

COPY

David P. Myers (SBN 206137)
dmyers@myerslawgroup.com
Jason Hatcher (SBN 285481)
jhatcher@myerslawgroup.com
Andriana N. Bravo (SBN 349191)
abravo@myerslawgroup.com
THE MYERS LAW GROUP, A.P.C.
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (909) 919-2027
Facsimile: (888) 375-2102

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 08 2024

BY JACOB SOBREDO *JS*
DEPUTY

Attorneys for Plaintiff Jose Guzman,
and all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOSE GUZMAN, on behalf of himself and
all others similarly situated

PLAINTIFF,

v.

PRO-CRAFT CONSTRUCTION, INC., a
California Corporation; and DOES 1 through
100, inclusive

DEFENDANTS.

Case No.: CIVSB2422756

CLASS ACTION

FIRST AMENDED COMPLAINT

1. **Failure to Pay Overtime Wages;**
2. **Failure to Provide Meal Periods;**
3. **Failure to Provide Rest Periods;**
4. **Failure to Provide Accurate Wage Statements;**
5. **Failure to Pay All Wages Due at Separation;**
6. **Unfair Competition**
7. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

This is an action brought by Plaintiff JOSE GUZMAN (“Plaintiff”), on his behalf and all others similarly situated, against PRO-CRAFT CONSTRUCTION, INC., a California Corporation, and other as of yet unnamed DOE Defendants 1-100 (hereinafter collectively “Defendants”) alleging, among other things violations of the California Labor Code and Unfair Competition Law. Plaintiff seeks damages, attorneys’ fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges as follows:

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II. GENERAL ALLEGATIONS

1. This class action arises from wage and hour violations for, among other things, Defendants’ failure to compensate hourly non-exempt employees in compliance with California law. As more fully described herein, Defendants failed and continue to fail compensate Plaintiff and class members the full amount of wages owed including overtime wages, provide meal breaks or meal period premium pay in lieu thereof, provide rest breaks or rest period premium pay in lieu thereof, provide accurate wage statements, and pay all wages due at separation. Additionally, Defendants violated and continue to violate the California Unfair Competition Law.

2. Plaintiff seeks, among other things, all wages, restitutionary disgorgement, and statutory penalties. Plaintiff seeks to represent the following Class:

All current and former California hourly non-exempt employees of Defendants who worked as an operator and/or laborer and/or pipe tradesman and/or pipelayer and/or plumber and/or foreman for Defendants at any time from four years prior to the filing of this action through the date of class certification. (The “Class”).

3. This Court is the proper court, and this action is properly filed in San Bernardino County and in this judicial district because Defendants do business in San Bernardino County, out of Redlands, California, and because Defendants’ obligations and liabilities arise therein.

4. Plaintiff is a former hourly non-exempt employee for Defendants in the state of California and a resident of California.

5. Plaintiff is informed and believes, and thereon alleges that Defendant PRO-CRAFT CONSTRUCTION, INC., is a California Corporation.

6. The true names and capacities, whether individual, corporate, associate, or

otherwise, of DOES 1 through 100 are unknown to Plaintiff, who therefore sues the DOE Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when they have been ascertained.

7. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control. Plaintiff is informed and believes, and thereon alleges, that at all times material hereto Defendants were and are the agents of each other.

8. Plaintiff is informed and believes, and thereon alleges, that Defendants DOES 1 through 100 are the partners, owners, shareholders, managers, joint employers, or alter egos of Defendants, and were acting on behalf of Defendants in the payment of wages to Plaintiff and the Class.

9. At all relevant times alleged herein Plaintiff was employed by Defendants, and Plaintiff performed work for Defendants in San Bernardino County in the state of California.

III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION

10. Plaintiff and the Class worked as hourly non-exempt employees in the state of California for Defendants.

11. Throughout the period of four (4) years prior to the filing of this action through the date of class certification ("Class Period"), Plaintiff and all Class members were and are employees of Defendants in the state of California, entitled to all of the protections afforded to employees under the Labor Code and applicable IWC Wage Order.

12. Defendants' primary business is plumbing contractor services. This work is accomplished in part by Plaintiff and the Class members.

13. Defendants are liable to Plaintiff and the Class for failing to pay for all hours worked, failing to provide legally compliant meal and rest periods, failing to provide accurate wage statements, failing to pay all wages owed at separation, and unfair competition.

14. Plaintiff is a member of and seeks to be the representative for the Class of similarly

1 situated employees who all have been exposed to, have suffered, and/or were permitted to work
2 under, Defendant's unlawful employment practices as alleged herein.

3 15. Throughout the Class Period, Defendants knowingly and willfully engaged and
4 continue to engage in an unlawful scheme to avoid complying with California wage and hour laws
5 and other employee rights and benefits.

