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and on behalf of other similarly situated employees and
aggrieved employees pursuant to the California Private Attorneys General Act*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ALFONSO HERRERA, individually, and on
behalf of other similarly situated employees and
aggrieved employees pursuant to the California
Private Attorneys General Act,

Plaintiff,

vs.

W.L. BUTLER CONSTRUCTION, INC., a
California Corporation; ALL AMERICAN
EQUIPMENT RENTAL, LLC, a California
Limited Liability Company; and DOES 1 through
25, inclusive,

Defendants.

Case No. 30-2023-01335445-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- 1. Violation of California Labor Code Sections 510 and 1198 (Unpaid Overtime);**
- 2. Violation of California Labor Code Sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages);**
- 3. Violation of California Labor Code Sections 226.7 and 512 (Unpaid Meal Period Premiums);**
- 4. Violation of California Labor Code Section 226.7 (Unpaid Rest Period Premiums);**
- 5. Violation of California Labor Code Sections 226(a) (Failure to Provide Accurate Wage Statements);**
- 6. Violation of California Labor Code Sections 201, 202, and 203 (Final**

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- Wages Not Timely Paid);**
- 7. Violation of California Labor Code Sections 2800 and 2802 (Failure to Reimburse Necessary Business Expenses);**
- 8. Violation of California Business and Professions Code Sections 17200, *et seq.* (Unfair and Unlawful Business Practices); and**
- 9. Violation of California Labor Code Sections 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004)**

DEMAND FOR JURY TRIAL

1 Plaintiff ALFONSO HERRERA (“Plaintiff”), individually, and on behalf of other similarly
2 situated employees and aggrieved employees pursuant to the California Private Attorneys General Act
3 (“PAGA”), alleges as follows against Defendants W.L. BUTLER CONSTRUCTION, INC., ALL
4 AMERICAN EQUIPMENT RENTAL, LLC, and DOES 1 through 25, inclusive (collectively,
5 “Defendants”):

6 **INTRODUCTION**

7 1. This is a class action to recover damages on behalf of Plaintiff and all current and
8 former hourly-paid and/or non-exempt employees who worked for Defendants in the State of
9 California at any time during the period from four years prior to the date of the filing of the original
10 Complaint until final judgment (“Class Members”).

11 2. This is also an enforcement action under PAGA to recover civil penalties on behalf of
12 Plaintiff, the State of California, and all current and former hourly-paid and/or non-exempt employees
13 who worked for Defendants in the State of California at any time during the period from one year prior
14 to the date of the filing of the original Complaint until final judgment (“Aggrieved Employees”).

15 3. Plaintiff alleges that Defendants hired Plaintiff, Class Members, and Aggrieved
16 Employees but, among other things, failed to properly pay them all wages owed for all time worked
17 (including minimum wages, straight time wages, and overtime wages), failed to provide them with all
18 meal periods and rest periods and associated premium wages to which they were entitled, failed to
19 timely pay them all wages due upon termination of their employment, failed to provide them with
20 accurate itemized wage statements, and failed to reimburse them for necessary business expenses.

21 4. As a result, Defendants violated, *inter alia*, California Labor Code sections 201, 202,
22 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable
23 Industrial Welfare Commission (“IWC”) Wage Order. Through this action, Plaintiff seeks to recover
24 all available remedies including but not limited to actual and liquidated damages, penalties, and
25 attorney’s fees and costs.

26 **JURISDICTION AND VENUE**

27 5. This class action is brought pursuant to California Code of Civil Procedure section 382
28 and a PAGA action brought pursuant to California Labor Code sections 2698, *et seq.*

6. The monetary damages, restitution, statutory penalties, and other applicable legal and equitable relief sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

9. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Orange. The majority of the acts, events, and violations alleged herein relating to Plaintiff occurred in the State of California, County of Orange.

THE PARTIES

10. At all times herein mentioned, Plaintiff ALFONSO HERRERA was and is a resident of Orange County in the State of California.

11. At all times herein mentioned, Defendant W.L. BUTLER CONSTRUCTION, INC., was and is, upon information and belief, a California Corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout Orange County and the State of California.

12. At all times herein mentioned, Defendant ALL AMERICAN EQUIPMENT RENTAL, LLC, was and is, upon information and belief, a California Limited Liability Company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout Orange County and the State of California.

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1 13. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
2 the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and
3 serve such fictitiously named Defendants once their names and capacities become known.

4 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
5 omissions alleged herein were performed by, or are attributable to Defendants W.L. BUTLER
6 CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT RENTAL, LLC; and/or DOES 1 through
7 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
8 each of the other co-Defendants and within the course and scope of such agency, employment, joint
9 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all
10 Defendants represent and were in accordance with Defendants' official policy.

11 15. At all relevant times, Defendants were the employers of Plaintiff within the meaning
12 of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
13 working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make
14 each of said Defendants employers and employers liable under the statutory provisions set forth herein.

15 16. Defendants had the authority to hire and terminate Plaintiff and the other Class
16 Members, to set work rules and conditions governing Plaintiff and the other Class Members'
17 employment, and to supervise their daily employment activities.

