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BRYAN DE ANDA and JOB BUENROSTRO, in a representative capacity, and on behalf of other members of the general public similarly situated

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County of San Diego
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Clerk of the Superior Court
By A. Irving ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

BRYAN DE ANDA, an individual, JOB BUENROSTRO, an individual, and on behalf of other members of the general public similarly situated

Plaintiffs,

v.

APPLIED RESTORATION, INC., a California Corporation; PRO-FINISH CONSTRUCTION SERVICES, INC., a California Corporation; and DOES 1 through 10, inclusive

Defendants.

Case No: 25CU026291C

COMPLAINT FOR:

1. MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
2. OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
3. WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
4. MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.*
6. FAILURE TO TIMELY PAY WAGES PURSUANT TO LABOR CODE § 2698 *et seq.*
7. FAILURE TO PROVIDE SICKPAY PURSUANT TO LABOR CODE § 2698 et seq.

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COME NOW Plaintiffs BRYAN DE ANDA ("Plaintiff De Anda") and JOB BUENROSTRO ("Plaintiff Buenrostro") collectively "Plaintiffs", individually, and on behalf of all aggrieved employees allege for their complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may not be aggregated. *Urbino v. Orkin Servs. of California, Inc*., 726 F.3d 1118, 1122 (9th Cir. 2013).

2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiffs' injuries occurred in the County of San Diego, State of California.

3. Plaintiffs are informed and believe and thereon allege that at all relevant times mentioned herein, Defendant APPLIED RESTORATION INC. ("APPLIED RESTORATION" or "Defendant APPLIED RESTORATION" herein) was and is a California Corporation doing business throughout the state, including the County of San Diego, State of California.

4. Plaintiffs are informed and believe and thereon allege that at all relevant times mentioned herein, Defendant PRO-FINISH INC. ("PRO-FINISH" or "Defendant PRO-FINISH" herein) was and is a California Corporation doing business throughout the state, including the County of San Diego, State of California.

5. Plaintiffs are presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiffs will seek leave of

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court to amend this complaint to allege their true names and capacities after the same have been ascertained.

6. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-Defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her authority as such agent, servant, partner, and employee with the permission and consent of the co-Defendants. Plaintiffs' injuries as herein alleged were proximately caused by said Defendants. Wherever it is alleged herein that any act or omission was done or committed by any specially named Defendant or Defendants, Plaintiffs intend thereby to allege and does allege that the same act or omission was also done and committed by each and every defendant named as a DOE, both separately and in concert with the named Defendant or Defendants.

7. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, including DOES 1 through 10, are and at all times herein mentioned were either individuals, sole proprietorships, partnerships, registered professionals, corporations, alter egos or other legal entities which were licensed to do and/or were doing business in the County of San Diego, State of California at all times relevant to the subject matter of this action.

FACTUAL BACKGROUND

8. In 2023, Plaintiff BRYAN DE ANDA commenced working for Defendants. Plaintiff's employment with Defendants lasted through November 2024. Throughout his employment with Defendants, Plaintiff performed his job in a capable and competent manner and was commended for doing so.

9. In 2023, Plaintiff JOB BUENROSTRO commenced working for Defendants. Plaintiff's employment with Defendants lasted through November 2024. Throughout his employment with Defendants, Plaintiff performed his job in a capable and competent manner and was commended for doing so.

10. Throughout the terms of their employment, Plaintiffs and all other aggrieved employees were, and currently are, denied the benefits and protections of the Labor Code due to the Defendants' institutionalized pay practices, standard as to all of Defendants' California-based employees.

11. On February 27, 2025, counsel for Plaintiffs prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations' "PAGA Filing" website. This letter concerned Defendants PRO-FINISH and APPLLIED RESTORATIONS and their Labor Code violations. A copy of this letter was also mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiffs' claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)

12. The statutory time period for the LWDA to investigate and/or respond, and for the employer to respond, has concluded.