6 16. Throughout the Class Period, Plaintiff and Class members worked in excess of eight
7 (8) hours per workday or forty (40) hours per work week. Defendants failed to pay Plaintiff and
8 Class members one-and-one-half times their regular rate of pay for hours worked in excess of eight
9 (8) hours per day or forty (40) hours per workweek.

10 17. Throughout the Class Period, Defendants failed to authorize and permit legally
11 compliant meal breaks. Plaintiff and Class members were assigned to and required to work shifts
12 lasting over five (5) hours and were not provided nor allowed to take a thirty (30) minute
13 uninterrupted off-duty meal break without exemption.

14 18. Throughout the Class Period, Defendants failed and continue to fail to pay for meal
15 period violations at the correct regular rate of pay.

16 19. Defendants failed to compensate Plaintiff and the Class members for time spent on
17 non-duty free meal periods resulting in unpaid, earned, overtime wages.

18 20. Throughout the Class Period, Defendants failed to authorize and provide paid rest
19 periods compliant with the provisions of the California Labor Code and applicable Wage Order.
20 Plaintiff and Class members were assigned to and required to work shifts lasting over four (4)
21 hours and were not provided nor allowed to take a non-captive paid ten-minute uninterrupted rest
22 break during each four (4) hour work period, or major fraction thereof, at the direction of
23 Defendants and/or with Defendants knowledge and acquiescence.

24 21. Throughout the Class Period, Defendants failed and continue to fail to pay for rest
25 period violations at the correct regular rate of pay.

26 22. The wage statements provided by Defendants failed to provide accurate
27 information reflecting the total hours worked, gross and net wages earned for all hours worked per
28 pay period as well as meal and rest period premiums.

1 23. Defendants failed to pay Plaintiff and the Class all earned wages timely upon
2 termination.

3 24. The underpayment of wages, Labor Code violations and Wage Order violations
4 upon Plaintiff and the Class are a consequence of Defendants' unlawful policies and practices
5 which were centrally devised, implemented, communicated, and applied to Plaintiff and the Class.

6 25. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and
7 continue to be systematically deprived of their benefits of the Labor Code and applicable IWC
8 Wage Orders, to the detriment of Plaintiff, the Class, and the public at large.

9 **CLASS DEFINITION AND CLASS ALLEGATIONS**

10 26. Plaintiff brings this action on his own behalf and on behalf of all others similarly
11 situated, pursuant to California Code of Civil Procedure §382, and as a member of the Class
12 defined as follows:

13 All current and former California hourly non-exempt employees of Defendants who
14 worked as an operator and/or laborer and/or pipe tradesman and/or pipelayer and/or
15 plumber and/or foreman for Defendants at any time from four (4) years prior to the
16 filing of this action through the date of class certification. (The "Class").

17 **Sub-Class 1**

18 All current and former California hourly non-exempt employees of Defendants who
19 worked as an operator and/or laborer and/or pipe tradesman and/or pipelayer and/or
20 plumber and/or foreman for Defendants at any time from four (4) years prior to the
21 filing of this action through the date of class certification who worked at least one
22 (1) shift of more than eight (8) hours in a day or more than forty (40) hours in a
23 week. ("Overtime" Sub-Class)

24 **Sub-Class 2**

25 All current and former California hourly non-exempt employees of Defendants who
26 worked as an operator and/or laborer and/or pipe tradesman and/or pipelayer and/or
27 plumber and/or foreman for Defendants at any time from four (4) years prior to the
28 filing of this action through the date of class certification and who worked at least
one (1) shift of more than five (5) hours. ("Meal Period" Sub-Class).

Sub-Class 3

 All current and former California hourly non-exempt employees of Defendants who
worked as an operator and/or laborer and/or pipe tradesman and/or pipelayer and/or
plumber and/or foreman for Defendants at any time from four (4) years prior to the
filing of this action through the date of class certification who worked at least one
(1) shift of three and a half (3.5) hours or more. ("Rest Period" Sub-Class).

1 **Sub-Class 4**

2 All current and former California hourly non-exempt employees of Defendants who
3 worked as an operator and/or laborer and/or pipe tradesman and/or pipelayer and/or
4 plumber and/or foreman for Defendants at any time from one (1) year prior to the
 filing of this action through the date of class certification who are members of Sub-
 Class 1 and/or 2 and/or 3. (“Wage Statement Class” Sub-Class).

5 **Sub-Class 5**

6 All former California hourly non-exempt employees of Defendants who worked as
7 an operator and/or laborer and/or pipe tradesman and/or pipelayer and/or plumber
8 and/or foreman for Defendants at any time from three (3) years prior to the filing
 of this action through the date of class certification who are members of Sub-Class
 1 and/or 2 and/or 3. (“Waiting Time Penalties” Sub-Class).

