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ERNESTO SALAZAR, on behalf
6 of himself and all others similarly situated

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE

10
11 ERNESTO SALAZAR, on behalf of himself)
and all others similarly situated,)

12 Plaintiffs,)
13)

14 v.)

15 GBC CONCRETE AND MASONRY)
16 CONSTRUCTION, INC., a California)
corporation; and DOES 1 through 100,)
17 Inclusive)

18 Defendants.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO.: CVRI2402455

FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGE;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. FAILURE TO PAY ALL WAGES UPON TERMINATION;
6. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;
7. VIOLATION OF LABOR CODE §2802;
8. UNFAIR COMPETITION; and
9. CIVIL PENALTIES LABOR CODE §2699

DEMAND FOR JURY TRIAL

COMES NOW plaintiff ERNESTO SALAZAR (hereinafter “Mr. Salazar” and/or “Plaintiff”) on behalf of himself and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on behalf of Plaintiff and all other current and former similarly situated employees employed by or formerly employed by GBC CONCRETE AND MASONRY CONSTRUCTION, INC. and any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), within the State of California.

2. For at least four (4) years prior to the filing of this action and through to the present, Defendants on multiple occasions have had a pattern and practice of failing to pay wages for all time worked, including overtime wages, on multiple occasions to Plaintiff and other non-exempt employees in the State of California, such that in the aggregate employees are underpaid wages as a result of Defendants’ pattern and practice of unevenly rounding time worked by its employees.

3. For at least four (4) years prior to the filing of this action and through to the present Defendants on multiple occasions have had a pattern and practice of failing to pay overtime wages, to Plaintiff and other non-exempt employees in the State of California, as a result of Defendants failure to include all forms of remuneration in determining the regular rate of pay.

4. For at least four (4) years prior to the filing of this action and through to the present Defendants on multiple occasions have had a pattern and practice of failing to pay Plaintiff and other non-exempt employees for off-the-clock work, including but not limited to performing pre and post shift duties without compensation and submitting to COVID-19 screening prior to clocking-in without compensation.

5. For at least four (4) years prior to the filing of this action and through to the present Defendants on multiple occasions have had policy of failing to reimburse Plaintiff and other non-exempt employees for all business related expenses in performing their job duties.

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1 6. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendants on multiple occasions have had a pattern and practice of failing to provide
3 Plaintiff and other similarly situated employees or former employees within the State of California
4 a thirty (30) minute uninterrupted meal period for days on which the employees worked more than
5 five (5) hours in a workday and a second thirty (30) minute uninterrupted meal periods for days on
6 which the employees worked in excess of ten (10) hours in a work day, and failing to provide
7 compensation at the regular rate of pay for such unprovided meal periods as required by California
8 wage and hour laws.

9 7. For at least four (4) years prior to the filing of this action and continuing to the
10 present, Defendants on multiple occasions have had a pattern and practice of failing to provide
11 Plaintiff and similarly situated employees or former employees within the State of California rest
12 periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing
13 to provide compensation at the regular rate of pay for such unprovided rest periods as required by
14 California wage and hour laws.

15 8. For at least three (3) years prior to the filing of this action and continuing through
16 the present, Defendants on multiple occasions have failed to pay Plaintiff and other similarly
17 situated employees the full amount of their wages owed to them upon termination and/or
18 resignation as required by Labor Code §§ 201 or 202.

19 9. For at least one (1) year prior to the filing of this action and continuing through the
20 present, Defendants on multiple occasions have failed to issue Plaintiff and other similarly situated
21 employees accurate wage statements as required by Labor Code § 226.

22 10. Plaintiff, on behalf of himself and all other similarly situated employees, brings this
23 action pursuant to, including but not limited to, California Labor Code §§200, 201, 202, 203, 204,
24 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 2699, et seq., 2802 and
25 California Code of Regulations, Title 8, §11070, seeking unpaid overtime and minimum wages,
26 premium wages for non-compliant meal and rest periods, failure to pay regular rate, failure to
27 reimburse business related expenses, statutory penalties, civil penalties, reasonable attorney's fees
28 and costs.

11. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant to California Business & Professions Code §§17200-17208 also seeks all monies owed but withheld and retained by Defendants to which Plaintiff and members of the Class are entitled.

