

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Electronically Filed
Superior Court of California
County of San Bernardino
Rancho Cucamonga District
9/10/2024 9:36 AM
By: Kayla Schuebel, DEPUTY

Attorneys for Plaintiff,
CHRISTIAN CARRIZOSA

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

CHRISTIAN CARRIZOSA, an
individual, on his own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

R3 CONSTRUCTION SERVICES,
INC., a California corporation;
AEROTEK, INC., a Maryland
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CIVRS2400341

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY PREMIUM
OVERTIME WAGES DUE (Cal. *Labor Code* §§ 510, 1198; IWC Wage Order No. 16);**
- 2. FAILURE TO PAY MINIMUM WAGES
DUE TO OFF THE CLOCK WORK AND
SHAVING (Cal. *Labor Code* §§1194,
1194.2, 1997, 1197.1, 1198; IWC Wage
Order No. 16);**
- 3. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS (Cal. *Labor Code*
§226; IWC Wage Order No. 16);**
- 4. FAILURE TO PAY WAGES DUE UPON
TERMINATION (Cal. *Labor Code* §§201-
203; IWC Wage Order No. 16);**
- 5. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. *Labor Code* §2802);**
- 6. FAILURE TO PROVIDE UNIFORMS
AND A MAINTENANCE ALLOWANCE
(Cal. *Labor Code* §2802; IWC Wage Order
No. 16);**
- 7. FAILURE TO MAINTAIN ACCURATE
RECORDS (Cal. *Labor Code* §1174(d));**
- 8. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor Code*
§1198.5); and**

DEMAND FOR A JURY TRIAL

1 expenses, failing to provide a uniform and maintenance allowance, failing to maintain accurate
2 records, failing to allow inspection of employment records, and by using other unlawful
3 stratagems to ensure that labor costs remain artificially low.

4 4. Plaintiff brings this class action to recover, among other things, wages and
5 penalties from unpaid wages earned and due, including but not limited to, premium overtime
6 wages, minimum wages due to illegal shaving and off the clock work, penalties for failure to
7 provide accurate itemized wage statements, penalties for failure to pay wages due on
8 termination and/or resignation, reimbursement of business expenses, failure to provide
9 uniforms and maintenance allowance, failure to maintain accurate records, failure to allow
10 inspection of employment records and interest, attorneys' fees, costs, and expenses.

11 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
12 himself and all members of the class, to compensate these workers for the unpaid wages and to
13 protect current and future workers of Defendants from being subjected to similar wage theft
14 and otherwise unlawful working conditions.

15 6. Plaintiff also brings an action seeking relief for Defendants' violations of
16 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
17 disgorgement of all compensation retained by Defendants as a result of their unlawful and
18 unfair business practices, as well as injunctive relief.

19 JURISDICTION AND VENUE

20 7. This Court has jurisdiction over this First Amended Complaint under Code of
21 Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and
22 *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Christian Carrizosa brings this First
23 Amended Complaint on his own behalf and on behalf of all persons in the Class as defined in
24 paragraph 21 below.

25 8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
26 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
27 herein, occurred in the County of Riverside and because Defendants owned and operated their
28 businesses in the County of Riverside.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Riverside County, California;
- (b) Employed as an hourly employee for Defendant in Chino Hills, California;
- (c) Did not receive overtime compensation as required by *Labor Code* §§510 and 1194 and the applicable Wage Orders;
- (d) Did not receive minimum wages due to illegal off the clock work and shaving in violation of *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable Wage Orders;
- (e) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (f) Was not paid all wages due on termination as required by *Labor Code* §§ 201-203;
- (g) Was not reimbursed for business expenses as required by *Labor Code* §2802;
- (h) Was not provided uniforms and a maintenance allowance;
- (i) Was subject to Defendants' failure to maintain accurate records; and
- (j) Was not provided his personnel records. Each of these was a violation of the *Labor Code*.

DEFENDANTS

10. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant R3 is, and at all times mentioned herein was:

- (a) A California corporation, with a principal place of business at 15320 Barranca Pkwy., Suite 100, Irvine, CA 92618. Defendant R3 has been

1 authorized to do business and has been doing business in the County of
2 Riverside;

3 (b) The former employer of Plaintiff and the current and former employer of
4 the putative Class members;

5 (c) Paid Plaintiff and all Class Members on an hourly basis;

6 (d) Failed to pay Plaintiff and all putative Class members premium overtime
7 wages;

8 (e) Failed to pay Plaintiff and all putative Class members minimum wages
9 due to illegal off the clock work and shaving;

10 (f) Failed to provide Plaintiff and all putative Class members with accurate
11 itemized wage statements;

12 (g) Failed to reimburse for business expenses;

13 (h) Failed to provide uniforms and a uniform maintenance allowance;

14 (i) Failed to maintain accurate records as mandated by *Labor Code* §1174;
15 and

16 (j) Was not provided his personnel records. Each of these was a violation of
17 the *Labor Code*.

