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FILED
Superior Court of California
County of Los Angeles
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David W. Slayton, Executive Officer / Clerk of Court
By: F. Sims Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANTONIO ROSILLO, ALONDRA BECERRIL ALBARRAN, and ELVA PENA, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

BRODY HEATING, AIR CONDITIONING & ELECTRICAL CONTRACTORS, LLC and DOES 1 through 50, inclusive,

Defendants.

Case No. 24STCV10881
(Consolidated with 24STCV16328)

Hon. Theresa M. Traber
Dept. 1

CLASS ACTION

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Paid Sick Leave Violations
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Failure to Reimburse Business Expenses
10. Unlawful Wage Deductions
11. Unfair Competition
12. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)
13. Failure to Pay Call-Back Pay Premiums

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Plaintiffs ANTONIO ROSILLO, ALONDRA BECERRIL ALBARRAN, and ELVA PENA, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiffs") brings this SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants BRODY HEATING, AIR CONDITIONING & ELECTRICAL CONTRACTORS, LLC and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a class action filed for wage and hour violations of the California Labor Code.

2. Defendant operates a heat and air conditioning company throughout the greater Los Angeles area.

3. Defendant failed to compensate Plaintiffs and Class Members for all hours suffered or permitted to work.

4. Defendant's underpayment of wages was facilitated by their company-wide practices of failing to compensate employees for time spent "on-call" and failing to include commissions and other payments in the regular rate of pay for the purpose of paying overtime. Defendant also failed to pay Labor Code § 226.7 premiums at the regular rate of compensation for non-compliant meal periods and rest periods, including late, short, and missed meal periods.

5. Defendant did not reimburse Plaintiffs and Class Members for necessary expenses incurred in furtherance of the Class Members' job duties.

6. Defendant's employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the Class Members.

7. Plaintiffs seek to recover the underpaid damages, plus associated penalties, interests, attorney's fees and costs.

JURISDICTION & VENUE

8. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

9. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

10. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiffs

12. Plaintiff Rosillo is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about September 2022 to August 2023. Plaintiff Rosillo worked as an HVAC Service Technician.

13. Plaintiff Becerril is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from approximately August 14, 2023 to approximately June 21, 2024 as a maintenance coordinator.

14. Plaintiff Pena is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from approximately September 20, 2023 to approximately June 21, 2024 as a customer service representative.

15. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th _____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), Plaintiffs bring the PAGA claims in this lawsuit exclusively in a non-individual, representative capacity seeking relief on behalf of the State of California and all aggrieved employees.

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B. Defendants

16. Defendant Brody Heating, Air Conditioning & Electrical Contractors, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

17. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

18. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

19. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

20. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

21. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory

tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

22. Plaintiffs reserve the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

23. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiffs' claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiffs experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiffs adequate class representatives; will take all necessary steps to protect the class members' interests adequately and fairly; have no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its

approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

24. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

25. Plaintiffs and Class Members worked for Defendant as non-exempt employees and were compensated on an hourly basis.

26. Defendant repeatedly underpaid Plaintiffs and Class Members by not accounting for all hours they worked. Plaintiffs and Class Members were required to be on-call for one week at a time every month. However, Defendant did not compensate Plaintiffs or Class Members for the time they were on-call despite severely limiting employees' activities during that time. Moreover, Defendant and Class Members maintained a strict policy and practice that required employees to answer phone calls immediately, if they did not then they could be terminated.

27. In addition to their hourly wages, Defendant paid Plaintiffs and Class Members other forms of non-discretionary remuneration, including "incentive" pay, for setting up leads and selling systems. Plaintiffs and Class Members would earn a flat rate of $50 for generating a lead and $200 for selling a system. However, when Defendant paid overtime and paid sick leave to Plaintiffs and Class Members, Defendant failed to include the extra remuneration in the overtime and paid sick leave rate calculation, resulting in a regular rate of pay violation.

28. Further, due to employee responsibilities and the continuous flow of business, Plaintiffs and Class Members suffered many short, missed, late, and/or interrupted meal and rest periods. Defendant maintained a practice of scheduling Plaintiffs and Class Members for appointments in quick succession, which did not facilitate timely meal or rest periods. Moreover, to the extent Defendant paid Plaintiffs or Class Members due meal and rest premiums, Defendant underpaid these premiums

due to the regular rate miscalculation stated above regarding additional, non-discretionary remuneration.