PARTIES

A. Plaintiff

12. Venue as to each defendant is proper in this judicial district, pursuant to California Code of Civil Procedure §395. Defendants operate and do business in California, and each defendant is within the jurisdiction of this court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California. Defendants employ numerous Class Members in the State of California.

13. Plaintiff is a resident of the State of California. At all relevant times herein, he has been employed by Defendants as a non-exempt employee in California.

B. Defendants

14. Defendant, GBC Concrete and Masonry Construction, Inc., a California corporation, provides construction services within the State of California. GBC Concret and Masonry Construction, Inc. employed Plaintiff and similarly situated persons within the State of California.

15. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure §474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

16. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respect pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

FACTUAL BACKGROUND

17. Plaintiff and other similarly situated employees have not been paid wages, including overtime wages, for all time worked on multiple occasions, such that in the aggregate employees are underpaid wages as a result of Defendants' pattern and practice of unevenly rounding time worked by its employees.

18. For at least four (4) years prior to the filing of this action and through to the present Defendants on multiple occasions have had a pattern and practice of failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California, a result of Defendants' pattern and practice of failing to include all forms of remuneration in determining the regular rate of pay.

19. For at least four (4) years prior to the filing of this action and through to the present Defendants on multiple occasions have had a pattern and practice of failing to pay Plaintiff and other non-exempt employees for off-the-clock work, including but not limited to performing pre and post shift duties without compensation and submitting to COVID-19 screening prior to clocking-in without compensation.

20. For at least four (4) years prior to the filing of this action and through to the present Defendants on multiple occasions have had policy of failing to reimburse Plaintiff and other non-exempt employees for all business related expenses in performing their job duties.

21. Defendants have had a pattern and practice of on multiple occasions failing to provide Plaintiff and other similarly situated employees or former employees within the State of California a thirty (30) minute uninterrupted meal period for days on which the employees worked more than five (5) hours in a workday and a second thirty (30) minute uninterrupted meal periods for days on which the employees worked in excess of ten (10) hours in a work day, and on multiple occasions failing to provide compensation at the regular rate of pay for such unprovided meal periods.

22. Defendants have had a pattern and practice of on multiple occasions failing to provide Plaintiff and similarly situated employees or former employees within the State of California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction

1 thereof and on multiple occasions failing to provide compensation at the regular rate of pay for
2 such unprovided rest periods as required by California wage and hour laws.

3 23. Plaintiff and other similarly situated employees or former employees at all times
4 pertinent hereto were not exempt from the overtime, meal break and rest break provisions of
5 California law, and the implementing rules and regulations of the IWC California Wage Orders.

6 24. Defendants have failed to comply with Labor Code §226(a) by, on multiple
7 occasions, not providing itemized wage statements accurately showing, including but not limited
8 to, correct name of the employer, total hours worked during the pay period and pay due and owing
9 for failure to pay wages as described herein.

10 25. At the time Plaintiff's employment and the employment of other former employees
11 of Defendants ended, Defendants on multiple occasions willfully failed to pay all earned wages as
12 described herein.

13 CLASS ACTION ALLEGATIONS

14 26. Plaintiff brings this action on behalf of himself, and all others similarly situated,
15 as a class action pursuant to California Code of Civil Procedure §382. Plaintiff seeks to represent
16 six Classes composed of and defined as follows:

17 Non-Exempt Employee Class

18 All current and former employees of Defendants within the State of California at
19 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
20 until the time that notice of the class action is provided to the class (collectively
referred to as "Non-Exempt Employee Class").

21 Meal Period Class

22 All current and former employees of Defendants within the State of California at
23 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
until the time that notice of the class action is provided to the class, who worked
shifts of 5 hours or more (collectively referred to as "Meal Period Class").

24 Rest Period Class

25 All current and former employees of Defendants within the State of California at
26 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
27 until the time that notice of the class action is provided to the class, who worked
shifts of 4 hours or more (collectively referred to as "Rest Period Class").

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1 **Late Pay Class**

2 All former employees of Defendants within the State of California at any time
3 commencing three (3) years preceding the filing of Plaintiff's complaint up until the
4 time that notice of the class action is provided to the class, who did not receive all
5 their wages upon termination and or resignation of their employment (collectively
6 referred to as "Late Pay Class").