9 27. Plaintiff reserves the right to amend or otherwise alter the class definition presented
10 to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in response to
11 facts learned through discovery, legal arguments advanced by Defendants or otherwise.

12 28. Further, this action is brought for the benefit of the public, who are entitled to
13 restitution of those funds improperly withheld by Defendants.

14 29. This action has been brought and may be properly maintained as a class action
15 pursuant to the provisions of the Code of Civil Procedure §382 and other applicable law.

16 30. **Numerosity:** Members of the Class are so numerous that their individual joinder is
17 impracticable. It is possible to ascertain the number of former and current employees who are
18 members of the proposed class, but they are so numerous that joinder is impracticable. The
19 proposed Class includes future employees (persons who are hired by defendant within the class
20 period, but who are not now class members as current or former employees) whose joinder is
21 currently impossible. The precise number of Class members and their addresses can be determined
22 by Defendants’ business records and will become known to Plaintiff through discovery. Class
23 members may be notified of the pendency of this action by mail, e-mail, the internet, or published
24 and posted notice.

25 31. **Typicality:** Plaintiff’s claims are typical of the claims of members of the proposed
26 classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has been subjected
27 to Defendants’ unlawful employment practices, as alleged in this Complaint.

28 32. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the

1 interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
2 Plaintiff has retained competent and experienced counsel. The interests of Class members will be
3 fairly and adequately protected by Plaintiff and his counsel.

4 33. **Common Questions of Law and Fact:** Common questions of law and fact exist
5 as to all Class members and predominate over any questions affecting solely individual members
6 of the proposed Class:

- 7 a. Whether Defendants engaged in a pattern or practice of failing to pay
8 Plaintiff and the members of the Class the full amount of overtime wages in
9 violation of the applicable Labor Code provisions including §§510 and
10 1194;
- 11 b. Whether Defendants improperly retained, appropriated or deprived Plaintiff
12 and members of the proposed Plaintiff class of the use of monies or sums to
13 which they were legally entitled;
- 14 c. Whether Defendants engaged in unlawful, unfair, and/or fraudulent
15 business practices;
- 16 d. Whether Defendants, and each of them, was/were participants in the alleged
17 unlawful conduct;
- 18 e. Whether Defendants engaged in a pattern or practice of failing to provide
19 Plaintiff and the members of the Class meal periods in violation of the
20 applicable Wage Order and Labor Code §§ 226.7, 512 by failing to timely
21 provide 30-minute uninterrupted, duty-free, meal periods to Plaintiff and
22 Class members;
- 23 f. Whether Defendants engaged in a pattern or practice of failing to provide
24 Plaintiff and the members of the Class legally compliant, non-captive,
25 dutyfree paid rest periods in violation of the applicable Wage Order and
26 Labor Code §§226.7;
- 27 g. Whether Defendants violated Labor Code §203 by failing to pay all wages
28 due upon separation;

- h. Whether Defendants engaged in unfair practice and violated California Business and Professions Code §17200 *et seq.*;
- i. Whether Defendants failed to provide accurate wage statements to Plaintiff and members of the Class; and
- j. The nature and extent of class-wide injury and measure of damages for the injury.

34. **Superiority and Substantial Benefit:** A class action is the superior method for the fair and efficient adjudication of this controversy. Defendants implemented illegal schemes that are generally applicable to the members of the proposed plaintiff class and sub-classes. Damages suffered by each Class member may be relatively small given the burden and expense of individual prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if Class members could afford such individual litigation, the court system could not. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

35. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Plaintiff is informed and believes, and on that basis alleges, that the amount of money due each Class member as economic damages is ascertainable from Defendants' records or may readily be determined by other means.

36. The Classes should also be certified because:

- a. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for Defendants;
- b. The prosecution of separate actions by individual Class members creates the risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the interests of the other Class members not parties

1 to the adjudications, or would substantially impair or impede their ability to
2 protect their interests; and

3 c. Defendants have acted or have refused to act on grounds generally
4 applicable to the class and/or the general public, thereby making final and
5 injunctive relief, as well as declaratory relief, with respect to the Class as a
6 whole, appropriate.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY OVERTIME WAGES**

9 **Violation of Labor Code §§510 and 1194 and IWC Wage Order No. 16-2001**

10 (Against all Defendants)

11 37. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
12 paragraphs 1 through 36 of this Complaint.