18 11. Plaintiff is informed and believes, and based on that information and belief,
19 alleges, Defendant Aerotek is, and at all times mentioned herein was:

20 (a) A Maryland corporation, with a principal place of business at 7301
21 Parkway Dr., 3rd Floor, Hanover, MD 21076. Defendant Aerotek has
22 been authorized to do business and has been doing business in the
23 County of Riverside;

24 (b) The former employer of Plaintiff and the current and former employer of
25 the putative Class members;

26 (c) Paid Plaintiff and all Class Members on an hourly basis;

27 (d) Failed to pay Plaintiff and all putative Class members premium overtime
28 wages;

- 1 (e) Failed to pay Plaintiff and all putative Class members minimum wages
2 due to illegal off the clock work and shaving;
3 (f) Failed to provide Plaintiff and all putative Class members with accurate
4 itemized wage statements;
5 (g) Failed to reimburse for business expenses;
6 (h) Failed to provide uniforms and a uniform maintenance allowance;
7 (i) Failed to maintain accurate records as mandated by *Labor Code* §1174;
8 and
9 (j) Was not provided his personnel records. Each of these was a violation of
10 the *Labor Code*.

11 12. The true names and capacities, whether individual, corporate, subsidiary,
12 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
13 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
14 *Civil Procedure* § 474. Plaintiff will seek leave to amend his First Amended Complaint to
15 allege the true names and capacities of DOES 1 through 100, inclusive, when they are
16 ascertained.

17 13. Plaintiff is informed and believes, and based on that information and belief
18 alleges, that Defendants DOES 1 through 100 are persons, corporations or other entities which
19 reside in or are authorized to do, or are otherwise doing, business in the State of California.
20 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
21 conduct business in the County of Riverside. Each of the Defendants DOES 1 through 100 was
22 the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter
23 ego and/or representative of one or more of the other Defendants named herein, and acting with
24 permission, authorization, and/or ratification and consent of the other Defendants.

25 14. Plaintiff is informed and believes, and based on that information and belief
26 alleges, that the Defendants named in this First Amended Complaint, including DOES 1
27 through 100, inclusive, are responsible in some manner for one or more of the events and
28 happenings that proximately caused the injuries and damages hereinafter alleged.

1 15. Plaintiff is informed and believes, and based on that information and belief
2 alleges, that Defendants named in this First Amended Complaint, including DOES 1 through
3 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or
4 employees of each of the other Defendants and that each Defendant was acting within the
5 course and scope of his, hers or its authority as the agent, servant and/or employee of each of
6 the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the
7 Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

8 16. Plaintiff is informed and believes, and based on that information and belief
9 alleges, that the Defendants named in this First Amended Complaint, including DOES 1
10 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together
11 among themselves and entered into a combination and systemized campaign of activity to *inter*
12 *alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
13 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
14 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
15 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
16 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
17 the actions of one Defendant was accomplished in concert with, and with the knowledge,
18 ratification, authorization and approval of each of the other Defendants.

19 **JOINT EMPLOYER ALLEGATIONS**

20 17. Plaintiff is informed and believes and thereon alleges that R3 contracted with
21 Aerotek, whereby Aerotek would provide them with staffing/employment services. Pursuant
22 to that agreement, and given the amount of influence, control and direction R3 and Aerotek
23 exerted over Plaintiff's employment, R3 and Aerotek were Plaintiff's co-employers.

24 18. Plaintiff is informed and believes and thereon alleges that R3 and Aerotek
25 exercised control over Plaintiff's wages, hours and/or working conditions (start time, end time,
26 etc.) such that they were joint employers.

27 19. Aerotek employees work on site at R3's jobsite location in Chino Hills,
28 California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLASS ALLEGATIONS

A. The Definition of the Class

20. The Class (“the Class”) is defined as follows:

(a) “All current and former employees who were hourly paid employees of Defendants and worked for R3 and Aerotek in California at any time during the period commencing on the date that is four (4) years prior to the filing of this First Amended Complaint and continuing through the present date (the “Class Period”).”

(b) “All persons who were hourly paid employees of Defendants and worked for R3 and Aerotek in California and left the employ of Defendants at any time during the period commencing on the date that is within one (1) year prior to the filing of this First Amended Complaint and continuing through the present date (the “Class Period”).”

Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

B. Maintenance of the Action

21. Plaintiff brings this action individually and on behalf of himself and as representative of all similarly situated persons under *Business & Professions Code* §§ 17203 and 17204 and *Code of Civil Procedure* § 382.

C. The Class Requisites

22. At all material times, Plaintiff was a member of the Class.

23. The Class action meets the statutory prerequisites for maintaining a class action under Code of Civil Procedure § 382 in that:

(a) The persons who comprise the Class are so numerous that the joinder of all those persons is impracticable and the disposition of their claims as a Class will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this First Amended Complaint are common to the Class
3 and will apply uniformly to every Class member;
- 4 (c) The claims of the representative Plaintiff are typical of the claims of each
5 Class member. Plaintiff, like all Class members, has sustained damages
6 arising from Defendant's violations of the laws of the State of California.
7 Plaintiff, and the Class members, were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
9 pattern of misconduct engaged in by the Defendants;
- 10 (d) The representative Plaintiff has, and will continue to, fairly and adequately
11 represent and protect the interests of the Class and has retained counsel
12 who are competent and experienced in class action litigation. There are no
13 material conflicts between the claims of the representative Plaintiff and the
14 Class members that would make class certification inappropriate. Counsel
15 for the Class will vigorously assert the claims of all Class members.

16 24. The persons who comprise the Class are so numerous that joining all of them is
17 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
18 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
19 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
20 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
21 Plaintiff are experienced, qualified and generally able to conduct complex class action
22 litigation.

23 25. The Court should permit the action to be maintained as a class action under
24 *Code of Civil Procedure* § 382 because:

- 25 (a) The questions of law and fact common to the Class predominate over any
26 question affecting only individual members:
- 27 (b) A class action is superior to any other available method for fairly and
28 efficiently adjudicating the claims of the Class;

- 1 (c) The Class members are so numerous that it is impractical to bring all of
2 them before the Court;
- 3 (d) Plaintiff and other Class members will not be able to obtain effective and
4 economic legal redress unless the action is maintained as a class action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the statutory violations, and in obtaining adequate
7 compensation for the damages and injuries for which Defendants are
8 responsible in an amount sufficient to adequately compensate the Class
9 members;
- 10 (f) Without Class certification, the prosecution of separate actions by
11 individual Class members would create a risk of:
- 12 i. Inconsistent or varying adjudications for individual Class members
13 that would establish incompatible standards of conduct for
14 Defendants; and/or,
- 15 ii. Adjudication for individual Class members that would, as a
16 practical matter, dispose of other non-party members' interests, or
17 that would substantially impair or impede the non-parties' ability
18 to protect their interests, by, for example, potentially exhausting
19 the funds available from Defendants, and
- 20 (g) Defendants have acted or refused to act on grounds generally applicable
21 to the Classes, making final injunctive relief appropriate for the Class, as
22 a whole.

23 26. Plaintiff contemplates eventually issuing notice to the proposed Class Members
24 that would set forth the subject and nature of the action. The Defendants' own business records
25 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
26 any further notices may be required, Plaintiff would contemplate using additional media and/or
27 mailing.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GENERAL ALLEGATIONS

27. At all times material hereto, Defendant R3 has been and is, a construction company.

28. At all times material hereto, Defendant Aerotek has been and is, a staffing agency.

29. Plaintiff and members of the Class were employed as Painters and other non-exempt employees by Defendants in California at various times during the Class Period.

THE CONDUCT

30. Plaintiff seeks relief from Defendants' uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

31. Starting on or about April 2, 2023 and continuing to December 1, 2023, Defendants employed Plaintiff on an hourly basis as a Painter at their jobsite in Chino Hills, California.

32. While employed by Defendant as a Painter, Plaintiff was paid approximately \$19.50 per hour.

**FAILURE TO PAY OVERTIME/MINIMUM WAGES DUE TO OFF THE CLOCK
WORK/TIME SHAVING**

33. Under California law, non-exempt employees as defined by the applicable Wage Order, are entitled to premium wages for overtime worked. Under California law, an hourly paid employee is entitled to overtime pay when they exceed eight hours of work in a single day, exceed 40 hours of work in a week or work seven days in a row.

34. Under California law, non-exempt employees as defined by the applicable Wage Order are entitled to minimum wages. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 entitles "any employee receiving less than the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full

1 amount of this minimum wage.” The applicable IWC Wage Order(s), obligates employers to
2 pay each employee minimum wages for all hours worked.