7 **Wage Statement Class**

8 All current and former employees of Defendants within the State of California, to
9 whom, at any time commencing one (1) year preceding the filing of Plaintiff's
10 complaint up until the time that notice of the class action is provided to the class,
11 were provided with wage statements (collectively referred to as "Wage Statement
12 Class").

13 **Reimbursement Class Members**

14 All current and former non-exempt employees of Defendants within the State of
15 California, who were not reimbursed for business related expenses at any time
16 commencing four (4) years preceding the filing of Plaintiff's complaint up until the
17 time that notice of the class action is provided to the class (collectively referred to as
18 "Reimbursement Class").

19 27. Plaintiff reserves the right under California Rules of Court Rule 3.765(b), to amend
20 or modify the class description with greater specificity or further division into subclasses or
21 limitation to particular issues.

22 28. This action has been brought and may properly be maintained as a class action
23 under the provisions of California Code of Civil Procedure §382 because there is a well-defined
24 community of interest in the litigation and the proposed Class is easily ascertainable.

25 **A. Numerosity**

26 29. The potential members of the Class as defined are so numerous that joinder of all
27 the members of the Class is impracticable. While the precise number of Class Members has not
28 been determined at this time, Plaintiff is informed and believes that there are over 100 Class
29 Members employed by Defendants within the State of California.

30 30. Accounting for employee turnover during the relevant periods necessarily increases
31 this number. Plaintiff alleges Defendants' employment records would provide information as to the
32 number and location of all Class Members. Joinder of all members of the proposed Class is not
33 practicable.

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1 **B. Commonality**

2 31. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 (1) Did Defendants violate Labor Code §1194 by not compensating Class
5 Members overtime wages?
- 6 (2) Did Defendants violate Labor Code §§ 1194 and 1197 by not paying Class
7 Members minimum wages for all hours worked?
- 8 (3) Did Defendants violate Labor Code § 512 by not providing Class Members
9 with meal periods?
- 10 (4) Did Defendants violate Labor Code § 226.7 by not providing Class Members
11 additional wages at the regular rate of pay for missed or interrupted meal
12 periods?
- 13 (5) Did Defendants violate Labor Code §226.7 by not providing Class Members
14 additional wages at the regular rate of pay for missed rest periods?
- 15 (6) Did Defendants violate Labor Code §§ 201 and 202 by failing to pay Class
16 Members upon termination or resignation all wages earned?
- 17 (7) Are Defendants liable to Class Members for penalty wages under Labor
18 Code § 203?
- 19 (8) Did Defendants violate Labor Code § 226(a) by not furnishing Class
20 Members with accurate wage statements?
- 21 (9) Did Defendants violate the Unfair Competition Law, Business and
22 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
23 herein?
- 24 (10) Are Class Members entitled to restitution of penalty wages under Business
25 and Professions Code § 17203?
- 26 (11) Did Defendants violate Labor Code §2802 by not reimbursing employees for
27 all business related expenses in performing their job duties?
- 28 (12) Are Class Members entitled to attorney's fees?

(13) Are Class Members entitled to interest?

C. Typicality

32. The claims of Plaintiff herein alleged are typical of those claims which could be alleged by any member of the classes, and the relief sought is typical of the relief which would be sought by each of the members of the classes in separate actions. Plaintiff and all members of the Classes sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation

33. Plaintiff will fairly and adequately represent and protect the interests of the members of the Classes. Counsel who represents Plaintiff is competent and experienced in litigating wage and hour class actions.

E. Superiority of Class Action

34. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal pattern and practice of on multiple occasions failing to pay overtime wages, failing to pay minimum wages, failing to provide meal and rest breaks or compensation in lieu thereof, failing to reimburse business related expenses, failing to provide accurate itemized wage statements and failing to pay all wages due upon termination and/or resignation, as described herein.

35. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(By Plaintiff and the Class Against All Defendants)**

4 36. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 37. At all times relevant to this complaint, California Labor Code §510 was in effect
7 and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight
8 hours in one workday and any work in excess of forty hours in any one workweek . . . shall be
9 compensated at the rate of no less than one and one-half times the regular rate of pay for an
10 employee.” Overtime pay is computed based on the regular rate of pay. The regular rate
11 of pay includes many different kinds of remuneration. Under California law, the determination of
12 regular rate of pay for purposes of determining overtime pay must include the employee’s
13 commissions, bonuses, or other non-hourly compensation.

