, failure to adopt a compliant sick pay policy, failure to itemize
25 and keep accurate records, failure to pay all wages due at time of termination, and failure
26 to reimburse all necessary business expenses incurred, as alleged herein, constitutes
27 unlawful activity prohibited by *California Business and Professions Code* section 17200,
28 et seq.

1 178. The actions of Defendant and/or DOES in failing to pay Plaintiff and members of the
2 proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent,
3 and deceptive business practices, within the meaning of *California Business and*
4 *Professions Code* section 17200, et seq.

5 179. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
6 practices in order to prevent future damage, for which there is no adequate remedy at law,
7 and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as
8 members of the general public actually harmed and as a representative of all others subject
9 to Defendant and/or DOES unlawful acts and practices.

10 180. As a result of their unlawful acts, Defendant and/or DOES have reaped and continue to
11 reap unfair benefits at the expense of Plaintiff and the proposed Class he seeks to represent.
12 Defendant and/or DOES should be enjoined from this activity and made to disgorge these
13 ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to
14 *California Business and Professions Code* section 17203. Plaintiff is informed and
15 believes, and thereon alleges, that Defendant and/or DOES are unjustly enriched through
16 their policy of not all wages owed to Plaintiff and members of the proposed Class.

17 181. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
18 proposed class are prejudiced by Defendant's and/or DOES' unfair trade practices.

19 182. As a direct and proximate result of the unfair business practices of Defendant and/or DOES,
20 and each of them, Plaintiff, individually and on behalf of all employees similarly situated,
21 are entitled to equitable and injunctive relief, including full restitution and/or disgorgement
22 of all wages and premium pay which have been unlawfully withheld from Plaintiff and
23 members of the proposed Class as a result of the business acts and practices described
24 herein and enjoining Defendant and/or DOES from engaging in the practices described
25 herein.

26 183. The illegal conduct alleged herein is continuing, and there is no indication that Defendant
27 and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if
28 Defendant and/or DOES are not enjoined from the conduct set forth in this Complaint, they

1 will continue the unlawful activity discussed herein.

2 184. Plaintiff further requests that the Court issue a preliminary and permanent injunction
3 prohibiting Defendant and/or DOES from continuing to not pay Plaintiff and the members
4 of the proposed Class all earned but unpaid wages as discussed herein.

5 185. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
6 below.

7 **ELEVENTH CAUSE OF ACTION AGAINST DOMUS AND/OR DOES: Violations of the**
8 **Private Attorneys General Act of 2004 (“PAGA”) (Lab. Code § 2698 et seq.)**

9 186. Plaintiff and Class Members hereby incorporate by reference each and every other
10 paragraph in this Complaint herein as if fully plead.

11 187. Plaintiff, by virtue of his employment with Defendant and/or DOES, and Defendant’s
12 and/or DOES’ failure to provide meal, rest, and recovery periods; failure to pay all straight
13 time and overtime compensation; failure to pay all wages for all work performed at the
14 statutory minimum agreed upon rate; failure to reimburse for all required expenses; failure
15 to adopt a lawful sick pay/paid time off policy; failure to provide accurate, itemized wage
16 statements; and failure to pay all wages due at termination, is an aggrieved employee with
17 standing to bring an action under the Private Attorney General Act (“PAGA”). Plaintiff,
18 as a representative of the people of the State of California, will seek any and all penalties
19 otherwise capable of being collected by the Labor Commission and/or the Department of
20 Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in
21 Labor Code Section 2699.5, which provides that Section 2699.3(a) applies to any alleged
22 violation of the following provisions: Sections 201 through 203, 205.5, 218, 218.5, 221,
23 222, 223, 224, 226, 226.7, 246, 510, 512, 518, 558, 1174, 1194, 1194.2, 1197, and 2802.

24 188. Plaintiff is informed and believes that Defendant and/or DOES have violated and continue
25 to violate provisions of the California Labor Code and applicable Wage Orders related to
26 meal, rest, and recovery periods; overtime and straight-time compensation; expense
27 reimbursement; wages for all work performed; sick pay; wage statements; and all wages
28 due at termination.

1 189. Plaintiff, as a representative of the general public, will and does seek to recover any and all
2 penalties for each and every violation shown to exist or to have occurred beginning one-
3 year prior to providing notice to the Labor and Workforce Development Agency (LWDA)
4 and continuing to the present, in an amount according to proof, as to those penalties that
5 are otherwise only available to public agency enforcement actions. Funds recovered will
6 be distributed in accordance with PAGA, with at least 75% of the penalties recovered being
7 reimbursed to the State of California and the LWDA.

8 **V. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment as follows:

- 10 A. That the Court determine that this action may be maintained as a class action;
- 11 B. For compensatory damages, in an amount according to proof at trial, with interest
12 thereon;
- 13 C. For economic and/or special damages in an amount according to proof with interest
14 thereon;
- 15 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,
16 with interest thereon;
- 17 E. For compensation for all time worked;
- 18 F. For compensation for not being provided paid meal periods;
- 19 G. For compensation for not being provided paid rest breaks;
- 20 H. For compensation for not being provided paid recovery periods;
- 21 I. For damages and/or monies owed for failure to comply with itemized employee wage
22 statement provisions;
- 23 J. For damages and/or monies owed for adopting an unlawful sick pay policy;
- 24 K. For reimbursement of business expenses incurred;
- 25 L. For all waiting time penalties owed;
- 26 M. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
27 Act of 2004;
- 28 N. That Defendant and/or DOES be found to have engaged in unfair competition in

violation of sections 17200 et seq. of the *California Business and Professions Code*;

O. That Defendant and/or DOES be ordered and enjoined to make restitution to the Class due to their unfair competition, including disgorgement of their wrongfully withheld wages pursuant to *California Business and Professions Code* sections 17203 and 17204;

P. That an order of specific performance of all penalties owed be issued under *California Business and Professions Code* sections 17202;

Q. That Defendant and/or DOES be enjoined from continuing the illegal course of conduct, alleged herein;

R. That Defendant and/or DOES further be enjoined to cease and desist from unfair competition in violation of section 17200 et seq. of the *California Business and Professions Code*;

S. That Defendant and/or DOES be enjoined from further acts of restraint of trade or unfair competition;

T. For attorneys' fees;

U. For liquidated damages;

V. For interest accrued to date;

W. For costs of suit and expenses incurred herein; and

X. For any such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: September 17, 2024

MARA LAW FIRM, PC



David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff Jose Rios on behalf of himself, all others similarly situated, and on behalf of the general public