3 35. These minimum wage standards apply to each hour employees worked or were
4 subject to control by the employer for which they were not paid. Therefore, an employer’s
5 failure to pay for any particular hour of time worked by an employee or subject to the
6 employer’s control is unlawful, even if averaging an employee’s total pay over all hours
7 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
8 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

9 36. Defendants required Plaintiff and the Class to regularly perform compensable
10 tasks post-shift off-the-clock for which they did not receive any compensation. Specifically, at
11 times Plaintiff and Class members were required to load containers with materials for 30
12 minutes after clocking out for their shifts. Further, at least once per week, Plaintiff and Class
13 members were required to clean and maintain their equipment off the clock. Otherwise, they
14 would have to purchase new equipment at their own expense.

15 37. Plaintiff and the Class were not paid overtime and minimum wages due to time
16 shaving and off the clock work. Defendants’ management filled out timesheets for Plaintiff and
17 Class members at the end of each week. The timesheets listed the start and end times of the
18 shifts as scheduled, with a scheduled meal break. Thus, the actual hours worked by Plaintiff
19 and Class members were not recorded.

20 38. At all times during the relevant time period, Plaintiff and the Class routinely
21 worked schedules such that they were due pay at overtime and minimum wage rates. During
22 this period, it was the practice and policy of Defendants to not pay employees’ overtime and
23 minimum wages. Monies for unpaid overtime and minimum wages remain due and owing.

24 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

25 39. As a result of Defendants’ failure to pay employees at required overtime and
26 minimum wage rates due to illegal time shaving and off the clock work, the wage statements
27 issued to the employees did not comply with *Labor Code* §226 and the California Industrial
28

1 Welfare Commission (“IWC”) applicable Wage Order in that they did not accurately reflect all
2 wages earned and due and owing.

3 **FAILURE TO PAY WAGES DUE ON TERMINATION AND/OR RESIGNATION**

4 40. Defendants failed to pay Plaintiff and Class members all wages due on
5 termination and/or resignation.

6 **LACK OF EXPENSE REIMBURSEMENT**

7 41. Defendants failed to reimburse Plaintiff and members of the Class for business-
8 related expenses, such as cell phone use. However, Defendants failed to reimburse Plaintiff and
9 Class members for these necessary business expenses.

10 **FAILURE TO PROVIDE UNIFORMS AND A MAINTENANCE ALLOWANCE**

11 42. Defendants failed to reimburse Plaintiff and members of the Class for uniforms
12 and also failed to maintain those uniforms. Plaintiff and members of the Class were required to
13 wear protective gear such as white coveralls with no logo and boots. Plaintiff and Class
14 members were required to purchase the coveralls and boots themselves and were not
15 reimbursed therefor. Further, Plaintiff and Class members were required to maintain the
16 coveralls themselves.

17 **FAILURE TO MAINTAIN ACCURATE RECORDS**

18 43. Defendants failed to maintain accurate records because their management
19 employees filled out timesheets for Plaintiff and Class members at the end of each week. The
20 timesheets listed the start and end times of the shifts as scheduled, but not as actually worked.

21 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

22 44. Defendant failed to allow Plaintiff and Class members to timely inspect their
23 records and payroll files.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME**

3 **(Labor Code §§510, 558, 1194.3 and IWC Wage Order No. 16 by Plaintiffs Against**
4 **Defendants and Does 1-100)**

5 45. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this First Amended Complaint.

7 46. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab.
8 Code §§510, 1194, and 1198, and the IWC Wage Order No. 16, Defendants were required to
9 compensate Plaintiff and Class members with premium pay for all overtime work performed,
10 for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for
11 the first eight (8) hours on the seventh (7th) consecutive day of any work week.

12 47. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
13 who had not been paid overtime compensation could recover the unpaid balance of the full
14 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
15 fees and costs of suit.

16 48. Pursuant to the IWC Wage Order No. 16, § 3, "Employment beyond eight (8)
17 hours in any workday is permissible provided the employee is compensated for such overtime
18 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
19 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
20 workday...

21 49. California Labor Code section 558 provides in pertinent part:

22 (a) Any employer or other person acting on behalf of an employer who
23 violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the
25 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

26 (1) For any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid in
28 addition to an amount sufficient to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was
3 underpaid in addition to an amount sufficient to recover underpaid
4 wages.

5 (3) Wages recovered pursuant to this section shall be paid to the affected
6 employee...

7 (c) The civil penalties provided for in this section are in addition to any
8 other civil or criminal penalty provided by law.

9 50. Throughout Plaintiff's employment, Plaintiff worked overtime hours and was
10 not paid overtime pay due to Defendants' shaving down of hours work. Specifically,
11 Defendants' management completed timesheets at the end of each week based on the start and
12 end times of the shifts as scheduled, not the actual hours worked.