14 38. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
15 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
16 forty hours in a work week and were not paid overtime wages for all hours worked as a result of,
17 including but not limited to, Defendants improperly rounding time worked by its employees.

18 39. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
19 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
20 forty hours in a work week and on multiple occasions these employees have not been paid
21 overtime wages, when they were worked off-the-clock in performing pre and post shift duties and
22 submitting to COVID-19 screening prior to clocking-in, such that employees are underpaid
23 overtime wages.

24 40. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class, on
25 multiple occasions worked for Defendants during shifts that consisted of more than eight hours in a
26 work day and/or more than forty hours in a work week while concurrently earning other forms of
27 remuneration and on these multiple occasions employees have not been paid overtime wages as a
28 result of Defendants’ pattern and practice of failing to include all forms of remuneration in

1 determining the regular rate of pay for overtime purposes.

2 41. Accordingly, by requiring Plaintiff and Non-Exempt Employee Class to work in
3 excess of eight hours per day and/or forty hours per week and without properly compensating
4 overtime wages, as described herein, Defendants willfully violated the provisions of Labor Code
5 §1194.

6 42. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt
7 Employee Class have been deprived of overtime wages in an amounts to be determined at trial, and
8 are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and
9 costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and Civil Code
10 §3287.

11 SECOND CAUSE OF ACTION

12 FAILURE TO PAY MINIMUM WAGES

13 (By Plaintiff and the Class Against All Defendants)

14 43. Plaintiff realleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs of this Complaint as though fully set forth herein.

16 44. At all relevant times, Plaintiff and the members of the Non-Exempt Employee
17 Class were employees of Defendants covered by Labor Code §1197 and applicable Wage Orders.

18 45. Pursuant to Labor Code §1197 and applicable Wage Orders, Plaintiff and the
19 members of the Non-Exempt Employee Class were entitled to receive minimum wages for all
20 hours worked.

21 46. At all times herein mentioned, to the extent that Plaintiff and Non-Exempt
22 Employee Class worked for Defendants during shifts that were less than eight hours in a work day
23 and/or less than forty hours in a work week, on multiple occasions these employees have not been
24 paid minimum wage, such that in the aggregate employees are underpaid wages as a result of
25 Defendants' pattern and practice of unevenly rounding time worked by its employees and requiring
26 its employees to work off-the-clock in performing pre and post shift job duties and submitting to
27 COVID-19 screening.

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47. Defendants failure to pay Plaintiff and members of the Non-Exempt Employee Class minimum wages for all hours worked, as described herein, is in violation of Labor Code §1197 and applicable Wage Orders. As a result of Defendants' pattern and practice, Plaintiff and members of the Non-Exempt Employee Class have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked.

48. Pursuant to Labor Code §§ 1194 and 1194.2 Plaintiff and members of the Non-Exempt Employee Class are entitled to recover the full amount of unpaid minimum wages, prejudgment interest, liquidated damages, reasonable attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(By Plaintiff and the Class Against All Defendants)

49. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

50. Pursuant to Labor Code §512, no employer shall employ an employee for a work period of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Plaintiff and other members of the Meal Period Class were on multiple occasions were not provided with requisite meal periods as contemplated under the law since employees would be prevented and discouraged by workplace interruptions which caused missed, short and late meal periods.

51. Pursuant to Labor Code §226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period or rest period is not provided.

52. By their failure on multiple occasions to provide Plaintiff and members of the Meal Period Class with the meal periods contemplated by California law, and failing to provide

1 compensation for such unprovided meal periods at the regular rate of pay, as alleged above,
2 Defendants willfully violated the provisions of Labor Code §512 and applicable Wage Orders.

3 53. As a result of Defendants' unlawful conduct Plaintiffs and the other members of the
4 Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were
5 not paid premium wages at the regular rate of pay, owed for missed meal periods.

6 54. Plaintiff and the other members of the Meal Period Class are entitled to recover the
7 full amount of their unpaid additional premium pay for missed meal periods. Pursuant to Code of
8 Civil Procedure §1021.5, Plaintiff and the other members of the Meal Period Class are entitled to
9 recover reasonable attorney's fees and costs of suit.

10 55. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Meal Period
11 Class are entitled to recover prejudgment interest on the additional premium pay owed for missed
12 meal periods.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS**

15 **(By Plaintiff and the Class Against All Defendants)**

16 56. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs of this Complaint as though fully set forth herein.

