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Superior Court of California
County of Sacramento

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By: L. Baldwin Deputy

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Individually and on behalf of all other similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

THOMAS B. MCNUTT, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

AMERICA'S PLUMBING CO., INC., a
California Corporation; BRYAN HOPKINS,
an individual; KELLY HOPKINS, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV020622

CLASS ACTION

COMPLAINT FOR DAMAGES:

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Unfair Competition**
- 8. Private Attorneys General Act**

INDIVIDUAL CLAIMS

- 9. Violation of Labor Code § 1102**
- 10. Wrongful Termination/Retaliation**

DEMAND FOR JURY TRIAL

Plaintiff THOMAS B. MCNUTT ("Plaintiff"), on behalf of himself and all other similarly
situated employees, hereby files this First Amended Complaint against Defendants AMERICA'S
PLUMBING CO., INC., a California Corporation; BRYAN HOPKINS, an individual; KELLY

HOPKINS, an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as “Defendants”). On information and belief, Plaintiff allege the following:

INTRODUCTION

1. This is a class action and a Private Attorneys General Act (“PAGA”) lawsuit brought by Plaintiff for 1) Failure to Pay Overtime Wages, 2) Failure to Pay Minimum Wages, 3) Meal Period Violations, 4) Rest Period Violations, 5) Wage Statement Violations, 6) Waiting Time Penalties, and 7) Unfair Competition. Plaintiff is also asserting individual claims for wrongful termination/retaliation and violation of Labor Code section 1102.5.

JURISDICTION AND VENUE

2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 16.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that Defendants reside in Sacramento County and/or are foreign entities and have not designated any county in California as being where they maintain their principal offices. In addition, some of the wrongful acts and violations of law asserted herein occurred within Sacramento County, and Defendants’ obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on approximately October 11, 2024. Plaintiff provided facts and legal bases for her claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The October 11, 2024, notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself

1 and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),
2 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

3 Aggrieved Employees include, but is not limited to the following: all non-exempt employees who have
4 worked, or continue to work, for Defendants in California from October 11, 2023, to the present.

5 **PARTIES**

6 5. THOMAS B. MCNUTT is an individual over the age of eighteen (18) and is a
7 resident of the State of California.

8 6. On information and belief, Plaintiff alleges, AMERICA'S PLUMBING CO., INC., is
9 now and/or at all times mentioned in this Complaint was a California Corporation and the owner and
10 operator of an industry, business and/or facility doing business in the State of California.

11 7. On information and belief, Plaintiff alleges, BRYAN HOPKINS, is now and/or at all
12 times mentioned in this Complaint was an individual and the owner and operator of an industry,
13 business and/or facility doing business in the State of California. Plaintiff is informed and believes,
14 and thereupon alleges, that BRYAN HOPKINS is an individual over the age of eighteen (18) and is a
15 resident of the State of California. Plaintiff further alleges that BRYAN HOPKINS is an owner,
16 director, officer, and/or managing agent of AMERICA'S PLUMBING CO., INC., responsible for
17 causing the violations outlined in the first through seventh, and ninth through tenth causes of action.
18 As such BRYAN HOPKINS is individually liable pursuant to California Labor Code section 558.1.
19 Pursuant to California Labor Code section 558.1, AMERICA'S PLUMBING CO., INC., and
20 BRYAN HOPKINS are jointly and severally liable for each cause of action asserted herein. On
21 information and belief, Plaintiff alleges that BRYAN HOPKINS trained subordinate staff to
22 implement and carry out the policies and practices identified herein. As a result, whether directly or
23 indirectly, BRYAN HOPKINS caused the violations identified herein. BRYAN HOPKINS was
24 responsible for the violations stated herein as he was in a position of authority with the power and
25 responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them
26 instead.