29. Defendant also required Plaintiffs and Class Members to incur necessary, work-related costs, without reimbursement. Plaintiffs and Class Members were to purchase their own tools, like drills, sensors, monitors, and diagnostic tools, to fulfill their job duties. Defendant did not compensate employees for using their personal devices for employment-related activities. In fact, Defendant unlawfully deducted the cost of tools from employees' wages if they could not afford to purchase their own tools at the outset. Defendant would deduct the cost of the tools from employees' wages until employees paid off the cost of the tools in full.

30. Defendant also regularly omitted bonuses, commissions, and paid sick leave accrual from wage statements for regular wages resulting in inaccurate wage statements.

31. These violations create derivative liability for failure to pay all wages owed each payday or upon separation of employment.

32. Wage Order 4 requires that if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, Defendants failed to pay Plaintiff and other non-exempt employees for two (2) hours at the employee's regular rate of pay on days in which Plaintiff and the other non-exempt employees were on call afterhours and were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiffs and Class Members Against All Defendants)

33. All outside paragraphs of this Complaint are incorporated into this section.

34. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt

employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer's failure to pay all minimum wages (plus liquidated damages).

35. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect. As a result, Defendants are liable for all associated damages, including liquidated damages for the minimum wage violations pursuant to Labor Code § 1194.2.

36. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

37. All outside paragraphs of this Complaint are incorporated into this section.

38. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime wages all overtime hours worked, and which further provide a private right of action for an employer's failure to pay all overtime compensation for overtime hours worked.

39. Defendants failed in their affirmative obligation to pay Plaintiffs and class members no less than one and one-half times their respective "regular rate of pay" for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for

such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

40. Plaintiffs and class members are entitled to recover the full amount of the unpaid overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

41. All outside paragraphs of this Complaint are incorporated into this section.

42. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

43. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiffs and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

44. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiffs and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

45. Plaintiffs and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 516

46. All outside paragraphs of this Complaint are incorporated into this section.

47. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

48. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiffs and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the applicable orders).

49. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiffs and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL PAID SICK LEAVE WAGES

Violation of Labor Code §§ 200, 218, 246 *et seq.*

50. All outside paragraphs of this Complaint are incorporated into this section.

51. Defendants knowingly and intentionally failed in their affirmative obligation to pay sick leave wages to Plaintiffs and a paid sick leave subclass in violation of Labor Code section 246 *et seq.* Paid sick leave earnings constitute wages for purposes of California wage and hour law. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103 ["Courts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay"].)

52. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

> [A]n employer shall calculate paid sick leave using any of the following calculations:
>
> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
>
> (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

53. Defendants failed to pay Plaintiffs and class members their paid sick leave wages at one of the lawful rates set forth in the statute because Defendants failed to include in their sick leave calculation the additional remuneration received by Plaintiffs and class members.

54. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

55. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

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56. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

57. Under Labor Code section 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following four methods:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

58. Labor Code section 248.6 requires employers to pay supplemental sick leave using either method (I) or (II), as identified above.

59. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave in the manner described above because Defendants failed to include in their sick leave calculation the additional remuneration received by class members.

60. As a result, Defendants violated the Labor Code and are liable to Plaintiffs and class members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

61. All outside paragraphs of this Complaint are incorporated into this section.

62. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due

under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

63. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiffs and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

64. Plaintiffs and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of $100 for the initial violation for each failure to pay each employee and $200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

65. All outside paragraphs of this Complaint are incorporated into this section.

66. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

67. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiffs and class members resulting in injury to Plaintiffs and class members. Specifically, the wage statements issued to Plaintiffs and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

68. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

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69. As a result, Plaintiffs and class members are entitled to recover the statutory penalty of $50 per employee for the initial pay period in which a violation occurred and $100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of $4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq*.

70. All outside paragraphs of this Complaint are incorporated into this section.

71. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

72. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiffs and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

73. Plaintiffs and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

NINTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

74. All outside paragraphs of this Complaint are incorporated into this section.

75. Defendants willfully failed in their affirmative obligation to reimburse Plaintiffs and a reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

76. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiffs and class members are entitled to recover the amount unreimbursed expenses of Plaintiffs and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

TENTH CAUSE OF ACTION

UNLAWFUL WAGE DEDUCTIONS

Violation of Labor Code §§ 221 through 225

77. All outside paragraphs of this Complaint are incorporated into this section.

78. Labor Code section 221 renders it "unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

79. Labor Code section 222 renders it illegal to unlawfully withhold any part of wages agreed upon from the employee.

80. Labor Code section 222.5 renders it unlawful to deduct from employee compensation, or require employee payment, for pre-employment medical or physical examination taken as a condition of employment.