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REPRESENTATIVE ALLEGATIONS

13. As more specifically set forth below, Plaintiffs bring this action in a representative capacity on behalf of all current and former nonexempt employees of Defendant. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiffs and all other aggrieved employees were denied the protections and benefits of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s) due to Defendants' standard practices. Throughout their employment, Plaintiffs and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code §§ 223, 510 and 1194, IWC Wage Order 16. Plaintiffs and the other aggrieved employees were and are denied meal and rest periods and meal and rest period payments, in violation of, Labor Code §§ 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code § 226. Defendants failed to reimburse Plaintiffs and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code § 2802. Defendants failed to

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provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code §§ 201 through 203. Defendants failed to pay Plaintiffs and other aggrieved employees their paid sick leave in violation of, *inter alia*, Labor Code § 246.

14. Plaintiffs bring this action on the grounds that they and other similarly situated current and former employees of Defendants were and are improperly denied the mandated wages and reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed fifty (50) aggrieved employees.

15. The approximately Fifty (50) aggrieved employees are comprised of all of Defendants' current and former California-based employees, designated as "nonexempt" by Defendants. Defendants' standard policies and practices which lead to Labor Code violations, as alleged herein, applied to all California nonexempt employees.

16. There are questions of fact and law common to all aggrieved employees arising from Defendants' actions to include, among others, the following:

a. Whether Defendants failed to pay their employees the proper straight-time, overtime, and double time wages due and owing to them;

b. Whether Defendants failed to provide their employees with statutorily compliant Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code §§ 512 and 226.7, in that Defendants' written policies are not compliant with California law, Defendants do not allow its employees duty-free Meal and/or Rest Periods, and Defendants improperly "round" employees' recorded Meal Periods;

c. Whether Defendants failed to properly provide Meal and Rest Period premiums in accordance with law;

d. Whether Defendants failed to properly calculate and pay their employees Overtime compensation or Meal and Rest Period premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of employee benefits;

e. Whether Defendants failed to properly reimburse its employees for necessary business expenditures for, *inter alia*, cell phone costs and mileage, in violation of Labor Code § 2802;

f. Whether Defendants failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203, due, in part, to the fact that Defendants failed to provide proper compensation for all hours worked, as discussed above; and

g. Whether Defendants failed to provide Plaintiffs and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 226.

17. At all times mentioned herein, Defendants were subject to the Labor Code and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code § 2698 et seq.

18. At all times mentioned herein, Defendants are and were "employers" as that term is used within the relevant sections of the California Labor Code and the applicable wage order. An employer-employee relationship existed between Plaintiffs and Defendants.

19. Plaintiffs have exhausted their administrative remedies and pre-filing requirements California Labor Code § 2699.3, and have also fulfilled all notice requirements under the statute. On February 27, 2025, counsel for Plaintiffs prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations' "PAGA Filing" website. This letter concerned Defendants PRO-FINISH and APPLIED RESTORATION and their Labor Code violations. A copy of this letter was also mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendants, as well as the facts and theories in support of Plaintiffs' claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)

20. The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded.

21. Throughout the operative limitations period, Plaintiffs and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants' standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION

Minimum Wage Violations Pursuant to Labor Code § 2698 *et seq.*

Representative and Individual Action

(By Plaintiffs against Defendants and DOES 1 through 10)

22. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

23. Defendants failed to pay their employees all compensation due in violation of, among other statutes, Labor Code § 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc*. (2005) 135 Cal.App.4th 314, 323. These violations were caused by and through Defendants' failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, although Defendants would receive "to-the-minute" start and end times (from their employees' mandated timekeeping practices), Defendants would thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. Defendants PRO-FINISH and APPLIED RESTORATIONS would instruct supervisors to modify and under-report work hours, resulting in a loss of compensation. Plaintiffs BRIAN DE ANDA and JOB BUENROSTRO and other employees' time entries were often edited by management to inaccurately reflect the employee worked less hours. Defendants also required Plaintiffs and other employees to work extended hours (beyond their scheduled hours) without compensation. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants' knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation. Defendants also instructed their employees to limit the recording of their hours to that of the employee's work schedules only.

