

SUMMONS for First Amended Complaint (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

PRECISION METAL PRODUCTS, INC., a Delaware Corporation,
"Additional Parties Attached"

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

VICTOR MANUEL IBARRA, on behalf of himself and all others
similarly situated, and on behalf of the general public,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/1/2024 1:41:22 PM

Clerk of the Superior Court
By I. Irizarry, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Hall of Justice Courthouse
330 W. Broadway
San Diego, CA 92101

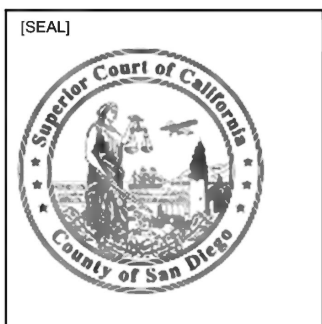
CASE NUMBER:
(Número del Caso): 24CU003229C

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Roman Otkupman, Nidah Farishta: 5743 Corsa Ave, Suite 123, Westlake Village CA 91362; (818)293-5623

DATE: **October 21, 2024**
(Fecha)

Clerk, by  , Deputy
(Secretario) **I. Irizarry** (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
- ☐ by personal delivery on (date):

SHORT TITLE: Victor Manuel Ibarra v. Precision Metal Products, Inc., et al.	CASE NUMBER: 24CU03229C
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

HBD INDUSTRIES, INC., a Delaware Corporation, and DOES 1 through 10, inclusive.

Roman Otkupman, CSBN 249423

Roman@OLFLA.com

Nidah Farishta, CSBN 312360

Nidah@OLFLA.com

OTKUPMAN LAW FIRM, A LAW CORPORATION

5743 Corsa Ave., Suite 123,

Westlake Village, CA 91362

Telephone: (818) 293-5623

Facsimile: (888) 850-1310

Attorney for Plaintiff,

Victor Manuel Ibarra, on behalf of himself and all others similarly situated, and on behalf of the general public

ELECTRONICALLY FILED

Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By I. Irizarry, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

VICTOR MANUEL IBARRA, on behalf of
himself and all others similarly situated, and
on behalf of the general public,

Plaintiff,

vs.

PRECISION METAL PRODUCTS, INC., a
Delaware Corporation, HBD INDUSTRIES,
INC., a Delaware Corporation, and DOES 1
through 10, inclusive.

Defendants.

CASE NO. 24CU003229C

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

- 1. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 2. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 3. FAILURE TO PAY ALL WAGES IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2);**
- 4. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e), 1174(d);**
- 5. FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION (LABOR CODE §§ 201-203);**
- 6. FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF LABOR CODE § 204(a)(b);**

7. **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF (LABOR CODE § 2802);**
8. **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS WORKED IN VIOLATION OF (LABOR CODE § 210, 218);**
9. **VIOLATION OF LABOR CODE § 221;**
10. **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200;**
11. **PENALTIES PURSUANT TO LABOR CODE SECTION 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a),(e), 201-203, 204(a)(b), 2802, 221, 210, 218**

DEMAND FOR JURY TRIAL

PLAINTIFF, Victor Manuel Ibarra (“Plaintiff”), on behalf of himself and all others similarly situated, and on behalf of the general public, complains of Defendants as follows:

I. INTRODUCTION

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382 on behalf of Plaintiff and certain individuals who are employed by, or were formerly employed by, PRECISION PRODUCTS, INC., HBD INDUSTRIES, INC. and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”). Plaintiff and Defendant’s California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant’s California employees were forced to continue working through their meal and rest breaks in order to assist Defendant’s needs. Because of this, Plaintiff and Defendant’s California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one

1 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees
2 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
3 and IWC Order No. 5-2001, Section 12.

4 3. Plaintiff and Defendant's California employees were required to work off the clock
5 for Defendants. Plaintiff and Defendant California employees were asked to perform tasks prior to
6 clocking in without being compensated for it such as walking through the warehouse to see what the
7 work for the day required, and talked to the production manager. Plaintiff and Defendant California
8 employees were also required to start his computer and clock in. It took Plaintiff on the average of
9 15 minutes to complete these tasks. Moreover, Plaintiff and Defendant's California employees were
10 required to work off the clock for Defendant, such as answering inquiries from Defendant. These
11 communications took 5-10 minutes each time. These excess hours were not recorded on our client's
12 and Defendants' California employees wage statements. Plaintiff and Defendant's California
13 employees should have been compensated for that time, but he was not in violation of Labor Code
14 Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were
15 not paid for all hours worked including all straight time wages, and overtime wages. These failures
16 to pay wages constitute violations of Labor Code § 510 and 1194.

