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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By N. Lopez, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

CLIFFORD PARISH, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

ACE MASONRY, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 24CU006905C

REPRESENTATIVE ACTION COMPLAINT

1. Rest Period Violations
2. Failure to Reimburse for Necessary Business Expenses
3. Untimely Payment of Wages
4. Wage Statement Violations
5. Waiting Time Penalties
6. Civil Penalties under the Private Attorneys General Act

1 Plaintiff Clifford Parish (“Plaintiff”), as an individual and on behalf of all others similarly
2 situated current and former California employees and the State of California, brings this individual
3 and representative action against Defendant Ace Masonry, Inc. (“Ace Masonry” or “Defendant”); and
4 DOES 1 through 50 (collectively, “Defendants”), and on information and belief allege as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this individual and representative action against Defendants for rest
7 break violations, unreimbursed business expenses, unsafe working conditions, and related penalties
8 under the California Labor Code and Private Attorneys General Act (“PAGA”).

9 2. Defendants’ employment policies, practices and payroll systems enabled and facilitated
10 these violations on a company-wide basis with respect to the aggrieved employees.

11 **JURISDICTION & VENUE**

12 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
13 California Constitution.

14 4. Venue as to each defendant is proper in this judicial district under Code of Civil
15 Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, and committed
16 the alleged violations in this county.

17 **PARTIES**

18 **A. Plaintiff**

19 5. Plaintiff Clifford Parish (“Parish”) is an individual over 18 years of age who worked
20 for Defendants in San Diego, California as an hourly, non-exempt employee from approximately June
21 2023 through February 2024. Plaintiff Parish served as a brick layer in San Diego for Defendants for
22 the duration of his employment.

23 **B. Defendants**

24 6. Defendant Ace Masonry, Inc. (“Defendant” or “Ace Masonry”) is a California
25 corporation registered to do business in the State of California. Ace Masonry operates as a masonry
26 and construction service company.

27 7. The true names and capacities, whether individual, corporate, or otherwise, of the
28 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such

1 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes and alleges
2 that each of the fictious defendants is responsible in some manner for the acts and omissions alleged
3 herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and capacities
4 when they become known.

5 **GENERAL ALLEGATIONS**

6 8. Plaintiff worked for Defendants as an hourly, non-exempt employee until February
7 2024.

8 9. From the start of Plaintiff's employment, Plaintiff encountered safety violations and
9 unsafe practices almost daily on the worksite. For example, Plaintiff and others were often required
10 to "dry cut" blocks, which resulted in silica dust becoming airborne for all employees on the worksite
11 to breathe in. Dry cutting is notoriously unsafe, and is generally prohibited under state and federal
12 law, due to the potential to cause lung cancer, silicosis, and other lung diseases. Plaintiff complained
13 to his foreman Jimmy Savino, and later Aldo (last name unknown), about this unsafe practice, but his
14 complaints went unaddressed and the practice continued. Both before and after his complaints,
15 Plaintiff observed the use of "dry cutting" more often than the use of proper legal methods that would
16 have prevented the silica dust from becoming airborne.

17 10. Plaintiff also often witnessed improper and insufficient use of scaffolding, including
18 stacking of scaffolding without "pinning" or securing levels together. This resulted in an extreme risk
19 that the scaffolding frame could collapse and injure workers. Defendant also often failed to provide
20 scaffolding of sufficient height to finish certain projects, resulting in employees overextending
21 themselves and/or being directed to stand on top of unsecured blocks to finish projects.

22 11. Scaffolding was often not available when needed, and employees were directed to lay
23 planks unsecured across platforms where scaffolding should have been.

24 12. Plaintiff often witnessed gaps between walking planks of 10 inches or greater, and fell
25 between the planks multiple times almost severely injuring his groin.

26 13. Plaintiff reported these unsafe scaffolding practices and incidents repeatedly
27 throughout his employment to his foremen. These reports were similarly ignored, and he was directed
28 to continue working in the unsafe conditions. Later, when foreman Jim Savino and superintendent

1 Brandon Wilson saw Plaintiff walking across planks as Jimmy Savino had directed, Jimmy Savino
2 made fun of the situation, stating “he (Plaintiff) might look old, but he’s a gazelle on his feet.”