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24. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

25. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

26. Plaintiffs seek compensation they are owed due to Defendants' underpayment.

27. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SECOND CAUSE OF ACTION
Overtime Violations Pursuant to Labor Code § 119 510
Representative and Individual Action
(By Plaintiffs against Defendants and DOES 1 through 10)

28. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

29. Defendants failed to pay Plaintiffs and all other aggrieved employees all compensation, including Overtime Compensation, due in violation of, among other statutes, Labor Code § 510. Defendants PRO-FINISH and APPLIED RESTORATIONS would instruct supervisors to modify and under-report work hours, resulting in a loss of compensation. Plaintiffs BRIAN DE ANDA and JOB BUENROSTRO and other employees' time entries were often edited by management to inaccurately reflect the employee worked less hours. Defendants also required Plaintiffs and other employees to work extended hours (beyond their scheduled hours) without compensation. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants' knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. Defendants were actively directing

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supervisors of Plaintiffs and other employees to reduce overtime to uniformly, and illegally undercompensate Plaintiffs and other aggrieved employees. These violations occurred due to Defendants' illegal policies, referenced above, whereby employees experienced monetary under-compensation. Given the length of Plaintiffs' and other employees' shifts, the unpaid work time often would have been owed at the overtime rate of pay. These systematic failures to provide proper overtime compensation are in violation of California law.

30. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

31. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief. Plaintiffs seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

32. Plaintiffs seek compensation they are owed due to Defendants' underpayment.

33. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

THIRD CAUSE OF ACTION

Wage Statement Violations Pursuant to Labor Code § 226
Representative and Individual Action
(By Plaintiffs against Defendants and DOES 1 through 10)

34. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

35. Defendants willfully failed to provide Plaintiffs and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 226. These violations include, but are not limited to, Defendants' failure to accurately identify all applicable regular and overtime rates of pay in violation of section 226(a)(9),

and providing inaccurate representations of both "gross" and "net wages." For example, Plaintiffs and the other employees were not compensated for all hours worked (due in part to Defendants requiring supervisors and employees to list only *scheduled* work time, not actual work time. Therefore, Pro-Finish and ARI failed to provide a showing of the “total hours worked” by its employees pursuant to section 226(a)(2). Defendants also failed to provide an accurate showing of the "total hours worked," in violation of Labor Code § 226(a)(2).

36. Defendants violated Labor Code § 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, Defendants (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period Penalties when due.

37. Defendants violated Labor Code § 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Plaintiffs and the other employees were not compensated for all hours worked. For example, Defendants instructed employees to not record time spent answering calls, on standby, or driving time. Plaintiffs and other employees were not compensated for all hours worked (due in part to Pro-Finish’s and ARI’s requirement that supervisors modify employees’ actual hours to conform with scheduled work times). Defendants actively directed supervisors to lessen the pay and exclude regular and overtime for Plaintiffs and other employees.

38. Defendants violated Labor Code § 226(a)(5) by willfully failing to furnish an accurate showing of the gross and net wages earned by its employees. For example, Defendants (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due.

39. Defendants violated Labor Code § 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates, in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiffs and the other employees

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were not compensated for all hours worked (Defendants would require employees to list only their scheduled work-times, and failed to pay employees for the actual work-times.)

40. Defendants' failure to include the above information in its calculation of Plaintiffs', and other aggrieved employees', gross and net wages subjects Defendants to liability under Labor Code § 226.

41. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

42. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

43. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

44. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

FOURTH CAUSE OF ACTION

Meal and Rest Period Violations Pursuant to Labor Code §§ 226.7 and 512
Representative and Individual Action
(By Plaintiffs against Defendants and DOES 1 through 10)

45. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

46. Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

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47. Under applicable California law, "An 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 [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes" Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11160 (10); see also Wage Order 16, Section 10(A-F).

48. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an "on duty" Meal Period and counted as time worked. 8 Cal. Code Regs. § 11160 (10).

49. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or "major fraction thereof." 8 Cal. Code Regs. § 11160 (11).

50. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11160 (10), (11).

51. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.

52. For example, Defendants failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 16, or any other applicable wage orders. For example, Defendants set Meal Periods for Plaintiffs and other employees more than five and sometimes six hours into the workday. Defendants did not ensure their employees are either timely or wholly provided Meal Periods. Defendants provided Plaintiffs and other employees untimely Meal Periods. Over the course of their employment, Plaintiffs and other employees were instructed on numerous occasions to remain available during their Meal Periods. Additionally, Defendants illegally retained control over Plaintiffs and other employees during rest periods. For example, Defendants did not provide Plaintiffs and other employees uninterrupted Rest Periods. Rest Periods

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were also often improperly merged with Meal Periods which took place 5 hours and up to 6 hours into a work shift.

