

01/02/2025

By: A. Turner Deputy

Nazo Koulloukian, SBN 263809

nazo@koullaw.com

KOUL LAW FIRM, APC

217 South Kenwood Street

Glendale, CA 91205

(213) 325-3023

Facsimile: (818) 561-3938

Attorneys for Plaintiff,
GERMAN GIL MENDEZ,
and all putative class members

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

GERMAN GIL MENDEZ, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

D & J PLUMBING, INC. a California
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: 24CV024048

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

- 1. Failure to Pay For All Hours Worked,
Including Overtime Hours Worked**
- 2. Failure to Pay All Wages Owed Twice
Per Month**
- 3. Failure to Pay Minimum Wage**
- 4. Failure to Pay Wages Due Upon
Termination**
- 5. Failure to Provide Rest Breaks**
- 6. Failure to Provide Timely Meal
Breaks**
- 7. Failure to Provide Proper Cool-Down
Rest Periods**
- 8. Failure to Reimburse For Required
Business Expenses**
- 9. Failure to Provide Accurate Itemized
Wage Statements & Violation of
Record Keeping Requirements**
- 10. Unlawful Business Practices Bus &
Prof. Code §17200**
- 11. Private Attorneys General Act
Penalties (Lab. Code §2699)**

1 Plaintiff GERMAN GIL MENDEZ, individually, and on behalf of all others similarly
2 situated, all aggrieved employees, and as a Private Attorney General for the State of California
3 (collectively “Plaintiff”), alleges as follows:

4 NATURE OF THE ACTION

5 1. This is an employment class action on behalf of over 100 hourly, non-exempt employees
6 against their employer for violations of numerous wage and hour laws. Plaintiff brings this
7 employment class action complaint on behalf of himself, and all others similarly situated, all
8 aggrieved employees, and as a Private Attorney General for the State of California against D & J
9 PLUMBING, INC. and DOES 1-50, inclusive, (hereafter collectively “Defendant” or
10 “Defendants”).

11 2. Defendant D & J PLUMBING, INC. is a plumbing company, doing business in
12 California. Plaintiff GERMAN GIL MENDEZ worked for Defendant as a plumber on an hourly,
13 non-exempt basis until April 26, 2024. Plaintiff and the proposed class earn at or near minimum
14 wage.

15 3. As described further below, Defendant has violated the California Labor Code by (1)
16 failing to pay for all hours worked, including overtime hours worked (§218, 510, 558, 1194, 1197,
17 1198, 1199, Wage Order 4); (2) failing to pay all wages owed twice per month (§204, 210); (3)
18 failing to pay minimum wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199);
19 (4) failing to pay wages due upon termination (§201, 202, 203, 227.3, 256); (5) failing to provide
20 rest breaks (§226, 226.7, 512, 558, 1198, 2350, 6300, 6310, 6400, and 8 CCR §3457); (6) failing
21 to provide timely meal breaks (§226, 226.7, 512, 558, 1198); (7) failing to provide proper cool-
22 down rest periods (§226.7); (8) failing to reimburse for required business expenses (§1198, 2802);
23 (9) failing to provide accurate itemized wage statements and violating record keeping requirements
24 (§226, 246, 248, 1174, 1174.5); (10) unlawful and unfair business practices (Bus. & Prof. Code
25 §17200, *et. seq.*) and (11) penalties under the Private Attorneys General Act (“PAGA”), Labor
26 Code §2698 et seq. Attorney General Act (“PAGA”), Labor Code §2698 et seq.

27 4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)
28 §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period

1 penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and
2 reasonable attorneys' fees and costs. Pursuant to the class action procedures provided for under
3 California law, Plaintiff, on behalf of himself and proposed Class Members and aggrieved
4 employees (also referred to as "Class"), also seeks injunctive relief and restitution of all benefits
5 Defendant has received from their unlawful actions as alleged herein. Plaintiff has also provided
6 notice of these claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development
7 Agency ("LWDA") and now brings this First Amended Complaint, including claims for civil
8 penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 *et seq.* Attorney
9 General Act ("PAGA"), Labor Code §2698 *et seq.*

10 5. The "Class Period" is designated as the four-year period prior to the filing of this
11 Complaint through the date of the final disposition of this action. From the start of the Class Period
12 through the present, Defendant has had a policy and/or practice of among other violations: late
13 and/or interrupted meal breaks, untimely and/or interrupted rest breaks, issuing inaccurate wage
14 statements, and ignoring and violating California wage and hour laws, in their business as more
15 fully set forth below.

16 6. The "PAGA Period" is defined herein commences one year prior to the date of filing the
17 PAGA Notice letter with the LWDA.

18 7. Defendant has treated all persons employed in California in such a way as to violate
19 California's laws governing conditions of employment and payment of wages owed. Plaintiff
20 asserts that Defendant has knowingly and with conscious disregard of the law refused to pay the
21 Class Members and aggrieved employees all wages owed, including overtime wages and meal and
22 rest break penalty wages. Defendant has violated numerous Labor Code provisions, as set forth
23 herein. Class Members and aggrieved employees are owed their back pay, plus interest and/or
24 premiums and penalties under Business and Professions Code section 17203 to compensate Class
25 Members and aggrieved employees for the delay in receiving wages due.

26 8. Defendant, by and through their actions, has engaged in unfair competition, requiring
27 restitution to persons affected and disgorgement of profits so obtained.
28

1 **THE PARTIES**

2 9. Plaintiff GERMAN GIL MENDEZ is an individual who resides in California and
3 worked for Defendant as a plumber on an hourly, non-exempt basis until April 26, 2024.