18 57. California law and applicable Wage Orders require that employers "authorize and
19 permit" employees to take paid 10 minute rest periods in about the middle of each 4-hour work
20 period "or major fraction thereof." Accordingly, employees who work shifts of 3 ½ to 6 hours
21 must be provided 10 minutes of paid rest period, employees who work shifts of more than 6 and up
22 to 10 hours must be provided with 20 minutes of paid rest period, and employees who work shifts
23 of more than 10 hours must be provided 30 minutes of paid rest period. Plaintiff and other
24 members of the Rest Period Class on multiple occasions were not provided with requisite rest
25 periods as contemplated under the law.

26 58. Pursuant to Labor Code §226.7, if an employer fails to provide an employee with a
27 meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
28 Commission, the employer shall pay the employee one additional hour of pay at the employee's

1 regular rate of compensation for each work day that the meal period or rest period is not provided.

2 59. By their failure on multiple occasions to provide Plaintiff and other members of the
3 Rest Period Class with the rest periods contemplated by California law, and failing to provide
4 compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the
5 provisions of Labor Code §226.7 and applicable Wage Orders.

6 60. As a result of Defendants' unlawful conduct Plaintiff and the other members of the
7 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were
8 not paid additional premium pay, at the regular rate of pay, owed for missed rest periods.

9 61. Plaintiff and the other members of the Rest Period Class are entitled to recover the
10 full amount of their unpaid additional premium pay for missed rest periods. Pursuant to Code of
11 Civil Procedure §1021.5, Plaintiff and the other members of the Rest Period Class are entitled to
12 recover reasonable attorney's fees and costs of suit.

13 62. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Rest Period
14 Class are entitled to recover prejudgment interest on the additional pay owed for missed rest
15 periods.

16 FIFTH CAUSE OF ACTION

17 FAILURE TO PAY ALL WAGES UPON TERMINATION

18 (By Plaintiff and the Class Against All Defendants)

19 63. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs of this Complaint as though fully set forth herein.

21 64. At all relevant times, Plaintiff and other members of the Late Pay Class were
22 employees of Defendants covered by Labor Code §§ 201 and 202.

23 65. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of the Late Pay
24 Class were entitled upon termination to timely payment of all wages earned and unpaid prior to
25 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior
26 to discharge immediately upon termination. Employees who resigned were entitled to payment of
27 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
28 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and

1 unpaid at the time of resignation.

2 66. Defendants failed to pay Plaintiff and other members of the Late Pay Class all
3 wages earned and unpaid prior to termination in accordance with Labor Code §§ 201 or 202.
4 Plaintiff and other members of the Late Pay Class are informed and believe and thereon allege that
5 within the applicable limitations period, Defendants on multiple occasions had a pattern and
6 practice of not paying upon termination, the wages owed to them as a consequence of failing to
7 pay non-exempt employees for earned wages, as described herein.

8 67. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages
9 earned prior to termination in accordance with Labor Code §§ 201 and 202 was wilful.
10 Defendants had the ability to pay all wages earned by Plaintiff and other members of the Late Pay
11 Class at the time of termination in accordance with Labor Code §§ 201 and 202, but intentionally
12 adopted policies or practices incompatible with the requirements of Labor Code §§ 201 and 202.

13 68. Pursuant to Labor Code §§ 201 and 202 Plaintiff and other members of the Late
14 Pay Class are entitled to all wages earned prior to termination that Defendants failed to pay them.

15 69. Pursuant to Labor Code § 203, Plaintiff and other members of the Late Pay Class
16 are entitled to penalty wages from the date their earned and unpaid wages were due, upon
17 termination, until paid, up to a maximum of 30 days.

18 70. As a result of Defendants' unlawful conduct Plaintiff and other members of the
19 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
20 paid for all wages earned prior to termination.

21 71. As a result of Defendants' unlawful conduct Plaintiff and the other members of the
22 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
23 paid all penalty wages owed under Labor Code § 203.

24 72. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the other members of the
25 Late Pay Class are entitled to recover the full amount of their unpaid wages, penalty wages under
26 Labor Code § 203, reasonable attorney's fees, and costs of suit. Pursuant to Labor Code § 218.6
27 or Civil Code § 3287(a), Plaintiff and the other members of the Late Pay Class are entitled to
28 recover prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

3 **(By Plaintiff and the Class Against All Defendants)**

4 73. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 74. At all relevant times, Plaintiff and the other members of the Wage Statement Class
7 were employees of Defendants covered by Labor Code § 226.