53. Defendants' Meal and Rest Period policy also assumes that employees have "waived" the right to a legally compliant Meal or Rest Period, or a Meal or Rest Period penalty payment, unless the employees complete a very specific process of formal notification to the Defendant.

54. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest Periods. These institutional and established practices of Defendants are illegal, in that Plaintiffs and all other employees were denied proper and/or timely Meal and Rest Periods.

55. These violations are due, in part, to the fact that Defendants do not possess a legal Rest Period policy or practice, as their Rest Period policy lacks required language, resulting in employees failing to receive all Rest Periods legally due. Defendants do not provide Rest Periods, as defined by California law. For example, Plaintiffs and other employees would often (a) miss a Rest Period entirely, (b) be provided a short or untimely Rest Period, or (c) be provided only one Rest Period, even when they were working an excess of 8 hours a day. Plaintiffs and other employees sometimes had Rest Periods tacked onto the end of a lunch period to "extend the Meal Period" at the direction of Defendants. That Meal Period would often be 5-6 hours into the workday, leaving Plaintiffs and employees with no Rest Period for over five hours at a time. Defendants have not provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues. Finally, Defendants illegally retained control over their employees during Rest Periods. For example, Defendants did not provide uninterrupted Rest Periods which were often improperly merged with Meal Periods which took place 5 to 6 hours into a 9-hour workday. Further, Defendants have never provided a Rest Period penalty payment to Plaintiffs or any other employee.

56. Defendants also do not possess a legal Meal Period policy and make no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees

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would often be provided a short or late Meal Period, or be provided only one Meal Period, even when they were working more than 10 hours a day. Additionally, Defendants failed to accurately record its employees actual start and stop times of Meal Periods, in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11160 (6).

57. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest Periods, in that the employees are required to always remain "On Call", including during the Meal and Rest Periods. These institutional and established practices of Defendants are illegal, in that Plaintiffs and all other class members were denied proper and/or timely Meal and Rest Periods.

58. Defendants willfully failed and refused to pay Plaintiffs and all other class members one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 16 (10F).

59. Any payments made by Defendants for missed or late Meal Periods were not paid at an employee's regular rate in violation of Labor Code § 226.7 and IWC Wage Order 16 (10F). Instead, these payments were made at an employee's base rate and did not include the value of, *inter alia*, additional compensation and/or employee benefits.

60. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

61. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

62. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

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63. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

FIFTH CAUSE OF ACTION

Failure to Reimburse Pursuant to Labor Code § 2802
Representative and Individual Action
(By Plaintiffs against Defendants and DOES 1 through 10)

64. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

65. Defendants failed to reimburse their nonexempt employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code § 2802. These expenditures are the result of, *inter alia*, Defendants' standard policies which require its employees to incur travel costs and phone costs without reimbursement. According to Wage Order 16 Section 5(A) and 5(B), "All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3 Hours and Days of Work . . . Each workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his usual or scheduled day's work, the employer shall pay him for half the usual or scheduled day's work." Defendants often required Plaintiffs to meet in a location in San Diego in order to carpool or pickup other employees and did not compensate Plaintiffs or employees for their time, mileage, gasoline or other travel related expenses.

66. By failing to provide payments for expenses incurred by Plaintiffs and other non-exempt employees, including expenses for mileage, Defendants violated Labor Code § 2802.

67. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

68. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiffs on behalf of himself and all other aggrieved employees by and through Labor Code §

2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendant pursuant to Labor Code § 2699(a) for each of these employees.

69. Plaintiffs seek reimbursement for business expenses which was illegally withheld.

70. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SIXTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 *et seq.*
Representative and Individual Action
(By Plaintiff Representatives against Defendants and DOES 1 through 10)

71. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

72. Defendants willfully failed to provide Plaintiffs and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code §§ 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code §§ 226.7, 510, 512, and 1197.

73. Defendants failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203. Defendants failed to provide Plaintiff and other employees all compensation upon termination of employment in violation of Labor Code §§ 201-203, due in part, to the fact that Pro-Finish and ARI failed to provide proper compensation for all hours worked, and failed to pay full Rest Period penalties, as discussed above. Plaintiffs ceased employment with Defendants in or around November 2024 and did not receive all wages due and owed to them. Other employees have also ceased employment with Defendants since November 2024 for the same failure by Defendants to pay all wages due and owed to them.

