

1 Bevin Allen Pike (SBN 221936)
2 Bevin.Pike@capstonelawyers.com
3 Daniel S. Jonathan (SBN 262209)
4 Daniel.Jonathan@capstonelawyers.com
5 Trisha K. Monesi (SBN 303512)
6 Trisha.Monesi@capstonelawyers.com
7 Shealene P. Mancuso (SBN 331740)
8 Shealene.Mancuso@capstonelawyers.com
9 Capstone Law APC
10 1875 Century Park East, Suite 1000
11 Los Angeles, California 90067
12 Telephone: (310) 556-4811
13 Facsimile: (310) 943-0396

14 Attorneys for Plaintiff Arturo Cruz Sanchez

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YOLO

ARTURO CRUZ SANCHEZ, individually,
and on behalf of other members of the
general public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

BLAZONA CONCRETE
CONSTRUCTION, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CV2024-2250

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Arturo Cruz Sanchez, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of Information
5 forms with the California Secretary of State designating a principal place of business in West
6 Sacramento, County of Yolo, in accordance with California Corporations Code section
7 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants
8 employ persons in this county, and employed Plaintiff in this county, and thus a substantial
9 portion of the transactions and occurrences related to this action occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff Arturo Cruz Sanchez is a resident of Sacramento, in Sacramento County,
12 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
13 approximately May 2020 to June 2024. Plaintiff worked for Defendants as a Clean & Spread
14 and Footing Crew Laborer. During his employment, Plaintiff typically worked eight (8) hours
15 or more per day and five (5) days or more per week. Plaintiff's primary job duties included,
16 without limitation, performing site preparation, securing forms for footings and foundations,
17 assisting with concrete pouring and spreading, placing and securing rebar for housing structures,
18 and loading and unloading materials.

19 5. BLAZONA CONCRETE CONSTRUCTION, INC. was and is, upon information
20 and belief, a California corporation, and at all times hereinafter mentioned, an employer whose
21 employees are engaged throughout this county and the State of California.

22 6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
23 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
24 complaint and serve such fictitiously named Defendants once their names and capacities
25 become known.

26 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
27 were the partners, agents, owners, or managers of BLAZONA CONCRETE CONSTRUCTION,
28 INC. at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to BLAZONA CONCRETE CONSTRUCTION, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “BLAZONA”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

9. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

10. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

11. Defendants provide commercial and residential concrete construction services across Northern California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in West Sacramento, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

12. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several

documents provided at an employee's time of hire.

13. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in West Sacramento, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

14. Defendants continue to employ non-exempt or hourly paid employees in California.

15. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period premiums, that included as eligible income all remuneration required by law, including but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms of remuneration in calculating the regular rate of pay for Plaintiff and class members.

1 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive at least minimum
3 wages for compensation and that they were not receiving at least minimum wages for work that
4 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
5 class members were not paid at least minimum wages for work done off-the-clock.

6 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to meal periods in accordance
8 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
9 additional hour of pay at their regular rates of pay when they were not provided with timely,
10 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
11 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
12 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

13 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to rest periods in accordance
15 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
16 additional hour of pay at their regular rates of pay when they were not authorized and permitted
17 to take a compliant rest period and that Plaintiff and class members were not authorized and
18 permitted to take compliant rest periods or provided with payment of one (1) additional hour of
19 pay at their regular rates of pay when they were not authorized and permitted to take a compliant
20 rest period.

21 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive complete and
23 accurate wage statements in accordance with California law. In violation of the California
24 Labor Code, Plaintiff and class members were not provided complete and accurate wage
25 statements.

26 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that they had a duty to maintain accurate and complete payroll records in
28 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,

1 knowingly, and intentionally failed to do so.

2 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to timely payment of all
4 wages earned upon termination of employment. In violation of the California Labor Code,
5 Plaintiff and class members did not receive payment of all wages due, including, but not limited
6 to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay,
7 within permissible time periods.

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to timely payment of wages
10 during their employment. In violation of the California Labor Code, Plaintiff and class members
11 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
12 wages, meal and rest period premiums, and/or sick leave pay, within permissible time periods.

13 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive sick leave benefits
15 to be paid at a regular rate of pay, that included, as eligible income, all income derived from
16 incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In violation of
17 the California Labor Code, Defendants failed to include all forms of remuneration in calculating
18 the regular rate of pay for sick leave pay.

19 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that Defendants had a duty to provide
21 Plaintiff and class members with written notice of the material terms of their employment with
22 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

23 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
25 and class members for all hours worked, and that Defendants had the financial ability to pay
26 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
27 represented to Plaintiff and class members that they were properly denied wages, all in order to
28 increase Defendants' profits.

1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 29. At all times herein set forth, PAGA provides that any provision of law under the
3 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
4 collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the
5 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by
6 aggrieved employees in a civil action brought on behalf of themselves and other current or
7 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

8 30. PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as
9 “any person who was employed by the alleged violator and personally suffered each of the
10 violations alleged.”

11 31. Plaintiff and other current and former employees of Defendants are “aggrieved
12 employees” as defined by Labor Code section 2699(c)(1) in that they are all Defendants’ current
13 or former employees and each of the alleged violations were committed against them.

14 32. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
15 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
16 requirements have been met:

- 17 (a) The aggrieved employee or representative shall give written notice by
18 online filing with the LWDA and by certified mail to the employer of the
19 specific provisions of the California Labor Code alleged to have been
20 violated, including the facts and theories to support the alleged violation.
- 21 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
22 2699.3(a) and any employer response to that notice shall be accompanied
23 by a filing fee of seventy-five dollars (\$75).
- 24 (c) The LWDA shall notify the employer and the aggrieved employee or
25 representative by certified mail that it does not intend to investigate the
26 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
27 postmark date of the aggrieved employee’s notice. Upon receipt of the
28 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)

1 calendar days of the postmark date of the aggrieved employee's notice,
2 the aggrieved employee may commence a civil action pursuant to
3 California Labor Code section 2699 to recover civil penalties.

4 33. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
5 through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision
6 other than those listed in Section 2699.5 after the following requirements have been met:

7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of the
9 specific provisions of the California Labor Code alleged to have been
10 violated (other than those listed in Section 2699.5), including the facts
11 and theories to support the alleged violation.