27 8. On information and belief, Plaintiff alleges, KELLY HOPKINS, is now and/or at all
28 times mentioned in this Complaint was an individual and the owner and operator of an industry,

1 business and/or facility doing business in the State of California. Plaintiff is informed and believes,
2 and thereupon alleges, that KELLY HOPKINS is an individual over the age of eighteen (18) and is a
3 resident of the State of California. Plaintiff further alleges that KELLY HOPKINS is an owner,
4 director, officer, and/or managing agent of AMERICA'S PLUMBING CO., INC., responsible for
5 causing the violations outlined in the first through seventh, and ninth through tenth causes of action.
6 As such KELLY HOPKINS is individually liable pursuant to California Labor Code section 558.1.
7 Pursuant to California Labor Code section 558.1, AMERICA'S PLUMBING CO., INC., and
8 KELLY HOPKINS are jointly and severally liable for each cause of action asserted herein. On
9 information and belief, Plaintiff alleges that KELLY HOPKINS trained subordinate staff to
10 implement and carry out the policies and practices identified herein. As a result, whether directly or
11 indirectly, KELLY HOPKINS caused the violations identified herein. KELLY HOPKINS was
12 responsible for the violations stated herein as he was in a position of authority with the power and
13 responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them
14 instead.

15 9. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
16 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
17 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
18 names and capacities of these DOE Defendants when they are ascertained.

19 10. At all times mentioned herein, each Defendant was the agent or employee of each of the
20 other Defendants and was acting within the course and scope of such agency or employment. The
21 Defendants are jointly and severally liable to Plaintiff.

22 11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
23 were members of and/or engaged in a joint employment, joint venture, partnership and common
24 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
25 joint venture, partnership and common enterprise.

26 12. Defendants, and each of them, now and/or at all times mentioned in this Complaint
27 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.
28

13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

14. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who have worked, or continue to work, for Defendants in California at any time from October 11, 2020, to the present.

15. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid for all hours worked;
- (2) Whether Defendants did not pay putative class members for non-productive time;
- (3) Whether Defendants did not pay putative class members for overtime;
- (4) Whether Defendants did not pay putative class members for rest periods;
- (5) Whether Defendants provided compliant meal and rest periods to putative class members;

- 1 (6) Whether Defendants unlawfully deducted pay from putative class members;
2 (7) Whether Defendants required putative class members to work split shifts without
3 paying split shift premiums;
4 (8) Whether Defendants authorized and permitted putative class members to take all
5 meal and rest periods;
6 (9) Whether Defendant maintained accurate payroll records;
7 (10) Whether as a result of Defendants' policies and practices Plaintiff's and putative
8 class members received all wages, due and owing, at the time of their termination
9 or separation; and
10 (11) Whether Defendants provided Plaintiff's and putative class members with wage
11 statements that complied with Labor Code section 226.

- 12 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
13 class. The putative class also sustained damages arising out of Defendants' common
14 course of conduct in violation of the law as complained of herein. Plaintiff and all
15 members of the putative class were non-exempt employees who Plaintiff and all members
16 of the putative class were non-exempt employees who were subject to the same working
17 conditions which Plaintiff alleges are unlawful, such as not being paid for all hours
18 worked, not being paid for non-productive time, not being paid for overtime, not being
19 paid for rest periods, not being paid for meal and rest period premiums, not being
20 provided with compliant meal and rest periods, resulting in failure to pay minimum
21 wages, failure to pay for overtime, and failure to pay for meal and rest period premiums,
22 Additionally, Defendants issued Plaintiff and all members of the putative class wage
23 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
24 each member of the putative class will have suffered the same type of harm and seek the
25 same type of recovery based on the same legal theories.
- 26 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
27 putative class. For all relevant times, Plaintiff resided in California and worked for
28 Defendants in California. Moreover, Plaintiff is an adequate representative of the

putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

- (e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

16. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully set forth herein.

18. Plaintiff was employed with Defendants from May 19, 2021, to February 21, 2024, as a Service Technician. Defendants are located in Sacramento and provide plumbing services, maintenance, and repair to its customers in the area. Plaintiff and similarly situated employees worked over eight (8) hours per day and over forty (40) hours per week. Plaintiff and similarly situated employees duties included, but were not limited to, responding to plumbing service calls, providing estimates for plumbing jobs to customers, providing plumbing services and fixing plumbing at customer's sites, preparing invoices, having customers sign contracts for the plumbing services, ordering parts for plumbing jobs, collecting payment, and cleaning and maintaining work vehicles.