4 10. Defendant D & J PLUMBING, INC. is a California corporation doing business in
5 California with the capacity to sue and to be sued and doing business, in Sacramento County, State
6 of California. Defendant exercised control over the wages, hours, and/or working conditions of
7 Plaintiff and members of the proposed class throughout the liability period.

8 11. Defendant Does 1-50, inclusive, are sued herein under fictitious names. Their true
9 names and capacities are unknown to Plaintiff. When their true names and capacities are
10 ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein.
11 Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendant
12 is responsible in some manner for the occurrences herein alleged, and that the damages sustained
13 by Plaintiff, Class Members and aggrieved employees herein alleged were proximately caused by
14 such Doe Defendants.

15 12. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
16 indirectly, or through agents or other persons, employed Plaintiff and other members of the Class,
17 and exercised control over their wages, hours, and working conditions. Plaintiff is informed and
18 believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the
19 agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
20 pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

21 **JURISDICTION AND VENUE**

22 13. Venue is proper in this judicial district because Defendant conducts business in this
23 County and Defendant has legal obligations to Plaintiff and many of the Class Members and
24 aggrieved employees in this case that arose in this county.

25 14. The monetary damages, restitution, and statutory penalties sought by Plaintiff exceed
26 the minimal jurisdictional limits of the Superior Court and will be established according to proof
27 at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in
28

controversy, including claims for monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars (\$25,000) and less than five million dollars (\$5,000,000).

15. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

CLASS AND REPRESENTATIVE ACTION ALLEGATIONS

16. During the Class Period, Defendant committed various violations of the California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in more detail. Defendant enforces multiple policies that violate state law which are intended to increase its own profits to the detriment of its employees.

17. Plaintiff, aggrieved employees and the putative class are employees of Defendant.

18. Defendant failed to (1) pay for all hours worked, including overtime hours worked (§218, 510, 558, 1194, 1197, 1198, 1199, Wage Order 4); (2) pay all wages owed twice per month (§204, 210); (3) pay minimum wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199); (4) pay wages due upon termination (§201, 202, 203, 227.3, 256); (5) provide rest breaks (§226, 226.7, 512, 558, 1198, 2350, 6300, 6310, 6400, and 8 CCR §3457); (6) provide timely meal breaks (§226, 226.7, 512, 558, 1198); (7) provide proper cool-down rest periods (§226.7); (8) reimburse for required business expenses (§1198, 2802); (9) provide accurate itemized wage statements and violating record keeping requirements (§226, 246, 248, 1174, 1174.5); (10) unlawful and unfair business practices (Bus. & Prof. Code §17200, *et. seq.*). These practices also constitute unlawful and unfair business practices. These policies and practices have deprived Plaintiff, Class Members, and Aggrieved Employees of payment for all hours worked, and further damages, as set forth below, and render Defendant liable for damages, including penalties under PAGA.

19. Failure to pay for all hours worked, including overtime hours worked. Defendant on occasions subject to proof failed to properly calculate and pay overtime compensation. Defendant on occasions subject to proof failed to provide a compliant time recording where employees could clock in and out of their shifts to properly record the hours they worked. Instead, Defendant told

1 Plaintiff and his coworkers what job site to report to and paid them from scheduled shift start and
2 end times. Defendant has also on occasions subject to proof failed to pay the required minimum
3 wage for all hours worked and have failed to pay all wages owed twice per month.

4 20. Failure to pay wages due upon termination. Defendant on occasions subject to proof
5 failed to pay all wages owed twice per month.

6 21. Failure to pay minimum wage. Defendant on occasions subject to proof failed to pay a
7 minimum wage.

8 22. Failure to pay wages due upon termination. Defendant on occasions subject to proof
9 failed to pay all wages owed upon termination.

10 23. Rest Breaks. Defendant on occasions subject to proof failed to maintain a policy and
11 practice that provides its employees with off-duty rest periods as required by California law.

12 24. Meal Breaks. Defendant on occasions subject to proof failed to maintain a policy and
13 practice that provides its employees with timely meal breaks as required by California law.

14 25. Cool-down rest periods. Defendant on occasions subject to proof also failed to provide
15 proper cool-down rest periods.

16 26. Business Expenses. Defendant on occasions subject to proof failed to reimburse for
17 required business expenses. Plaintiff, Class Members and aggrieved employees used their personal
18 cell phone for work-related communicating or for navigations. In addition to their personal cell
19 phones, Plaintiff and his coworkers were also required to use their own personal vehicles and
20 purchase work tools for business-related purposes. Defendant failed to pay any amount for the
21 required use of Plaintiff, Class Members and aggrieved employees' personal phones.

22 27. Inaccurate Wage Statements. Defendant failed to consistently provide timely, accurate,
23 itemized wage statements to employees, as well as maintain accurate records, in accordance with
24 Labor Code §§ 226 and 1174.

25 28. Unfair Business Practices. Based upon the above allegations, Defendant from time to
26 time engaged in unfair competition.
27
28

1 29. Plaintiff brings this action on behalf of himself, and all other persons similarly situated,
2 to recover from Defendant for failure to comply with California wage and hour laws, and for claims
3 under Business and Professions Code § 17200.

4 30. This action has been brought and may properly be maintained as a class action
5 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
6 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of 100
7 employees who have been similarly injured by Defendant's unlawful employment policies and
8 practices.

9 31. The "Relevant Time Period" or proposed "Class Period" as defined herein commences
10 four years prior to the date of filing this Complaint.