17 4. Plaintiff, on behalf of himself and all other California employees of Defendant claims
18 that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
19 their employees bonuses and commissions which are not included in the employees regular rate of
20 pay for the purposes of computing the proper overtime rate. As a result, employees are not properly
21 compensated for work performed in excess of eight (8) hours in a workday and work performed in
22 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
23 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
24 1194, and 1194.2.

25 5. Additionally, Labor Code Section 1194(a) states: "[n]otwithstanding any agreement
26 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
27 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
28 balance of the full amount of this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees, and costs of suit. Plaintiff and Defendant's California employees
claim that Defendant engaged in "rounding." This essentially means that the Defendant underpaid
Plaintiff by rounding the time Plaintiff worked in violation of Labor Code Section 1194(a).

1 6. Defendant failed to issue Plaintiff and Defendant's California employees accurately
2 itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California
3 employees with all wages due, as detailed above, their wage statements failed to accurately state all
4 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
5 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
6 Plaintiff and the California employees wage statements' failed to accurately state the name and
7 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
8 applicable hourly rates during the pay period and the corresponding number of hours worked, in
9 violation of Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due.
10 Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
11 Plaintiff's worked hours, due to the rounding. These violations also violate Labor Code §§ 226(e)
12 and 226.3 with respect to Plaintiff and Defendants' California employees.

13 7. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
14 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
15 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
16 Defendant's California employees, and the records maintained by Defendants, have not accurately
17 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
18 premiums, and total hour worked.

19 8. Our client further alleges that Defendants paid him and Defendant's California
20 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they
21 were not paid all wages due and owing throughout the course of their employment as a result of
22 Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they
23 were not paid all final wages due and owing for the entirety of their employment. This violates
24 Labor Code §§ 201-203.

25 9. Defendant pays Plaintiff and it's California employees on a bi-monthly basis and has
26 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis
27 must be paid no later than ten calendar days following the close of the payroll period. Due to the
28 violations described above, Plaintiff and Defendant's California employees did not receive all of
their wages earned in a timely manner as required by Labor Code § 204(a)(b).

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10. Defendant failed to reimburse Plaintiff and Defendant's California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Defendant violated Labor Code § 221 by collecting and/or receiving from Plaintiff and Defendant's California employees, part of their wages.

11. Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

12. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

13. Plaintiff, on behalf of himself and all others similarly situated, and on behalf of the general public, (specifically, the “California Class” as defined herein), brings this action pursuant to Labor Code §§ 226.7, 512, and 558, Labor Code §§ 510, 1194, 1194.2, 1194(a), Labor Code § 226(a)(e), 1174(d), Labor Code § 201-203, Labor Code § 204(a)(b), Labor Code § 2802, Labor Code § 210, 218, Labor Code § 221, Business & Professions Code § 17200, et seq.

14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendants operate within the State of California. The unlawful acts alleged herein took place in El Cajon, California.

II. PARTIES

A. PLAINTIFF

15. Plaintiff Victor Manuel Ibarra is a resident of San Diego, California. At all times relevant herein, he was employed by Defendants in San Diego County, California. Plaintiff was employed by Defendants as a non-exempt, hourly employee in California, including in and around the city of El Cajon, County of San Diego. During Plaintiff's employment:

- 1 A. Plaintiff did not receive final wages upon termination.
- 2 B. Plaintiff and the Class were not paid in a timely manner pertaining to the waiting time
- 3 penalties in accordance with Labor Code §§ 201-203.
- 4 C. Plaintiff was forced to receive inaccurately itemized and deficient wage statements, in
- 5 violation of Labor Code § 226(a).
- 6 D. Plaintiff did not receive his compensation in accordance with Labor Code Section 204 in
- 7 that Defendant failed to issues wages to its employees within ten (10) calendar days after
- 8 the pay period ended.
- 9 E. Plaintiff was required to work without meal and rest periods, nor compensation in lieu
- 10 thereof, as required by the Labor Code and relevant Wage Orders.
- 11 F. Plaintiff was required to work either in excess of eight hours per workday or in excess of
- 12 forty hours per workweek without receiving compensation at a rate of one and one half
- 13 the regular rate of pay.
- 14 G. Defendant also failed to reimburse Plaintiff and Defendant's California employees for
- 15 reasonable and necessary expenses in the course of their job duties, in violation of Labor
- 16 Code § 2802.