18 17. Defendants exercised sufficient authority over the terms and conditions of Plaintiff
19 and the other Class Members' employment for them to be joint employers of Plaintiff and the other
20 Class Members.

21 18. Defendants directly hired and paid wages and benefits to Plaintiff and the other Class
22 Members.

23 19. Defendants continue to employ hourly paid and/or non-exempt employees within the
24 State of California.

25 20. At all relevant times, Defendants, and each of them, ratified each and every act or
26 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
27 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
28 alleged.

21. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

22. Defendants, jointly and severally, employed Plaintiff ALFONSO HERRERA from approximately June 2019 to October 2020 as a non-exempt, hourly-paid employee. During his employment with Defendants, Plaintiff was employed as a Driver/Warehouse Attendant at 3 Mason, Irvine, California 92618.

23. Defendants hired Plaintiff and the other Class Members but failed to properly pay them all overtime wages and minimum wages for all hours worked, failed to provide all meal and rest breaks to which they were entitled, failed to timely pay all wages upon termination of employment, failed to provide accurate wage statements, failed to reimburse necessary business-related expenses, and failed to adhere to other related protections afforded by the California Labor Code and applicable IWC Wage Order.

24. Plaintiff and the other Class Members worked over eight (8) hours in a day, in excess of forty (40) hours in a week, and/or the first eight (8) hours on the seventh consecutive day in a workweek during their employment with Defendants.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that pursuant to California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, Plaintiff and the other Class Members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that pursuant to California Labor Code sections 1194, 1197, and 1197.1, and the applicable IWC Wage Order, Plaintiff and the other Class Members were entitled to receive at least minimum wages for all hours worked and that they were not receiving minimum wages for all hours worked.

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1 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 implemented time rounding practices that at times resulted in the underpayment of wages to Plaintiff
3 and the other Class Members, including minimum and overtime wages. Defendants employed a time
4 rounding policy that was not neutral and designed to round time in Defendants' favor, ensuring that
5 Plaintiff and the other Class Members were at times not paid for all time worked.

6 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
7 should have known that pursuant to California Labor Code sections 226.7 and 512, and the applicable
8 IWC Wage Order, Plaintiff and the other Class Members were entitled to receive a meal period or
9 payment of one (1) additional hour of pay at their regular rate of compensation when they were not
10 provided with an uninterrupted meal period of no less than thirty (30) minutes for a work period of
11 more than five hours per day and that Plaintiff and the other Class Members were entitled to receive a
12 second meal period or payment of one (1) additional hour of pay at their regular rate of compensation
13 when they were not provided with an uninterrupted second meal period of no less than thirty (30)
14 minutes for a work period of more than ten (10) hours per day. However, Plaintiff and the other Class
15 Members did not receive all meal periods or payment of one (1) additional hour of pay at their regular
16 rate of compensation when a meal period was missed, shortened, taken late, and/or interrupted.

17 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
18 should have known that pursuant to California Labor Code section 226.7 and the applicable IWC
19 Wage Order, Plaintiff and the other Class Members were entitled to receive all rest periods or payment
20 of one (1) additional hour of pay at their regular rate of compensation when they were not provided
21 with an uninterrupted rest period of no less than ten (10) minutes for every four hours, or major fraction
22 thereof, worked. However, Plaintiff and the other Class Members did not receive all rest periods or
23 payment of one (1) additional hour of pay at their regular rate of compensation when a rest period was
24 missed, shortened, taken late, and/or interrupted.

25 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
26 or should have known that they were required to provide Plaintiff and the other Class Members with
27 complete and accurate itemized wage statements pursuant to California Labor Code section 226, but
28 failed to do so.

1 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
2 or should have known pursuant to California Labor Code sections 2800 and 2802 that Plaintiff and
3 the other Class Members were entitled to reimbursement for necessary business-related expenses,
4 but, in fact, did not reimburse them for necessary business-related expenses.

5 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
6 should have known that Plaintiff and the other Class Members were entitled to receive all wages upon
7 termination of employment, including, without limitation, overtime wages, minimum wages, meal
8 period premium wages, and rest period premium wages, and that they did not receive payment of all
9 wages upon termination of employment in violation of California Labor Code sections 201 and 202.

10 **CLASS ACTION ALLEGATIONS**

11 33. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly
12 situated, as members of a proposed class pursuant to California Code of Civil Procedure section
13 382. The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and
14 superiority requirements under California Code of Civil Procedure section 382.

15 34. The proposed **Class** is defined as follows:

16 **All current and former hourly-paid and/or non-exempt employees who worked**
17 **for Defendants in the State of California at any time during the period from four**
18 **years prior to the date of the filing of the original Complaint until final judgment.**

19 35. Plaintiff reserves the right to establish additional subclasses as appropriate.

20 36. There is a well-defined community of interest in the litigation and the Class is easily
21 ascertainable.