3 14. Defendant also often failed to provide rest breaks for water, or to provide any water on
4 location, even on hot summer days. Plaintiff raised this issue with his foremen because provision of
5 water is required under law, and because he found it difficult to perform his work without proper
6 hydration and breaks for rest. The lack of water and time for rest breaks persisted throughout
7 Plaintiff’s employment.

8 15. Plaintiff’s complaints of safety problems were met with indifference and increasing
9 hostility. Plaintiff’s main foreman, Jimmy Savino, expressed to Plaintiff “all you do is complain.” In
10 the final month of his employment, Plaintiff was transferred to a different worksite under a new
11 foreman, Aldo (last name unknown), who he had filled in for periodically before. Plaintiff later
12 learned that his prior foreman, Jimmy Savino, did not want to work with him anymore, and believes
13 he was moved worksites due to his repeated safety complaints to foreman Jimmy Savino. However,
14 foreman Aldo (last name unknown) did not take Plaintiff’s reports of safety concerns any more
15 seriously, and, in March 2024, Plaintiff was ultimately taken off of Aldo’s worksite too.

16 16. On or around March 2, 2024, Plaintiff called superintendent Brandon Wilson to see
17 why he was not being scheduled. Mr. Wilson informed Plaintiff that neither Jimmy nor Aldo wanted
18 to work with him anymore, and did not say why. Plaintiff believes he was fired in retaliation for his
19 protected complaints of safety violations and in discrimination for his age.

20 17. Defendants also failed to reimburse Plaintiff and other employees for necessary
21 business expenses. Plaintiff and other employees were required to use their own personal cell phones
22 for timekeeping, taking trainings, and communicating with Defendants via an application called
23 “Workforce.” Despite requiring employees to use this app and their personal devices for work,
24 Defendants did not reimburse Plaintiff and other employees for any portion of the expenses incurred.

25 18. Plaintiff and other aggrieved employees were unable to take rest periods in compliance
26 with California law as set out further below. Defendants would combine employees’ meal break with
27 one of their rest breaks and provide 45 minutes in the middle of the day. However, employees were
28 not usually able or allowed to take rest breaks at any other point throughout the day. When Plaintiff

1 and other employees were unable to take a compliant rest break, Defendants failed to pay one hour of
2 premium pay at the employees' regular rate of pay as required by California law. Defendants were
3 aware that Plaintiff and other aggrieved worked through rest periods because Defendants set the
4 policies and schedules that prevented employees from taking lawful breaks. Defendants encouraged
5 Plaintiff and other employees to work through rest periods, and assigned them tasks that prevented
6 them from taking any meal or rest breaks

7 19. With respect to the unpaid rest period premiums owed to Plaintiff and other employees,
8 Defendants failed to pay those wages on time each pay period or upon separation of employment. (*See*
9 *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93.) Defendants similarly failed to
10 timely pay all wages owed each pay day or upon separation of employment (or within 72 hours
11 thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b
12 (paydays).

13 20. Defendants equally failed in their affirmative obligation to provide accurate itemized
14 wage statements each pay period to Plaintiff and other employees. Defendants issued wage statements
15 to Plaintiff and, on information and belief, other employees, which contain were inaccurate. On each
16 wage statement furnished, Defendants failed to accurately state the "gross wages earned" and "net
17 wages earned" in violation of Labor Code § 226(a)(1) and (5), as Plaintiff and other employees were
18 not paid for rest period premiums when owed,

19 21. Defendants' wage statement issues described above rendered the wage statements
20 inaccurate and confusing to Plaintiff and other employees, concealing the underpayments and
21 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and other
22 employees as the sole documentary evidence of their respective earnings.

23 22. Plaintiff and other employees suffered injury in the form of confusion regarding
24 amounts paid for hours worked, and in the form of concealment of the common payroll practices
25 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
26 this Complaint.

27 23. Plaintiff and, on information and belief, other employees were misinformed and misled
28 by the wage statements wages and earnings. As a result of the inaccuracies on the wage statements,

1 Plaintiff and, on information and belief, other employees were led to believe that the hourly rates and
2 net and gross wages reflected were a complete and accurate reflection of the wages actually earned
3 under California law.