1 19. Plaintiff and similarly situated employees worked typically five (5) days per week,
2 between nine (9) to ten (10) hours per day. Defendants paid Plaintiff and similarly situated employees a
3 commission percentage, which was calculated based on the net earnings of a job less certain identified
4 costs and/or expenses. The commission percentage ranged from 20% to 30%, or some fraction thereof
5 for jobs where multiple employees worked on the job. Additionally, Defendants paid Plaintiff and
6 similarly situated employees a bonus depending on the amount of the total service charges or revenue
7 that each employee generated for the prior two weeks. The bonuses ranged from \$200 to \$500
8 depending on the level of revenue generated.

9 20. Defendants did not pay Plaintiff and similarly situated employees for all hours worked
10 and for any overtime. For example, Defendants did not pay Plaintiff and similarly situated employees
11 for time spent during estimates where customers did not agree to move forward with the service or
12 where Defendant assigned a job to an employee other than the one that went to provide the estimate. On
13 many days, Defendants did not pay Plaintiff and similarly situated employees for the hours that they
14 worked because none of their estimates were accepted by customers. At times, Plaintiff and similarly
15 situated employees would stay in Defendants' shop and wash the work vehicles because there were no
16 service calls, but this time did not earn any compensation under the commission compensation formula.
17 Plaintiff and similarly situated employees reported to work every day, five days per week even if there
18 were no jobs scheduled for them. Defendants did not pay Plaintiff and similarly situated employees for
19 any work that was not related to an actual plumbing job, maintenance or repair. Plaintiff and similarly
20 situated employees worked approximately 5-10 hours of overtime per week, but were not paid any
21 overtime. Similarly, there was no adjustment to the regular rate of pay that accounted for commissions
22 or bonus payments when calculating any premium wages or sick leave wages owed. Defendants did not
23 pay Plaintiff and similarly situated employees for any non-productive time. In fact, Defendants did not
24 list the number of regular hours worked and the number of overtime hours worked in Plaintiff's and
25 similarly situated employees' paystubs.

26 21. Defendants did not provide Plaintiff and similarly situated employees with all compliant
27 meal periods. Defendants would clock Plaintiff and similarly situated employees in and out for meal
28 periods even though Plaintiff and similarly situated employees were still working during their meal

1 periods. Defendants would call Plaintiff and similarly situated employees while they were out on service
2 calls and working and would tell them that Defendants would clock them out for meal periods. On many
3 occasions, Plaintiff and similarly situated employees kept working while being clocked out for meal
4 periods because they were in the middle of a service call and customers needed the repair done quickly
5 and/or there were other calls or repairs scheduled for that day that did not allow Plaintiff and similarly
6 situated employees to take a meal period. Defendants were aware that Plaintiff and similarly situated
7 employees worked through meal periods because Plaintiff and similarly situated employees would tell
8 them that they are still working. Defendants would tell Plaintiff and similarly situated employees that
9 they have to clock them out by law, but made no effort to allow Plaintiff and similarly situated
10 employees the opportunity to actually take meal periods.

11 22. Defendants did not provide Plaintiff and similarly situated employees with all compliant
12 rest periods either. Defendants did not provide any separate compensation other than the commission
13 payments in order to compensate for time spent during rest periods. Thus, any rest periods were unpaid.
14 Additionally, Plaintiff and similarly situated employees were unable to take all their rest periods because
15 they had to work during rest periods due to scheduling, emergency repairs, and customer demands.