13 51. Further, Defendants required Plaintiff and the Class to regularly perform
14 compensable tasks post-shift off-the-clock for which they did not receive any compensation.
15 Specifically, at times Plaintiff and Class members were required to load containers with
16 materials for 30 minutes after clocking out for their shifts. Further, at least once per week,
17 Plaintiff and Class members were required to clean and maintain their equipment off the clock.
18 Otherwise, they would have to purchase new equipment at their own expense.

19 52. Throughout Plaintiff's employment, Defendants failed and refused to pay and
20 properly calculate overtime compensation to Plaintiff and Class Members as required by law.

21 53. The foregoing overtime compensation is owed and unpaid. As a direct and
22 proximate result of Defendants' failure and refusal to pay overtime, Plaintiff and Class
23 Members suffered damages in an amount to be proven at trial.

24 54. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
25 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's
26 attorneys' fees, costs and interest.
27
28

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES DUE TO TIME SHAVING**

3 **(IWC Wage Order No. 16; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**

4 **Against all Defendants and Does 1 through 100)**

5 55. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this First Amended Complaint.

7 56. Labor Code §§ 1194(a) states: “Notwithstanding any agreement to work for a
8 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
9 compensation applicable to the employee is entitled to recover in a civil action the unpaid
10 balance of the full amount of this minimum wage or overtime compensation, including interest
11 thereon, reasonable attorney's fees, and costs of suit.”

12 57. *Labor Code* § 1197 states the California requirement that employees must be
13 paid at least the minimum wage fixed by the Commission, and any payment of less than the
14 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
15 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
16 the full amount of this minimum wage.” IWC Wage Order No. 16 also obligates employers to
17 pay each employee minimum wages for all hours worked. These minimum wage standards
18 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
19 failure to pay for any particular hour of time worked by an employee is unlawful, even if
20 averaging an employee’s total pay over all hours worked, paid or not, results in an average
21 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
22 (2005).

23 58. Pursuant to IWC Wage Order No. 16, Defendants are required to pay the
24 members of the Class for all hours worked, meaning the time during which an employee is
25 subject to the control of an employer, including all the time the employee is suffered or
26 permitted to work, whether or not required to do so.

27 59. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
28 and the standard conditions of labor fixed by the commission shall be the maximum hours of

1 work and the standard conditions of labor for employees. The employment of any employee for
2 longer hours than those fixed by the order or under conditions of labor prohibited by the order
3 is unlawful.”

4 60. Defendants failed to satisfy minimum wage requirements because they
5 improperly shaved down Plaintiff’s actual hours worked and required Plaintiff and Class
6 members to engage in activities off the clock in violation of *Labor Code* §§ 1197, 1198 and the
7 IWC Wage Order No. 16.

8 61. Defendants’ pattern, practice and uniform administration of corporate policy
9 regarding illegal employee compensation as described herein is unlawful and creates an
10 entitlement, pursuant to Labor Code § 218, to recovery by Plaintiff and the members of the
11 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
12 the appropriate rate.

13 62. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
14 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
15 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
16 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
17 the time associated with the overtime for which they received no compensation. *See Sillah v.*
18 *Command Int’l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
19 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
20 showed they were paid less than minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*,
21 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

22 63. Plaintiff and the other Class Members suffered and continue to suffer losses
23 related to the use and enjoyment of compensation due and owing to them as a direct result of
24 Defendants’ unlawful acts and Labor Code violations in an amount to be shown according to
25 proof at trial and within the jurisdictional limitations of this Court.

26 64. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
27 Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them,
28

1 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
2 proof.

3 **THIRD CAUSE OF ACTION**

4 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

5 **ITEMIZED STATEMENTS**

6 **(Labor Code §226 By Plaintiffs Against all Defendants and Does 1 through 100)**

7 65. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this First Amended Complaint.

9 66. Pursuant to the IWC Wage Order No. 16, Defendants were the employers of
10 Plaintiff and the Class.

11 67. Pursuant to California Labor Code sections 226 and 1174, and IWC Wage Order
12 No. 16, section 7, Defendants are required to maintain and provide accurate records relating to
13 employee compensation including all formulas and production records used to calculate wages
14 due.

15 68. Defendants are further required to provide, *inter alia*, semimonthly or at the time
16 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
17 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
18 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
19 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

20 69. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
21 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
22 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods
23 in which the employer knowingly and intentionally failed to provide accurate itemized
24 statements to the employee causing the employee to suffer injury.

25 70. Notwithstanding these provisions. Defendants have engaged in a uniform
26 practice of refusing to maintain and provide the accurate records and wage statements required
27 by California law.

28

71. Throughout the Class Period, Defendants intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in that the payments owed to Plaintiff and the members of the Class for overtime compensation and minimum wages, were not included in gross wages earned by Plaintiff and members of the Class.