4 24. Defendants' wage statement violations were knowing and intentional as a matter of law
5 with respect to Plaintiff and California employees given that the legal obligation was not disputed, the
6 wage statement and wage laws are clear and unambiguous as written, and because Defendants
7 nevertheless failed to comply despite the means and ability to do so.

8 25. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
9 knowingly and intentionally caused harm to Plaintiff and other employees. Plaintiff is informed,
10 believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC
11 Wage Orders by maintaining practices, policies, and customs that are inconsistent with their
12 obligations under California law.

13 **PAGA ALLEGATIONS**

14 26. Plaintiff seeks to recover civil penalties as individual aggrieved employees and on
15 behalf of the State of California and all current and former non-exempt hourly employees who worked
16 for Defendants in the State of California during the one-year period preceding the date of the PAGA
17 Notice through the current date and the date of final judgment in any pending action (the "aggrieved
18 employees" and the "PAGA Period").

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

23 28. Plaintiff is an "aggrieved employee" because Plaintiff was employed by Defendants
24 and personally experienced one or more of the alleged violations. Therefore, Plaintiff is properly
25 suited to act on behalf of the State of California and collect civil penalties for all violations committed
26 against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas*
27 *Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved
28

employee”—a person affected by one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”)]

29. “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.” (Labor Code § 2699(a)).

30. Now that at least 65 days have passed from Plaintiff first notifying Defendants and the LWDA on **June 14, 2024** of the specific provisions of the Labor Code alleged to have been violated (including the supporting facts and theories) without LWDA intervention—and without Defendants giving written notice by certified mail to Plaintiff providing a description of any actions taken to cure the alleged violations within 33 days—Plaintiff exhausted all prerequisites and commences this civil action under Labor Code § 2699 with respect to the PAGA notice and any amendments or supplements thereto. A true and correct copy of the PAGA Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit A**.

31. All 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.”)

FIRST CAUSE OF ACTION

REST PERIOD VIOLATIONS

55. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

56. This cause of action is brought by the aggrieved employees 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.

1 57. Defendants willfully failed in their affirmative obligation to consistently authorize and
2 permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less than
3 ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
4 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
5 applicable orders).

6 58. Further, Defendants willfully failed in their affirmative obligation to consistently pay
7 Plaintiff and the aggrieved employees one additional hour of pay at the respective regular rate of
8 compensation for each workday that a fully compliant rest period was not provided, in violation of
9 Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

10 59. Plaintiff are entitled to recover to the full amount of the rest period premiums owed, in
11 addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the extent permitted
12 by law.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

15 **Violation of Labor Code § 2802**

16 60. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

17 61. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
18 aggrieved employees for all necessary expenditures, losses, expenses, and costs incurred by them in
19 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

20 62. At all relevant times, Defendants were required to comply with the reimbursement
21 mandate of Labor Code section 2802. Plaintiff and other employees were not compensated for their
22 use of their personal devices, cell phones, and Defendants did not provide a reasonable stipend. (*See,*
23 *e.g., Cochran v. Schwan Home Service* (2014) 228 Cal. App. 4th 1137.)

24 63. Defendants’ unlawful acts and omissions deprived Plaintiff and aggrieved employees
25 of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff are
26 entitled to recover to amount of the unreimbursed expenses in addition to interest, attorneys’ fees, and
27 costs to the extent permitted by law, including under Labor Code section 2802.

28 /

1 **THIRD CAUSE OF ACTION**

2 **UNTIMELY PAYMENT OF WAGES**

3 55. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

4 56. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
5 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
6 period, and which further provide a private right of action for an employer's failure to comply with
7 this obligation.

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

14 58. Plaintiff are entitled to recover the full amount of the unpaid wages, in addition to a
15 statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee
16 and \$200 for all subsequent violations and for all willful or intentional violations for each failure to
17 pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code
18 § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

19 **FOURTH CAUSE OF ACTION**

20 **WAGE STATEMENT VIOLATIONS**

21 59. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

25 61. Defendants knowingly and intentionally failed in their affirmative obligation provide
26 accurate itemized wage statements to Plaintiff and aggrieved employees resulting in injury to Plaintiff
27 and aggrieved employees. Specifically, the wage statements issued to Plaintiff and aggrieved
28

employees did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

62. Defendants' unlawful acts and omissions deprived Plaintiff and the aggrieved employees of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

63. As a result, Plaintiff and the aggrieved employees 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).

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

64. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

65. This cause of action is brought 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.

66. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and aggrieved employees 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.

