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FILED
Superior Court of California
County of Los Angeles
08/19/2024

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARIO MONTOYA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BKB CONSTRUCTION, L.P., a Texas limited
partnership; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. 24STCV14873

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802, 2804);**
- (6) **WAGE STATEMENT PENALTIES
(LABOR CODE § 226 *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

**(8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 et seq.).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Mario Montoya (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants BKB Construction., L.P., a Texas limited partnership, and
4 DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business and Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
10 1197, 1198, 2698 *et seq.*, 2802, 2804, and Industrial Welfare Commission Wage Order 16 (“Wage
11 Order 16”), in addition to seeking injunctive relief, declaratory relief, and restitution. This
12 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
13 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
14 controversy exceeds this Court's jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
18 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
19 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
20 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
23 eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident.
24 Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff
25 was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of
26 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has
27 been deprived of the rights guaranteed by California Business and Professions Code § 17200 *et.*
28 *seq.*, Labor Code §§ 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,

2698 *et seq.*, 2802, 2804, and Wage Order 16, which sets employment standards for certain on-site occupations in the “Construction, Drilling, Lodging, and Mining Industries.”

4. Plaintiff is informed and believes, and based thereon alleges, that during the applicable statute of limitations for each cause of action pled herein and continuing to the present, Defendants engage in and continue to engage in the business of repairing and renovating multi-family apartment buildings, and employed Plaintiff and other, similarly-situated non-exempt employees within Los Angeles County, and the State of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 15) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all relevant times, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants engage in the business of repairing and renovating multi-family
5 apartment buildings and serve locations throughout Southern California. Plaintiff worked for
6 Defendants as a non-exempt employee as a “Painter” or similarly titled position, from
7 approximately March 21, 2022 until the present.

8 10. Throughout Plaintiff’s employment with Defendants, Defendants’ timekeeping
9 policies and/or practices resulted in Plaintiff and other non-exempt employees not being
10 compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise.
11 Upon information and belief, Plaintiff and other non-exempt employees did not record their own
12 hours worked, and Defendants failed to accurately record Plaintiff and other non-exempt
13 employees’ hours worked, resulting in unpaid minimum and overtime wages.

14 11. Defendants also failed to provide Plaintiff and other non-exempt employees with
15 all legally compliant meal periods due to Defendants’ meal period policies/practices, which have
16 resulted in late (commencing after the fifth hour of work) and short (fewer than 30 minutes) meal
17 periods. Plaintiff and other non-exempt employees’ meal periods were frequently “late” (i.e.,
18 starting after the completion of the fifth hour of work) because Defendants’ work demand
19 prevented them from taking a timely meal period. Furthermore, Defendants did not require
20 Plaintiff and other non-exempt employees to punch out for meal periods or record their meal
21 periods. In addition, Defendants failed to provide Plaintiff and other non-exempt employees with
22 second meal periods on shifts over 10.0 hours. On those occasions when Plaintiff was not
23 provided with all legally required meal periods to which they were entitled, Defendants failed to
24 compensate Plaintiff with the required meal period premium for each workday in which he
25 experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and
26 belief, during at least a portion of the relevant time period, Defendants maintained no payroll code
27 for paying meal period premiums under Labor Code § 226.7.

28 12. Plaintiff and other non-exempt employees were not authorized and permitted to

1 take all required rest periods due to Defendants' unlawful rest period policies/practices, which
2 failed to authorize and permit a net 10-minute rest period for every four hours worked, or major
3 fraction thereof. Plaintiff and other non-exempt employees were not able to take their legally
4 compliant rest breaks due to work demands imposed by Defendants. Additionally, although
5 Plaintiff and other non-exempt employees occasionally worked shifts in excess of 10.0 hours,
6 Plaintiff and other non-exempt employees were not authorized and permitted a third rest period
7 during shifts in excess of 10.0 hours. On those occasions when Plaintiff was not authorized and
8 permitted to take all legally compliant rest periods to which he was entitled, Defendants failed to
9 compensate Plaintiff with the required rest period premium(s) for each workday there was a rest
10 period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants
11 maintained no mechanism for the payment of rest period premium payments as required by Labor
12 Code § 226.7, in the event that a legally compliant rest period was not authorized and permitted
13 to their non-exempt employees.

14 13. At all times relevant herein, Defendants failed to reimburse Plaintiff for all
15 reasonable and necessary work expenditures, including, but not limited to, use of personal cellular
16 phones to speak with supervisors and take work-related pictures. Therefore, Plaintiff and other
17 non-exempt employees are entitled to reimbursement pursuant to Labor Code § 2802.