11 32. The "PAGA Period" is defined herein commences one year prior to the date of filing
12 the PAGA Notice letter with the LWDA.

13 33. The PAGA Class, also referred to herein as "aggrieved employees": "All current and
14 former hourly, non-exempt employees of Defendant in California, at any time from one year prior
15 to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter."
16 Plaintiff reserves the right to amend or modify the definition of aggrieved employees with respect
17 to the issues or in any other way.

18 34. Plaintiff brings this action on his behalf and as a class action under Cal. Code of Civil
19 Procedure §382 on behalf of the following defined groups:

20 35. Proposed Class: "All persons who are employed or have been employed by Defendant
21 in the State of California as hourly, non-exempt workers during the period of the relevant statute
22 of limitations."

23 36. Proposed Sub-classes are defined as follows:

24 A. All persons who are employed or have been employed by Defendant in the State
25 of California as hourly, non-exempt workers during the period of the relevant
26 statute of limitations, who worked one or more shift in excess of five (5) hours.
27
28

- 1 B. All persons who are employed or have been employed by Defendant in the State
2 of California as hourly, non-exempt workers during the period of the relevant
3 statute of limitations, who worked one or more shifts in excess of six (6) hours.
- 4 C. All persons who are employed or have been employed by Defendant in the State
5 of California as hourly, non-exempt workers during the period of the relevant
6 statute of limitations, who worked one or more shifts in excess of eight (8)
7 hours.
- 8 D. All persons who are employed or have been employed by Defendant in the State
9 of California as hourly, non-exempt workers during the period of the relevant
10 statute of limitations, who worked one or more shifts in excess of three and one-
11 half hours (3 ½), but less than or equal to six (6) hours.
- 12 E. All persons who are employed or have been employed by Defendant in the State
13 of California as hourly, non-exempt workers during the period of the relevant
14 statute of limitations, who worked one or more shifts in excess of six (6) hours,
15 but less than or equal to ten (10) hours.
- 16 F. All persons who are employed or have been employed by Defendant in the State
17 of California as hourly, non-exempt workers during the period of the relevant
18 statute of limitations, who were paid sick pay.
- 19 G. All persons who are employed or have been employed by Defendant in the State
20 of California as hourly, non-exempt workers during the period of the relevant
21 statute of limitations, who separated their employment from Defendant.
- 22 H. All persons who are employed or have been employed by Defendant in the State
23 of California as hourly, non-exempt workers during the period of the relevant
24 statute of limitations, who received pay for one or more pay periods.

25 37. This action is brought, and may properly be maintained, as a class action under CCP
26 §382 and/or a representative action under Business & Professions Code §§17200 et seq. and Labor
27 Code §2699 because there is a well-defined community of interest in the litigation, and the
28 proposed Class, PAGA Class, and Subclasses (collectively “Class”) are easily ascertainable.

1 38. Numerosity: The Proposed Class is so numerous that joinder of all members is
2 impractical. Plaintiff is informed and believes, and on that basis alleges, that during the relevant
3 time period, Defendant employed over 100 putative Class Members who are geographically
4 dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only
5 available method for the fair and efficient adjudication of this controversy. Membership in the
6 Proposed Class can be easily ascertained by an examination and analysis of employee and payroll
7 records, among other records within Defendant's possession and control.

8 39. Typicality: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff,
9 like others similarly situated, was subjected to Defendant's common, unlawful policies, practices,
10 and procedures described above. The Plaintiff's positions at the company was typical of those of
11 other Class Members. Plaintiff's claims are typical of the claims of each Class Member because
12 each have sustained damages arising out of and caused by Defendant's common course of conduct,
13 as alleged herein. As such, Plaintiff has the same interests in this matter as all members of the
14 Class.

15 40. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of
16 the Class. Plaintiff has retained counsel competent and experienced in complex class actions and
17 California labor and employment litigation.

18 41. Commonality: Common questions of law and fact exist, including but not limited to
19 the following:

- 20 i. Whether Defendant violated wage and hour laws by failing to pay overtime
21 wages;
- 22 ii. Whether Defendant violated wage and hour laws by failing to pay all wages
23 due twice per month;
- 24 iii. Whether Defendant violated wage and hour laws by failing to pay minimum
25 wage;
- 26 iv. Whether Defendant violated wage and hour laws by failing to pay all wages
27 due upon termination;
- 28

- v. Whether Defendant violated wage and hour laws by failing to provide rest breaks;
- vi. Whether Defendant's policy and practice concerning rest breaks was unlawful;
- vii. Whether Defendant violated wage and hour laws by failing to provide uninterrupted meal breaks;
- viii. Whether Defendant's policy and practice concerning meal breaks was unlawful;
- ix. Whether Defendant violated wage and hour laws by failing to proper cool-down rest periods;
- x. Whether Defendant violated wage and hour laws by failing to reimburse for required business expenses;
- xi. Whether Defendant unlawfully failed to keep and furnish Class Members with accurate, itemized records of hours worked, in violation of Labor Code §§ 226 and 1174;
- xii. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, the Class Members, and Subclass Members;
- xiii. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xiv. Whether Defendant, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xv. Whether Defendant's conduct was willful and reckless;
- xvi. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or other compensation; and
- xvii. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

42. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning employees who rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

43. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendant's corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

44. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules of Court, that the absent Class and Subclass Members be notified by the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The names and address of the Class and Subclass Members are available from Defendant.