67. Plaintiff is entitled to recover to 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.

SIXTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

(Labor Code § 2698 et seq.)

68. Plaintiff incorporate all outside paragraphs of this Complaint as if set forth herein.

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

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

13 71. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
14 of an employer who violates, or causes to be violated, a section of this chapter or any provision
15 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
16 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
17 employee for each pay period for which the employee was underpaid in addition to an amount
18 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
19 for each underpaid employee for each pay period for which the employee was underpaid in addition
20 to an amount sufficient to recover underpaid wages.”

21 72. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
22 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
23 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
24 of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed pursuant
25 to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred
26 dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid
27 ... and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation
28 for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each

1 pay period for which the employee is underpaid regardless of whether the initial violation is
2 intentionally committed.”

3 73. Defendants have committed violations of the California Labor Code against Plaintiff
4 and other aggrieved employees as discussed herein. Plaintiff are “aggrieved employees” within the
5 meaning of Labor Code section 2689 et seq. (*See Huff v. Securitas Security Services USA* (2018) 23
6 Cal. App. 5th 745.) Acting on behalf of other aggrieved employees, Plaintiff brings this representative
7 action against Defendants to recover the civil penalties due to Plaintiff individually and other
8 aggrieved employees and the State of California, according to proof, pursuant to Labor Code Sections
9 558 and 2699 (a) and (f), including but not limited to: (1) \$100 for each initial violation for each failure
10 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
11 pursuant to Labor Code section 210 for each failure to pay each employee, plus 25 percent of the
12 amount unlawfully withheld; (2) \$50 for each initial violation and \$100 for each subsequent violation
13 pursuant to Labor Code section 558 per employee per pay period, plus an amount sufficient to recover
14 the unpaid wages owed to each aggrieved employee; (3) \$100 for each initial violation and \$250 for
15 each subsequent violation pursuant to Labor Code section 1197.1 per employee per pay period; (4)
16 \$250 for each initial violation and \$1,000 for each subsequent violation pursuant to Labor Code section
17 226.3 per employee per pay period; and/or (5) \$100 for each initial violation and \$200 for each
18 subsequent violation per employee per pay period for those violations of the Labor Code for which no
19 specific penalty is provided, based on the following Labor Code violations:

- 20 a. Failing to provide all legally required rest periods, and failing to pay rest period
21 premiums when owed to the aggrieved employees at the regular rate of compensation in
22 violation of Labor Code sections 204, 210, 226.7, 512, 516, 1198 and 558;
- 23 d. Failing to furnish the aggrieved employees with complete, accurate and itemized wages
24 statements in violation of Labor Code section 226;
- 25 e. Failing to timely pay all wages earned at least twice per calendar month in violation of
26 Labor Code Section 204;
- 27 g. Failing to maintain accurate payroll records in violation of Labor Code Sections 558
28 and 1174;

1 h. Failing to reimburse for necessary business expenses in violation of Labor Code
2 Section 2802.

3 i. Failing to timely pay all final wages and compensation earned by the aggrieved
4 employees at the time of separation from employment in violation of Labor Code Sections 201,
5 202, and 203.

6 j. Failing to furnish a safe working environment in violation of Labor Code Sections
7 6400, 6401, and 6402.

8 k. Retaliating against Plaintiff for reporting unsafe working conditions in violation of
9 Labor Code Sections 232.5, 1102.5, and 6310.

10 74. Plaintiff and others were subjected to all of the above violations, and Plaintiff alleges
11 that Defendants maintain a policy and practice of similarly depriving other aggrieved employees of
12 their rights.

13 75. Defendants committed the above violations as a result of their intentional policies, and
14 therefore willfully failed in their affirmative obligation to pay Plaintiff and aggrieved employees their
15 lawful wages in violation of Labor Code sections 1182.12, 1194, 1197 and 1198 and the IWC Wage
16 Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), to
17 provide meal and rest periods, to timely pay each employee their wages each pay period, and to timely
18 pay each employee all wages owed upon their termination or end of employment.