12 (b) An aggrieved employee's notice filed with the LWDA pursuant to
13 2699.3(c) and any employer response to that notice shall be accompanied
14 by a filing fee of seventy-five dollars (\$75).

15 (c) The employer may cure the alleged violation within thirty-three (33)
16 calendar days of the postmark date of the notice sent by the aggrieved
17 employee or representative. The employer shall give written notice
18 within that period of time by certified mail to the aggrieved employee or
19 representative and by online filing with the LWDA if the alleged violation
20 is cured, including a description of actions taken, and no civil action
21 pursuant to Section 2699 may commence. If the alleged violation is not
22 cured within the 33-day period, the aggrieved employee may commence
23 a civil action pursuant to Section 2699.

24 34. On November 5, 2024, Plaintiff provided written notice by online filing to the
25 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
26 Code alleged to have been violated, including facts and theories to support the alleged
27 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
28 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA

1 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
2 PAGA Case Number LWDA-CM-1060203-24. A true and correct copy of Plaintiff's written
3 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

4 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff
5 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
6 to investigate Plaintiff's claims and Defendants have not cured the violations.

7 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
8 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
10 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

11 37. Labor Code section 558(a) provides "[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare Commission
14 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
15 each underpaid employee for each pay period for which the employee was underpaid (2)
16 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
17 each pay period for which the employee was underpaid" Labor Code section 558(c)
18 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
19 criminal penalty provided by law."

20 38. Defendants, at all times relevant to this complaint, were employers or persons
21 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
22 rights by violating various sections of the California Labor Code as set forth above.

23 39. As set forth below, Defendants have violated numerous provisions of both the
24 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
25 Order.

26 40. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
27 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public
28 interest as a private attorney general, seeks assessment and collection of civil penalties and

injunctive relief for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

41. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

42. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

43. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

44. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

45. Members of the Class and Subclass are referred to herein as "class members."

46. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

47. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

(a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;

(b) Whether Defendants failed to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime

wages and/or meal and rest period premiums to Plaintiff and class members

(c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;

(d) Whether Defendants failed to provide Plaintiff and class members with meal periods;

(e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;

(f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);

(g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(h) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay due to Plaintiff and class members upon their discharge;

(i) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay due to Plaintiff and class members during their employment;

(j) Whether Defendants failed to properly calculate the regular rate of pay upon which Plaintiff's and class members' sick leave rate of pay was based;

(k) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;

(l) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(m) The appropriate amount of damages, restitution, or monetary penalties

1 resulting from Defendants' violations of California law.

2 48. There is a well-defined community of interest in the litigation and the class
3 members are readily ascertainable:

4 (a) Numerosity: The class members are so numerous that joinder of all
5 members would be unfeasible and impractical. The membership of the
6 entire class is unknown to Plaintiff at this time; however, the class is
7 estimated to be greater than one hundred (100) individuals and the
8 identity of such membership is readily ascertainable by inspection of
9 Defendants' employment records.

10 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
11 the interests of each class member with whom he has a well-defined
12 community of interest, and Plaintiff's claims (or defenses, if any) are
13 typical of all class members as demonstrated herein.

14 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
15 the interests of each class member with whom he has a well-defined
16 community of interest and typicality of claims, as demonstrated herein.
17 Plaintiff acknowledges that he has an obligation to make known to the
18 Court any relationship, conflicts or differences with any class member.
19 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
20 governing class action discovery, certification, and settlement. Plaintiff
21 has incurred, and throughout the duration of this action, will continue to
22 incur costs and attorneys' fees that have been, are, and will be necessarily
23 expended for the prosecution of this action for the substantial benefit of
24 each class member.

25 (d) Superiority: The nature of this action makes the use of class action
26 adjudication superior to other methods. A class action will achieve
27 economies of time, effort, and expense as compared with separate
28 lawsuits, and will avoid inconsistent outcomes because the same issues

1 can be adjudicated in the same manner and at the same time for the entire
2 class.

3 (e) Public Policy Considerations: Employers in the State of California
4 violate employment and labor laws every day. Current employees are
5 often afraid to assert their rights out of fear of direct or indirect retaliation.
6 Former employees are fearful of bringing actions because they believe
7 their former employers might damage their future endeavors through
8 negative references and/or other means. Class actions provide the class
9 members who are not named in the complaint with a type of anonymity
10 that allows for the vindication of their rights while simultaneously
11 protecting their privacy.

12 **FIRST CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

14 **(Against all Defendants)**

15 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 50. Labor Code section 1198 makes it illegal to employ an employee under
18 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
19 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
20 shall be the . . . standard conditions of labor for employees. The employment of any employee
21 . . . under conditions of labor prohibited by the order is unlawful.”

22 51. California Labor Code section 1198 and the applicable IWC Wage Order provide
23 that it is unlawful to employ persons without compensating them at a rate of pay either time-
24 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
25 worked by the person on a daily or weekly basis.

26 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
27 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
28 more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours

1 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

2 53. The applicable IWC Wage Order further provides that Defendants are and were
3 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
4 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
5 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
6 employee, including nondiscretionary bonuses and incentive pay.

7 54. California Labor Code section 510 codifies the right to overtime compensation
8 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
9 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
10 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
11 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
12 the seventh (7th) day of work.

13 55. During the relevant time period, Defendants willfully failed to pay all overtime
14 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
15 members were not paid overtime premiums for all of the hours they worked in excess of eight
16 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours
17 in a week, because all hours worked were not recorded.

18 56. First, on information and belief, during the relevant time period, Defendants had,
19 and continue to have, a company-wide policy and/or practice of discouraging and impeding
20 Plaintiff and class members from recording hours worked that were outside of their scheduled
21 shifts in order to limit the amount of overtime employees could accrue. As stated in Defendants'
22 "Rules of the Job" document, employees are instructed, "Do not exceed 40 work hours per
23 week" and, "[f]ailure to comply with any of the above will result in immediate termination."
24 To enforce this policy, Defendants had, and continue to have, a company-wide policy and/or
25 practice of failing to accurately record hours worked by their employees. Specifically,
26 Defendants failed to implement a timekeeping system at their jobsites and did not provide
27 employees with any mechanism, such as a time clock or electronic timekeeping system, to
28 accurately track and record their hours worked. Instead, Defendants' company-wide policy

1 and/or practice is to require employees, including Plaintiff and class members, to sign blank
2 timesheets presented to them by Defendants' foremen at the end of each day. Upon information
3 and belief, Defendants' foremen subsequently input all employee time onto the signed
4 timesheets, and submit them to management at the end of each pay period for review and
5 approval. Because Defendants failed to provide Plaintiff and class members with any
6 mechanism to record their actual hours worked themselves and, instead, granted Defendants'
7 foremen exclusive control and discretion over employee time records, whereby actual hours
8 worked were not recorded by Defendants' foremen, Plaintiff and class members were not paid
9 for all hours worked.