72. As a result, Plaintiff and members of the Class have been injured by having been deprived of the true facts pertaining to their compensation and employment.

73. Plaintiff and members of the Class were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to overtime compensation, minimum wages, even though they were so entitled and these failures hindered them from determining the amounts of wages owed to them.

74. Plaintiff and members of the Class are entitled to the amounts provided in Labor Code §226(e), plus attorneys' fees and costs.

75. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided by law for Defendants' improper conduct.

FOURTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION

(Labor Code §§201-203 By Plaintiffs Against all Defendants and Does 1 through 100)

76. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

77. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

78. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

1 work-related expenses that they incurred in using their personal cell phones and tools, for
2 work-related purposes.

3 86. As a result of Defendants' conduct, Plaintiff and Class members suffered
4 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
5 business-related expenses incurred in the discharge of their duties.

6 87. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
7 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
8 costs of suit.

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE UNIFORMS AND A MAINTENANCE ALLOWANCE**

11 **(Labor Code §2802 and Wage Order No. 16 By Plaintiffs Against all Defendants and**
12 **Does 1 through 100)**

13 88. Plaintiff and the Class reallege and incorporate by reference all of the allegations
14 set forth in this First Amended Complaint.

15 89. Under California law, if an employer requires employees to wear a uniform, the
16 employer must pay for and maintain the uniform for the employee. Labor Code
17 §2802.

18 90. In addition to the cost of the uniform, the employer must provide employees
19 with reasonable maintenance of the uniforms. The employer can either maintain the uniform
20 itself, or pay the employee a weekly maintenance allowance.

21 91. An employer may never impose a financial burden on employees, with respect
22 to paying for and maintaining clothing, which would reduce the employees' wage rate below
23 the minimum wage.

24 92. Here, Defendants required Plaintiff and Class members to wear protective gear,
25 such as coveralls without logos. Further, Plaintiff and Class members were required to purchase
26 boots. However, Defendants do not reimburse for the protective gear and boots that Plaintiff
27 and Class members were required to purchase. Additionally, Defendants do not maintain the
28

1 uniforms and protective gear. Plaintiff and members of the Class pay for the maintenance and
2 cleaning themselves.

3 93. Additionally, Defendants did not require and/or provide standard protective gear
4 for painters such as dust masks, goggles, etc.

5 94. Defendants failed to reimburse for and maintain the uniforms and protective
6 gear, nor pay Plaintiff and members of the Class a weekly maintenance allowance.

7 95. As a proximate result of the aforementioned violations of Labor Code § 2802,
8 Plaintiff and members of the Class have been damaged in an amount according to proof at the
9 time of trial.

10 96. As a proximate result of the aforementioned violations of § 2802, Plaintiff and
11 members of the Class are entitled to recovery from Defendants for reimbursement of necessary
12 expenditures including interest and attorneys' fees.

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO MAINTAIN ACCURATE RECORDS**

15 **(Labor Code §1174(d) By Plaintiffs Against all Defendants and Does 1 through 100)**

16 97. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this First Amended Complaint.

18 98. Labor Code section 1174(d) requires that employers, including Defendants,
19 maintain accurate records showing the hours worked daily by its employees and to whom
20 wages were paid.

21 99. Additionally, the "Records" section of IWC Wage Order No. 16 obligates the
22 employer, including Defendants, to keep accurate information with respect to each one of their
23 employees including, but not limited to, the total wages paid each payroll period, and time
24 records showing when the employee begins and ends each work period, the total daily hours
25 worked, the total hours worked in the payroll period, and the applicable rates of pay.

26 100. Pursuant to Labor Code section 1174.5, any person employing labor who
27 willfully fails to maintain accurate and complete records required by Labor Code section
28 1174(d) is subject to a penalty. On information and belief, Defendants intentionally failed to

1 maintain accurate records regarding Plaintiffs and members of the Class, including the
2 applicable rates of pay and total wages earned for the payroll period.

3 101. Defendants' management filled out timesheets for Plaintiff and Class members
4 at the end of each week. The timesheets listed the start and end times of the shifts as scheduled,
5 with a scheduled meal break. Thus, the actual hours worked by Plaintiff and Class members
6 were not recorded.

7 102. As a direct result of Defendants' violations alleged herein, Plaintiffs and
8 members of the Class have suffered and continue to suffer substantial losses related to
9 Defendants' failure to pay overtime and minimum wages.

10 103. Plaintiff seeks all available remedies for Defendants' violations including, but
11 not limited to penalties, and costs to the extent permitted by law.