19 76. Plaintiff was compelled to retain counsel to file this court action to protect the interests
20 of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants to such
21 aggrieved employees and the State of California. Plaintiff has thereby incurred attorney’s fees and
22 costs, which Plaintiff is entitled to recover under California Labor Code Section 2699(g).

23 **PRAYER**

24 Plaintiff prays for judgment as follows:

- 25 a. For recovery of damages in amount according to proof;
26 b. For all recoverable pre- and post-judgment interest;
27 c. For recovery of all civil and statutory penalties and liquidated damages;
28 d. For disgorgement of all amounts wrongfully obtained;

- 1 e. For restitution and injunctive relief;
- 2 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 3 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
- 4 1194, 2802, and Code of Civil Procedure section 1021.5;
- 5 g. For Plaintiff and counsel to be provided with all enforcement capability as if the action
- 6 were brought by the State of California or the California Division of Labor
- 7 Enforcement;
- 8 h. For an award of all civil penalties under the Labor Code section 2698 et seq.;
- 9 i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 10 permitted by law, including under California Labor Code sections 218.5, 226, 1194,
- 11 2802, 2699(g) and Code of Civil Procedure section 1021.5; and
- 12 j. For such other relief the Court deems just and proper.

13

14 Dated: August 20, 2024

WALTMAN EMPLOYMENT LAW

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16 Rick A. Waltman
17 Matthew B. Shields
18 *Attorneys for Plaintiff Clifford Parish*

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EXHIBIT A

LWDA Notice



501 W. Broadway, Ste. 800
San Diego, CA 92101

(619) 320-5666
rick@waltmanemploymentlaw.com

June 14, 2024

**NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.***

PAGA CLAIM NOTICE AND FILING FEE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL

Shayne Cleavenger
Ace Masonry, Inc.
9374 Bond Avenue
El Cajon, CA 92021

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of Claimant Clifford Parish ("Claimant") and other aggrieved employees under California Labor Code section 2699.3 against Ace Masonry, Inc., owners of the company, and any other related individuals or employer entities who may be later added ("Defendants").

If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act ("PAGA").

"PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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WALTMAN EMPLOYMENT LAW

Ace Masonry, Inc.

June 14, 2024

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FACTUAL STATEMENT

Defendants do business in California providing masonry and related construction services. Defendants employ hourly, non-exempt employees in the State of California, who are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times was an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and other aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law. Additionally, Defendants and their agents are liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant worked for Defendant as a brick layer from June 2023 until February 2024. From the start of Claimant’s employment, Claimant encountered safety violations and unsafe practices almost daily on the worksite. For example, Claimant and others were often required to “dry cut” blocks, which resulted in silica dust becoming airborne for all employees on the worksite to breathe in. Dry cutting is notoriously unsafe, and is prohibited under state and federal law, due to the potential to cause lung cancer, silicosis, and other lung diseases. Claimant complained to his foreman Jimmy Savino, and later Aldo (last name unknown), about this unsafe practice, but his complaints went unaddressed and the practice continued. Both before and after his complaints, Claimant observed the use of “dry cutting” more often than the use of proper legal methods that would have prevented the silica dust from becoming airborne.

Claimant also often witnessed improper and insufficient use of scaffolding, including stacking of scaffolding without “pinning” or securing levels together. This resulted in an extreme risk that the scaffolding frame could collapse and injure workers. Defendant also often failed to provide scaffolding of sufficient height to finish certain projects, resulting in employees overextending themselves and/or being directed to stand on top of unsecured blocks to finish projects.

Scaffolding was often not available when needed, and employees were directed to lay planks unsecured across platforms where scaffolding should have been. Claimant often witnessed gaps between walking planks of 10 inches or greater, and fell between the planks multiple times almost severely injuring his groin. Claimant reported these unsafe scaffolding practices and incidents repeatedly throughout his employment to his foremen. These reports were similarly ignored, and he was directed to continue working in the unsafe conditions. Later, when foreman Jim Savino and superintendent Brandon Wilson saw Claimant walking across planks as Jimmy Savino had directed, Jimmy Savino made fun of the situation, stating “he (Claimant) might look old, but he’s a gazelle on his feet.”

WALTMAN EMPLOYMENT LAW

Ace Masonry, Inc.