8 75. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage
9 Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages,
10 an accurate itemized statement showing gross wages earned, net wages earned, all applicable
11 hourly rates in effect during the pay period and the corresponding number of hours worked at each
12 hourly rate by the employee.

13 76. Defendants failed to provide Plaintiff and the other members of the Wage
14 Statement Class accurate itemized wage statements in accordance with Labor Code § 226(a).

15 77. Plaintiff and the other members of the Wage Statement Class are informed and
16 believe and thereon allege that at all relevant times, Defendants maintained and continue to
17 maintain a policy and practice of issuing wage statements that do not show, including but not
18 limited to, correct name of the employer, all hours worked and all earned wages and pay due for
19 all hours worked at applicable rates of pay. Defendants' practices resulted and continue to result
20 in, the issuance of Wage Statements to Plaintiff and other members of the Class that do not
21 comply with the itemization requirements.

22 78. Defendants' failure to provide Plaintiff and other members of the Wage Statement
23 Class with accurate Wage Statements was knowing and intentional. Defendants had the ability to
24 provide Plaintiff and the other members of the Wage Statement Class with accurate Wage
25 Statements, but intentionally provided wage statements that Defendants knew were not accurate.

26 79. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
27 Wage Statement Class have suffered injury. The absence of accurate information on their wage
28 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery

1 and mathematical computations to determine the amount of wages owed, causes difficulty and
2 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate
3 information about wages and amounts deducted from wages to state and federal government
4 agencies.

5 80. Pursuant to Labor Code § 226(e) Plaintiff and other members of the Wage
6 Statement Class are entitled to recover \$50 for the initial pay period during the period in which
7 violation of Labor Code § 226 occurred and \$100 for each violation of Labor Code § 226 in a
8 subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee.

9 81. Pursuant to Labor Code § 226(e) and § 226(g), Plaintiff and the other members of
10 the Wage Statement Class were entitled to recover the full amount of penalties due under Labor
11 Code § 226(e) reasonable attorney's fees and costs of suit.

12 SEVENTH CAUSE OF ACTION

13 VIOLATION OF LABOR CODE §2802

14 (By Plaintiff and Class Members Against All Defendants)

15 82. Plaintiff realleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs of this Complaint as though fully set forth herein.

17 83. California Labor Code §2802(a) provides that "an employer shall indemnify his
18 or her employee for all necessary expenditures or losses incurred by the employee in direct
19 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
20 the employer . . .".

21 84. California Code of Regulations, Title 8, §11070 (9)(A) provides that "when
22 uniforms are required by the employer to be worn by the employee as a condition of employment,
23 such uniforms shall be provided and maintained by the employer."

24 85. At all relevant times, Defendants required Plaintiff and the Reimbursement Class
25 Members to, among other things, failure to reimburse for mileage for using their own vehicles to
26 perform their job duties.

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1 86. Pursuant to Labor Code §2802, Defendants' owe to Plaintiff and each
2 Reimbursement Class Member for reimbursement of business related expenses which were
3 required to perform their work duties, plus interest thereon and reasonable attorney's fees.

4 **EIGHTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(By Plaintiff and Class Members Against All Defendants)**

7 87. Plaintiff realleges and incorporates by reference all of the allegations contained in
8 the preceding paragraphs of this Complaint as though fully set forth herein.

9 88. The unlawful conduct of Defendants alleged herein constitutes unfair competition
10 within the meaning of Business & Professions Code § 17200. Due to their unlawful business
11 practices in violation of the Labor Code, Defendants have gained a competitive advantage over
12 other comparable companies doing business in the state of California that comply with their
13 obligations to compensate employees in accordance with the Labor Code.

14 89. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
15 similarly situated Class Members have suffered injury in fact and lost money or property.
16 Plaintiff and similarly situated Class Members have been deprived from not being compensated
17 overtime wages, from not being compensated minimum wages, from not being reimbursed
18 business related expenses, and from not being provided with meal and rest breaks or
19 compensation in lieu thereof, as described herein.