18 14. As a result of Defendants' failure to pay all minimum and overtime wages and
19 failure to pay all meal and rest period premium wages, Defendants maintained inaccurate payroll
20 records and issued inaccurate wage statements to Plaintiff and other non-exempt employees.

21 **CLASS ACTION ALLEGATIONS**

22 15. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
23 following Classes pursuant to § 382 of the Code of Civil Procedure:

24 a. The Minimum Wage Class consists of all of Defendants' current and former non-
25 exempt employees in California who were subject to Defendants' timekeeping
26 policies and/or practices, during the four years immediately preceding the filing of
27 this action through the present.

28 b. The Overtime Class consists of all of Defendants' current and former non-exempt

employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week and were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.

e. The Employee Expense Class consists of all of Defendants' current and former non-exempt employees who were not reimbursed for business expenses in California during the four years immediately preceding the filing of this Complaint through the present.

e. The Wage Statement Class consists of all Defendants' current and former non-exempt employees in California who received a wage statement, during the one year immediately preceding the filing of this action through the present.

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

17. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants paid at least the minimum wage for all hours worked to members of the Minimum Wage Class;
- ii. Whether Defendants properly paid all overtime wages to members of the Overtime Class;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants provided meal and rest period premium payments for non-compliant meal and rest periods;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- vii. Whether Defendants' reimbursement policies, and failure to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their work duties comply with Labor Code § 2802.

18. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, including but not limited to Defendants' timekeeping policies/practices, and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

19. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not paid all minimum and overtime wages owed due to Defendants' timekeeping policies/practices, was not provided all required meal periods, was not authorized and permitted all rest periods, did not receive premium pay for non-

compliant meal and rest periods, was not reimbursed for all necessary business expenditures, and was not provided with accurate, compliant, itemized wage statements.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified in Paragraph 15 are maintainable as classes under § 382 of the
5 Code of Civil Procedure.

6 **FIRST CAUSE OF ACTION**
7 **MINIMUM WAGE VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

9 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 23. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
11 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
12 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
13 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
14 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
15 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its
16 pay practices to the requirements of the law by failing to pay Plaintiff and members of the
17 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were
18 subject to the control of Defendants and/or suffered or permitted to work under the California
19 Labor Code and Wage Order 5.

20 24. California Labor Code § 1198 makes unlawful the employment of an employee
21 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
22 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
23 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
24 amount equal to the wages due and interest thereon.

25 25. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
26 members of the Minimum Wage Class seek penalties pursuant to Wage Order 5 § 18(A) and
27 California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and
28 Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2;

attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

28. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for all overtime hours work. Defendants caused Plaintiff and members of the Overtime Class to work overtime hours but failed to credit these employees with all overtime hours actually worked.

29. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 1194, and 1198; Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and 3289.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California,

1 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
2 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite
3 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
4 of the Meal Period Class at their respective regular rates of compensation, in accordance with
5 California Labor Code §§ 204, 210, 226.7, and 512.

6 32. As a result, Defendants are responsible for paying premium compensation for meal
7 period violations including interest thereon, statutory penalties, civil penalties, and costs of suit,
8 pursuant to Labor Code §§ 226.7, 512, 558, Wage Order 5, and Civil Code §§ 3287(b) and 3289.

9 **FOURTH CAUSE OF ACTION**

10 **REST PERIOD VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

12 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 34. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516 and 558 establish
14 the right of employees to be provided with a rest period of at least ten (10) minutes for each four
15 (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and
16 permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods as
17 alleged herein, Defendants did not pay these individuals an additional hour of pay at their
18 respective regular rate for the rest periods that they failed to authorize and permit them to take, as
19 required by Labor Code § 226.7.

20 35. Defendants' policies and practices described herein are unlawful and create an
21 entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the
22 unpaid amount of rest period premiums owing, including interests thereon, statutory penalties,
23 civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7,
24 516, 558, Wage Order 5, and Civil Code §§ 3287(b) and 3289.

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE ALL NECESSARY BUSINESS EXPENDITURES**

27 **(AGAINST ALL DEFENDANTS)**

28 36. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though

1 fully set forth herein.

2 37. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
3 states that “an employer shall indemnify his or her employees for all necessary expenditures or
4 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
5 his or her obedience to the directions of the employer.”