17 **B. DEFENDANTS**

18 16. Defendant Precision Metal Products, Inc. is doing business in El Cajon, California. It

19 operates within the State of California. Defendants employed Plaintiff and similarly situated

20 employees within California. The violations alleged herein arose in El Cajon, California.

21 17. Defendant HBD Industries, Inc. is doing business in El Cajon, California. It operates

22 within the State of California. Defendants employed Plaintiff and similarly situated employees

23 within California. The violations alleged herein arose in El Cajon, California.

24 18. The true names and capacities, whether individual, corporate, associate, or otherwise,

25 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who

26 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is

27 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a

28 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will

seek leave of court to amend this Complaint to reflect the true names and capacities of the

Defendants designated hereinafter as DOES when such identities become known.

19. Plaintiff is informed and believes, and based thereon alleges, that each Defendant

1 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
2 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
3 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
4 employer and/or joint employer of Plaintiff and the proposed Class.

5 **FACTUAL ALLEGATIONS**

6 20. Plaintiff and Defendant's California employees were routinely unable, and not
7 authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-
8 minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California
9 employees were forced to continue working through their meal and rest breaks in order to assist
10 Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to
11 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one
12 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees
13 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
14 and IWC Order No. 5-2001, Section 12.

15 21. Plaintiff and Defendant's California employees were required to work off the clock
16 for Defendants. Plaintiff and Defendant California employees were asked to perform tasks prior to
17 clocking in without being compensated for it such as walking through the warehouse to see what the
18 work for the day required, and talked to the production manager. Plaintiff and Defendant California
19 employees were also required to start his computer and clock in. It took Plaintiff on the average of
20 15 minutes to complete these tasks. Moreover, Plaintiff and Defendant's California employees were
21 required to work off the clock for Defendant, such as answering inquiries from Defendant. These
22 communications took 5-10 minutes each time. These excess hours were not recorded on our client's
23 and Defendants' California employees wage statements. Plaintiff and Defendant's California
24 employees should have been compensated for that time, but he was not in violation of Labor Code
25 Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were
26 not paid for all hours worked including all straight time wages, and overtime wages. These failures
27 to pay wages constitute violations of Labor Code § 510 and 1194.

28 22. Plaintiff, on behalf of himself and all other California employees of Defendant claims
that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
their employees bonuses and commissions which are not included in the employees regular rate of
pay for the purposes of computing the proper overtime rate. As a result, employees are not properly

1 compensated for work performed in excess of eight (8) hours in a workday and work performed in
2 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
3 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
4 1194, and 1194.2.

5 23. Additionally, Labor Code Section 1194(a) states: “[n]otwithstanding any agreement
6 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
7 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
8 balance of the full amount of this minimum wage or overtime compensation, including interest
9 thereon, reasonable attorney’s fees, and costs of suit. Plaintiff and Defendant’s California employees
10 claim that Defendant engaged in “rounding.” This essentially means that the Defendant underpaid
11 Plaintiff by rounding the time Plaintiff worked in violation of Labor Code Section 1194(a).

12 24. Defendant failed to issue Plaintiff and Defendant’s California employees accurately
13 itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant’s California
14 employees with all wages due, as detailed above, their wage statements failed to accurately state all
15 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
16 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
17 Plaintiff and the California employees wage statements’ failed to accurately state the name and
18 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
19 applicable hourly rates during the pay period and the corresponding number of hours worked, in
20 violation of Labor Code § 226(a)(9), as a result of Defendant’s failure to pay all overtime wages due.
21 Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
22 Plaintiff’s worked hours, due to the rounding. These violations also violate Labor Code §§ 226(e)
23 and 226.3 with respect to Plaintiff and Defendants’ California employees.

24 25. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant’s
25 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
26 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
27 Defendant’s California employees, and the records maintained by Defendants, have not accurately
28 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
premiums, and total hour worked.

26 26. Our client further alleges that Defendants paid him and Defendant’s California

1 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they
2 were not paid all wages due and owing throughout the course of their employment as a result of
3 Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they
4 were not paid all final wages due and owing for the entirety of their employment. This violates
Labor Code §§ 201-203.