10 57. Moreover, on information and belief, when Defendants' foremen completed
11 these handwritten timesheets, Defendants' management would only record Plaintiff's and class
12 members' hours according to their scheduled shift start and end times, instead of their actual
13 hours worked. For example, Defendants sometimes required Plaintiff and class members to
14 report to Defendants' main yard before their scheduled shifts to load equipment and materials
15 onto Defendants' and employees' trucks, which could take up to 45 minutes. As another
16 example, Plaintiff was sometimes required to continue working at Defendants' jobsites for up
17 to one (1) hour after his scheduled shift end-time, before he could leave for the day. However,
18 because Defendants did not provide him with a mechanism to record this time worked, and
19 because Defendants' foremen would only record an employee's scheduled hours, Plaintiff was
20 never paid for this time worked outside of his scheduled shifts.

21 58. Additionally, during the relevant time period, Defendants required Plaintiff and
22 class members to travel to distant jobsites and assignments, but did not compensate them for
23 their time spent traveling to and from these locations. Although Plaintiff and class members
24 sometimes met at Defendants' main yard to travel to jobsites, Defendants would also require
25 Plaintiff and class members to drive their personal vehicles to distant jobsites. For example,
26 Defendants sometimes required Plaintiff to drive for approximately 60 miles or more from his
27 home in Sacramento, California, to various jobsites, including but not limited to those in Colusa,
28 California. However, Plaintiff and class members were not allowed to clock in until arriving at

1 the assigned jobsite for the start of their scheduled shifts, and thus were not paid for any time
2 spent traveling to or from the distant jobsite. Thus, Plaintiff and class members were not
3 compensated for this travel time, despite being under the direction and control of Defendants.

4 59. Second, upon information and belief, during the relevant period, Defendants had
5 a company-wide policy and/or practice of improperly rounding employee clock-in and clock-
6 out times to the nearest quarter (0.25) of an hour. Defendants' rounding policy resulted in the
7 failure to compensate Plaintiff and class members fully for all hours worked, causing Plaintiff
8 and class members to not be paid overtime wages for all of the overtime hours they actually
9 worked. Upon information and belief, Defendants' rounding policy was, and continues to be,
10 unfair and has, over time, resulted in the underpayment of wages to Plaintiff and class members.
11 To the extent Defendants' rounding policy took away time worked that was eligible for
12 overtime, Plaintiff and class members were denied overtime pay for all hours worked.

13 60. Third, Defendants had, and continue to have, company-wide policies and/or
14 practices of understaffing their jobsites while assigning heavy workloads. Defendants' policies
15 and/or practices resulted in a failure to provide Plaintiff and class members with adequate meal
16 period coverage, and thus, Plaintiff and class members were not always afforded uninterrupted
17 30-minute meal periods during shifts when they were entitled to receive a meal period.
18 Defendants also had a practice of failing to schedule meal periods, which further caused Plaintiff
19 and class members to not be relieved of their duties for compliant meal periods. For example,
20 Plaintiff worked through his meal periods and had them cut short in order to keep up with the
21 demands of work and complete his assigned duties, often only being able to quickly eat
22 something in the 10 minutes' time when another employee was pouring concrete. Thus,
23 Plaintiff and class members worked through meal periods and/or had meal periods cut short or
24 interrupted in order to handle their workloads. Defendants did not compensate Plaintiff and
25 class members for the time they spent working off the clock during unpaid meal periods.

26 61. Fourth, Defendants' company-wide timekeeping practices and/or policies do not
27 allow employees to track the actual start and end times of meal periods or report a short, missed,
28 or interrupted meal period (*see supra*). As stated, because Defendants' foremen logged the start

1 and end times of meal periods on handwritten timesheets only after Plaintiff and class members
2 had signed them, Defendants, upon information and belief, would record that compliant meal
3 periods were taken, even if that was not the case, in order to strictly limit meal period premiums
4 that Defendants would otherwise owe. Because Defendants failed to implement any sort of
5 timekeeping system for tracking and recording meal periods and prohibited employees from
6 recording a short, missed, or interrupted meal period, Plaintiff and class members were not paid
7 for all hours worked.

8 62. Defendants knew or should have known that as a result of these company-wide
9 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
10 the-clock before and after their shifts and during meal periods, and were suffered or permitted
11 to perform work for which they were not paid. Because Plaintiff and class members worked
12 shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-
13 clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were
14 not paid overtime wages for all of the overtime hours they actually worked.

15 63. Moreover, Defendants did not pay Plaintiff and class members the correct
16 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
17 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
18 and/or other forms of remuneration. However, in violation of the California Labor Code,
19 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
20 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
21 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
22 class members worked overtime and received these other forms of pay, Defendants failed to pay
23 all overtime wages by paying a lower overtime rate than required.

24 64. For example, Defendants paid Plaintiff and class members incentive pay and/or
25 nondiscretionary bonuses which were listed on Plaintiff's and class members' wage statements
26 as "Bonus - Saturday." During pay periods that Plaintiff and class members were paid overtime
27 wages, Defendants did not incorporate the incentive pay and/or nondiscretionary bonuses into
28 Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and

1 lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and class
2 members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay.
3 Defendants' failure to properly calculate the overtime rates of pay based on all remuneration
4 paid has resulted in an underpayment of overtime wages to Plaintiff and class members on a
5 company-wide basis.

6 65. Defendants' failure to pay Plaintiff and class members the balance of overtime
7 compensation as required by California law, violates the provisions of California Labor Code
8 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
9 members are entitled to recover from Defendants their unpaid overtime compensation, as well
10 as interest, costs, and attorneys' fees.