FIRST CAUSE OF ACTION

**FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS
WORKED**

Cal. Labor Code §§ 218, 510, 558, 1194, 1197, 1198, 1199, Wage Order 4
(Plaintiff Against Defendant)

1 45. Plaintiff incorporates by reference in this cause of action each allegation of the
2 preceding paragraphs as though fully set forth herein.

3 46. Defendant's conduct described in this complaint from time to time violates the
4 provisions of Labor Code §§ 218, 510, 558, 1194, 1197, 1198, 1199, Wage Order 4.

5 47. The Wage Orders define "hours worked" as "the time during which an employee is
6 subject to the control of an employer, and including all the time the employee is suffered or
7 permitted to work, whether or not required to do so." Defendant has been engaged in many
8 unlawful employment practices which resulted in underpayment for hours worked each pay period,
9 including overtime hours worked, as more fully set forth below.

10 48. Defendant failed to consistently provide a compliant time recording where employees
11 could clock in and out of their shifts to properly record the hours they worked. Instead, Defendant
12 instructed Plaintiff and his coworkers what job site to report to and paid them from scheduled shift
13 start and end times. Defendant has also failed to pay the required minimum wage for all hours
14 worked and have failed to pay all wages owed twice per month.

15 49. Plaintiff, Class Members and aggrieved employees have been employed under
16 conditions prohibited by the wage order, and thus Defendant has also violated §§1198 and 1199.

17 50. Off-the-Clock Hours Worked. Plaintiff, Class Members and aggrieved employees
18 frequently worked off the clock and were routinely subjected to periods wherein they were under
19 the Defendant's control but not compensated for their time. For example, Plaintiff would
20 occasionally be required to work extra time off-the-clock to finish a task if it was not finished
21 during his shift. Additionally, Plaintiff would often be contacted by Defendant before or after his
22 scheduled workhours.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES OWED TWICE PER MONTH**

25 Cal. Labor Code §§ 204, 210

26 (Plaintiff Against Defendant)

27 51. Plaintiff incorporates by reference in this cause of action each allegation of the
28 preceding paragraphs as though fully set forth herein.

1 52. Defendant's conduct described in this complaint from time to time violates the
2 provisions of Labor Code §§ 204, 210.

3 53. Defendant was required to pay Plaintiff, Class Members and aggrieved employees all
4 wages earned twice during each calendar month pursuant to Labor Code §204(a).

5 54. Defendant failed to pay all wages earned to employees as a result of the unlawful
6 employment policies and practices discussed herein. As a result of these practices, employees were
7 underpaid for hours worked, including overtime and penalty wages, and this underpayment
8 resulted in a failure to pay all wages owed twice per month.

9 55. Due to these failures, Defendant is liable under Labor Code §204, 210 for failure to
10 pay wages as required by law.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGE**

13 Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 119

14 (Plaintiff Against Defendant)

15 56. Plaintiff incorporates by reference in this cause of action each allegation of the
16 preceding paragraphs as though fully set forth herein.

17 57. Defendant's conduct described in this complaint from time to time violates the
18 provisions of Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199.

19 58. Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer
20 to suffer or permit a California employee to work without paying wages at the proper minimum
21 wage for all time worked as required by the applicable IWC Wage Order.

22 59. Defendant on occasions subject to proof failed to pay Plaintiff, Class Members and
23 aggrieved employees for all hours worked as a result of Defendant's practices described above.
24 Based on Defendant's unlawful conduct described herein, and because Plaintiff and the Class
25 Members and aggrieved employees were paid at or near minimum wage, employer's failure to pay
26 for all hours worked, including overtime, resulted in a payment of less than the minimum wage for
27 all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders.
28

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES DUE UPON TERMINATION**

3 Cal. Labor Code §§ 201, 202, 203, 227.3, 256

4 **(Plaintiff Against Defendant)**

5 60. Plaintiff incorporates by reference in this cause of action each allegation of the
6 preceding paragraphs as though fully set forth herein.

7 61. Defendant's conduct described in this complaint from time to time violates the
8 provisions of Labor Code §§ 201, 202, 203, 227.3, 256.

9 62. An employee who is discharged must be paid all of his or her wages, including accrued
10 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
11 forth above, Defendant on occasions subject to proof knowingly and willfully failed to pay all
12 compensation due and owing to Plaintiff at the time employment terminated.

13 63. Defendant willfully failed to pay employees who are no longer employed by it all
14 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
15 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days' pay
16 as waiting time under the terms of §203.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST BREAKS**

19 Cal. Labor Code §§ 226, 226.7, 512, 558, 1198, 2350, 6300, 6310, 6400, and 8 CCR §3457

20 **(Plaintiff Against Defendant)**

21 64. Plaintiff incorporates by reference in this cause of action each allegation of the
22 preceding paragraphs as though fully set forth herein.

23 65. Defendant's conduct described in this complaint from time to time violates the
24 provisions of Labor Code §§ 226, 226.7, 512, 558, 1198, 2350, 6300, 6310, 6400, and 8 CCR
25 §3457.

26 66. Defendant on occasions subject to proof failed to maintain a compliant rest period
27 policy and practice that provides its employees with off-duty rest periods as required by California
28 law.

1 67. Plaintiff reports that he and his coworkers on occasions subject to proof missed rest
2 periods as a result of Defendant's business practices, and that rest breaks were not scheduled into
3 daily shifts.