22 37. The Class is so numerous that the individual joinder of all its members is impracticable.
23 While the exact number and identities of Class Members are unknown to Plaintiff at this time, the
24 exact numbers of Class Members and their identities can be ascertained through appropriate discovery
25 from records maintained by Defendants and their agents.

26 38. Common questions of fact and law exist as to all Class Members, which predominate
27 over any questions affecting only individual members of the Class. The common legal and factual
28 questions which do not vary from Class Member to Class Member and which may be determined

1 without reference to the individual circumstances of any Class Member include, but are not limited to,
2 the following:

- 3 i. Whether Defendants had a policy and practice of failing to pay overtime wages to
4 Plaintiff and the other Class Members for all overtime hours worked;
- 5 ii. Whether Defendants had a policy and practice of failing to pay minimum wages to
6 Plaintiff and the other Class Members for all hours worked;
- 7 iii. Whether Defendants had a policy and practice of failing to provide meal periods to
8 Plaintiff and the other Class Members;
- 9 iv. Whether Defendants had a policy and practice of failing to provide rest periods to
10 Plaintiff and the other Class Members;
- 11 v. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in
12 the State of California for all hours worked, and for all missed, short, late, and/or
13 interrupted meal periods and rest breaks;
- 14 vi. Whether Defendants' failure to pay wages, without abatement or reduction, in
15 accordance with the California Labor Code, was willful;
- 16 vii. Whether Defendants failed to pay all wages due to Plaintiff and the other Class
17 Members within the required time upon their discharge or resignation;
- 18 viii. Whether Defendants failed to comply with wage reporting as required by the California
19 Labor Code, including, *inter alia*, section 226;
- 20 ix. Whether Defendants failed to reimburse Plaintiff and the other Class Members for
21 necessary business-related expenses and costs;
- 22 x. Whether Defendants' conduct was willful or reckless;
- 23 xi. Whether Defendants engaged in unfair business practices in violation of California
24 Business & Professions Code section 17200, *et seq.*;
- 25 xii. The appropriate amount of damages, restitution, and/or monetary penalties resulting
26 from Defendants' violation of California law; and
- 27 xiii. Whether Plaintiff and the other Class Members are entitled to compensatory damages
28 pursuant to the California Labor Code.

39. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are coincident with and not antagonistic to those of the other Class Members he seeks to represent. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff intends to prosecute this action vigorously.

40. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class Members is impracticable. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class Member.

41. Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the Class Members who are not named in the complaint anonymity that allows for the vindication of their rights.

PAGA ALLEGATIONS

42. PAGA is and was applicable to Defendants' employment of Plaintiff and the Aggrieved Employees.

43. PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

1 44. Pursuant to PAGA, a civil action may be brought by an “aggrieved employee,” who is
2 any person employed by the alleged violator and against whom one or more of the alleged violations
3 was committed.

4 45. Plaintiff and the other hourly-paid, non-exempt employees are “Aggrieved Employees”
5 as defined by California Labor Code section 2699(c) because they are current or former employees of
6 Defendants against whom one of more of the alleged violations were committed.

7 46. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
8 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
9 have been met:

10 a. The aggrieved employee shall give written notice by certified mail (hereinafter
11 “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the
12 California Labor Code alleged to have been violated, including the facts and theories
13 to support the alleged violations.

14 b. The LWDA shall provide notice (“LWDA Response”) to the employer and the
15 aggrieved employee by certified mail that it does not intend to investigate the alleged
16 violation within sixty (60) calendar days of the postmark date of the Employee’s
17 Notice. Upon receipt of the LWDA Response, or if the LWDA Response is not
18 provided within sixty-five (65) calendar days of the postmark date of the Employee’s
19 Notice, the aggrieved employee may commence a civil action pursuant to California
20 Labor Code section 2699 to recover civil penalties in addition to any other penalties to
21 which the employee may be entitled.

22 47. On May 1, 2024, Plaintiff provided notice by electronic submission to the LWDA and
23 by certified mail to Defendants regarding the specific provisions of the California Labor Code alleged
24 to have been violated, including the facts and theories to support the alleged violations, pursuant to
25 California Labor Code section 2699.3. **A true and correct copy of the Employee’s Notice is**
26 **attached hereto as Exhibit A.**

27 48. Plaintiff did not receive a LWDA Response within sixty-five (65) calendar days of
28 providing the Employee’s Notice.

49. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of, *inter alia*, California Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802 have been satisfied.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT RENTAL, LLC; and DOES 1-25)

50. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

51. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

52. Specifically, the applicable IWC Wage Order provides that Defendants were required to pay Plaintiff and the other Class Members at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of the first eight (8) hours worked on the seventh consecutive day in a workweek..

53. The applicable IWC Wage Order further provides that Defendants were required to pay Plaintiff and the other Class Members overtime compensation at a rate of two (2) times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day and/or for all hours worked in excess of eight (8) hours on the seventh consecutive day in a workweek.