13 38. Plaintiff and class members were and are employed and scheduled as a matter of
14 established company policy to work in excess of eight (8) hours per day and/or in excess of forty
15 (40) hours per workweek. Defendants employed and scheduled Plaintiff and the class members
16 without providing the full amount of overtime compensation for such excess hours worked in
17 violation of Labor Code §§510 and 1194 and the relevant California Industrial Welfare
18 Commission (IWC) orders.

19 39. Labor Code §510 mandates: “Eight hours of labor constitutes a day's work. Any
20 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
21 workweek and the first eight hours worked on the seventh day of work in any one workweek shall
22 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
23 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
24 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
25 on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
26 rate of pay of an employee. Nothing in this section requires an employer to combine more than
27 one rate of overtime compensation in order to calculate the amount to be paid to an employee for
28 any hour of overtime work.” The California overtime requirement and wage requirement are non-

1 waivable rights pursuant to LC §219.

2 40. Section 3(a)(1) of Wage Order No. 16-2001 mandates that employers pay one and
3 one-half times the employees' regular rate of pay for employees who work more than eight hours
4 in a day or forty hours in a week and two times their regular rate of pay for any work in excess of
5 twelve hours in one day.

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

11 42. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for
12 overtime wages directly against the employer without first filing a claim with the Division of Labor
13 Standards Enforcement ("DLSE") and may recover such wages, together with interest thereon,
14 penalties, attorneys' fees and costs. Further, pursuant to Labor Code §1198, it is unlawful to
15 employ person for longer than the hours set by the IWC or under conditions prohibited by the
16 applicable IWC Wage Orders. IWC Wage Order No. 16, as amended, applies to Plaintiff and the
17 class.

18 43. Defendants have failed and refused to pay Plaintiff and the Class members overtime
19 compensation earned from uncompensated non-duty-free meal periods. Plaintiff is informed and
20 believes and thereon alleges that the obligations and responsibilities of the class employees are
21 irrelevant because Plaintiff and all other similarly situated employees were subjected to
22 Defendants' unlawful pay plans and its failure to pay wages for all hours worked.

23 44. Plaintiff and the class members have been deprived of rightfully earned overtime
24 compensation as a direct and proximate result of Defendants' common policies, practices, and
25 refusal to pay the full amount of compensation earned for all overtime hours worked.

26 45. Plaintiff and the class are entitled to and seek the full amount of all earned unpaid
27 overtime pay, attorneys' fees and costs, and interest pursuant to LC §1194 in an amount to be
28 determined at trial.

46. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class Members seek recover of pre-judgment interest on all amounts recovered herein.

47. Plaintiff and the class are entitled to and seek attorneys' fees and costs, and interest pursuant to Labor Code §1194 in the amount to be determined at trial.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Violation of Labor Code §§226.7, 512, & Wage Order No. 16-2001

(Against all Defendants)

48. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 36 of this Complaint.

49. Labor Code §226.7 requires an employer to pay one additional hour of compensation, at the regular rate of pay, per day for each meal period the employer fails to provide pursuant to the Labor Code and/or applicable Wage Order. Plaintiff alleges that Defendants failed to provide legally compliant meal periods to Plaintiff and the Class members; in addition to impeding, discouraging, and/or dissuading employees from taking legally compliant meal periods. Employees are entitled to a meal period of at least thirty (30) minutes per five (5) hours work period.

50. Pursuant to Labor Code §512 and the applicable Wage Order, employees are entitled to a meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff and the Class consistently worked over five (5) hours shifts without meal periods of at least thirty (30) minutes due to Defendants' policy of discouraging, dissuading and/or impeding Plaintiff and the Class from taking at least thirty (30) minute meal periods.

51. IWC Wage Order No. 16-2001 applies to Defendants and provides, in pertinent part, that if an employer fails to allow an employee to take meal periods in accordance with the applicable provisions of this Order, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided.

52. During the relevant statutory time period, Defendants failed to authorize and permit timely, duty-free, uninterrupted meal breaks. Plaintiff and Class members were routinely required

1 to work shifts exceeding five (5) hours without Defendants providing an uninterrupted, thirty (30)
2 minute meal break at the direction of Defendants and/or with Defendants' knowledge or
3 acquiescence.

4 53. By their actions in its failure to relieve Plaintiff and the Class members of their
5 duties for uninterrupted, thirty (30) minute meal periods, Defendants have violated California
6 Labor Code §226.7 and §11 of IWC Wage Order No. 16-2001 and are liable to Plaintiff and the
7 Class.

8 54. Pursuant to Labor Code §226.7, Plaintiff and the Class are entitled to damages in
9 an amount equal to one (1) hour of wages at the regular rate of pay per missed meal break per day,
10 in a sum to be proven at trial.

11 55. Pursuant to Labor Code §218.5, Plaintiff and the Class seek attorney's fees and
12 costs for the non-payment of these wages of one (1) hour of pay at no less than the regular rate of
13 compensation. *Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132.