6 38. Furthermore, at all relevant times herein, Defendants were subject to Labor Code
7 § 2804, which states that “any contract or agreement, express or implied, made by any employee
8 to waive the benefits of this article or any part thereof, is null and void, and this article shall not
9 deprive any employee or his personal representative of any right or remedy to which he is entitled
10 under the laws of this State.”

11 39. Due to Defendants’ unlawful policy and/or practice of requiring employees to use
12 their own personal cellular phones for work purposes, and failing to pay reimbursements to
13 Plaintiff and members of the Employee Expense Class, Defendants have violated Labor Code §
14 2802.

15 40. As a proximate result of Defendants’ policies and/or practices in violation of Labor
16 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class suffered damages
17 in sums, which will be shown according to proof.

18 41. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
19 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

20 42. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
21 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
22 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
23 from the date on which they incurred the initial necessary expenditure.

24 **SIXTH CAUSE OF ACTION**

25 **WAGE STATEMENT VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff

1 and members of the Wage Statement Class with accurate and complete, itemized wage statements
2 that included, among other requirements, all hours worked, total gross wages earned, all rates of
3 pay and corresponding number of hours worked, total net wages earned, and the correct name and
4 address of the legal entity that is the employer in violation of Labor Code § 226 *et seq.*

5 45. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
6 with accurate and complete, itemized wage statements resulted in actual injury, as said failures
7 led to, among other things, the non-payment of minimum and overtime wages and meal and rest
8 period premium wages owed and deprived them of the information necessary to identify the
9 discrepancies in Defendants' reported data.

10 46. Defendants' failures create an entitlement to recovery by Plaintiff and members of
11 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
12 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
13 costs of suit according to California Labor Code § 226 *et seq.*

14 **SEVENTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

17 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 48. Defendants have engaged and continue to engage in unfair and/or unlawful
19 business practices in California in violation of California Business and Professions Code § 17200
20 *et seq.*, by: (a) failing to pay Plaintiff and members of the Overtime Class all overtime wages
21 owed; (b) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages;
22 (c) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to
23 which they are entitled, and failing to pay them meal period premium payments; (d) failing to
24 authorize and permit Plaintiff and members of the Rest Period Class all rest periods to which they
25 are entitled, and failing to pay them rest period premium payments; and (e) failing to issue
26 accurate and itemized wage statements to the Wage Statement Class.

27 49. Defendants' utilization of these unfair and/or unlawful business practices deprived
28 Plaintiff and continues to deprive members of the Classes of compensation to which they are

legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

50. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

51. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

52. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

54. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per

employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to reimburse Plaintiff, the Employee Expense Class, and other aggrieved employees for all necessary work expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in

violation of Labor Code §§ 201, 202, and 203;

h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

55. On June 13, 2024, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 54 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

56. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

57. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

1 5. Upon the Second Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

3 6. Upon the Third Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

5 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
6 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

7 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
8 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

9 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
10 226 *et seq.*;

11 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
12 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
13 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
14 *seq.*;

15 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
16 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
17 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
18 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
19 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
20 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
21 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
22 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
23 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
24 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
25 each initial violation and \$200 for each subsequent violation per employee per pay period for
26 those violations of the Labor Code for which no civil penalty is specifically provided, based on
27 the Labor Code violations identified in Paragraph 54 (a)-(i);

28 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor

1 Code § 218.6 and Civil Code §§ 3287 and 3289;

2 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
3 §§ 226, 1194, 2699(g), and 2802(c), and Code of Civil Procedure § 1021.5; and

4 14. For such other and further relief, the Court may deem just and proper.

5
6 Dated: August 19, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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8 By:



9 Paul K. Haines
Attorneys for Plaintiff

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11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

13
14 Dated: August 19, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

15
16 By:



17 Paul K. Haines
Attorneys for Plaintiff

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[illegible]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On August 19, 2024, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Erick J. Becker, P.C.
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Attorneys for Defendant BKB CONSTRUCTION, L.P.

[X] (VIA ELECTRONIC MAIL) BY ELECTRONIC MAIL) I am "readily familiar" with Haines Law Group, APC's practice of serving documents via electronic mail. Under the practice, pursuant to an agreement between Haines Law Group, APC, and the party(ies) listed above, the document is being sent to the persons at the electronic service addresses listed from the email address ndavis@haineslawgroup.com.

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

Executed on August 19, 2024, at El Segundo, California.

a.



Nicole Davis