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74. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.

75. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

76. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

77. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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<u>SEVENTH CAUSE OF ACTION</u>

Failure to Provide Sick Pay Pursuant to Labor Code §§ 246, and 2698 *et seq*.
Representative and Individual Action
(By Plaintiff against Defendants and DOES 1 through 10)

78. Plaintiffs hereby incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

79. Labor Code § 246 (a)-(b) states that an employee who has worked for the same employer for 30 days or more within a calendar year is entitled to "paid sick days at the rate of one hour per every 30 hours worked […] provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued pick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-mon period."

80. Labor Code § 246 (c) further states that "An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued."

81. Labor Code 246 (n) states, "An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after sick leave was taken."

82. As set forth herein, Plaintiffs and other aggrieved employees worked the requisite amount of days for sick time to accrue. However, Defendants did not permit their employees to take sick time, and did not pay their employees sick time when it was taken.

83. As a direct result of Defendants' violations alleged herein, Plaintiffs and other aggrieved employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such sick wages, including lost interest on such monies and expenses, and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial.

84. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff s on behalf of themselves and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

85. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

86. Plaintiffs also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on their own behalf and on behalf of all aggrieved employees, pray for judgment as follows:

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 201, 202, 203, 221, 223, 226, 246, 226.7, 450, 512, and 1197.1, 2699 *et seq*. among other statutes;
3. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 16 (or any applicable Wage Order);
4. For lost back pay in an amount to be proven;
5. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
6. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
7. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5; and
8. For such other relief as the Court deems just and proper.

DATED: May 12, 2025

GRUENBERG LAW

JOSHUA D. GRUENBERG, ESQ.
KATHERINE D. KREBS, ESQ.
MAX A. GRUENBERG, ESQ.
Attorneys for Plaintiffs
BRYAN DE ANDA and JOB BUENROSTRO, in a representative capacity, and on behalf of other members of the general public similarly situated

EXHIBIT 1

(1) PLAINTIFFS' LETTER FILED WITH THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

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November 15, 2024

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Brian De Anda, Job Buenrostro v. Pro-Finish Construction Services Inc., Applied Restoration Inc.

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Pro-Finish Construction Services Inc., Pro Finish Painting, Inc. and Applied Restoration Inc. (Herein "Pro-Finish" and "ARI") in the above-referenced matter.

This "written notice" is filed on behalf of Brian De Anda and Job Buenrostro and all current and former non-exempt employees employed by Pro-Finish and ARI. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Pro-Finish and ARI are as follows:

> CALIFORNIA LABOR CODE SECTIONS 201-203, 223, 226, 226.7, 246, 510, and, 512, 1194, 2802, as well as IWC Wage Order 16, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11160 *et seq*.

<u>Facts and theories supporting the allegations</u>: Brian De Anda currently works as a non-exempt employee, employed by Pro-Finish and ARI since March 2023 to the present as a supervisor. Job Buenrostro, worked as a non-exempt employee employed by Pro-Finish and ARI from approximately June 2023 to November 2024, as a Journeyman Painter.

<u>Please Note:</u> Throughout the terms of his employment, Mr. Buenrostro was jointly employed by Pro-Finish and ARI, as both entities controlled the means, method and manner of his (and other non-exempt employees') employment. Mr. De Anda's is currently jointly employed by Pro-Finish and ARI, as both entities control the means, method, and manner of his (and other non-exempt employees') employment.

Throughout the term of Brian De Anda's and Job Buenrostro's employment, Pro-Finish and ARI require(d) Brian De Anda and Job Buenrostro and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

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Minimum Wage and Overtime Violations

Pro-Finish and ARI failed to provide all compensation, including Minimum Wage and Overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, inter alia, Labor Code sections 223, 1194, 510, IWC Wage Order 16, and any other applicable wage orders. This illegal action is due, in part, to Pro-Finish's and ARI's policies of **(1)** failing to properly retain accurate Time Records, in violation of California law, and **(2)** failing to provide compensation (including both Minimum and Overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Pro-Finish and ARI would instruct supervisors to modify and under-report work hours for approximately a year, resulting in a loss of compensation. Brian De Anda, Job Buenrostro, and other employees' time entries were often edited by management to inaccurately reflect the employee worked less hours. Moreover, Pro-Finish and ARI would often require Brian De Anda and Job Buenrostro to work extended hours (beyond their scheduled hours) without compensation.