11 **SECOND CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid**

13 **Minimum Wages**

14 **(Against all Defendants)**

15 66. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
18 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
19 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
20 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 16-2001 as "the
21 time during which an employee is subject to the control of an employer, and includes all the
22 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
23 Code Regs. tit. 8, § 11160(2)(J) (defining "Hours Worked").

24 68. First, as set forth above, Defendants had, and continue to have, company-wide
25 policies and/or practices of discouraging and impeding Plaintiff and class members from
26 recording hours worked that were outside of their scheduled shifts in order to limit the amount
27 of overtime employees could accrue. Defendants failed to provide Plaintiff and class members
28 with any mechanism to track and record their actual hours worked themselves and, instead,

1 granted Defendants' foremen exclusive control and discretion over employee time records. On
2 information and belief, when Defendants' foremen completed these handwritten timesheets,
3 Defendants' management would only record Plaintiff's and class members' hours according to
4 their scheduled shift start and end times, instead of their actual hours worked.

5 69. Pursuant to these timekeeping practices, Plaintiff and class members were
6 required to perform work before and after their scheduled shifts, including, but not limited to,
7 reporting to Defendants' main yard to load equipment and materials onto Defendants' and
8 employees' trucks before scheduled shift start-times, or continuing to work at Defendants'
9 jobsites after scheduled shift end-times, without being compensated for the time they worked.
10 Additionally, as stated, Defendants required Plaintiff and class members to travel to distant
11 jobsites and assignments, but they were not allowed to clock in until arriving at the assigned
12 jobsite for the start of their scheduled shifts, and thus were not paid for any time spent traveling
13 to or from the distant jobsite.

14 70. Second, as stated, Defendants had a company-wide policy and/or practice of
15 rounding Plaintiff's and class members' hourly clock-in and clock-out times in their
16 timekeeping system to the nearest quarter-hour, resulting in the failure to compensate them for
17 all hours worked.

18 71. Third, as also stated, due to Defendants' policies and/or practices of
19 understaffing their jobsites while assigning heavy workloads, and failing to schedule meal
20 periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods
21 to which they were entitled and were required to work off-the-clock during meal periods, have
22 their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid
23 meal periods. Moreover, as stated, Defendants' company-wide timekeeping practices and/or
24 policies do not allow employees to track the actual start and end times of meal periods or report
25 a short, missed, or interrupted meal period. Because Defendants failed to implement any sort
26 of timekeeping system for tracking and recording meal periods in real-time and prohibited
27 employees from recording a short, missed, or interrupted meal period, Plaintiff and class
28 members were not paid for all hours worked during meal periods. Thus, Defendants

1 systematically failed to pay Plaintiff and class members for actual hours worked during unpaid
2 meal periods because these hours were not always correctly recorded.

3 72. Defendants did not pay minimum wages for all hours worked by Plaintiff and
4 class members. To the extent that these off-the-clock hours did not qualify for overtime
5 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
6 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

7 73. Defendants' failure to pay Plaintiff and class members minimum wages violates
8 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
9 Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants
10 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

11 **THIRD CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period**

13 **Violations**

14 **(Against all Defendants)**

15 74. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 75. At all relevant times herein set forth, California Labor Code section 512(a)
18 provides that an employer may not require, cause, or permit an employee to work for a period
19 of more than five (5) hours per day without providing the employee with a meal period of not
20 less than thirty (30) minutes, except that if the total work period per day of the employee is not
21 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
22 and the employee. Under California law, first meal periods must start after no more than five
23 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

24 76. At all relevant times herein set forth, California Labor Code sections 226.7,
25 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
26 meal period mandated by an applicable order of the IWC.

27 77. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a), and
28 the applicable IWC Wage Order also require employers to provide a second meal period of not

1 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
2 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
3 hours worked is no more than twelve (12) hours, the second meal period may be waived by
4 mutual consent of the employer and the employee only if the first meal period was not waived.

5 78. First, during the relevant time period, Defendants maintained a company-wide,
6 unlawful written meal period policy insofar as it fails to state, whatsoever, the timing of when
7 meal periods must occur. Under California law, first meal periods must start after no more than
8 five hours of work. *Brinker*, 53 Cal. 4th at 1041-1042. However, Defendants' written meal
9 period policy states (translated from Spanish to English), in part: The supervisors are to arrange
10 a break and meal periods to accommodate the operational requirements of work. Employees
11 will be given time off from all active responsibilities and restrictions during meal periods and
12 will not be compensated for that time. Meal periods will be at least thirty minutes in length.
13 These meal periods must be recorded on all time sheets. Typical work day is 07 a.m.-03:30
14 p.m.¹ Notably absent from Defendants' written policy, is any mention of when the first meal
15 period must take place (i.e., within the first five (5) hours of work) under California law and is
16 therefore facially invalid.

17 79. Second, as stated, Defendants had, and continue to have, company-wide policies
18 and/or practices of understaffing while assigning heavy workloads, which has resulted in a lack
19 of meal period coverage and prevented Plaintiff and class members from taking all timely,
20 uninterrupted meal periods to which they were entitled. Further, as stated, Defendants had a
21 company-wide practice and/or policy of failing to schedule meal periods, which further caused
22 Plaintiff and class members to not be relieved of their duties for compliant meal periods.

23 80. As a result, Plaintiff and class members had to work through all or part of their
24 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
25

26 ¹ "Los supervisores a organizar un descanso y almuerzo períodos para acomodarlos
27 requisitos de operación. Los empleados se les dará de descanso todas las responsabilidades
28 activas y restricciones durante los períodos de comida y no serán compensados por ese tiempo.
Los períodos de comida serán por lo menos treinta (30) minutos de duración. Estos períodos de
comida deben ser registradas en todas las hojas de tiempo empleado. día de trabajo típico es 07
a.m.-3:30 p.m."

1 before taking meal periods. For example, Plaintiff worked through his meal periods and had
2 them cut short in order to keep up with the demands of work and complete his assigned duties,
3 often only being able to quickly eat something in the 10 minutes' time when another employee
4 was pouring concrete. Additionally, Plaintiff regularly took his meal periods late, after the fifth
5 hour of work, due to the lack of meal period coverage.