4 68. Rest periods were from time to time either less than ten minutes, not provided,
5 interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater
6 than six hours, as prescribed by California law because Defendant: (1) did not account for all hours
7 worked that were unaccounted for on their timecard; (2) did not adequately inform and train
8 employees about their rights to rest breaks and premium payments for non-compliant rest breaks;
9 (3) did not adequately inform and train employees about when, where and how to take timely and
10 uninterrupted ten-minute rest breaks; (4) because Defendant did not staff enough people to
11 schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at
12 various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a
13 lawfully compliant rest break policy.

14 69. The rest period requirement obligates employers to permit and authorize employees to
15 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
16 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
17 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's
18 regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted
19 rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC
20 Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance
21 with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of
22 pay at the employee's regular rate of compensation for each work day that the rest period is not
23 provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable
24 rest area. (*Id.* at 268) (relying on January 3, 1986, and February 22, 2002, DLSE Letters wherein
25 the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a
26 rest area and cannot include time it takes to get to and from the rest area). The employer must show
27 that it clearly articulates the right to a net ten minutes, which means it must clearly communicate
28 what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest

1 area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v.*
2 *Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to
3 clearly communicate the authorization and permission [to take rest periods] to their employees.”).

4 70. Defendant on occasions subject to proof did not authorize or permit all of its hourly
5 employees to take at least a ten-minute rest period in which they were relieved of all duties, for
6 every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and
7 the Wage Orders. When breaks were missed Defendant failed to pay the 1-hour penalty, as
8 required. Because Defendant violated the Wage Order, Defendant is liable under Labor Code
9 §1198.

10 71. Legally Compliant Bathrooms. California Labor Code §2350 requires employers to
11 provides that “[e]very factory, workshop, mercantile or other establishment in which one or more
12 persons are employed, shall be kept clean and free from the effluvia arising from any drain or other
13 nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet
14 facilities for the use of the employees.” Defendant violated §2350 by failing to provide bathrooms
15 for employees. Defendant further violated 8 CCR §3457(c) by failing to provide adequate toilet
16 and handwashing facilities.

17 72. Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times,
18 operational, maintained in a clean and sanitary condition, and kept in good repair. Written records
19 of service and maintenance shall be maintained and retained for two years.” Labor Code §6712
20 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair
21 at all times, including written records of that service and maintenance.” Moreover, “any employer
22 who fails to provide the facilities required by the field sanitation standard shall be assessed a civil
23 penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code
24 §6712. Further, the public policy of the State of California as codified, expressed and mandated in
25 Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps
26 to provide a safe and secure workplace.
27
28

1 73. Plaintiff reports that he and his coworkers were not consistently provided with
2 compliant restrooms or resting facilities during their workday or rest period, rendering rest periods
3 noncompliant on occasions when restrooms and suitable resting facilities were not available.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE TIMELY MEAL BREAKS**

6 Cal. Labor Code §§ 226, 226.7, 512, 558, 1198

7 **(Plaintiff Against Defendant)**

8 74. Plaintiff incorporates by reference in this cause of action each allegation of the
9 preceding paragraphs as though fully set forth herein.

10 75. Defendant's conduct described in this complaint from time to time violates the
11 provisions of Labor Code §§ 226, 226.7, 512, 558, 1198.

12 76. Labor Code §512 provides, "[a]n employer may not employ an employee for a work
13 period of more than five hours per day without providing the employee with a meal period of not
14 less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee
15 to work during any meal... period mandated by an applicable order of the Industrial Welfare
16 Commission." Paragraph 11 of the Wage Order provides, in pertinent part, "[u]nless an employee
17 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
18 duty' meal period and counted as time worked."

19 77. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
20 "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code
21 §§226.7 and 512. Defendant failed to pay all penalty pay to Plaintiff or Class Members and
22 aggrieved employees for noncompliant meal periods. As a derivative claim, Plaintiff alleges that
23 pay statements were inaccurate, failing to include required meal period penalties, thus failing to
24 meet the requirements of Labor Code §226(a).

25 78. In this case, Plaintiff and Plaintiff's coworkers on occasions subject to proof missed
26 their first and second meal periods. When meals periods were provided, they were often late, short,
27 and/or interrupted.
28

1 79. Full, uninterrupted, off-duty, thirty-minute meal periods were not consistently provided
2 because Defendant: (1) did not account for all hours worked that were unaccounted for on their
3 timecard; (2) did not adequately inform and train employees about their rights to meal periods and
4 premium payments for non-compliant meal periods; (3) did not adequately inform and train
5 employees about when, where and how to take timely and uninterrupted thirty-minute meal
6 periods; (4) because Defendant did not staff enough people to schedule all timely and uninterrupted
7 thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-
8 exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy;
9 and/or (6) because Defendant unlawfully shaved and/or rounded clock in and clock out times for
10 meal periods. Employees were not paid a premium payment, paid as an hour's wage when meal
11 periods were not given to them in compliance with California law.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE PROPER COOL-DOWN REST PERIODS**

14 Cal. Labor Code §§ 226.7

15 (Plaintiff Against Defendant)

16 80. Plaintiff incorporates by reference in this cause of action each allegation of the
17 preceding paragraphs as though fully set forth herein.

18 81. Defendant's conduct described in this complaint from time to time violates the
19 provisions of Labor Code §§ 226.7.

20 82. Labor Code section 226.7, subdivision (c) provides:

21 A. If an employer fails to provide an employee a... recovery period in
22 accordance with a state ., law, including, but not limited to an applicable statute
23 or applicable regulation, standard, or order of the Occupational Safety and
24 Health Standards Board, or the Division of Occupational Safety and Health, the
25 employer shall pay the employee one additional hour of pay at the employee's
26 regular rate of compensation for each workday that the meal or rest or recovery
27 period is not provided.
28

1 83. Defendant required Plaintiff, Class Members and aggrieved employees to consistently
2 work in temperatures far exceeding eighty (80) degrees Fahrenheit and did not provide adequate
3 cool down period opportunities.