54. California Labor Code section 510 codifies the right to overtime compensation at one-and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of the first eight (8) hours worked on the seventh consecutive day in a workweek, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

55. During the relevant time period, Plaintiff and the other Class Members regularly worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of forty (40) hours in a week, and/or in excess of seven (7) consecutive days in a workweek. However, Defendants did not record Plaintiff and the other Class Members' actual hours worked and intentionally and willfully failed to pay all overtime wages owed to Plaintiff and the other Class Members and failed to pay one-and-one half times the regular hourly rate for overtime hours. Defendants' failure to pay overtime wages included, *inter alia*, amongst other things, requiring Plaintiff and the other Class Members to perform work well beyond the eight (8) hours scheduled in a day and off-the-clock – i.e, during purported meal periods. This off-the-clock work included, amongst other things, requiring Plaintiff and the other Class Members to manage Defendants' warehouse, travel to stores to make equipment purchases, and load/unload construction equipment and materials at jobsites.

56. Defendants' failure to pay Plaintiff and the other Class Members as outlined above violates California Labor Code sections 510 and 1198, and is therefore unlawful.

57. Pursuant to California Labor Code section 1194, Plaintiff and the other Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 1194, 1197, AND 1197.1

(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT RENTAL, LLC; and DOES 1-25)

58. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

59. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Plaintiff and the other Class Members were not paid the appropriate minimum wage for all of the hours they worked. Plaintiff and the other Class Members were not paid the minimum wage for work

1 performed beyond their scheduled shifts, and the wages paid to them were not sufficient to compensate
2 them for all hours they worked at a minimum wage rate on a cumulative basis. Defendants failed to
3 pay Plaintiff and the other Class Members for time spent working “off-the-clock” performing duties
4 including, but not limited to, amongst other things, requiring Plaintiff and the other Class Members to
5 manage Defendants’ warehouse, travel to stores to make equipment purchases, and load/unload
6 construction equipment and materials at jobsites.

7 60. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff
8 and the other Class Members for all hours he worked in violation of California Labor Code sections
9 1194, 1197, and 1197.1.

10 61. Defendants’ failure to pay Plaintiff and the other Class Members the minimum wage
11 as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those
12 sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance of their
13 minimum wage compensation, as well as interest, costs, and attorney’s fees.

14 62. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
15 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
16 unpaid and interest thereon.

17 **THIRD CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512**

19 **(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT**
20 **RENTAL, LLC; and DOES 1-25)**

21 63. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in all preceding paragraphs.

23 64. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California
24 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and the other Class Members’
25 employment by Defendants.

26 65. At all relevant times herein set forth, California Labor Code section 226.7 provides that
27 no employer shall require an employee to work during any meal period mandated by an applicable
28 IWC Order.

1 66. At all relevant times herein set forth, California Labor Code section 512(a) provides
2 that an employer may not require, cause, or permit an employee to work for a period of more than five
3 (5) hours per day without providing the employee with a meal period of not less than thirty (30)
4 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
5 the meal period may be waived by mutual consent of both the employer and the employee.

6 67. At all relevant times herein set forth California Labor Code section 512(a) further
7 provides that an employer may not require, cause, or permit an employee to work a work period of
8 more than ten (10) hours per day without providing the employee with a second uninterrupted meal
9 period of not less than thirty (30) minutes, except if the total hours worked is no more than twelve (12)
10 hours, the second meal period may be waived by mutual consent of the employer and the employee
11 only if the first meal period was not waived.

12 68. During the relevant time period, Plaintiff and the other Class Members who were
13 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
14 legally-mandated meal periods by mutual consent, were required to work for periods longer than five
15 (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

16 69. During the relevant time period, Plaintiff and the other Class Members
17 who were scheduled to work for a period of time in excess of six (6) hours, were required to work for
18 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
19 minutes.

20 70. During the relevant time period, Plaintiff and the other Class Members,
21 who were scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve
22 (12) hours, and who did not waive their legally-mandated meal periods by mutual consent, were
23 required to work in excess of ten (10) hours without receiving a second uninterrupted meal period of
24 not less than thirty (30) minutes.

25 71. During the relevant time period, Plaintiff and the other Class Members,
26 who were scheduled to work for a period of time in excess of twelve (12) hours, were required to work
27 for periods longer than ten (10) hours without a second uninterrupted meal period of not less than
28 thirty (30) minutes.

1 72. During the relevant time period, Defendants willfully required Plaintiff and the other
2 Class Members to work during meal periods and failed to compensate Plaintiff and the other Class
3 Members for work performed during meal periods. As a result, Plaintiff worked through meal periods,
4 took late meal periods, took interrupted meal periods, or took short meal periods, if at all.

5 73. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
6 Members all meal period premiums due pursuant to California Labor Code section 226.7 and 512.
7 Defendants' conduct violates the applicable IWC Wage Order(s) and California Labor Code sections
8 226.7 and 512(a).

9 74. Pursuant to the applicable IWC Wage Order and California Labor Code section
10 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
11 hour of pay at their regular rate of compensation for each work day that a meal period was not
12 provided.

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE SECTION 226.7**

15 **(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT**
16 **RENTAL, LLC; and DOES 1-25)**

17 75. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in all preceding paragraphs.