14 56. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
15 Members seek recovery of pre-judgment interest on all amounts recovered herein.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REST PERIODS**

18 **Violation of Labor Code §§226.7, 512 & Wage Order 16-2001**

19 (Against all Defendants)

20 57. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
21 paragraphs 1 through 36 of this Complaint.

22 58. Labor Code §226.7(b) provides that "An employer shall not require an employee
23 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
24 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
25 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

26 59. Labor Code §516 provides that the Industrial Welfare Commission "may adopt or
27 amend working condition orders with respect to break periods, meal periods, and days of rest for
28 any workers in California consistent with the health and welfare of those workers."

1 60. IWC Wage Order No. 16-2001 provides, in pertinent part, that if an employer fails
2 to allow an employee to take rest periods in accordance with the applicable provisions of this
3 Order, the employer shall pay the employee one hour of pay at the employee's regular rate of
4 compensation for each workday that a rest period was not provided. The authorized rest period is
5 based on the total hours worked daily at the rate of ten minutes net rest time per four hours or
6 major fraction thereof.

7 61. Section §12 of the IWC Wage Order No. 16-2001 states: "Every employer shall
8 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
9 middle of each work period. The authorized rest period time shall be based on the total hours
10 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
11 thereof. However, a rest period need not be authorized for employees whose total daily work time
12 is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
13 worked for which there shall be no deduction from wages."

14 62. Defendants, and each of them, failed and/or refused to implement a relief system
15 by which Plaintiff and the Class members could receive paid non-captive, ten (10) minute rest
16 breaks and/or work free of interruption for every four (4) hours worked, or major fraction thereof.
17 By and through their actions, Defendants intentionally and improperly denied rest periods to the
18 Plaintiff and Class members in violation of Labor Code §§226.7 and 512.

19 63. During the relevant time period, Defendants failed to authorize and permit non-
20 captive, rest breaks and the Class members, including Plaintiff, were routinely required to work
21 through or without rest breaks at the direction of Defendants and/or with Defendants knowledge
22 or acquiescence.

23 64. Labor Code §226.7(b) and Section 12(B) of the Wage Order require an employer
24 to pay one additional hour of compensation, at the regular rate of pay, per day for each rest period
25 the employer failed to provide pursuant to the Labor Code and/or applicable Wage Order.

26 65. Plaintiff and the Class members were entitled to a non-captive, duty-free, paid rest
27 period of not less than ten (10) minutes for every four hours worked or major fraction thereof, or
28 premium pay remedy of one hours pay at the regular rate of pay for each day in lieu of the same.

1 66. During the relevant time period, Defendants failed to provide legally compliant
2 non-duty free ten (10) minute paid rest periods to Plaintiff and the Class members and/or
3 Defendants failed to provide the requisite premium pay remedy for non-compliant and/or missed
4 rest periods.

5 67. As such, as a matter of Defendants' established company policy, Defendants failed
6 to authorize and permit all required paid rest periods established by Labor Code §§226.7 and 516
7 and Section 12 of the applicable Wage Order.

8 68. As a result of the unlawful acts of Defendants, Plaintiff and the Class members have
9 been deprived of legally compliant paid rest breaks and are entitled to recover damages under
10 Labor Code §226.7(b) and §12 of IWC Wage Order No. 16-2001 in the amount of one additional
11 hour of compensation at their regular rate of pay for each day a paid rest break was not provided.

12 69. Pursuant to Labor Code §218.5, Plaintiff and the Class seek attorney fees and costs
13 for the non-payment of these wages of one (1) hour of pay at no less than the regular rate of
14 compensation. *Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132.

15 70. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
16 Members seek recovery of pre-judgment interest on all amounts recovered herein.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

19 **Violation of Labor Code §226**

20 (Against all Defendants)

21 71. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
22 paragraphs 1 through 36 of this Complaint.

23 72. California Labor Code §226 provides:

24 (a) Every employer shall, semimonthly or at the time of each payment of wages,
25 furnish each of his or her employees, either as a detachable part of the check, draft,
26 or voucher paying the employee's wages, or separately when wages are paid by
27 personal check or cash, an accurate itemized statement in writing showing (1) gross
28 wages earned, (2) total hours worked by the employee, except for any employee
whose compensation is solely based on a salary and who is exempt from payment
of overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission, (3) the number of piece-rate units earned and any

1 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
2 provided that all deductions made on written orders of the employee may be
3 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
4 the period for which the employee is paid, (7) the name of the employee and only
5 the last four digits of his or her social security number or an employee identification
6 number other than a social security number, (8) the name and address of the legal
7 entity that is the employer..., and (9) all applicable hourly rates in effect during the
8 pay period and the corresponding number of hours worked at each hourly rate by
9 the employee...