4 84. Plaintiff reports that he and his coworkers were not always provided with a shaded area
5 to rest or an opportunity to rest when they would feel overheated.

6 85. Plaintiff, Class Members and aggrieved employees were exposed to a high risk of
7 suffering heat illness so that their life, safety, and health were jeopardized by Defendant's conduct,
8 violating California Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and
9 1198.

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES**

12 Cal. Labor Code §§ 1198, 2802

13 (Plaintiff Against Defendant)

14 86. Plaintiff incorporates by reference in this cause of action each allegation of the
15 preceding paragraphs as though fully set forth herein.

16 87. Defendant's conduct described in this complaint from time to time violates the
17 provisions of Labor Code §§ 1198, 2802.

18 88. Labor Code §2802 requires employers to indemnify employees for necessary
19 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
20 Plaintiff, Class Members and aggrieved employees on occasions subject to proof used their
21 personal cell phone for work-related communicating or for navigations. In addition to their
22 personal cell phones, Plaintiff and his coworkers were also on occasions subject to proof required
23 to use their own personal vehicles and purchase work tools for business-related purposes.
24 Defendant failed to pay any amount for the required use of Plaintiff, Class Members and aggrieved
25 employees' personal phones.

26 ///

27 ///

28 ///

1 **NINTH CAUSE OF ACTION**

2 **PAYSTUB AND RECORD KEEPING VIOLATIONS**

3 Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5

4 **(Plaintiff Against Defendant)**

5 89. Plaintiff incorporates by reference in this cause of action each allegation of the
6 preceding paragraphs as though fully set forth herein.

7 90. Defendant's conduct described in this complaint from time to time violates the
8 provisions of Labor Code §§ 226, 246, 248, 1174, 1174.5.

9 91. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
10 wage statements to Plaintiff and the Class Members and aggrieved employees in accordance with
11 Labor Code §§ 226 and keep accurate records as required by §1174(d).

12 92. The statements provided to Plaintiff, Class Members and aggrieved employees, and the
13 records maintained by Defendant, have not consistently accurately reflected actual gross wages
14 earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and
15 overtime pay, vacation pay, reimbursement for business-related expenses, and pay for meal and
16 rest period premium wages.

17 93. §226 (a) requires:

18 A. An employer, semimonthly or at the time of each payment of wages,
19 shall furnish to his or her employee, either as a detachable part of the check,
20 draft, or voucher paying the employee's wages, or separately if wages are paid
21 by personal check or cash, an accurate itemized statement in writing showing
22 (1) gross wages earned, (2) total hours worked by the employee, except as
23 provided in subdivision (j), (3) the number of piece-rate units earned and any
24 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
25 deductions, provided that all deductions made on written orders of the employee
26 may be aggregated and shown as one item, (5) net wages earned, (6) the
27 inclusive dates of the period for which the employee is paid, (7) the name of the
28 employee and only the last four digits of his or her social security number or an

1 employee identification number other than a social security number, (8) the
2 name and address of the legal entity that is the employer and, if the employer is
3 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
4 and address of the legal entity that secured the services of the employer, and (9)
5 all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee...

7 94. Such failures are called injury to Plaintiff and others, by, among other things, the total
8 hours worked, and the amount of wages to which they are and were entitled. Defendant knowingly
9 and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total
10 hours worked.

11 95. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff, Class
12 Members and aggrieved employees to sign employment-related contracts and documents that
13 contained unlawful terms of employment, including invalid meal period waivers resulting from a
14 noncompliant meal period policy and/or practice.

15 **TENTH CAUSE OF ACTION**

16 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**

17 California Business and Professions Code section 17200, et seq.

18 **(Plaintiff Against Defendant)**

19 96. Plaintiff incorporates by reference in this cause of action each allegation of the
20 preceding paragraphs as though fully set forth herein.

21 97. Defendant from time to time knowingly committed, and upon information and belief
22 continue to commit, ongoing unlawful business practices within the meaning of the UCL,
23 including, but not limited to unlawful practices as described in the causes of action articulated
24 above, and hereby incorporated herein.

25 98. Plaintiff lost money and property as a result of Defendant's unlawful business practices
26 described above.

1 99. Pursuant to the UCL, Plaintiff and all Class Members and aggrieved employees are
2 entitled to restitution of money or property acquired by Defendant by means of such unlawful
3 business practices, in amounts not yet known, but to be ascertained at trial.

4 100. Pursuant to the UCL, Plaintiff, Class Members and aggrieved employees are entitled
5 to injunctive relief against Defendant's ongoing unlawful business practices. If an injunction does
6 not issue enjoining Defendant from engaging in the unlawful business practices described above,
7 Plaintiff and the general public will be irreparably injured.

8 101. Plaintiff has no plain, speedy, and adequate remedy at law. Defendant, if not enjoined
9 by this Court, will continue to engage in the unlawful business practices described above in
10 violation of the UCL, in derogation of the rights of Plaintiff, Class Members and aggrieved
11 employees and of the general public.

12 102. Plaintiff's success in this action will result in the enforcement of important rights
13 affecting the public interest by conferring a significant benefit upon the general public.

14 103. Defendant's numerous violations of local and California law, as well as the other
15 statutory and regulatory violations alleged herein, constitute unlawful business actions and
16 practices in violation of Business and Professions Code § 17200, et seq.