19 76. At all relevant times herein set forth, the applicable IWC Wage Order and California
20 Labor Code section 226.7 were applicable to Plaintiff and the other Class Members' employment by
21 Defendants.

22 77. At all relevant times, California Labor Code section 226.7 provides that no employer
23 shall require an employee to work during any rest period mandated by an applicable order of the
24 California IWC.

25 78. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
26 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
27 the middle of each work period" and that the "rest period time shall be based on the total hours worked
28 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the

1 total daily work time is less than three and one-half (3½) hours.”

2 79. Pursuant to the applicable IWC Wage Order and California Labor Code section
3 226.7(b), Plaintiff and the other Class Members were entitled to recover from Defendants one (1)
4 additional hour of pay at their regular hourly rate of compensation for each workday that the rest period
5 was not provided.

6 80. During the relevant time period, Defendants required Plaintiff and the other Class
7 Members to work three and one-half (3 ½) or more hours without authorizing or permitting a ten (10)
8 minute rest period per each four (4) hour period, or major fraction thereof, worked.

9 81. During the relevant time period, Defendants willfully required Plaintiff and the other
10 Class Members to work during rest periods. Defendants failed to relieve Plaintiff and the other Class
11 Members of all duties such that they could take compliant rest breaks. As a result, Plaintiff worked
12 through rest periods, took late rest periods, took interrupted rest periods, or took short rest periods, if
13 at all.

14 82. Defendants also had no policy and/or practice to pay a premium when rest periods were
15 missed, short, late, and/or interrupted and thus failed to pay Plaintiff and the other Class Members the
16 full rest period premium due in violation of California Labor Code section 226.7.

17 83. Defendants’ conduct violates the applicable IWC Wage Order(s) and California Labor
18 Code section 226.7.

19 84. Pursuant to the applicable IWC Wage Order(s) and California Labor Code section
20 226.7(c), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
21 hour of pay at their regular rate of compensation for each work day that a rest period was not
22 provided.

23 **FIFTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE SECTION 226(a)**

25 **(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT**
26 **RENTAL, LLC; and DOES 1-25)**

27 85. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in all preceding paragraphs.

1 86. At all material times set forth herein, California Labor Code section 226(a) provides
2 that every employer shall furnish each of his or her employees an accurate itemized wage statement
3 in writing, including, but not limited to, the name and address of the legal entity that is the employer,
4 total hours worked, and all applicable hourly rates.

5 87. Defendants have intentionally and willfully failed to provide Plaintiff and the other
6 Class Members with complete and accurate wage statements. The deficiencies include, among other
7 things, the failure to state all hours worked and the failure to state all hourly rates.

8 88. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
9 and the other Class Members have suffered injury and damage to their statutorily protected rights.

10 89. Specifically, Plaintiff and the other Class Members have been injured by Defendants'
11 intentional violation of California Labor Code section 226(a) because they were denied both their legal
12 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
13 California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate
14 number of total hours worked on wage statements, Plaintiff and the other Class Members have been
15 prevented by Defendants from determining if all hours worked were paid and the extent of the
16 underpayment. Plaintiff had to file this lawsuit, and will further have to conduct discovery, reconstruct
17 time records, and perform computations in order to analyze whether in fact Plaintiff and the other
18 Class Members were paid correctly and the extent of the underpayment, thereby causing Plaintiff to
19 incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
20 costs had Defendants provided the accurate number of total hours worked. This has also delayed
21 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

22 90. Plaintiff and the other Class Members are entitled to recover from Defendants the
23 greater of their actual damages caused by Defendants' failure to comply with California Labor Code
24 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

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SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

**(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT
RENTAL, LLC; and DOES 1-25)**

91. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

92. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 mandates that if an employee quits, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

93. California Labor Code section 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than thirty (30) days.

94. At the time that Plaintiff and the other Class Members' employment with Defendants ended, Defendants knowingly and willfully failed to pay Plaintiff and the other Class Members all wages owed to them pursuant to California Labor Code sections 201 and 202, including, without limitation, overtime wages, minimum wages, meal period premium wages, and rest period premium wages.

95. As a result, Plaintiff and the other Class Members are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code section 203, together with interest thereon, as well as other available remedies.

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1 **SEVENTH CAUSE OF ACTION**
2 **VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802**
3 **(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT**
4 **RENTAL, LLC; and DOES 1-25)**

5 96. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in all preceding paragraphs.

7 97. Pursuant to California Labor Code sections 2800 and 2802, an employer must
8 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
9 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct
10 consequence of his or her obedience to the directions of the employer.

11 98. Plaintiff and the other Class Members incurred necessary business-related expenses
12 and costs that were not fully reimbursed by Defendants, including, but not limited to, the purchase of
13 uniforms and steel-toe boots for work-related purposes.

14 99. Defendants intentionally and willfully failed to reimburse Plaintiff and the other Class
15 Members for all necessary business-related expenses and costs. Plaintiff and the other Class Members
16 are entitled to recover from Defendants their business-related expenses and costs incurred during the
17 course and scope of his employment, plus interest accrued from the date on which Plaintiff and the
18 other Class Members incurred the necessary expenditures at the same rate as judgments in civil actions
19 in the State of California.