June 14, 2024

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Defendant also often failed to provide rest breaks for water, or to provide any water on location, even on hot summer days. Claimant raised this issue with his foremen because provision of water is required under law, and because he found it difficult to perform his work without proper hydration and breaks for rest. The lack of water and time for rest breaks persisted throughout Claimant's employment.

Claimant's complaints of safety problems were met with indifference and increasing hostility. Claimant's main foreman, Jimmy Savino, expressed to Claimant "all you do is complain." In the final month of his employment, Claimant was transferred to a different worksite under a new foreman, Aldo (last name unknown), who he had filled in for periodically before. Claimant later learned that his prior foreman, Jimmy Savino, did not want to work with him anymore, and believes he was moved worksites due to his repeated safety complaints to foreman Jimmy Savino. However, foreman Aldo (last name unknown) did not take Claimant's reports of safety concerns any more seriously, and, in March 2024, Claimant was ultimately taken off of Aldo's worksite too.

On or around March 2, 2024, Claimant called superintendent Brandon Wilson to see why he was not being scheduled. Mr. Wilson informed Claimant that neither Jimmy nor Aldo wanted to work with him anymore, and did not say why. Claimant believes he was fired in retaliation for his protected complaints of safety violations and in discrimination for his age.

Defendants also failed to reimburse Claimant and other employees for necessary business expenses. Claimant and other employees were required to use their own personal cell phones for timekeeping, taking trainings, and communicating with Defendants via an application called "Workforce." Despite requiring employees to use this app and their personal devices for work, Defendants did not reimburse Claimant and other employees for any portion of the expenses incurred.

Claimant and other aggrieved employees were unable to take rest periods in compliance with California law as set out further below. Defendants would combine employees meal break with one of their rest breaks and provide 45 minutes in the middle of the day. However, employees were not usually able or allowed to take rest breaks at any other point throughout the day. When Claimant and other employees were unable to take a compliant rest break, Defendants failed to pay one hour of premium pay at the employees' regular rate of pay as required by California law. Defendants were aware that Claimant and other aggrieved worked through rest periods because Defendants set the policies and schedules that prevented employees from taking lawful breaks. Defendants encouraged Claimant and other employees to work through rest periods, and assigned them tasks that prevented them from taking any meal or rest breaks.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

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All current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Failure to Furnish a Safe Work Environment **Labor Code §§ 6400, 6401, 6402**

Labor Code Section 6400 requires employers to “furnish employment and a place of employment which are safe and healthful for the employees therein.” Labor Code Section 6401 requires employers to “adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful”). Labor Code Section 6402 states that employers cannot “require or permit any employee to go or be in any employment or place of employment which is not safe and healthful”).

As discussed above, Defendants failed to ensure that scaffolding and walking platforms were secured, and required employees to subject themselves to dangerous situations to complete jobs. Defendants did not provide enough scaffolding for employees, and employees were often forced to stand on top of unsecured blocks with dangerous tools to finish projects.

Defendants also failed to take any measures to minimize silica dust when Claimant and other employees cut blocks, and required them to “dry cut” the blocks without ventilation or respiratory masks. OSHA regulations require employers to ensure the safe use of saws used for cutting concrete blocks. 29 CFR 1926 subpart Q (Concrete and Masonry Construction), §1926.702(i) contains two requirements regarding masonry saws. It states: (1) Masonry saws shall be guarded with a semicircular enclosure over the blade. (2) A method for retaining blade fragments shall be incorporated in the design of the semicircular enclosure. 29 CFR 1926.55, states in part:

- (a) Exposure of employees to inhalation, ingestion, skin absorption, or contact with any material or substance at a concentration above those specified in the "Threshold Limit Values of Airborne Contaminants for 1970" of the American Conference of Governmental Industrial Hygienists, shall be avoided.
- (b) To achieve compliance with paragraph (a) of this section, administrative or engineering controls must first be implemented whenever feasible. When such

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controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used ...

Silica is listed in the "Threshold Limit Values" table in §1926.55 (Appendix A). Therefore, with regard to airborne silica, employers engaged in construction are required to ensure their employees are not exposed to levels above the Permissible Exposure Limits listed in §1926.55.