16 23. Defendants unlawfully deducted pay from Plaintiff and similarly situated employees if
17 there were ever any damage to a customer's property, or if they made a mistake that led to a monetary
18 loss for Defendants. Defendants used Plaintiff's and similarly situated employees' wages as insurance
19 for such losses. For example, Plaintiff and another similarly situated employees were working on a
20 plumbing job where an electrical line in an old building was unintentionally hit during a repair. The
21 electrical line was not marked, but Defendant's customer required Defendants to pay for the repair of the
22 damaged electrical line. Defendants pressured Plaintiff and the other similarly situated employee to have
23 them pay the cost of the repair bill for the customer. Defendants threatened Plaintiff with firing if he did
24 not sign an agreement to agree to a deduction from his pay for the repair. Defendants informed Plaintiff
25 that if he does not sign the agreement to pay for the repair, he will get fired. Plaintiff, afraid of losing his
26 job, signed the agreement on January 8, 2024, which stated that Defendants would deduct \$325 per pay
27 period for five (5) pay periods. This amounted to a \$1,625 deduction for Plaintiff and the other similarly
28 situated employee. Defendants withheld approximately \$600 - \$700 from Plaintiff, prior to terminating

1 Plaintiff when Plaintiff complained to Defendants that such deduction was unlawful and illegal. When
2 Plaintiff complained that the deductions from his pay were illegal, Bryan Hopkins, Defendants' Chief
3 Executive Officer, stated that "it seems like you do not want to work here." Plaintiff informed Mr.
4 Hopkins that he wants to work for Defendants, but they were withholding pay illegally. Mr. Hopkins
5 stated that if Plaintiff feels that Defendants are withholding money illegally, then they should separate.
6 Defendants then on February 21, 2024, provided Plaintiff with a "Notice to Employee as to Change in
7 Relationship" which stated the reason for the change in relationship as voluntary quitting. Plaintiff did
8 not sign the form because it misrepresented the reason why the change in employment relationship was
9 occurring and he did not want to quit. Defendants terminated Plaintiff for complaining about the illegal
10 deduction from his pay and Plaintiff was not quitting voluntarily. Plaintiff is informed and believes that
11 the other similarly situated employee who was subject to the same deduction did not complain to
12 Defendants about the deduction and was not terminated. Defendants had a practice of forcing or
13 pressuring similarly situated employees to pay for business losses when similarly situated employees
14 made a mistake or unintentionally damaged a customer's property that required Defendants to pay for
15 the repair bill.

16 24. As a result of Defendants not paying Plaintiff and similarly situated employees for all
17 hours worked, overtime work, working through meal and rest periods, Defendants did not accurately
18 record Plaintiff's and similarly situated employees' meal periods, as well as minimum and overtime
19 hours and wages, and the correct accrual of sick leave hours. As a result of these practices, Plaintiff and
20 similarly situated employees were not paid wages for all hours worked and did not receive the proper
21 accrual of sick leave hours.

22 25. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
23 minimum wages, overtime wages, and meal and rest period premiums owed, the wage statements
24 Defendants issued were inaccurate. Defendants' paystubs do not itemize any working hours, regular
25 hours, and overtime hours. The paystubs that Defendants issued did not accurately itemize all hours
26 worked, the accurate rates of pay, minimum and overtime wages earned, the number of meal and rest
27 period premiums owed, and the accurate gross and net wages earned.

1 26. To date, Defendants have not paid Plaintiff and similarly situated employees all the
2 minimum wages, overtime wages, meal and rest period premiums, and sick leave wages owed to them.

3 27. Defendant AMERICA’S PLUMBING CO, INC., identified Defendant BRYAN
4 HOPKINS in its filings with the California Secretary of State from July 27, 2023, to the present as its
5 Chief Executive Officer, Secretary, and Chief Financial Officer. Plaintiff is informed and believes that
6 BRYAN HOPKINS was responsible for creating and electing to implement AMERICA’S PLUMBING
7 CO, INC.,’s payroll and compensation policies and practices or that BRYAN HOPKINS was aware of
8 such policies and practices and ratified them.

9 28. Defendant AMERICA’S PLUMBING CO, INC., identified Defendant KELLY
10 HOPKINS in its filings with the California Secretary of State from July 27, 2023, to the present as its
11 Vice President. Plaintiff is informed and believes that KELLY HOPKINS was responsible for creating
12 and electing to implement AMERICA’S PLUMBING CO, INC.,’s payroll and compensation policies
13 and practices or that KELLY HOPKINS was aware of such policies and practices and ratified them.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**
16 **FAILURE TO PAY OVERTIME WAGES**
17 **(As to all Defendants)**

18 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully
19 set forth herein.