20 **EIGHTH CAUSE OF ACTION**
21 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES IN**
22 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *ET. SEQ.***
23 **(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT**
24 **RENTAL, LLC; and DOES 1-25)**

25 100. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in all preceding paragraphs.

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1 101. Each and every one of Defendants' acts and omissions in violation of the California
2 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
3 Defendant's failure and refusal to pay overtime compensation, Defendant's failure and refusal to pay
4 minimum wages, Defendants' failure and refusal to provide required meal periods, Defendants' failure
5 and refusal to provide required rest periods, Defendants' failure and refusal to furnish accurate
6 itemized wage statements, Defendants' failure and refusal to reimburse business-related expenses, and
7 Defendants' failure to timely pay wages upon termination constitutes an unfair and unlawful business
8 practice under California Business and Professions Code sections 17200, *et seq.*

9 102. Defendants' violations of California wage and hour laws constitute an unfair and
10 unlawful business practice because Defendants' aforementioned acts and omissions were done
11 repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff
12 and the other Class Members.

13 103. Defendants have avoided payment of overtime wages, minimum wages, meal period
14 premiums, rest period premiums, and other benefits as required by the California Labor Code, the
15 California Code of Regulations, and the applicable IWC Wage Order. Further, Defendants have failed
16 to record, report, and pay the correct sums of assessment to the state authorities under the California
17 Labor Code and other applicable regulations.

18 104. As a result of Defendants' unfair and unlawful business practices, Defendants have
19 reaped unfair and illegal profits during Plaintiff and the other Class Members' tenure at the expense
20 of Plaintiff, the other Class Members, and members of the public. Defendants should be made to
21 disgorge its ill-gotten gains and to restore them to Plaintiff and the other Class Members.

22 105. Defendants' unfair and unlawful business practices entitle Plaintiff and the other Class
23 Members to seek preliminary and permanent injunctive relief, including but not limited to orders that
24 Defendants account for, disgorge, and restore to Plaintiff and the other Class Members the wages and
25 other compensation unlawfully withheld from them. Plaintiff and the other Class Members are entitled
26 to restitution of all monies to be disgorged from Defendants in an amount according to proof at the
27 time of trial.

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1 **NINTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTIONS 2698, *ET SEQ.***

3 **(Against W.L. BUTLER CONSTRUCTION, INC.; ALL AMERICAN EQUIPMENT**
4 **RENTAL, LLC; and DOES 1-25)**

5 106. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in all preceding paragraphs.

7 107. Plaintiff brings this action on a representative basis on behalf of other Aggrieved
8 Employees and the State of California, in Plaintiff's capacity as a private attorney general pursuant to
9 the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*

10 108. PAGA expressly provides for a private right of action to recover civil penalties for
11 violations of the California Labor Code as follows: "*Notwithstanding any other provision of law, any*
12 *provision of this code that provides for a civil penalty to be assessed and collected by the Labor and*
13 *Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,*
14 *or employees, for a violation of this code, may, as an alternative, be recovered through a civil action*
15 *brought by an aggrieved employee on behalf of himself or herself and other current or former*
16 *employees pursuant to the procedures specified in Section 2699.3.*" Cal. Lab. Code § 2699(a).

17 109. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
18 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
19 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

20 110. Plaintiff and the other hourly-paid, non-exempt employees are "Aggrieved Employees"
21 as defined by California Labor Code section 2699(c) in that they are all current or former employees
22 of Defendants, and one or more of the alleged violations were committed against them.

23 111. Defendants' conduct, as alleged herein, violates numerous sections of the California
24 Labor Code, including, but not limited to, the following:

- 25 a. Violation of California Labor Code sections 510 and 1198 for failure to pay overtime
26 wages, as set forth more fully above;
- 27 b. Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to pay
28 minimum wages, as set forth more fully above;

- c. Violation of California Labor Code sections 226.7 and 512(a) for failure to provide legally required meal periods, as set forth more fully above;
- d. Violation of California Labor Code sections 226.7 and 512(a) for failure to pay required meal period premiums, as set forth more fully above;
- e. Violation of California Labor Code section 226.7 for failure to provide legally required rest periods, as set forth more fully above;
- f. Violation of California Labor Code section 226.7 for failure to pay required rest period premiums, as set forth more fully above;
- g. Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully above;
- h. Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and Aggrieved Employees, as set forth more fully above;
- i. Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and Aggrieved Employees for necessary business-related expenses and costs, as set forth more fully above.

112. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections set forth herein, including penalties under California Labor Code sections 2699, 558, 1197.1, 226, 226.3, and 1197.1, penalties under the applicable IWC Wage Order, and any and all additional penalties and remedies as provided by the California Labor Code and/or other statutes.

113. Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the Aggrieved Employees.