73. Section 7(A) of the Wage Order requires accurate information pertaining to total
wages paid each payroll period, total hours worked in the payroll period and applicable rates of
pay, and incentive plan formula provided to the employees.

74. Labor Code §226(e) provides that an employee is entitled to recover the greater of
all actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226
occurs and one hundred dollars (\$100) for each subsequent pay period not to exceed an aggregate
penalty of four thousand dollars (\$4,000), as well as an award of costs and reasonable attorneys'
fees, for all pay periods in which the employer knowingly and intentionally failed to provide timely
and accurate itemized statements to the employees.

75. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
and intentional failure to provide accurate itemized wage statements as Plaintiff and the Class
member were owed but not paid overtime compensation for all hours worked, and premium
payments for rest and meal period violations which were not reflected on the wage statements.
Plaintiff and the Class members suffered injury as a reasonable person could not promptly and
easily determine from the wage statements alone the accurate amount of gross wages, the net wages
earned for the pay period, and the applicable hourly rates at the corresponding hours worked.

76. At all material times, Defendants knowingly and intentionally failed to provide
Plaintiff and Class Members with accurate wage statements reflecting the gross wages earned, net
wages earned, and/or meal and rest period premium payments on the wage statement.

77. Plaintiff and the Class members are entitled to the greater of actual damages or
statutory penalties pursuant to Labor Code §226(e) for these violations, in an amount to be
determined at trial.

1 78. Plaintiff and the Class members are entitled to and seek costs and reasonable
2 attorneys' fees pursuant to Labor Code §226(e).

3 79. Plaintiff further seeks injunctive relief and reasonable attorneys' fees and costs
4 pursuant to Labor Code §226(h).

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

7 **Violation of Labor Code §§201, 203**

8 (Against all Defendants)

9 80. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
10 paragraphs 1 through 36 of this Complaint.

11 81. Plaintiff and the Class members whose employment ended with Defendants during
12 the relevant time period were entitled to be promptly paid all earned and unpaid wages at the time
13 of termination, as required pursuant to Labor Code §§201 and 202, *et seq.* Defendants refused
14 and/or intentionally failed to promptly compensate Plaintiff and the other Class members all earned
15 overtime wages, rest period premium pay and/or meal period premium pay. Based on this Plaintiff
16 and the Class members seek and are entitled to damages in the form of statutory waiting time
17 penalties pursuant to LC §203.

18 82. Plaintiff and the Class members whose employment terminated during the relevant
19 time period were employees of Defendants covered by Labor Code §203.

20 83. Accordingly, pursuant to Labor Code §203, Plaintiff and the Class members are
21 entitled to waiting time penalties at an amount to be proven at trial.

22 **SIXTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION**

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

25 (Against all Defendants)

26 84. Plaintiff and the class re-allege and incorporate by reference and re-allege each and
27 every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint
28 as if fully set forth herein.

1 85. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
2 least since four (4) years before the filing of this action, Defendants have engaged in a pattern and
3 practice of acts of unfair competition in violation of B&PC §17200, including the practices alleged
4 herein.

5 86. Defendants, and each of them, are “persons” as defined by Business and
6 Professions Code §17201.

7 87. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff sues
8 on his own behalf and on behalf of the current, former, and future employees of the Defendants
9 that were denied overtime pay and required to work shifts without legally compliant meal and/or
10 rest breaks periods, due to Defendants’ unfair business practices.

11 88. Plaintiff and the Class have suffered injuries-in-fact and have lost money as a result
12 of the Defendants’ unfair competition alleged herein.

13 89. Defendants have previously or continue to engage in unlawful, unfair, and/or
14 fraudulent business practices, as alleged in this Complaint, in violation of California’s B&PC
15 §17200 *et seq.* by:

- 16 a. Failing and refusing to pay the class, including Plaintiff, earned overtime wages in
17 violation of Labor Code §§510, 1194 and the IWC Wage Order 16-2001;
- 18 b. Failing and refusing to provide Plaintiff and the Class members legally compliant,
19 uninterrupted, timely meal breaks or premium payments, at the regular rate of pay,
20 for said violations in violation of Labor Code §§226.7, 512 and IWC Wage Order
21 No. 16-2001;
- 22 c. Failing and refusing to provide Plaintiff and the Class members legally compliant
23 non-captive, duty-free, paid, ten-minute rest periods or premium payments, at the
24 regular rate of pay, for said violations in violation of Labor Code §§226.7, 512 and
25 IWC Wage Order No. 16-2001;

26 90. All of these allegations constitute unfair business practices and/or unlawful
27 business practices in violation of California B&PC §17200, *et seq.*

28 91. Defendants have avoided payment of wages, overtime wages and other benefits as

1 required by the California Labor Code, the California Code of Regulations and applicable IWC
2 Wage Orders. As a result of Defendants' unfair business practices, Defendants have reaped unfair
3 benefits and illegal profits at the expense of Plaintiff, the Class members, and others similarly
4 situated, and the members of the public. Defendants should be made to disgorge their ill-gotten
5 gains and to restore them to the Class, including Plaintiff.