17 104. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class
18 Members and aggrieved employees are entitled to restitution of unpaid wages, including overtime,
19 sick pay, and premium wages, among other relief alleged herein, that were withheld and retained
20 by Defendant during a period that commences four years prior to the filing of this action. Plaintiff
21 is further entitled to a permanent injunction requiring Defendant to comply with all provisions of
22 California labor law, including properly paying the lawful rate of pay for all hours worked,
23 properly paying sick pay, providing rest periods to all workers as defined herein, timely paying
24 due wages upon termination, maintaining accurate wages statements and payroll records, in
25 addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and
26 other applicable law, and costs.

27 ///

28 ///

STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE §2698 *et seq.*

105. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

107. As set forth above, Defendant has committed numerous violations for which the Labor Code provides for penalties, including violations of all applicable Labor Code provisions set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned Labor Code provisions as statutes to which §2699.3's procedural requirements must be met before a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural requirements specified in §2699.3 by providing written notice to the Defendant and the Labor & Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and correct copy of the Notice correspondence showing compliance with §2699.3. No notice of intent to investigate the alleged violations was provided within the statutory period. Consequently, Plaintiff has exhausted administrative remedies, and on behalf of themselves and all other aggrieved current and former employees of Defendant. Plaintiff therefore, now pursues this cause of action as permitted by §2698, et seq.

108. Enforcement of statutory provisions enacted to protect workers and to ensure proper and prompt payment of wages due to employees is a fundamental public interest in California. Consequently, Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated herein is necessary, as no public agency has pursued

enforcement. Plaintiff has incurring a financial burden in pursuing this action and it would be against the interests of justice to require payment of attorneys' fees and costs from any recover that might be obtained herein, pursuant to, inter alia, Labor Code §§2698, *et seq.*, and Code of Civil Procedure §1021.5

109. In addition, if Plaintiff succeeds in enforcing these rights affecting the public interest, then attorneys' fees may be awarded to Plaintiff and against Defendant under Code of Civil Procedure §1021.5 and other applicable law in part, because:

110. A successful outcome in this action will result in the enforcement of important rights affecting the public interest by requiring Defendant to comply with the wage and hour laws and California's unfair business practice law;

111. This action will result in a significant benefit to Plaintiff, the Class, and the general public by bringing to a halt unlawful and/or unfair activity;

112. Unless this action is prosecuted, members of the Class and general public will not recover those moneys, and many of Defendant's employees would not be aware that the acts and practices they were subjected to by Defendant was wrongful;

113. Unless this action is prosecuted, Defendant will continue to mislead their employees about the true nature of their rights and remedies under the wage and hour laws; and

114. An award of attorneys' fees and costs is necessary for the prosecution of this action and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in general, by preventing Defendant from continuing to circumvent the wage and hour statutes and frustrate the long-standing recognition by the California legislature and the courts that such statutes, as pled herein, are not merely a matter of private concern between employer and employee to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private agreements. Rather, the wage and hour statutes have been described as a matter of public concern, were designed to provide minimum substantive guarantees to individual workers and are essential to public welfare.

///

///

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class, request judgment and the following specific relief against Defendant as follows:

- A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
- B. That the Court determine that this action may be maintained as a PAGA representative action under Cal. Labor Code. §2698 *et seq.*
- C. Provision of class notice to all members of the Class;
- D. That Defendant is found to have violated the above-referenced provisions of the Labor Code, CCR and the IWC Wage Order as to Plaintiff, Class Members and aggrieved employees;
- E. For compensatory damages, in an amount according to proof at trial, with interest thereon;
- F. For compensation for not being paid overtime;
- G. For compensation for not being paid all wages owed twice per month;
- H. For compensation for not being paid minimum wage;
- I. For compensation for not being paid all wages due upon termination;
- J. For compensation for not being provided rest breaks;
- K. For compensation for not being provided timely meal breaks;
- L. For compensation for not being provided cool-down rest periods;
- M. For compensation for not being reimbursed for required business expenses;
- N. For compensation for not being paid premium and penalty wages;
- O. That Defendant's actions are found to be willful and/or in bad faith to the extent necessary under §§ 201, 202, 203, and 558 of the California Labor Code for willful failure to pay all compensation owed at the time of separation to Plaintiff, Class Members and aggrieved employees no longer employed by Defendant;

- 1 P. That Plaintiff, Class Members and aggrieved employees receive penalties for
2 Defendant's violation of §226 and 1174 of the California Labor Code for willful
3 failure to provide and maintain the required accurate and itemized wage
4 statements;
- 5 Q. That Plaintiff, Class Members and aggrieved employees receive an award in the
6 amount of unpaid wages owed, including interest thereon, and penalties as
7 provided in the Labor Code, CCR and Wage Order, including under Labor Code
8 §§ 203, 510, and 558, subject to proof at trial;
- 9 R. That Defendant be ordered to pay restitution to Plaintiff, Class Members and
10 aggrieved employees for amounts acquired through Defendant's unlawful
11 activities pursuant to Business and Professions Code §§ 17200-05 and enjoined
12 to cease and desist from unlawful and unfair activities in violation of California
13 Business and Professions Code § 17200 et. seq.;
- 14 S. That Plaintiff, Class Members and aggrieved employees receive an award of
15 reasonable attorneys' fees and costs pursuant to Code of Civil Procedure
16 §1021.5, Labor Code §226, 218.5, and 1194 and/or applicable laws;
- 17 T. That the Court award penalties pursuant to Labor Code §2698 *et seq.*
- 18 U. That the Court issue declaratory relief that Defendant's challenged policies are
19 unlawful; and
- 20 V. That the Court order further relief, in law and equity, as it deems appropriate
21 and just.
- 22

23 DATED: January 2, 2025

24 KOUL LAW FIRM, APC

25 

26 BY: Nazo Koulloukian, Esq.
27 Attorneys for Plaintiff GERMAN GIL
28 MENDEZ and putative class members

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

October 25, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

D & J Plumbing, Inc.
4341 Winters Street
Sacramento, CA 95838

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: German Gil Mendez
Employer: D & J Plumbing, Inc.