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1 114. Plaintiff retained counsel to file this court action, and to assess and collect the civil
2 penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and
3 costs pursuant to California Labor Code sections 218.5 and 2699(g)(1), and any other applicable
4 statute.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

7 **PRAYER FOR RELIEF**

8 Plaintiff, on behalf of all others similarly situated and other aggrieved employees pursuant to
9 the California Private Attorneys General Act, prays for relief and judgment against Defendants, jointly
10 and severally, as follows:

11 **Class Certification**

- 12 1. That this action be certified as a class action as to the first eight causes of action;
13 2. That Plaintiff be appointed as the representative of the Class as to the first eight causes
14 of action;
15 3. That counsel for Plaintiff be appointed as Class Counsel; and
16 4. That Defendants provide to Class Counsel immediately the names and most current/last
17 known contact information (addresses, e-mails, and telephone numbers) of all Class Members.

18 **As to the First Cause of Action**

- 19 5. That the Court declare, adjudge, and decree that Defendants violated California Labor
20 Code sections 510 and 1198 and the applicable IWC Wage Order(s) by willfully failing to pay all
21 overtime wages due to Plaintiff and the other Class Members;
22 6. For general unpaid wages at overtime wage rates and such general and special damages
23 as may be appropriate;
24 7. For pre-judgment interest on any unpaid overtime compensation commencing from the
25 date such amounts were due;
26 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
27 Labor Code section 1194; and
28 9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other Class Members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other Class Members in the amount as may be established according to proof at trial;

13. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

14. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

15. For liquidated damages pursuant to California Labor Code section 1194.2; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7 and 512 and the applicable IWC Wage Order(s) by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other Class Members;

18. That the Court make an award to Plaintiff and the other Class Members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

22. For reasonable attorneys' fees and costs of suit incurred herein; and

23. For such other and further relief as the Court may deem just and proper.

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1 **As to the Fourth Cause Action**

2 24. That the Court declare, adjudge, and decree that Defendants violated California Labor
3 Code section 226.7 and the applicable IWC Wage Order(s) by willfully failing to provide all rest
4 periods to Plaintiff and the other Class Members;

5 25. That the Court make an award to Plaintiff and the other Class Members of one (1) hour
6 of pay at each employee's regular rate of compensation for each workday that a rest period was not
7 provided;

8 26. For all actual, consequential, and incidental losses and damages, according to proof;

9 27. For premium wages pursuant to California Labor Code section 226.7(c);

10 28. For pre-judgment interest on any unpaid wages from the date such amounts were due;

11 29. For such other and further relief as the Court may deem just and proper.

12 **As to the Fifth Cause of Action**

13 30. That the Court declare, adjudge, and decree that Defendants violated the record keeping
14 provisions of California Labor Code section 226(a) and the applicable IWC Wage Order(s) as to
15 Plaintiff and the other Class Members, and willfully failed to provide accurate itemized wage
16 statements thereto;

17 31. For all actual, consequential, and incidental losses and damages, according to proof;

18 32. For statutory penalties pursuant to California Labor Code section 226(e);

19 33. For injunctive relief to ensure compliance with this section, pursuant to California
20 Labor Code section 226(g);

21 34. For such other and further relief as the Court may deem just and proper.

22 **As to the Sixth Cause of Action**

23 35. That the Court declare, adjudge, and decree that Defendants violated California Labor
24 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
25 termination of the employment of Plaintiff and the other Class Members no longer employed by
26 Defendants;

27 36. For all actual, consequential, and incidental losses and damages, according to proof;

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1 37. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff
2 and the other Class Members who have left Defendants' employ;

3 38. For pre-judgment interest on any unpaid compensation from the date such amounts
4 were due;

5 39. For such other and further relief as the Court may deem just and proper.

6 **As to the Seventh Cause of Action**

7 40. That the Court declare, adjudge, and decree that Defendants violated California Labor
8 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other Class Members
9 for all necessary business-related expenses as required by California Labor Code sections 2800 and
10 2802;

11 41. For all actual, consequential, and incidental losses and damages, according to proof;

12 42. For the imposition of civil penalties and/or statutory penalties;

13 43. For reasonable attorneys' fees and costs of suit incurred herein; and

14 44. For such other and further relief as the Court may deem just and proper.

15 **As to the Eighth Cause of Action**

16 45. That the Court declare, adjudge, and decree that Defendants violated the following
17 California Labor Code sections as to Plaintiff and the other Class Members: 510 and 1198 (by failing
18 to pay overtime wages); 1194, 1197, and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a)
19 (by failing to provide meal and rest periods or compensation in lieu thereof); 226(a) (by failing to
20 provide accurate wage statements); 201, 202, and 203 (by failing to pay all wages owed upon
21 termination); and 2800 and 2802 (by failing to reimburse business-related expenses);

22 46. For restitution of unpaid wages to Plaintiff and all the other Class Members and all pre-
23 judgment interest from the day such amounts were due and payable;

24 47. For the appointment of a receiver to receive, manage, and distribute any and all funds
25 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
26 result of violation of California Business and Professions Code sections 17200, *et seq.*;

27 48. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
28 Code of Civil Procedure section 1021.5; and

1 49. For injunctive relief to ensure compliance with this section, pursuant to California
2 Business and Professions Code sections 17200, *et seq.*

3 **As to the Ninth Cause of Action**

4 50. For the imposition of civil penalties pursuant to California Labor Code sections 2699,
5 558, 226, 226.3, and 1197.1, and all other penalties allowed by the California Labor Code and/or other
6 applicable statutes;

7 51. For statutory attorneys' fees and costs pursuant to sections 218.5 and 2699(g)(1) of the
8 California Labor Code; and

9 52. For such other and further relief as the Court may deem proper.