6 92. Plaintiff and the Class members seek full restitution of said monies, as necessary
7 and according to proof, to restore any and all monies withheld and/or acquired by Defendants by
8 means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff
9 seeks, on behalf of all current and former employees of Defendants, restitution of monies retained
10 by Defendants. Plaintiff further seeks on behalf of himself and the Class members, the appointment
11 of a receiver, as necessary, to establish the total restitutionary relief from Defendants. The
12 restitution includes all wages withheld by Defendants as a result of the unfair, unlawful, and/or
13 fraudulent business practices; including interest thereon. Absent a statutory provision specifically
14 governing the type of claim at issue, the prejudgment interest rate is 10 percent. The acts
15 complained of herein occurred, at least in part, within the last four (4) years preceding the filing
16 of the Complaint.

17 93. Plaintiff is informed and believes and thereon alleges that at all times herein
18 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
19 prohibited by California B&PC §17200, thereby depriving their employees and the Class
20 members, the minimum working condition, standards and conditions due to them under the
21 California labor laws and Industrial Welfare commission wage orders as specifically described
22 herein. Plaintiff further seeks an order requiring Defendants to identify by full name, telephone
23 number, and last known address employees who worked or still work for Defendants for the Class
24 members from four (4) years preceding the filing of the original Complaint through the date of
25 class certification. Plaintiff further seeks an order requiring Defendants to timely pay restitution
26 to all current and former employees, including back wages, and interest.

27 94. By and through its unfair, unlawful, and/or fraudulent business practices and acts
28 described herein, Defendants have obtained valuable services from Plaintiff and all persons

1 similarly situated, and has deprived Plaintiff and all persons similarly situated of valuable rights
2 and benefits guaranteed by law, all to their detriment.

3 95. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
4 to and do seek such relief as may be necessary to restore to them the money and property which
5 Defendants have acquired, or of which Plaintiff and class members have been deprived by mean
6 of the herein described unfair, unlawful, and/or fraudulent business practices.

7 96. Plaintiff, and all persons similarly situated, and all persons in interest, are further
8 entitled to and do seek a declaration that the above-described business practices are unfair,
9 unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein
10 described unfair, unlawful, and/or fraudulent business practices.

11 97. Plaintiff and the Class members request attorney's fees and costs pursuant to Code
12 of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class
13 and the public.

14 **SEVENTH CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

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

17 (Against all Defendants)

18 98. Plaintiff on behalf of himself and on behalf of all other aggrieved employees herein
19 re-alleges and incorporates each and every one of the allegations in the preceding paragraphs as if
20 fully set forth herein.

21 99. Labor Code §§2698-2699, the Labor Code Private Attorney General Act of 2004,
22 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
23 Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or
24 employees for a violation of the Labor Code, may be recovered through a civil action by an
25 aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current
26 or former employees.

27 100. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
28 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized

1 to exercise the same discretion, subject to the same limitations and conditions to assess a civil
2 penalty.

3 101. Plaintiff and Defendants' non-exempt hourly employees who who work/worked as
4 an operator and/or laborer and/or pipe tradesman and/or pipelayer and/or plumber and/or foreman
5 employees are "aggrieved employees" as defined by Labor Code §2699, in that they are all current
6 or former employees of Defendants, and one or more of the alleged violations was committed
7 against them.

8 102. Plaintiff gave written notice electronically to the LWDA on or about July 12, 2024,
9 and by certified mail to Defendants on or about July 16, 2024 of the specific provisions of this
10 code alleged to have been violated, including the facts and theories to support the alleged violations
11 as required by Labor Code §2699.3. More than 65 days have lapsed since notice to the LWDA and
12 the LWDA has not indicated that it intends to investigate Defendants' Labor Code violations.
13 Accordingly, Plaintiff may commence a civil action to recover civil penalties for himself and other
14 current and former employees under Labor Code §2699 pursuant to §2699.3.

15 103. Plaintiff asserts all the claims in this Complaint against Defendants, individually
16 and on behalf of all aggrieved employees in their capacity as private attorney general and seeks all
17 applicable civil penalties available under the Labor Code.