6 81. Third, Defendants' company-wide timekeeping practices and/or policies do not
7 allow employees to track the actual start and stop times of meal periods or report a short, missed,
8 or interrupted meal period. As stated, because Defendants' foremen logged the start and end
9 times of meal periods on the handwritten timesheets only after Plaintiff and class members had
10 signed them, Defendants, upon information and belief, would record that compliant meal
11 periods were taken, even if that was not the case, in order to strictly limit meal period premiums
12 that Defendants would otherwise owe.

13 82. Fourth, Plaintiff and class members worked shifts in excess of ten (10) hours
14 without receiving an uninterrupted second 30-minute meal period. For example, during his
15 employment, Plaintiff sometimes worked shifts in excess of ten (10) or more hours per day, but
16 was not provided a second 30-minute meal period. Plaintiff and class members did not sign
17 valid meal period waivers on days that they were entitled to meal periods and were not relieved
18 of all duties.

19 83. At all times herein mentioned, Defendants knew or should have known that, as a
20 result of these policies, Plaintiff and class members were prevented from being relieved of all
21 duties and required to perform some of their assigned duties during meal periods. Defendants
22 further knew or should have known that Defendants did not pay Plaintiff and class members
23 meal period premiums when meal periods were missed, shortened, interrupted, and/or late.
24 Further, to the extent that Defendants' rounding policy reported that Plaintiff and class members
25 were provided with timely, full 30-minute meal periods when, in fact, the meal periods were
26 taken after the fifth hour of work or were less than 30 minutes, Plaintiff and class members did
27 not receive meal period premiums for these improperly rounded meal periods.

28 84. Moreover, Defendants engaged in a company-wide practice and/or policy of not

1 paying meal period premiums owed when compliant meal periods are not provided. Because
2 of this practice and/or policy, Plaintiff and class members have not received premium pay for
3 missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay
4 Plaintiff and class members premium pay for missed, late, and interrupted meal periods,
5 Defendants did not pay Plaintiff and class members at the correct rate of pay for premiums
6 because Defendants systematically failed to include all forms of compensation, such as
7 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate
8 of pay. As a result, Defendants failed to provide Plaintiff and class members compliant meal
9 periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay
10 the full meal period premiums due.

11 85. Defendants' conduct violates the applicable IWC Wage Order, and California
12 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
13 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
14 rate of compensation for each work day that the meal period was not provided.

15 **FOURTH CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 17 **(Against all Defendants)**

18 86. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 87. At all relevant times herein set forth, the applicable IWC Wage Order and
21 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
22 members' employment by Defendants.

23 88. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof" unless the total daily work time is less than three and one-half
28 (3 ½) hours.

1 89. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to authorize and permit rest periods
4 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
5 must “relinquish any control over how employees spend their break time, and relieve their
6 employees of all duties—including the obligation that an employee remain on call. A rest
7 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
8 257, 273 (2016). Under IWC Wage Order No. 16-2001, subdivision 11(B), rest periods need
9 not be authorized in limited circumstances when the disruption of continuous operations would
10 jeopardize the product or process of the work. However, the employer shall make up the missed
11 rest period within the same workday or compensate the employee for the missed ten (10)
12 minutes of rest time at his/her regular rate of pay within the same pay period.

13 90. Pursuant to the applicable IWC Wage Order and California Labor Code section
14 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional
15 hour of pay at their regular rates of pay for each work day that a required rest period was not
16 authorized and permitted.

17 91. During the relevant time period, Defendants regularly failed to authorize and
18 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
19 period worked or major fraction thereof. Defendants maintained and implemented, on a
20 company-wide basis, a non-compliant written rest period policy that prevented Plaintiff and
21 class members from taking compliant rest periods. Specifically, Defendants’ non-compliant
22 written rest period policy fails to correctly state the duration of rest periods and timing of when
23 rest periods must occur. The policy states (translated from Spanish to English), in relevant part:
24 Rest periods will be given and are **typically** 10 minutes long. Supervisors will decide these rest
25 periods whenever practical.² (emphasis added). However, under California law, an employee
26 is entitled to ten (10) minutes net rest time per four (4) hours or major fraction thereof. Thus,

27
28 ² “Los periodos de descanso serán dadas y son típicamente de 10 minutos de duración.
Los supervisors decidirán estos periodos de descanso siempre que sea práctico.”

Defendants' written rest period policy is non-compliant on its face, as it fails to authorize and permit employees to take a net ten (10) minutes for rest periods, and take a first rest period for shifts between 3.5 and 6 hours, and a second rest period for shifts between 6 and 10 hours.

92. Additionally, as with meal periods, Defendants' company-wide practices, including understaffing and assigning heavy workloads, prevented Plaintiff and class members from being relieved of all duty to take rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted to take rest periods.

93. Furthermore, upon information and belief, during the relevant time period, Defendants maintained a company-wide on-premises rest period policy, which effectively required that Plaintiff and class members remain on the work premises during their rest periods. Because Plaintiff and class members were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and class members during rest periods.

94. As a result of Defendants' practices and policies, Plaintiff and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had to forgo all of his rest periods due to the lack of coverage and Defendants' failure to schedule rest periods for employees.

95. Defendants have also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiff and class members have not received premium pay for all missed rest periods. Alternatively, to the extent that Defendants did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as incentive pay,

1 nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay. As a
2 result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest
3 period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable
4 IWC Wage Order.

5 96. Defendants' conduct violates the applicable IWC Wage Order and California
6 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
7 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
8 compensation for each work day that a compliant rest period was not authorized and permitted.

9 **FIFTH CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 11 **Statements and Failure to Maintain Accurate Payroll Records**

12 **(Against all Defendants)**

13 97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 98. At all relevant times herein set forth, California Labor Code section 226(a)
16 provides that every employer shall furnish each of his or her employees an accurate and
17 complete itemized wage statement in writing, including, but not limited to, the name and address
18 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
19 and all applicable rates of pay.

20 99. At all relevant times, Defendants have knowingly and intentionally provided
21 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
22 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
23 fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
24 applicable hourly rates in effect during the pay period, including rates of pay for overtime
25 wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number
26 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
27 226(a)(2), 226(a)(5), and 226(a)(9).