10
11 Dated: July 11, 2024

BLACKSTONE LAW, APC

12
13 By:



Jonathan M. Genish, Esq.
Attorneys for Plaintiff ALFONSO HERRERA,
individually, and on behalf of other similarly
situated employees and aggrieved employees
pursuant to the California Private Attorneys
General Act

EXHIBIT A



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Miriam L. Schimmel, Esq.
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May 1, 2024

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, California 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*

To Whom It May Concern:

This office represents Alfonso Herrera (“Claimant”) with respect to his claims under the California Labor Code against W.L. Butler Construction, Inc. and All American Equipment Rental, LLC (including all affiliates, subsidiaries, parents, directors, and officers) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant as a non-exempt, hourly-paid employee. Claimant worked as a Driver/Warehouse Attendant for Employers and was based out of Employers’ facility located at 3 Mason, Irvine, California 92618.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to California Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order (“IWC Wage Order”).

The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and the applicable IWC Wage Order require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order further require employers to pay no less than one and one-half times an employee's regular rate of pay for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice an employee's regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock including, among other things, managing Employers' warehouse, traveling to stores to make equipment purchases, and loading/unloading construction equipment and materials at job sites prior to clocking-in and/or after clocking-out for their shifts. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

This uncompensated work often resulted in the total number of hours worked by Claimant and other Aggrieved Employees exceeding the daily and/or weekly triggers for overtime wages, yet Employers failed to pay Claimant and Aggrieved Employees applicable overtime rate(s) for these hours.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages, and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 510, 1194, 1197, 1197.1, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. MEAL BREAK VIOLATIONS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7 & 512(a). Employers must provide a second meal period of no less than thirty (30) minutes before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. *Id.* For each day that an employer fails to provide compliant meal period(s), the employer must pay the employee a meal penalty equal to one hour of pay at the employee's regular rate of compensation. *Id.*

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal breaks, when provided, were oftentimes interrupted and/or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete, and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded their own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a compliant meal period was not provided to them in compliance with California law.

Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. REST BREAK VIOLATIONS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. For each day that an employer fails to authorize and permit a compliant rest period, the employer owes the employee one hour of pay at the employee's regular rate of compensation. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest

periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a rest period was not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

4. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described above, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

5. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The applicable IWC Wage Order requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the purchase of uniforms and steel-toe boots for work-related purposes.

Accordingly, Employers violated the applicable IWC Order and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; and attorneys' fees and costs.

6. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Employers failed to pay all wages due to their employees within twenty-four (24) hours of termination or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Claimant and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Claimant and Aggrieved Employees for all straight time wage, minimum wages, and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Claimant and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

7. EMPLOYERS' OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745 ("*Huff*"), as an Aggrieved Employee, Claimant has standing, and intends to pursue civil penalties on behalf of the Labor and Workforce Development Agency ("LWDA") against Employers for any and all other California Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the California Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged California Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimant, as an "aggrieved" employee affected by at least one California Labor Code violation may, and hereby does, pursue penalties on behalf of the LWDA for all California Labor Code violations by Employers.



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Employers are in direct violation of numerous California wage and hour laws including but not limited to the California Labor Code sections referenced above. Claimant hereby provides notice to the LWDA under the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*, and specifically asks for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that Claimant may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the LWDA before he or she can invoke the provisions of California Labor Code sections 2699, *et seq.*, by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under California Labor Code section 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code section 2699 on behalf of himself, the State of California, and all Aggrieved Employees should your office not address Employers' alleged violations within this timeframe.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam L. Schimmel

Miriam L. Schimmel, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

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Newport Beach, California 92600

Attorneys for W.L. Butler Construction, Inc. and All American Equipment Rental, LLC

PROOF OF SERVICE

I, Stephany Sinaguinan, certify and declare as follows:

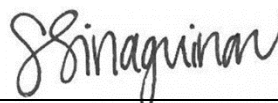
I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On July 11, 2024, I served a copy of the following document(s): **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties as follows:

MICHAEL J. STUDENKA
MADISON J. ROLAPP
NEWMAYER & DILLION LLP
895 Dove Street, Second Floor
Newport Beach, California 92660
(949) 854-7000; (949) 854-7099 (Fax)
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*Attorneys for Defendants W.L. Butler
Construction, Inc. and All American
Equipment Rental, LLC*

- ☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to the above referenced addressee(s) via email from email address ssina@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.
- ☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 11, 2024 at Beverly Hills, California.



Stephany Sinaguinan