20 30. During the period Plaintiff was employed by Defendants, Defendants were required to
21 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
22 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
23 hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 16, section
24 (3)(A); Cal. Lab. Code §§ 510, 1194.

25 31. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
26 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
27 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
28 worked at their regular rate of pay.

32. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully set forth herein.

35. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code § 1194.

36. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

37. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

38. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 37 as though fully set forth herein.

39. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

40. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

41. California Labor Code section 512 and Wage Order No. 16 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

42. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

43. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

44. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully set forth herein.

46. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

47. California Labor Code section 226.7 and Wage Order No. 16, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

48. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

49. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

52. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross 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 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 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

53. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the

requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked due to Defendants' policy of paying Plaintiff and similarly situated employees commission only and not paying minimum wages for hours worked, for overtime, and not paying for non-productive time and rest periods. Further Defendants' policies of not providing compliant meal, rest periods and not accurately calculating all sick wages owed to Plaintiff and similarly situated employees contributed inaccurate wage statements. Plaintiff and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

54. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully set forth herein.

56. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Cal. Lab. Code § 201.

57. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

58. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

1 59. An employer who willfully fails to pay an employee wages in accordance with California
2 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
3 days. *See* Cal. Lab. Code § 203.

4 60. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
5 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
6 and similarly situated employees were not paid all their hours worked because of Defendants' payment
7 of commission only policy which paid only commission to Plaintiff and similarly situated employees
8 even though they were not salespeople. Also, Defendants knew that Plaintiff and similarly situated
9 employees were working over eight (8) hours per day and over forty (40) hours per week and were not
10 paid for non-productive time which led to many days and hours not paid since Defendants only paid
11 commission to Plaintiff and similarly situated employees for actual plumbing jobs only, and not for their
12 time visiting clients sites, driving, providing estimates, and advise, if these estimates did not transform
13 in actual work orders and paying customers. Moreover, Defendants knew that they were not paying
14 Plaintiff and similarly situated employees for overtime and for rest periods because Defendants' wage
15 statements did not include any number of regular hours, overtime hours, and meal and rest periods.
16 Defendants also knew that they were unlawfully withholding and/or deducting wages from Plaintiff and
17 similarly situated employees because they threatened Plaintiff and similarly situated employees to have
18 them sign agreements to allow Defendants deduct wages for damages to customers properties.
19 Defendants used Plaintiff's and similarly situated employees' wages as insurance for such losses. Such
20 conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet
21 Defendants still refused to pay the remaining wages owed.

22 61. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
23 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
24 thirty (30) days for Defendants' failure to pay all wages due.

25 **SEVENTH CAUSE OF ACTION**
26 **UNFAIR COMPETITION**
27 **(As to AMERICA'S PLUMBING CO, INC and DOES 1 to 100)**

28 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
set forth herein.

63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

64. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, and paid sick leave, during their employment or any time thereafter. Moreover, through Defendants conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and rest periods. Defendants also failed to provide all wages owed when it unlawfully deducted wages from Plaintiff’s and similarly situated employees pay for Defendants’ business losses.

65. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

66. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 245 *et seq.*, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 1102 (Whistleblower Retaliation)

69. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

71. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 1102.5
(As to AMERICA'S PLUMBING CO., INC. and DOES 1-100)

72. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 71 as though fully set forth herein.

1 73. Labor Code section 1102.5(a) states that an employer may not “make, adopt, or enforce
2 any rule, regulation, or policy preventing an employee from disclosing information to a . . . person with
3 authority over the employee, or to another employee who has authority to investigate, discover, or
4 correct the violation or noncompliance, . . . if the employee has reasonable cause to believe that the
5 information discloses a violation of state or federal statute, or a violation of or noncompliance with a
6 local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the
7 employee’s job duties.”