Dear Sir or Madam:

Claimant German Gil Mendez has retained Nazo Koulloukian, Esq. of the Koul Law Firm, APC, to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, D & J Plumbing, Inc. (hereafter “Employer”). Claimant worked for Employer as a plumber on an hourly, non-exempt basis until April 26, 2024.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Wage Order 4)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below.

Employer failed to provide a compliant time recording where employees could clock in and out of their shifts to properly record the hours they worked. Instead, Employer told Claimant and his coworkers what job site to report to and paid them from scheduled shift start and end times. Employer has also failed to pay the required minimum wage for all hours worked and have failed to pay all wages owed twice per month.

Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer's control but not compensated for their time. For example, Claimant would occasionally be required to work extra time off-the-clock to finish a task if it was not finished during his shift. Additionally, Claimant would often be contacted by Employer before or after his scheduled workhours.

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described herein, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and

the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 et seq.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 227.3, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days' pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2698 *et seq.*, 6300, 6310, 6400, and 8 CCR §3457)

Employer failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Claimant reports that he and his coworkers almost always missed rest periods as a result of Employer's business practices, and that rest breaks were not scheduled into daily shifts.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted

rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) (“If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided”). Moreover, under California law rest periods must be a “net” ten minutes in a suitable rest area. (Id. at 268) (relying on January 3, 1986, and February 22, 2002, DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

Employer did not authorize or permit all of its hourly employees to take at least a ten-minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Legally Compliant Bathrooms

California Labor Code §2350 requires employers to provides that “[e]very factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees.” Employer violated §2350 by failing to provide bathrooms for employees. Employer further violated 8 CCR §3457(c) by failing to provide adequate toilet and handwashing facilities.

Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years.” Labor Code §6712 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.” Moreover, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code §6712. Further, the public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, *et seq.* requires all employers to take reasonable steps to provide a safe and secure workplace.

Claimant reports that he and his coworkers were never provided with compliant restrooms during their workday.

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer failed to pay all penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing to meet the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

In this case, Claimant and Claimant’s coworkers frequently missed their first and second meal periods. When meals periods were provided, they were often late, short, and/or interrupted.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because Employer unlawfully shaved and/or rounded clock in and clock out times for meal periods. Employees were not paid a premium payment, paid as an hour’s wage when meal periods were not given to them in compliance with California law.

Failure to Provide Potable Drinking Water

(Cal. Labor Code §2441)

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and

provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single-use cups.

Claimant reports that he and his coworkers were not provided with fresh drinking water during their shifts and that they needed to purchase their own water or bring it from home.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

Failure to Provide Suitable Resting Facilities

(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq.*)

Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

Claimant and aggrieved employees were never provided with a break or any type of suitable resting facility.

Employer did not provide employees with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Employer’s failure to provide suitable resting facilities to aggrieved employees violated and continues to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Failure to Provide Proper Cool-Down Rest Periods

(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq.*)

Labor Code section 226.7, subdivision (c) provides:

If an employer fails to provide an employee a... recovery period in accordance with a state law, including, but not limited to an applicable statute or applicable regulation, standard, or order of the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Employers required Claimant and aggrieved employees to consistently work in temperatures far exceeding eighty (80) degrees Fahrenheit and did not provide adequate cool down period opportunities.

Claimants reports that he and his coworkers were never provided with a shaded area to rest or an opportunity to rest when they would feel overheated.

Claimant and aggrieved employees were exposed to a high risk of suffering heat illness so that their life, safety, and health were jeopardized by Employer's conduct, violating California Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and 1198.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees used their personal cell phone for work-related communicating or for navigations. In addition to their personal cell phones, Claimant and his coworkers were also required to use their own personal vehicles and purchase work tools for business-related purposes. Employer failed to pay any amount for the required use of Claimant and aggrieved employees' personal phones. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

The statements provided to Claimants and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, vacation pay, reimbursement for business-related expenses, and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an

accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Such failures are called injury to Claimant and others, by, among other things, the total hours worked, and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked.

Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment, including invalid meal period waivers resulting from a noncompliant meal period policy and/or practice.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorneys for Claimant

PROOF OF SERVICE

Case No. 24CV024048
Gil Mendez v. D&J Plumbing, Inc.

I, NADIA CHAVEZ declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 3435 Wilshire Blvd. Ste. 1710, Los Angeles, California 90010.

On January 2, 2025, I served the foregoing document described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

 X **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address from e-mail nadia@koullaw.com pursuant to California Rules of Court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Daniel F. C. Kozieja
Brian Bertossa
COOK BROWN LLP
2407 J Street, Second Floor
Sacramento, CA 95816
dkozieja@cookbrown.com
bbertossa@cookbrown.com
tlindsay@cookbrown.com

Attorney for Defendant *D & J Plumbing, Inc.*

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

Executed on this January 2, 2025, in Los Angeles, California.



NADIA CHAVEZ