20 90. Pursuant to Business & Professions Code § 17203 Plaintiff and similarly situated
21 Class Members are entitled to restitution of all wages and other monies owed to them under the
22 Labor Code, including interest thereon, in which they had a property interest which Defendants
23 failed to pay them but withheld and retained for themselves. Restitution of the money owed to
24 Plaintiff and similarly situated Class Members is necessary to prevent Defendants from becoming
25 unjustly enriched by their failure to comply with the Labor Code.

26 91. Plaintiff and similarly situated Class Members are entitled to recover reasonable
27 attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil
28 Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

1 NINTH CAUSE OF ACTION

2 CIVIL PENALTIES LABOR CODE §2699 et seq.

3 (By Plaintiff and Aggrieved Employees Against All Defendants)

4 92. Plaintiff realleges and incorporate by reference all of the allegations contained
5 in the preceding paragraphs of this Complaint as though fully set forth herein.

6 93. Plaintiff has complied with the procedures for bringing suit specified in Labor
7 Code §2699.3. On or about May 3, 2024, Plaintiff gave written notice to the Labor and
8 Workforce Development Agency (“LWDA”) and Defendants of the specified provisions of the
9 Labor Code alleged to have been violated and the LWDA elected not to investigate.

10 94. During the period beginning one year period preceding the filing of Plaintiff’s
11 written notice to the LWDA (the “Civil Penalty Period”), Defendants violated, including but not
12 limited, to Labor Code §§200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194,
13 1194.2, 1197, 1197.1, 2802.

14 95. Labor Code §2699(a) and (g) authorize an aggrieved employee, on behalf of
15 themselves and other current and former employees, to bring a civil action to recover civil
16 penalties pursuant to the procedures specified in Labor Code §2699.3.

17 96. Pursuant to Labor Code §2699(a) and (f), Plaintiff and the aggrieved employees are
18 entitled to recover civil penalties for Defendants’ violations of the specified Labor Code sections
19 during the Civil Penalty Period in the amount of one hundred dollars (\$100) for each employee
20 per pay period for the initial violation and two hundred dollars (\$200) for each employee per pay
21 period for each subsequent violation.

22 97. In addition to the civil penalties recoverable under Labor Code §2699(a) and
23 (f), to the extent permitted by law, Defendants’ failure to provide Plaintiff and aggrieved
24 employees with accurate itemized wage statements, as described herein, entitles Plaintiff to seek
25 separate civil penalties for Defendants’ violation of Labor Code §226 (a) and 226 (e). For
26 violations of Labor Code §226 (a), Plaintiff seeks civil penalties provided by Labor Code §226.3.
27 Pursuant to Labor Code § 226.3, “[a]ny employer who violates subdivision (a) of section 226 shall
28 be subject to a civil penalty in the amount of two hundred dollars (\$250) per employee per

1 violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation
2 in a subsequent citation, for which the employer fails to provide the employee a wage deduction
3 statement or fails to keep the required in subdivision (a) of section 226.” Accordingly, Plaintiff
4 and aggrieved employees are entitled to recover civil penalties for violations of Labor Code §
5 226.3 and seeks default civil penalties for each of Defendants’ numerous violations of Labor Code
6 §226 (e).

7 98. In addition, pursuant to Labor Code §1197.1, subdivision (a): “Any employer or
8 other person acting either individually or as an officer, agent, or employee of another person, who
9 pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable
10 state or local law, or by an order of the commission shall be subject to a civil penalty, restitution
11 of wages, liquidated damages payable to the employee, and any applicable penalties imposed
12 pursuant to Section 203 as follows:

13 a. For any initial violation that is intentionally committed, one hundred dollars (\$100)
14 for each unpaid employee for each pay period of which the employee is underpaid.
15 This amount shall be in addition to an amount sufficient to recover underpaid
16 wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
17 imposed pursuant to Section 203.

18 b. For each subsequent violation for the same specific offence, two hundred fifty
19 dollars (\$250) for each underpaid employee for each pay period fo which the
20 employee is underpaid regardless of whether the initial violation is intentionally
21 committed. This amount shall be in addition to an amount sufficient to recover
22 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
23 applicable penalties imposed pursuant to Section 203.

24 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
25 Section 203, recovered pursuant to this section shall be paid to the affected
26 employee.”