18 104. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of all aggrieved
19 employees, requests and seeks to recover from the Defendants for: unpaid overtime and double
20 time wages, meal and rest period violations, wage statement violations, and waiting time penalties
21 according to proof. Plaintiff is further entitled to attorneys' fees and costs pursuant to Labor Code
22 §2699(k)(1), as well as all civil penalties, including, but not limited to:

- 23 a. Penalties under Code of Regulations, Title 8 §11010 in the amount of \$50
24 for each aggrieved employee per pay period for the initial violation, and
25 \$100 for each aggrieved employee per pay period for each subsequent
26 violation;
- 27 b. Penalties under Labor Code §558, in addition to and entirely independent
28 and apart from other penalties provided under the Labor Code, in the

1 amount of \$50 for each underpaid aggrieved employee for each pay period
2 the aggrieved employee was underpaid in addition to an amount sufficient
3 to recover underpaid wages, and \$100 for each subsequent violation for
4 each underpaid employee for each pay period for which the employee was
5 underpaid in addition to an amount sufficient to recover underpaid wages,
6 with all wages recovered pursuant to Labor Code §558 provided to the
7 affected employees;

- 8 c. Penalties under Labor Code §2699(f)(2)(A), in addition to and entirely
9 independent and apart from other penalties provided in the Labor Code and
10 for Labor Code violations without a specific civil penalty, in the amount of
11 \$100 for each aggrieved employee per pay period for each violation, or
12 pursuant to Labor Code §2699(f)(2)(B) for \$200 for each aggrieved
13 employee per pay period for each violation;

14 105. Any and all additional civil penalties and sums as provided by the Labor Code
15 and/or other statutes.

16 106. Plaintiff seeks and is entitled to have 75% of all penalties obtained be allocated to
17 the LWDA and 25% to aggrieved employees.

18 107. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and costs
19 pursuant to Labor Code §§2699(k)(1).

20 **IV. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment as follows:

- 22 1. An order that the action be certified as a class action;
23 2. An order that Plaintiff be appointed class representative;
24 3. An order that counsel for Plaintiff be appointed class counsel;
25 4. An order requiring Defendants to identify, by name, email address, address and
26 telephone number all current and former California hourly non-exempt employees
27 of Defendants who worked as an operator and/or laborer and/or pipe tradesman
28 and/or pipelayer and/or plumber and/or foreman for Defendants at any time from

- four (4) years prior to the filing of this action through the date of class certification;
5. For all unpaid wages due to Plaintiff and each Class member and liquidated damages, in amounts to be proven at trial;
 6. For restitution of all unpaid wages due Plaintiff and each Class member;
 7. For the full amount of unpaid overtime wages due to Plaintiff and each class member pursuant to Labor Code §1194;
 8. For recovery as authorized by Labor Code §226(e);
 9. For all applicable statutory penalties, in amounts to be proven at trial;
 10. For all applicable civil penalties, in amounts to be proven at trial;
 11. For an award of waiting time penalties pursuant to section 203 of the California Labor Code, in amounts to be proven at trial;
 12. For general damages including compensatory damages according to proof;
 13. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) and Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
 14. For all applicable interest on damages, wages, expenses, and penalties due;
 15. For injunctive relief to prevent further violations of the California Labor Code;
 16. For declaratory relief that Defendants engaged in unfair practices;
 17. For declaratory relief that Defendants violated Labor Code §§ 201-203, 226, 226.7, 510, 512, and 1194;
 18. For restitution of all moneys due to Plaintiffs and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
 19. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant meal break was not provided, impeded, discouraged, and/or dissuaded;
 20. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant rest break was not provided, impeded,

discouraged, and/or dissuaded;

21. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and (h), 218.5, 1194(a), 2699(k)(1), Code of Civil Procedure §1021.5, *et seq.*, and all other applicable law;

22. On behalf of Plaintiff and all other aggrieved employees and the LWDA, for all civil penalties authorized by LC §2699, including but not limited to:

a. For civil penalties pursuant to LC §558 as follows:

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

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

b. For civil penalties per Code of Regulations, Title 8 §11010 in the amount of \$50 for each aggrieved employee per pay period for the initial violation, and \$100 for each aggrieved employee per pay period for each subsequent violation;

c. For civil Penalties under Labor Code §2699(f)(2)(A), in addition to and entirely independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, or pursuant to Labor Code §2699(f)(2)(B) for \$200 for each aggrieved employee per pay period for each violation and;

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1 23. For all such other and further relief that the Court may deem just and proper.

2 Date: 10/7/24

THE MYERS LAW GROUP, A.P.C.

3
4 By: 

5 David P. Myers,
6 Jason Hatcher,
7 Andriana N. Bravo
8 Attorneys for Plaintiff and all others similarly situated
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