Additionally, among other issues, Pro-Finish and ARI had notice of Brian De Anda and Job Buenrostro, and others, working outside of their scheduled and reported hours, as well as *within* Meal and Rest Period, but failed to provide any compensation for this work time.

Finally, Brian De Anda, Job Buenrostro, and other non-exempt employees, worked Overtime. Pro-Finish and ARI failed to properly calculate the legal Overtime Rate of Pay (or pay Overtime Pay, at all), as Pro-Finish and ARI ignore certain compensation when calculating the Regular Rate of Pay.

Failure to Provide Compliant Meal Periods

Pro-Finish and ARI failed to provide compliant Meal Periods in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 16, or any other applicable wage orders. For example, Pro-Finish and ARI set Meal Periods more than five and sometimes six hours into the workday. Pro-Finish and ARI did not ensure its employees are either timely or wholly provided Meal Periods. The employees would often be provided an untimely Meal Period. Over the course of their employment, Brian De Anda and Job Buenrostro were instructed on numerous occasions to remain available during their Meal Periods.

Finally, Pro-Finish and ARI illegally retained control over their employees during Meal Periods. For example, Pro-Finish and ARI required its employees to "remain on the premises" and to remain "on call" at all times, including during Meal Periods.

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Failure to Provide Compliant Rest Periods

Pro-Finish and ARI failed to provide compliant Rest Periods or requisite Rest Period Penalty Payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, IWC Wage Order 16, and any other applicable wage orders. Pro-Finish and ARI did not ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working an excess of 8 hours a day. Employees sometimes had Rest Periods tacked onto the end of a lunch period to "extend the Meal Period." That Meal Period would often be 5-6 hours into the workday, leaving employees with no Rest Period for up to five hours at a time. Pro-Finish and ARI has not provided a compliant Rest Period Penalty Payment to any employee as to the above-referenced issues.

Finally, Pro-Finish and ARI illegally retained control over their employees during Rest Periods. For example, Pro-Finish and ARI did not provide uninterrupted Rest Periods which were often improperly merged with Meal Periods which took place 5 to 6 hours into a 9 hour workday.

Wage Statement Violations

Pro-Finish and ARI violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by their employees. For example, Pro-Finish and ARI **(a)** would not provide compensation for all hours and minutes worked, **(b)** would purposefully exclude Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period Penalties when due.

Pro-Finish and ARI violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Additionally, Brian De Anda, Job Buenrostro and other employees were not compensated for all hours worked (due in part to Pro-Finish's and ARI's requirement that supervisors modify employees' actual hours to conform with *scheduled* work times. Pro-Finish and ARI were actively directing supervisors to lessen the pay and exclude overtime).

Pro-Finish and ARI violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by their employees. For example, Pro-Finish and ARI **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) Overtime Rate of Pay, and **(c)** would fail to pay Meal and/or Rest Period penalties when due.

Pro-Finish and ARI violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Brian De Anda, Job Buenrostro, and the other employees were not compensated for all hours worked (due in part to Pro-Finish and ARI requiring supervisors and employees to list only *Scheduled* work time, not actual work time). Therefore, Pro-Finish and ARI failed to provide a showing of the "total hours worked" by its employees pursuant to section 226(a)(2).

Failure to Reimburse Business Expenses

Pro-Finish and ARI failed to provide compliant expense reimbursement payments in violation of, inter alia, Labor Code section 2802, which states in subsection (a): "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." By failing to provide payments for expenses incurred by Job Buenrostro, and other non-exempt employees, including expenses for mileage, Pro-Finish and ARI violated Labor Code Section 2802.

Willful Failure to Provide All Compensation to Ex-Employees

Pro-Finish and ARI failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due in part, to the fact that Pro-Finish and ARI failed to provide proper compensation for all hours worked, and failed to pay full Rest Period penalties, as discussed above. Brian De Anda and Job Buenrostro ceased employment with Pro-Finish and ARI in or around November 2024 and did not receive all wages due and owed to them.

To confirm, Pro-Finish is a "person" as defined within California Labor Code section

To confirm, ARI is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,

Max Gruenberg, Esq.

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