81. Labor Code section 223 states "[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

82. As described above, Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiffs and other class members by deducting wages rightfully owed to the class for employees' use of tools needed to fulfill job duties.

ELEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

83. All outside paragraphs of this Complaint are incorporated into this section.

84. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200

by committing the foregoing wage and hour violations alleged throughout this Complaint.

85. Defendants' dependence on these unfair and/or unlawful business practices deprived Plaintiffs and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

86. Plaintiffs victims of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiffs, as individuals and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

87. Plaintiffs do not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

88. Plaintiffs and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiffs and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiffs and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

TWELFTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)

89. All outside paragraphs of this Complaint are incorporated into this section.

90. Plaintiffs bring this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),

codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

91. Plaintiffs reserve the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

92. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

93. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3. "

94. Labor Code section 2699(f) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: … (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."

95. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

96. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

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97. On or about **April 23, 2024_and June 28, 2024**, Plaintiffs Rosillo and Becerril respectively paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

98. To date, neither Plaintiffs nor Plaintiffs' counsel have received a response to Plaintiffs' written PAGA notice from the LWDA.

99. Within 33 calendar days of the postmark date of the notice sent by Plaintiffs, neither Plaintiffs nor Plaintiffs' counsel have received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

100. Now that at least 65 days have passed from Plaintiffs notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiffs exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

101. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.

b. ***Unlawful Wage Deductions.*** Violation of Labor Code §§ 221 through 225.

c. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

d. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

l. ***Failure to Pay Call Back Pay Premiums.*** Violation of Labor Code § 1198 and Wage Order 5

102. Plaintiffs seek to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

CAUSE OF ACTION

FAILURE TO PAY CALL-BACK PAY PREMIUMS

Violation of Labor Code § 1198 and Wage Order 5

(By Plaintiffs on Behalf of the State and the Aggrieved Employees Against All Defendants)

103. All outside paragraphs of this Complaint are incorporated into this section.

104. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

105. Labor Code § 1198 provides: "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." Wage Order 5 requires that if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay.

106. During the relevant time period, Defendants failed to pay Plaintiff and other non-exempt employees for two (2) hours at the employee's regular rate of pay on days in which Plaintiff and the other non-exempt employees were on call afterhours and were required to report for work a

second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

107. As a consequence of Defendants' unlawful practices, Plaintiff and members of the class seek recovery of unpaid call-back pay premiums, including interest thereon, reasonable attorneys' fees, and costs of suit pursuant to Labor Code § 1198 and Wage Order 5.

PRAYER

Plaintiffs pray for judgment as follows:

a. For certification of this action as a class action;

b. For appointment of Plaintiffs as the class representatives;

c. For appointment of above-captioned counsel for Plaintiffs as Class Counsel;

d. For division of class members into appropriate classes and/or subclasses according to proof;

e. For recovery of all statutory penalties and liquidated damages;

f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;

g. For restitution and injunctive relief;

h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802.

i. For recovery of damages in amount according to proof;

j. For all recoverable pre- and post-judgment interest;

k. For this action to be maintained as a representative action under the PAGA;

l. For Plaintiffs and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

m. For recovery of all civil penalties and other recoverable amounts under the PAGA;

n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and

o. For such other relief the Court deems just and proper.

Dated: November 2, 2026

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro
Lauren N. Vega
Rick Waltman
Ricardo De Leon

Attorneys for Plaintiff Antonio Rosillo

DATED: November 2, 2026

JUSTICE FOR WORKERS, P.C.

By: _____

William C. Sung
Tiffany L. Luu
Joseph C. Ramli
Guneez Ibrahim
Attorneys for Plaintiffs ALONDRA BECERRIL ALBARRAN and ELVA PENA

PROOF OF SERVICE
ANTONIO ROSILLO et al. v. BRODY HEATING, AIR CONDITIONING & ELECTRICAL CONTRACTORS, LLC
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 9575 Bolsa Ave, Westminster, CA 92683.

On November 2, 2026, I served the foregoing document described as:

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

[ ] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail in the State of California addressed as set forth below:

[ ] by placing a true copy thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[x] by electronically serving the document(s) listed above to:
SEE SERVICE LIST
[ ] by having copies **personally delivered to the designed party(ies)**

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on the same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[x] (State) I declare under penalty of perjury the laws of the State of California that the foregoing is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made

Executed on November 2, 2026, at Westminster, California.



HUNG D. TRAN

SERVICE LIST

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