28 100. Because Defendants did not record the time Plaintiff and Subclass members spent

1 working off the clock, improperly rounded Plaintiff's and Subclass members' total hours
2 worked, and deducted time from their records for meal periods that were interrupted and/or
3 missed (and therefore time for which they should have been paid), Defendants did not list the
4 correct amount of gross wages and net wages earned by Plaintiff and Subclass members in
5 compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
6 accurately list the total number of hours worked by Plaintiff and Subclass members, in violation
7 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay
8 period and the corresponding accurate number of hours worked at each hourly rate, in violation
9 of section 226(a)(9).

10 101. Moreover, because Defendants did not calculate Plaintiff's and Subclass
11 members' regular rate of pay correctly for purposes of paying overtime wages, meal and rest
12 period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross
13 wages in compliance with section 226(a)(1). For the same reason, Defendants failed to list the
14 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
15 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of
16 pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of
17 section 226(a)(9).

18 102. The wage statement deficiencies also include, among other things, failing to list
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
20 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
21 which employees were paid; failing to list the name of the employee and only the last four digits
22 of his or her social security number or an employee identification number other than a social
23 security number; failing to list the name and address of the legal entity that is the employer;
24 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
25 the-clock.

26 103. California Labor Code section 1174(d) provides that "[e]very person employing
27 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
28 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
3 applicable piece rate paid to, employees employed at the respective plants or
4 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
5 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
6 members showing the daily hours they worked and the wages paid thereto as a result of failing
7 to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and
8 Subclass members’ total hours worked.

9 104. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
11 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
12 of any employees for longer hours than those fixed by the order or under conditions of labor
13 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
14 are required to keep accurate time records showing when the employee begins and ends each
15 work period and meal period. During the relevant time period, Defendants engaged in company-
16 wide practices and/or policies of failing to record actual hours worked, and thereby failed to
17 keep accurate records of work period and meal period start and end times for Plaintiff and
18 Subclass members, in violation of section 1198. Also, in light of Defendants’ failure to provide
19 Plaintiff and Subclass members with second 30-minute meal periods to which they were
20 entitled, Defendants kept no records of meal start and end times for second meal periods.

21 105. Plaintiff and Subclass members are entitled to recover from Defendants the
22 greater of their actual damages caused by Defendants’ failure to comply with California Labor
23 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
24 employee.

25 ///

26 ///

27 ///

28 ///

SIXTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

107. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

108. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

109. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

110. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

112. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not timely paid to Plaintiff and class members during their employment.

113. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

114. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

115. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

116. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

117. Defendants’ failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

119. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 16-2001, provides that: “[w]hen the employer requires the use of tools or equipment or they are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft”

120. During the relevant time period, Plaintiff and class members were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Plaintiff would use his personal cellular phone to converse with his foreman and supervisors about work-related matters and for GPS navigation when driving to the various jobsites for assignments. Although Defendants required Plaintiff and class members to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, Defendants failed to reimburse them for these costs.

121. Additionally, during the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and class members to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. Specifically, Defendants required Plaintiff and class members to travel to distant jobsites and assignments, but did not reimburse them for all travel expenses. For example, Defendants sometimes required Plaintiff to drive his personal vehicle for 35 miles or more from Defendants' main yard in West Sacramento, California, to various jobsites, including those in Plumas Lake and Colusa, California. Although Defendants required Plaintiff and class members to utilize their own vehicles to carry out their work-related responsibilities, Defendants did not reimburse them for all of their travel expenses.

122. Defendants could have provided Plaintiff and class members with the actual equipment for use on the job, such as company mobile devices and company vehicles. Or, Defendants could have reimbursed employees for their mobile device usage, mileage, and travel expenses. Instead, Defendants passed these operating costs onto Plaintiff and class members.

123. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and class members for necessary business-related expenses and costs.

124. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

125. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

126. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover

1 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
2 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and 1198.
3 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
4 penalties for violations of those Labor Code sections not found in section 2699.5, including
5 sections 226(a), 226.7, 246, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, 2802, and 2810.5.

6 127. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
9 Wage Order for Defendants' failure to compensate Plaintiff and other
10 aggrieved employees with all required overtime pay, as alleged herein;
- 11 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
12 and the applicable IWC Wage Order for Defendants' failure to
13 compensate Plaintiff and other aggrieved employees with at least
14 minimum wages for all hours worked, as alleged herein;
- 15 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
16 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
17 and other aggrieved employees with meal periods, as alleged herein;
- 18 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
19 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
20 and other aggrieved employees to take rest periods, as alleged herein;
- 21 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
22 IWC Wage Order for failure to provide accurate and complete wage
23 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 24 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
25 IWC Wage Order for failure to maintain payroll records, as alleged
26 herein;
- 27 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
28 wages upon termination, as alleged herein;

- 1 (h) Violation of Labor Code section 204 for failure to pay all earned wages
2 during employment, as alleged herein;
- 3 (i) Violation of Labor Code section 246 for failure to properly calculate the
4 sick leave paid to Plaintiff and other aggrieved employees, as set forth
5 below;
- 6 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
7 and other aggrieved employees for all business expenses necessarily
8 incurred, as alleged herein; and
- 9 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
10 provide written notice of information material to Plaintiff's and other
11 aggrieved employees' employment with Defendants, as set forth below.

12 128. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
13 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
14 days from the commencement of employment with paid sick days, to be accrued at least one
15 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
16 employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time
17 for nonexempt employees shall be calculated in the same manner as the regular rate of pay
18 for the workweek in which the employee uses paid sick time, whether or not the employee
19 actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees
20 shall be calculated by dividing the employee's total wages, not including overtime premium
21 pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
22 employment.

23 129. During the relevant time period, on information and belief, Defendants did not
24 pay Plaintiff and other aggrieved employees the correct sick leave rates of pay. Defendants
25 failed to correctly use either method of calculation under Labor Code section 246(l) to determine
26 Plaintiff's and other aggrieved employees' sick leave rates of pay. As stated, in addition to an
27 hourly wage, Defendants paid Plaintiff and other aggrieved employees incentive pay,
28 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the

1 California Labor Code, Defendants failed to incorporate all remunerations, including incentive
2 pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes
3 of calculating the sick leave pay rate. Therefore, during times when Plaintiff and other
4 aggrieved employees took sick leave and received these other forms of pay, Defendants failed
5 to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically,
6 Defendants paid Plaintiff and other aggrieved employees sick leave based on their hourly rate
7 of pay instead of their regular rate of pay.