8 74. An employer also may not “retaliate against an employee for disclosing information, or
9 because the employer believes that the employee disclosed or may disclose information, to a
10 government or law enforcement agency, to a person with authority over the employee or another
11 employee who has the authority to investigate, discover, or correct the violation or noncompliance, . . . if
12 the employee has reasonable cause to believe that the information discloses a violation of state or federal
13 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
14 whether disclosing the information is part of the employee’s job duties.” Labor Code § 1102.5(b).

15 75. Lastly, an employer may “not retaliate against an employee for refusing to participate in
16 an activity that would result in a violation of state or federal statute, or a violation or noncompliance
17 with a state or federal rule or regulation.” Labor Code § 1102.5(c).

18 76. Defendant unlawfully retaliated against Plaintiff after he complained about the unlawful
19 deduction for Defendants to pay for damages to customer’s property and then terminating him by telling
20 him that he should separate and providing him with a notice in change of employment relationship that
21 stated that Plaintiff quit.

22 77. Plaintiff had a reasonable, good faith belief that Defendant’s work practices violated the
23 law.

24 78. Defendant’s aforesaid acts in retaliating against and terminating Plaintiff for reporting
25 unlawful activity and for refusing to participate in unlawful activity were illegal and a reckless disregard
26 for the rights and sensibilities of Plaintiff.

27 79. Defendant’s acts were wanton, willful, intentional, malicious and were a conscious and
28 reckless disregard for the rights and sensibilities of Plaintiff and, therefore, warrant punitive damages.

80. As a proximate result of Defendants’ conduct, Plaintiff has been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth here in full.

TENTH CAUSE OF ACTION
WRONGFUL TERMINATION/RETALIATION
(As to AMERICA'S PLUMBING CO., INC. and DOES 1-100)

81. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 80 as though fully set forth herein.

82. Defendants terminated Plaintiff in violation of public policy.

83. Defendants' acts of discharge herein were malicious, fraudulent, and oppressive, with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights.

84. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;

1 4. As to the Third Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 4 section 1021.5;

5 5. As to the Fourth Cause of Action:

- 6 a. Wages in an amount to be proven at trial;
- 7 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 8 section 1021.5;

9 6. As to the Fifth Cause of Action:

- 10 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 11 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 12 violation occurred and one hundred dollars (\$100.00) per employee for each
- 13 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 14 (\$4,000.00);
- 15 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 16 226(e);

17 7. As to the Sixth Cause of Action:

- 18 a. For statutory penalties equal to an employees' daily rate of pay multiplied by
- 19 thirty (30) days;
- 20 b. For attorneys fees, costs, and interest as allowed by law;

21 8. As to the Seventh Cause of Action:

- 22 a. For restitution of unpaid wages and unreimbursed expenses in an amount to be
- 23 proven at trial;

24 9. As to the Eighth Cause of Action:

- 25 a. For civil penalties as provided in the Labor Code for each enumerated
- 26 violation;
- 27 b. For those Labor Code sections where there is no civil penalty provided for their
- 28 violation, the default penalty provided in Labor Code section 2699(f): for any

1 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
2 period; For any subsequent violation, two hundred dollars (\$200) for each
3 aggrieved employee per pay period;

- 4 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
5 d. For any other remedies as allowed by law and/or deemed appropriate by the
6 Court;

7 10. As to the Ninth and Tenth Causes of Action

- 8 a. For compensatory damages, including lost wages, earnings, retirement benefits,
9 and other employee benefits, and all other sums of money, together with interest
10 on these amounts;
11 b. For a money judgment for mental pain and anguish and emotional distress;
12 c. For an award of punitive damages, according to proof;
13 d. For attorneys fees and costs as allowed by law;

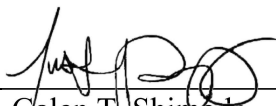
14 11. For such other and further relief as this Court may deem just and proper,
15 including, but not limited to:

- 16 a. Wages as proved at trial;
17 b. Injunctive and Declaratory relief;
18 c. Attorney's fees and costs as provided for by law; and
19 d. Interest.

20
21 Dated: December 19, 2024

Shimoda & Rodriguez Law, PC

22
23 By: _____


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Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff