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Attorneys for Plaintiff STEVEN MUIR
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

STEVEN MUIR, on behalf of the general public
as private attorney general,

Plaintiff,

v.

RAILPROS FIELD SERVICES, INC., a Texas
Corporation; RAILPROS, INC., a California
Corporation and DOES 1-50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff STEVEN MUIR (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants RAILPROS FIELD SERVICES, INC., a Texas Corporation; RAILPROS, INC., a California Corporation and DOES 1-50, inclusive (“Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendants’: (a) failure to pay minimum and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to provide accurate itemized wage statements, (e) failure to timely pay wages during employment, and (f) subjecting employees to illegal non-compete provisions in their employment contracts with Defendants. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, Defendants either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California

1 Courts consistent with traditional notions of fair play and substantial justice.

2 5. Venue as to each Defendants is proper in this judicial district pursuant to Code of
3 Civil Procedure section 395. Defendants is doing business throughout California, including but
4 not limited to Orange County, and each Defendants is within the jurisdiction of this Court for
5 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
6 all other aggrieved employees within the State of California. Defendants employs numerous
7 aggrieved employees in in the State of California.

8 6. On information and belief, Defendants has conducted business within the State of
9 California during the purported liability period and continue to conduct business throughout the
10 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
11 similarly situated aggrieved employees within California.

12 7. The California Superior Court also has jurisdiction in this matter because on
13 information and belief there are no federal questions at issue, as the issues herein are based solely
14 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
15 California Code of Civil Procedure, the California Civil Code, and the California Business and
16 Professions Code.

17 8. On information and belief, during the statutory liability period and continuing to
18 the present ("liability period"), Defendants consistently maintained and enforced against
19 Defendants' aggrieved Employees, among others, the following unlawful practices and policies,
20 in violation of California state wage and hour laws: a) failure to pay minimum and overtime wages,
21 (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to provide accurate
22 itemized wage statements, (e) failure to timely pay wages during employment, and (f) subjecting
23 employees to illegal non-compete provisions in their employment contracts with Defendants.

24 9. On information and belief, during the statutory liability period and continuing to
25 the present, Defendants has had a consistent policy of failing to pay wages including overtime
26 wages for hours worked while subject to the control of Defendants.

27 10. On information and belief, during the statutory liability period and continuing to
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1 the present, Defendants has failed to provide meal periods to Plaintiff and aggrieved employees.
2 Defendants has also failed to provide meal premiums for missed meal periods.

3 11. On information and belief, during the statutory liability period and continuing to
4 the present, Defendants has failed to provide rest periods to Plaintiff and aggrieved employees.
5 Defendants has also failed to provide rest premiums for missed rest periods.

6 12. On information and belief, during the statutory liability period and continuing to
7 the present, Defendants has failed to provide Plaintiff and aggrieved employees accurate itemized
8 wage statements.

9 13. On information and belief, during the statutory liability period and continuing to
10 the present, Defendants has failed to provide Plaintiff and aggrieved employees timely payment of
11 all wages owed to them during their employment.

12 14. On information and belief, during the statutory liability period and continuing to
13 the present, Defendants has subjected Plaintiff and aggrieved employees to illegal non-compete
14 provisions in their employment contracts with Defendants.

15 15. Plaintiff on behalf of the general public as private attorney general and all other
16 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
17 enumerated under 2699.5 as follows: sections 201-204, 226, 432.5, 510, 512, 558, 226.3, 1174,
18 1174.5, 1175, 1194, 1197, 1197.1, 1198 and seeking penalties, interest, attorneys' fees and costs.

19 **III. PARTIES**

20 **A. Plaintiff**

21 16. Plaintiff, STEVEN MUIR, was at all times relevant to this action, a resident of
22 California. Plaintiff was employed by Defendants in July of 2023 as a Non-Exempt Employee for
23 Defendants with the title of Railroad Worker in Charge until July of 2024. Plaintiff worked across
24 several counties in Southern California.

25 17. As Defendants' employee, Plaintiff, and all other aggrieved employees were
26 regularly required to and subsequently suffered:

27 a) to perform work subject to the control of the employer without being compensated all
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1 wages including overtime, all in violation of California labor laws, regulations, and the
2 Industrial Welfare Commission Wage Order (“IWC”);

3 b) not provided first and second meal periods nor paid premium wages;

4 c) not provided first and second rest periods nor paid premium wages;

5 d) not provided accurate itemized wage statements;

6 e) not paid timely during employment; and

7 f) subjected to illegal non-compete provisions in employment contracts.

8 18. On information and belief, Defendants willfully failed to pay all earned wages in
9 the form regular wages and overtime wages, to its Non-Exempt Employees and members of the
10 Representative Group; nor have Defendants returned to Plaintiff or members of the
11 Representative Group, upon or after separation from employment with Defendants, all wages
12 earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the
13 general public as private attorney general and all other aggrieved employees.

14 **B. Defendants**

15 19. Defendants, RAILPROS FIELD SERVICES, INC. and RAILPROS, INC. operate
16 as Railroad contractors. Plaintiff estimates there are in excess of one hundred (100) Non-Exempt
17 Employees who work or have worked for Defendants over the last year.

18 20. Other than identified herein, Plaintiff are unaware of the true names, capacities,
19 relationships and extent of participation in the conduct alleged herein, of the Defendants sued as
20 DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants is
21 legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants
22 by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
23 are ascertained.

24 21. Plaintiff are informed and believes and thereon alleges that each Defendants,
25 directly or indirectly, or through agents or other persons, employed Plaintiff and other members of
26 the Representative Group, and exercised control over their wages, hours, and working conditions.
27 Plaintiff are informed and believes and thereon alleges that each Defendants acted in all respects
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1 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
2 plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally attributable
3 to the other Defendants.

4 5 **IV. GENERAL ALLEGATIONS**

6 22. At all times set forth herein, Defendants employed Plaintiff and other persons in
7 the capacity of non-exempt positions, however titled, throughout the state of California.

8 23. Plaintiff is informed and believes Aggrieved employees have at all times pertinent
9 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
10 rules and regulations of the IWC California Wage Orders.

11 24. Defendants continues to employ Non-Exempt Employees, however titled, in
12 California and implement a uniform set of policies and practices to all non-exempt employees, as
13 they were all engaged in the generic job duties related to Defendants' railroad contracting business.

14 25. Plaintiff is informed and believes, and thereon alleges, that Defendants is and was
15 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
16 the requirements of California's wage and employment laws.

17 26. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
18 employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
19 week.
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21 27. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
22 employees based upon an hourly rate.

23 28. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
24 employees typically worked five (5) days a week.

25 29. Plaintiff is informed and believes that the Aggrieved employees were required to
26 keep similar schedules.

27 30. During the liability period, Defendants failed to compensate Plaintiff and
28 Aggrieved employees for all hours worked, resulting in underpayment of minimum and overtime

1 wages. For instance, worked off-the-clock daily. He was not compensated for time spent driving
2 from his home to the jobsite and back in a company vehicle.

3 31. Plaintiff was required to drive a company vehicle with the company's logo and
4 name printed all over the vehicle to and from work. He was not permitted to drive anyone else in
5 the car or drive anywhere in it for non-work-related purposes.

6 32. Plaintiff was subjected to many restrictions while driving the company vehicle,
7 such that it should be considered compensable time. Despite this, Plaintiff was not permitted to
8 clock in until he arrived at the jobsite.

9 33. Plaintiff was also required to be on-call waiting for the company to call him in after
10 hours. Plaintiff was expected to carry and be alert to his work phone after hours for this reason. If
11 Plaintiff did not answer his work phone, the company would call his personal phone. Plaintiff was
12 reprimanded for not answering his work phone after hours.

13 34. On information and belief, if an employee is unable to go to work after being called
14 in, their vacation accrual for the quarter is withheld from them. Once called in, employees had to
15 report to work within a reasonable amount of time.

16 35. During the relevant time, as a consequence of Defendants' staffing and scheduling
17 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
18 provide Plaintiff and Aggrieved employees timely, legally complaint uninterrupted 30-minute
19 meal periods on shifts over five hours as required by law.

20 36. On information and belief, Plaintiff and Aggrieved employees did not sign a meal
21 waiver.

22 37. Plaintiff and Aggrieved employees were not provided with valid lawful on-duty
23 meal periods.

24 38. Despite the above-mentioned meal period violations, Defendants failed to
25 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved employees,
26 one additional hour of pay at their regular rate as required by California law when meal periods
27 were not timely or lawfully provided in a compliant manner.
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1 39. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
2 should know, knew, and/or should have known that Plaintiff and Aggrieved employees were
3 entitled to receive premium wages based on their regular rate of pay under California Labor Code
4 § 226.7 but were not receiving such compensation.

5 40. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
6 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
7 period for every four hours worked or major fraction thereof, which is a violation of the California
8 Labor Code and IWC wage order.

9 41. Defendants maintained and enforced scheduling practices, policies, and imposed
10 work demands that frequently required Plaintiff and Aggrieved employees to forego their lawful,
11 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
12 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure
13 to provide relief for Plaintiff and Aggrieved employees to take their lawfully required breaks.

14 42. Despite the above-mentioned rest period violations, Defendants did not compensate
15 Plaintiff, and on information and belief, did not pay Aggrieved employees one additional hour of
16 pay at their regular rate as required by California law, including California Labor Code § 226.7
17 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized
18 and permitted.

19 43. Defendants imposed illegal non-compete provisions on Aggrieved employees
20 through their employment contracts, in violation of Labor Code § 432.5.

21 44. Upon information and belief, Defendants knew and or should have known that it is
22 improper to implement policies and commit unlawful acts such as:
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24 (a) requiring employees to work four (4) hours or a major fraction thereof without
25 being provided a minimum ten (10) minute rest period and without compensating the employees
26 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
27 rest period was not provided;

28 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day

1 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
2 and without compensating employees with one (1) hour of pay at the regular rate of compensation
3 for each workday that such a meal period was not provided;

4 (c) failing to pay overtime and minimum wages;

5 (d) failing to provide accurate wage statements;

6 (e) subjecting employees to illegal non-compete provisions in employment contracts;

7 (f) conducting and engaging in unfair business practices.

8 45. In addition to the violations above, and on information and belief, Defendants knew
9 they had a duty to compensate Plaintiff and Aggrieved employees for the allegations asserted
10 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
11 knowingly, recklessly, and/or intentionally failed to do so.

12 46. Plaintiff and Aggrieved employees they seek to represent are covered by, and
13 Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare
14 Commission Occupational Wage Orders (hereinafter "IWC Wage Orders") and corresponding
15 applicable provisions of California Code of Regulations, Title 8, § 11000 *et seq.*

16 **V. REPRESENTATIVE CLAIMS**

17 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

18 47. Plaintiff incorporates by reference and re-alleges each and every allegation
19 contained above, as though fully set forth herein.

20 48. PAGA is a mechanism by which the State of California can enforce state labor laws
21 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
22 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a
23 law enforcement action designed to protect the public and not to benefit private parties. The
24 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
25 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
26 Legislature specified that "it was...in the public interest to allow aggrieved employees, acting as
27 private attorneys general to recover civil penalties for Labor Code violations..." Stats. 2003, Ch.
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1 906, section 1. Accordingly, PAGA claims cannot be subject to arbitration.

2 49. Plaintiff brings this Representative Action on behalf of the State of California with
3 respect to himself and all other individuals who are or previously were employed by Defendants
4 as non-exempt California employees during the applicable statutory period (the “aggrieved
5 employees”).

6 50. On December 3, 2024 Plaintiff complied with notice requirements pursuant to
7 Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
8 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and
9 that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
10 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
11 representative capacity. The substance and violations set forth in this Complaint of which the
12 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
13 Action Complaint to the LWDA.

14 51. Plaintiff are an aggrieved employee as defined in Labor Code Section 2699(a).
15 Plaintiff brings this cause of action on behalf of all current and former California non-exempt
16 Employees of Defendants.

17 52. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
18 which Defendants is liable due to numerous Labor Code violations as set forth in this Complaint,
19 including without limitation Labor Code section 201-204, 226, 226.3, 226(b), 510, 512, 558, 1174,
20 1174.5, 1175, 1194, 1197, 1197.1, 1198, 1198.5 2802, and 2698 *et seq.*, applicable IWC Wage
21 Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

22 53. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
23 overtime wages owed. Therefore, Defendants violated section 510, and 1194 by not compensating
24 its Non-Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours
25 in a work week (40). Section 510 of the Labor Code codifies the right to overtime compensation
26 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
27 (8) hours in a day or forty (40) hours in a work week and to overtime compensation twice the
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1 regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight
2 (8) hours in a day on the seventh day of work in a particular work week.

3 54. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
4 period of more than five (5) hours without providing a meal break of not less than thirty (30)
5 minutes in which the employee is relieved of all of his or her duties. Also pursuant to California
6 law and the relevant IWC Wage Order(s), no employer shall require an employee to work more
7 than ten hours without being provided a second meal period, which can be waived by mutual
8 consent up until the twelfth hour.

9 55. For the Liability Period, Defendants failed to provide Plaintiff and the Aggrieved
10 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes.

11 56. For the Liability Period, Defendants failed to provide Plaintiff and the Aggrieved
12 Employees proper second meal periods for shifts in excess of ten hours.

13 57. Pursuant to the IWC wage orders applicable to Plaintiff and the Aggrieved
14 Employees, "Every employer shall authorize and permit all employees to take rest periods, which
15 insofar as practicable shall be in the middle of each work period.... [The] authorized rest period
16 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
17 four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as
18 hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a) prohibits
19 an employer from requiring any employee to work during any rest period mandated by an
20 applicable order of the IWC. Defendants were required to authorize and permit employees such
21 as Plaintiff and the Aggrieved Employees to take rest periods, based upon the total hours worked
22 at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no
23 deduction from wages.

24 58. Despite said requirements applicable to Plaintiff and the Aggrieved Employees,
25 Defendants failed and refused to authorize and permit Plaintiff and the Aggrieved Employees to
26 take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.
27 Plaintiff regularly worked shifts without properly authorized rest periods. Defendants did not pay
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1 Plaintiff an hour of wages for each day that a rest period violation occurred. On information and
2 belief, the Aggrieved Employees endured similar violations as a result of Defendants' rest period
3 policies and practices.

4 59. By their failure to provide rest periods for every four (4) hours or major fraction
5 thereof worked by Plaintiff and the Aggrieved Employees, Defendants violated the provisions of
6 Labor Code sections 226.7 and the applicable IWC Wage Order(s).

7 60. Plaintiff and the Aggrieved Employees were also injured because the wage
8 statements Defendants provided to them failed to accurately state the hours worked and also to
9 state that the Aggrieved Employees were being paid one hour of pay at their regular rate for days
10 in which they were not provided with each of their authorized meal and rest periods. Defendants
11 has made it impossible to properly calculate important information from the wage statements that
12 were provided to Plaintiff and the Aggrieved Employees throughout the liability period.

13 61. On information and belief, Defendants willfully failed to pay all wages due and
14 owing upon separation from employment. These wages include minimum and overtime wages.

15 62. On information and belief, Defendants willfully failed to pay all wages due and
16 owing during employment. These wages include minimum and overtime wages.

17 63. On information and belief, Defendants failed to provide accurate itemized wage
18 statements which failed to include all hours worked, including overtime, due and owing to Plaintiff
19 and the aggrieved employees pursuant to Labor Code section 226(a).

20 64. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
21 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
22 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
23 for each violation in a subsequent citation, for which the employer fails to provide the employee a
24 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

25 65. Additionally, Defendants has no accurate records relating to aggrieved employees'
26 work periods, total daily hours worked, total hours worked per payroll period and applicable pay
27 rates, in violation of applicable Wage Orders. Similarly, Defendants failed to maintain accurate
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1 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

2 66. As a result of Defendants' unlawful conduct, Plaintiff and aggrieved employees
3 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
4 worked.

5 67. Labor Code §432.5 states in pertinent part "No employer, or agent, manager,
6 superintendent, or officer thereof, shall require any employee or applicant for employment to
7 agree, in writing, to any term or condition which is known by such employer, or agent, manager,
8 superintendent, or officer thereof to be prohibited by law." Despite, this Defendants included a
9 non-compete clause in the employment agreements disseminated to their employees.

10 68. Labor Code §204 (a) states in pertinent part "All wages, other than those mentioned
11 in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
12 payable twice during each calendar month, on days designated in advance by the employer as the
13 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month
14 shall be paid for between the 16th and the 26th day of the month during which the labor was
15 performed, and labor performed between the 16th and the last day, inclusive, of any calendar
16 month, shall be paid for between the 1st and 10th day of the following month." Despite, this
17 Defendants failed to timely pay all wages owed timely during employment.

18 69. Plaintiff and the Representative aggrieved Employees are entitled to recover
19 Penalties and attorneys' fees and costs sunder Labor Code section 2698, et. seq.
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21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 23 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 24 2. For reasonable attorneys' fees and costs; and
- 25 3. For such other and further relief as the Court deems proper.
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1 Dated: December 3, 2024

JAMES HAWKINS APLC

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3 By: _____

JAMES R. HAWKINS
GREGORY MAURO
MICHAEL CALVO
LAUREN FALK
AVA ISSARY

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6 Attorneys for Plaintiff STEVEN MUIR on
7 behalf of the general public as private
8 attorney general
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