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

14 ***(Labor Code §1198.5 By Plaintiffs Against all Defendants and Does 1 through 100)***

15 104. Plaintiff and the Class reallege and incorporate by reference all of the allegations
16 set forth in this First Amended Complaint.

17 105. California Labor Code Section 1198.5 provides:

- 18
- 19 (a) Every current and former employee, or his or her representative, has the
20 right to inspect and receive a copy of the personnel records that the
21 employer maintains relating to the employee's performance or to any
22 grievance concerning the employee.
- 23 (b) The employer shall make the contents of those personnel records available
24 for inspection to the current or former employee, or his or her
25 representative, at reasonable intervals and at reasonable times, but not later
26 than 30 calendar days from the date the employer receives a written request,
27 unless the current or former employee, or his or her representative, and the
28 employer agree in writing to a date beyond 30 calendar days to inspect the
records, and the agreed-upon date does not exceed 35 calendar days from
the employer's receipt of the written request to inspect the records. Upon a
written request from a current or former employee, or his or her
representative, the employer shall also provide a copy of the personnel
records,..... later than 30 calendar days from the date the employer receives
the request...

1 (k) If an employer fails to permit a current or former employee, or his or her
2 representative, to inspect or copy personnel records within the times specified I
3 this section... the current or former employee may recover a penalty of seven
4 hundred fifty dollars (\$750) from the employer.

5 (1) A current or former employee may also bring an action for injunctive relief
6 to obtain compliance with this section, and may recover costs and reasonable
7 attorney's fees in such an action.

8 106. Additionally, pursuant to IWC Wage Order, No. 16, at section 7 re: Records,
9 employers are required to keep accurate payroll records on each employee, and such records
10 must be made readily available for inspection by the employee upon reasonable request. The
11 employer must also maintain accurate production records.

12 107. On or about June 11, 2024, Plaintiff's counsel issued a written request to
13 Defendants for copies of his personnel records.

14 108. Under California Labor Code Sections 226, 432 and 1198.5, such records were
15 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
16 Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for
17 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of
18 his records.

19 109. As a direct result and consequence of Defendants' failure and refusal to permit
20 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
21 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a
22 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
23 penalty of \$750 based upon Defendants' violation of §1198.

24 **NINTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against all Defendants and**
27 **Does 1 through 100)**

28 1. Plaintiff and the Class reallege and incorporate by reference all of the
allegations set forth in this First Amended Complaint. Pursuant to IWC Wage Order No. 16,

1 Defendants were the employers of Plaintiff and the Class. Defendants are also "person(s)" as
2 that term is defined in Business & Professions Code §17021.

3 2. The Business & Professions Code defines unfair competition as any unlawful,
4 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
5 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1)
6 pay Plaintiff and the Class overtime compensation due to off the clock work; (2) pay minimum
7 wages due to shaving; (3) furnish Plaintiff and the Class with accurate itemized wage
8 statements, as mandated by the applicable Labor Code and Industrial Welfare Commission
9 requirements, (4) reimburse business expenses, (5) pay wages on termination; (6) provide and
10 maintain uniforms, (7) maintain accurate records, and (8) provide personnel records, all in
11 violation of Business & Professions Code §§ 17200 *et seq.*

12 3. By and through the unfair and unlawful business practices described herein,
13 Defendants have obtained valuable property, money and services from the Plaintiff and the
14 Class and has deprived them of valuable rights and benefits guaranteed by law all to the
15 detriment of Plaintiff and the Class.

16 4. All the acts described herein are violations of, among other things, the Labor
17 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
18 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
19 thereby constitute unfair and unlawful business practices in violation of Business & Professions
20 Code §§ 17200 *et seq.*

21 5. Plaintiff and the Class are entitled to, and do, seek such relief as may be
22 necessary to restore to them the money and property which Defendants have acquired, or of
23 which Plaintiff and the Class have been deprived by means of the above-described unfair and
24 unlawful business practices.

25 6. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
26 above-described business practices are unfair and unlawful and that injunctive relief should be
27 issued restraining Defendants from engaging in any of the above described unfair and unlawful
28 business practices in the future.

7. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of the unfair and unlawful business practices of Defendants. As a result of the unfair and unlawful business practices described above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendants are restrained from continuing to engage in these unfair and unlawful business practices. In addition, Defendants should be required to disgorge the unpaid moneys to Plaintiff and the Class.

TENTH CAUSE OF ACTION

(Damages Pursuant to Private Attorney General Act Against All Defendants and Does 1 through 100)

1. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

2. Plaintiff bring this action on her own behalf and on behalf of all current and former employees of Defendants who were employed in California for the previous four years seeking to recover unpaid wages, including but not limited to meal period violations, rest periods violations, failure to issue accurate wage statements, failure to pay wages due on termination, failure to reimburse business expenses, failure to pay for uniform maintenance, failure to pay for off the clock work, time shaving, unlawful deductions and unfair competition as set forth in this pleading.