27 Plaintiff is informed and believes, and based thereon alleges, that Defendants’ caused Plaintiff
28 and aggrieved employees not to be paid minimum wages as a result of Defendants, without

1 limitation, routinely failing to pay Plaintiff and other aggrieved employees' wages for all hours
2 worked or otherwise under Defendants' control due to, without limitation, routinely failing to
3 accurately track and/or pay for all hours actually worked; and engaging, suffering, or permitting
4 employees to work off the clock. As a direct and proximate result of Defendants' conduct,
5 Plaintiff and other aggrieved employees are entitled to recover directly from Defendants civil
6 penalties pursuant to Labor Code §1197.1.

7 99. In addition to the civil penalties recoverable under Labor Code §2699(a) and
8 (f), to the extent permitted by law, Defendants' failure to pay Plaintiff and other aggrieved
9 employees timely wages for all hours worked, entitles Plaintiff to seek separate civil penalties for
10 Defendants' violation of Labor Code §§ 204 and 210. Specifically, Defendants failed to pay all
11 wages owed within seven days of the close of the payroll period in accordance with Labor Code
12 §204(d). Labor Code §210 (a) provides that "in addition to, and entirely independent and apart
13 from, any other penalty provided in this article, every person who fails to pay the wages of each
14 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) for any
15 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for each
16 subsequent violation, or any wilful or intentional violation, two hundred dollars (\$200) for each
17 failure to pay each employee, plus 25 percent of the amount unlawfully withheld." Accordingly,
18 Plaintiff and aggrieved employees are entitled to recover civil penalties for violations of Labor
19 Code §§ 204 and 210.

20 100. Lastly, pursuant to Labor Code § 558 any employer or other person acting on
21 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provision regulating hours and days of work in any order of the Industrial Welfare Commission
23 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
24 each underpaid employee for each pay period for which the employee was underpaid in addition
25 to an amount sufficient to recover underpaid wages; and (2) For each subsequent violation, one
26 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
27 was underpaid in addition to an amount sufficient to recover underpaid wages. As indicated
28 herein, Plaintiff and aggrieved employees were underpaid wages as a result of the asserted Labor

1 Code violations and therefore are entitled to recover civil penalties under Labor Code §558.

2 101. Pursuant to Labor Code §2699(g), Plaintiff and the aggrieved employees are
3 entitled to an award of reasonable attorneys' fees and costs in connection with their claims for
4 civil penalties.

5 **PRAYER**

6 WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for
7 judgment against Defendants as follows:

8 A. An order certifying that Plaintiff may pursue his claims against Defendants as a
9 class action on behalf of the Class Members;

10 B. An order appointing Plaintiff as Class representative and appointing Plaintiff's
11 counsel as class counsel;

12 C. Penalties for inaccurate wage statements under Labor Code §226(e);

13 D. Damages for unpaid wages under Labor Code §§201 or 202;

14 E. Damages for unpaid penalty wages under Labor Code §203;

15 F. Damages for unpaid wages for missed meal periods under Labor Code §226.7;

16 G. Damages for unpaid wages for missed rest periods under Labor Code §226.7;

17 H. Damages for minimum wages;

18 I. Damages for premium wages;

19 J. Liquidated damages for unpaid minimum wages;

20 K. Damages for unpaid overtime wages under Labor Code §1194;

21 L. Restitution under Business and Professions Code §17203;

22 M. Damages for reimbursement of business related expenses;

23 N. Civil Penalties under Labor Code §§ 210, 226.3, 558, 1197.1, 2699(a)-(f);

24 O. Pre-judgment interest;

25 P. Costs;

26 Q. Reasonable attorney's fees; and

27 R. Such other and further relief as the Court deems just and proper
28

1 DATED: August 16, 2024

THE NOURMAND LAW FIRM, APC

2
3 By: /s/ Michael Nourmand

Michael Nourmand, Esq.

James A. De Sario, Esq.

Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within entitled action; my business address is 8822 West Olympic Boulevard, Beverly Hills, California 90211.

On August 21, 2024, I served the following document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND RESTITUTION

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

David Nusz, Esq.
Matthew J. Sullivan, Esq.
O'HAGAN MEYER LLP
4695 MacArthur Court, Suite 900
Newport Beach, California 92660

Courtesy Copy By Email: dnusz@ohaganmeyer.com; msullivan@ohaganmeyer.com

BY MAIL: As follows: I am readily familiar with our office's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address stated above, following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this Proof of Service was executed on August 21, 2024, at Beverly Hills, California.


Lizbeth Ramirez