8 130. Defendants' failure to properly calculate the sick leave rates of pay based on all
9 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other
10 aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).
11 Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant
12 to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

13 131. At all relevant times herein, California's Wage Theft Prevention Act was enacted
14 to ensure that employers provide employees with basic information material to their
15 employment relationship at the time of hiring, and to ensure that employees are given written
16 and timely notice of any changes to basic information material to their employment. Codified
17 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
18 time of hiring, an employer must provide written notice to employees containing basic and
19 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
20 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
21 any rates for overtime, the regular payday designated by the employer, and any allowances
22 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
23 § 2810.5(a)(1)(A)-(C).

24 132. At all relevant times, on information and belief, Defendants failed, on a
25 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
26 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

27 133. Defendants' failure to provide Plaintiff and other aggrieved employees with
28 written notice of basic information regarding their employment with Defendants is in violation

1 of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to
2 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

3 **TENTH CAUSE OF ACTION**

4 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

5 **Unlawful Business Practices**

6 **(Against all Defendants)**

7 134. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
8 and every allegation set forth above.

9 135. Defendants are “persons” as defined by California Business & Professions Code
10 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
11 associations.

12 136. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
13 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
14 suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices.
15 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
16 Code of Civil Procedure section 1021.5.

17 137. Defendants’ activities, as alleged herein, are violations of California law, and
18 constitute unlawful business acts and practices in violation of California Business & Professions
19 Code sections 17200, *et seq.*

20 138. A violation of California Business & Professions Code sections 17200, *et seq.*
21 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
22 policies and practices have violated state law in at least the following respects:

- 23 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
24 class members, to work overtime without paying them proper
25 compensation in violation of California Labor Code sections 510 and
26 1198, and the applicable IWC Wage Order, as alleged herein;
- 27 (b) Failing to include all forms of remuneration in the regular rate of pay as
28 required by law for purposes of paying overtime wages and/or meal and

1 rest period premiums to Plaintiff and class members, in violation of
2 California Labor Code sections 226.7, 510, and 1198, and the applicable
3 IWC Wage Order, as alleged herein;

4 (c) Failing to pay at least minimum wage to Plaintiff and class members in
5 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
6 and 1198, and the applicable IWC Wage Order, as alleged herein;

7 (d) Failing to provide all meal periods to Plaintiff and class members in
8 violation of California Labor Code sections 226.7, 512(a), 516, and 1198,
9 and the applicable IWC Wage Order, as alleged herein;

10 (e) Failing to authorize and permit Plaintiff and class members to take all rest
11 periods in violation of California Labor Code sections 226.7, 516, and
12 1198, and the applicable IWC Wage Order, as alleged herein;

13 (f) Failing to provide Plaintiff and class members with accurate wage
14 statements and failing to maintain accurate payroll records in violation of
15 California Labor Code sections 226(a), 1174(d), and 1198, and the
16 applicable IWC Wage Order, as alleged herein;

17 (g) Failing timely to pay all earned wages to Plaintiff and class members in
18 violation of California Labor Code section 204, as alleged herein;

19 (h) Failing to properly calculate the sick leave paid to Plaintiff and class
20 members in violation of California Labor Code section 246(l), as set forth
21 below; and

22 (i) Failing to provide written notice of information material to Plaintiff's and
23 class members' employment with Defendants in violation of California
24 Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

25 139. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
26 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
27 days from the commencement of employment with paid sick days, to be accrued at least one
28 hour for every 30 hours worked. California Labor Code section 246(l) provides that an

1 employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time
2 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
3 the workweek in which the employee uses paid sick time, whether or not the employee actually
4 works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be
5 calculated by dividing the employee’s total wages, not including overtime premium pay, by the
6 employee’s total hours worked in the full pay periods of the prior 90 days of employment.

7 140. During the relevant time period, Defendants did not pay Plaintiff and class
8 members the correct sick leave rates of pay. Defendants failed to correctly use either method
9 of calculation under Labor Code section 246(l) to determine Plaintiff’s and class members’ sick
10 leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and class
11 members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
12 However, in violation of the California Labor Code, Defendants failed to incorporate all
13 remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of
14 the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during
15 times when Plaintiff and class members took sick leave and received these other forms of pay,
16 Defendants failed to pay all sick leave benefits by paying a lower sick leave pay rate than
17 required. Specifically, Defendants paid Plaintiff and class members sick leave based on their
18 hourly rate of pay instead of their regular rate of pay.

19 141. Defendants’ failure to properly calculate the sick leave rates of pay based on all
20 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class
21 members on a company-wide basis in violation of California Labor Code section 246(l).

22 142. At all relevant times herein, California’s Wage Theft Prevention Act was enacted
23 to ensure that employers provide employees with basic information material to their
24 employment relationship at the time of hiring, and to ensure that employees are given written
25 and timely notice of any changes to basic information material to their employment. Codified
26 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
27 time of hiring, an employer must provide written notice to employees containing basic and
28 material payroll information, including, among other things, the rate(s) of pay and basis thereof,

whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

143. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5.

144. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

145. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of the initial complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

146. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

147. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

148. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and

1 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
2 fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to
3 enforce important rights affecting the public interest within the meaning of Code of Civil
4 Procedure section 1021.5.

5 149. Defendants' activities, namely Defendants' company-wide practice and/or policy
6 of not paying Plaintiff and class members all meal and rest period premiums due to them under
7 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
8 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
9 section 226.7 is a "dual-purpose" remedy intended primarily to compensate employees, and
10 secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
11 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
12 class members as part of their employment with Defendants, and thus Defendants' practice
13 and/or policy of denying these statutory benefits constitutes an unfair business practice in
14 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

15 150. A violation of California Business & Professions Code sections 17200, *et seq.*
16 may be predicated on any unfair business practice. In the instant case, Defendants' policies and
17 practices have violated the spirit of California's meal and rest period laws and constitute acts
18 against the public policy behind these laws.

19 151. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
20 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
21 benefits implemented by section 226.7 withheld and retained by Defendants during a period that
22 commences four years prior to the filing of the initial complaint; a permanent injunction
23 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff
24 and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure
25 section 1021.5 and other applicable laws; and an award of costs.

26 **REQUEST FOR JURY TRIAL**

27 Plaintiff requests a trial by jury.

28 ///

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
3 Defendants, jointly and severally, as follows:

4 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
5 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
6 reserves the right to amend his prayer for relief to seek a different amount.