3. On June 7, 2024, Plaintiff, pursuant to California Labor Code §§2699, et seq., by and through Plaintiff’s attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via Certified Mail Return Receipt Requested to the defendant.

4. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

1 5. Plaintiff has therefore complied with the administrative exhaustion requirements
2 of PAGA.

3 6. Plaintiff seeks Labor Code penalties, attorney's fees, and costs, in an amount
4 according to proof at trial, as provided by the Labor Code Private Attorney General Act.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
7 and against Defendants, and each of them, as follows:

8 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff
9 and Class Members, according to proof;

10 2. For compensatory damages in the amount minimum wages due to Plaintiff and
11 Class Members, according to proof;

12 3. For payment of unpaid wages in accordance with California labor and
13 employment law;

14 4. For compensatory damages in the amount of Plaintiff and Class Members' cell
15 phone and tool expenses for business purposes, costs and attorneys' fees pursuant to Cal. Code
16 Civ. Proc. §2802(c);

17 5. For compensatory damages in the amount of Plaintiff and Class members'
18 uniform and maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
19 §2802(c);

20 6. For payment to Plaintiff and Class members of waiting time penalties pursuant
21 to *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of
22 termination or layoff, multiplied by the total amount of days elapsed between the date of the
23 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
24 maximum of 30 days' pay, according to proof;

25 7. For specific relief enforcing waiting time penalties of 30 days of per diem wages
26 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

27 8. For an award of consequential damages in Plaintiff and Class Members' favor
28 and against Defendants, in an amount to be proven at trial;

9. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
10. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;
11. For prejudgment interest accrued on all due and unpaid overtime and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;
12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5, according to proof;
13. For civil penalties pursuant to *Cal. Labor Code* §1198 and IWC Wage Order No. 16;
14. For all penalties pursuant to Private Attorney General Act.
15. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of Civ. Proc.* §1021.5, and the Private Attorney General Act;
16. For an award of restitution of wages to Plaintiff and Class members in an amount equal to the amount of wages owed and unpaid, according to proof;
17. For injunctive relief requiring Defendants to comply with Labor Code 1198.5(b)(1);
18. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;
19. For other injunctive relief ordering Defendants to notify Plaintiff and Class members that they have not been paid the proper amounts in accordance with California law;
20. For punitive and exemplary damages in a sum to be determined at trial; and
21. For such other and further relief as the Court deems just and proper.

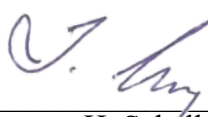
DEMAND FOR JURY TRIAL

Plaintiff Christian Carrizosa hereby respectfully requests a trial by jury for all claims and issues raised in his First Amended Complaint that may be entitled to a jury trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LIPELES LAW GROUP, APC

Date: September 9, 2024

By: 
Thomas H. Schelly
Attorneys for Plaintiff
Christian Carrizosa

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo St., Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorney for Plaintiff,
Christian Carrizosa

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

CHRISTIAN CARRIZOSA, an
individual,

Plaintiff,

vs.

R3 CONSTRUCTION SERVICES, INC.,
a California corporation; AEROTEK,
INC., a Maryland corporation; ADRIAN
DOE, an individual; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CIVRS2400341

PROOF OF SERVICE

PROOF OF SERVICE

I certify and declare that I am over the age of 18 years and not a party to this action and that my place of employment is in the County of Los Angeles, State of California, located at 880 Apollo St., Suite 336, El Segundo, California 90245.

On this date hereon, I served a true copy of the following document(s):

PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT

☐ by personally delivering it to the person(s) indicated below in the manner as provided by Rule of the California Rules of Civil Procedure; ☐ by transmitting it via facsimile machine to a telephone number listed below and known or represented to me to be the receiving telephone number for the facsimile copy transmission of the parties/persons/firms listed below; ☒ by transmitting it via electronically to the electronic mail address listed below; ☐ by overnight delivery service to be delivered the next day to the parties/persons/firms listed below; ☐ by United States Mail – First Class Postage to the parties/persons/firms listed below:

Philip J. Azzara Fisher & Phillips LLP 2050 Main Street, Suite 1000 Irvine, CA 92614 pazzara@fisherphillips.com	Attorney for Defendant R3 Construction Services, Inc.
---	--

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on September 9, 2024 at El Segundo, California 90245.

Diana Casarrubias
Diana Casarrubias