To comply with this requirement, administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures must be used to keep the exposure of employees to air contaminants within the prescribed limits. Defendants usually did not take measures to prevent silica dust from being inhaled by employees, or provide protective equipment for employees. Defendants thus failed to abide by their obligations under OSHA, and under California law to ensure a safe working environment for employees.

Defendants also failed to ensure its employees were safe from the heat or properly hydrated as required under California state law. California's Occupational Safety and Health Appeals Board (OSHAB) holds that employers must provide their outdoor workers with drinking water at a location "as close as practicable." Defendants often did not provide any drinking water for employees, even on hot summer days. As discussed below, Defendants usually did not even provide breaks for employees to drink their own water.

Claimant alleges that Defendants' safety violations outlined above resulted in an a less safe environment for its employees. By instructing and its employees to use unsafe and unsecured scaffolding, to "dry cut" blocks, and to skip breaks and go without water, Defendants acted in violation of their obligations under state law and federal laws aimed at protecting the safety of employees. Defendants failed to adopt practices and operations that were reasonably adequate to ensure a safe and healthful work environment, and required its workers to be subject to such a work environment every pay period they worked in such conditions.

Retaliation

Labor Code §§ 232.5, 1102.5, 6310

Defendants violated Labor Code Sections 232.5, 1102.5, 6310 by retaliating against Claimant and potentially others due to their protected complaints of unsafe workplace conditions and legal violations listed above. When Claimant raised the company's failure to maintain a safe working environment, they ignored his complaints, terminated Claimant's employment, and allowed employees and the public to continue being subjected to an unsafe environment. Claimant believes and thereon alleges that he and other employees may have been similarly forced out of the company for opposing Defendants' unlawful practices. Defendants are liable for a \$10,000 penalty with respect to Claimant and for each aggrieved employee who Defendants similarly retaliated against.

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Failure to Provide Rest Periods **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendants failed to provide rest periods, and to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Due to Claimant' and other employees' job responsibilities and pressures from Defendants, Claimant and the aggrieved employees often were not authorized or permitted to take rest periods. Claimant rarely took rest breaks due to the often non-stop demands of Defendants' operations, and Defendants' requirement that they schedule breaks. Defendants gave one 45 minute break in the middle of the day, but did not provide for rest breaks outside of that breaktime. Defendants had a policy and practice of not paying rest period premiums to aggrieved employees who were unable to take rest periods.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

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Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants failed to pay Claimant and other aggrieved employees wages, including overtime, sick pay, and meal and rest period premiums. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages, sick pay, and premiums at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

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As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code Section 226(a) by failing to include the “total hours worked.” Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information.

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a Claimant seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); see also *Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’) (rejecting *Maldonado* defense for class claims).

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Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Reimburse Necessary Expenses **Violation of Labor Code §2802**

Defendants failed in their affirmative legal obligation to reimburse aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants required aggrieved employees to use their personal devices (e.g., cell phone) and vehicles for work purposes without reimbursement. Aggrieved employees could not have performed their jobs without using their personal devices to communicate, take trainings, and log time. In direct consequence of their job duties, aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendants did not reimburse as a matter of policy and practice. At all relevant times, Defendants were required to comply with the reimbursement mandate of Labor Code section 2802.

To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive knowledge "does not appear in the statute" and written policies or handbooks do not "affect the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver." *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further affirms that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled

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under the laws of this State.” In other words, if—as here—employees incur “necessary expenses” or “losses” for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney’s fees and costs of suit.

Failure to Maintain Accurate Records **Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders**

Because of the violations set forth in this notice, including Defendants’ failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all accurate wages owed to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys’ Fees and Costs **Labor Code § 2699(g)**

Claimant were compelled to retain the services of counsel to file this court action to protect Claimant’ own interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys’ fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants **to Change Policies and Practices**

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant’ counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) this lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham*

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v. City of Los Angeles (2004) 34 Cal.4th 604, 608 (citing *Graham v. Diamler-Chrysler Corp.* (2004) 34 Cal. 4th 553) (authorizing an award of catalyst attorneys' fees against the defendants).

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

WALTMAN EMPLOYMENT LAW

A handwritten signature in black ink, appearing to read "Rick A. Waltman", with a long horizontal flourish extending to the right.

Rick A. Waltman