7 **Class Certification**

8 2. That this case be certified as a class action;

9 3. That Plaintiff be appointed as the representative of the Class and Subclass;

10 4. That counsel for Plaintiff be appointed as class counsel.

11 **As to the First Cause of Action**

12 5. That the Court declare, adjudge, and decree that Defendants violated California
13 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
14 pay all overtime wages due to Plaintiff and class members;

15 6. For general unpaid wages at overtime wage rates and such general and special
16 damages as may be appropriate;

17 7. For pre-judgment interest on any unpaid overtime compensation commencing
18 from the date such amounts were due, or as otherwise provided by law;

19 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
20 California Labor Code section 1194(a); and

21 9. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Second Cause of Action**

24 10. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
26 Order by willfully failing to pay minimum wages to Plaintiff and class members;

27 11. For general unpaid wages and such general and special damages as may be
28 appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour

1 of pay at each employee's regular rate of pay for each workday that a rest period was not
2 authorized and permitted;

3 25. For all actual, consequential, and incidental losses and damages, according to
4 proof;

5 26. For premiums pursuant to California Labor Code section 226.7(c);

6 27. For pre-judgment interest on any unpaid rest period premiums from the date such
7 amounts were due, or as otherwise provided by law;

8 28. For attorneys' fees pursuant to California Code of Civil Procedure section
9 1021.5, or as otherwise provided by law; and

10 29. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Fifth Cause of Action**

13 30. That the Court declare, adjudge and decree that Defendants violated the
14 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
15 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
16 itemized wage statements thereto;

17 31. For all actual, consequential, and incidental losses and damages, according to
18 proof;

19 32. For injunctive relief pursuant to California Labor Code section 226(h);

20 33. For statutory penalties pursuant to California Labor Code section 226(e);

21 34. For attorneys' fees and costs pursuant to California Labor Code section
22 226(e)(1); and

23 35. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Sixth Cause of Action**

26 36. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
28 meal and rest period premiums, and/or sick leave pay owed at the time of termination of the

1 employment of Plaintiff and other terminated class members;

2 37. For all actual, consequential and incidental losses and damages, according to
3 proof;

4 38. For waiting time penalties according to proof pursuant to California Labor Code
5 section 203 for all employees who have left Defendants' employ;

6 39. For pre-judgment interest on any unpaid wages from the date such amounts were
7 due, or as otherwise provided by law;

8 40. For attorneys' fees pursuant to California Code of Civil Procedure section
9 1021.5, or as otherwise provided by law; and

10 41. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Seventh Cause of Action**

13 42. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime
15 wages, minimum wages, meal and rest period premiums, and/or sick leave pay during their
16 employment;

17 43. For all actual, consequential and incidental losses and damages, according to
18 proof;

19 44. For statutory penalties according to proof pursuant to California Labor Code
20 section 210;

21 45. For pre-judgment interest on any unpaid wages from the date such amounts were
22 due, or as otherwise provided by law;

23 46. For attorneys' fees pursuant to California Code of Civil Procedure section
24 1021.5, or as otherwise provided by law; and

25 47. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Eighth Cause of Action**

28 48. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
2 expenses and costs incurred by Plaintiff and class members.

3 49. For all actual, consequential and incidental losses and damages, according to
4 proof.

5 50. For statutory penalties according to proof pursuant to California Labor Code
6 section 210.

7 51. For pre-judgment interest on any unpaid wages from the date such amounts were
8 due, or as otherwise provided by law.

9 52. For attorneys' fees pursuant to California Code of Civil Procedure section
10 1021.5, or as otherwise provided by law; and

11 53. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Ninth Cause of Action**

14 54. That the Court declare, adjudge and decree that Defendants violated the
15 following California Labor Code provisions as to Plaintiff and other aggrieved employees: 510
16 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198
17 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198
18 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
19 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and
20 maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon
21 termination); 204 (by failing to timely pay all earned wages during employment); 246 (by failing
22 to properly calculate sick leave pay); 2802 (by failing to reimburse business expenses); and
23 2810.5 (by failing to provide notice of material terms of employment);

24 55. For civil penalties pursuant to the California Labor Code, including sections 210,
25 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code
26 sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
27 1197.1, 1198, 2802, and 2810.5;

28 56. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or

2699(k) to bring Defendants into compliance with the requirements of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

57. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

58. For pre-judgment and post-judgment interest as provided by law; and

59. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

60. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to properly calculate Plaintiff's and class members' sick leave rates of pay, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

61. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

62. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by

Defendants as a result of violations of California Business & Professions Code sections 17200,
et seq.;

63. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
California Code of Civil Procedure section 1021.5; and

64. For such other and further relief as the Court may deem equitable and
appropriate.

As to the Eleventh Cause of Action

65. That the Court declare, adjudge and decree that Defendants' conduct of denying
Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
unfair business practice in violation of California Business and Professions Code sections
17200, *et seq.*;

66. For restitution of the statutory benefits under section 226.7 unfairly withheld
from Plaintiff and class members and prejudgment interest from the day such amounts were due
and payable;

67. For the appointment of a receiver to receive, manage, and distribute any and all
funds disgorged from Defendants and determined to have been wrongfully acquired by
Defendants as a result of violations of California Business & Professions Code sections 17200,
et seq.;

68. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
California Code of Civil Procedure section 1021.5;

69. For pre-judgment and post-judgment interest as provided by law; and

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1 70. For such other and further relief as the Court may deem equitable and
2 appropriate.

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4 Dated: January 10, 2025

Respectfully submitted,

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Capstone Law APC

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By: 

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Bevin Allen Pike

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Daniel S. Jonathan

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Trisha K. Monesi

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Shealene P. Mancuso

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Attorneys for Plaintiff Arturo Cruz Sanchez

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **January 10, 2025**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Ryan J. Maas (SBN: 243498)
ryan@radshap.com
RADOSLOVICH SHAPIRO, PC
3600 American Drive, Suite 200
Sacramento, CA 95864
Tel.: (916) 565-8161

Attorneys for Defendant(s)
BLAZONA CONCRETE CONSTRUCTION, INC.

Grace Perkins-Brown
grace@radshap.com

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.
- ☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 10, 2025**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name


Signature