5 27. Defendant pays Plaintiff and it's California employees on a bi-monthly basis and has
6 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis
7 must be paid no later than ten calendar days following the close of the payroll period. Due to the
8 violations described above, Plaintiff and Defendant's California employees did not receive all of
9 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

10 28. Defendant failed to reimburse Plaintiff and Defendant's California employees for
11 using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that
12 "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred
13 by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and
14 Defendant's California employees have incurred reasonable and necessary expenses in the course of
their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

15 Defendant violated Labor Code § 221 by collecting and/or receiving from Plaintiff and Defendant's
16 California employees, part of their wages.

17 29. Defendants failed to pay all wages earned to Plaintiff and Defendant's California
18 employees as a result of the unlawful employment policies and practices herein. As a result of these
19 practices, Plaintiff and Defendant's California employees were underpaid for hours worked,
20 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
21 to pay wages as required by law.

22 30. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business &*
23 *Professions Code* § 17200, et seq. The conduct of all Defendants as alleged above has been and
24 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

25 **CLASS ACTION ALLEGATIONS**

26 31. Plaintiff brings this action on behalf of himself and all others similarly situated as a
Class Action pursuant to § 382 of the Code of Civil Procedure.

27 32. Plaintiff seeks to represent a class composed of and defined as follows:

THE CALIFORNIA CLASS

33. All current and former California employees of Defendants since the date four (4) year prior to the filing of this complaint.

34. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

35. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. NUMEROSITY

36. The potential members of the proposed Class as defined are so numerous that joinder of all the members of the proposed Class is impracticable. While the precise number of proposed Plaintiff Class members has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed, over seventy-five (75) Class members in the State of California.

37. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges that Defendants' employment records would provide information as to the number and location of all proposed Plaintiff Class members. Joinder of all members of the proposed Class is not practicable.

B. COMMONALITY

38. There are questions of law and fact common to the proposed Class that predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation, whether Defendants failed to provide members of the Class with wage statements that fully and accurately itemize the requirements set forth in Labor Code §226(a), accurate final wages, and final wages on the day of termination and or within seventy-two (72) hours of separation and whether the rest periods were timely made available.

C. TYPICALITY

39. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff and all members of the proposed Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the

force and effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

40. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

41. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Plaintiff Class members is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendant's failure to comply with Labor Code 226(a).

42. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 512 and 558)**

43. Plaintiff incorporates paragraphs 1 through 42 of this Complaint as though fully set forth herein.

44. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512 and 558.

45. Plaintiff and Defendant's California employees were routinely unable, and not authorized to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's

1 California employees who were denied timely meal and rest breaks, in violation of Labor Code §§
2 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

3 46. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all meal
4 period compensations, which he was owed since he commenced to work for Defendant, according to
5 proof.

6 47. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and
7 prejudgment interest.

8 48. Wherefore, Plaintiff seeks to represent request relief as described below.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
11 **(LABOR CODE §§ 226.7, 512 and 558)**

12 49. Plaintiff incorporates paragraphs 1 through 48 of this Complaint as though fully set
13 forth herein.

14 50. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly
15 provide one or more rest periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512
16 and 558.

17 51. Plaintiff and Defendant's California employees were routinely unable, and not
18 authorized to take their 10-minute rest periods for every shift they worked. Specifically, Plaintiff and
19 Defendant's California employees were forced to continue working through their rest breaks in order
20 to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were
21 unable to take their required rest breaks. Moreover, Defendants failed to pay premium wages of one
22 hour's pay for each missed rest break to Plaintiff and Defendant's California employees who were
23 denied timely rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-
24 2001, Section 12.

25 52. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all rest
26 period compensations, which he was owed since he commenced to work for Defendant, according to
27 proof.

28 53. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and
prejudgment interest.

54. Wherefore, Plaintiff seeks to represent request relief as described below.

///

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES IN VIOLATION OF

(LABOR CODE §§ 510, 1194, 1194.2)

55. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

56. During the liability period, Defendant failed to pay all wages to Plaintiff and Defendant's California employees.

57. Plaintiff and Defendant's California employees were required to work off the clock for Defendants. Plaintiff and Defendant California employees were asked to perform tasks prior to clocking in without being compensated for it such as walking through the warehouse to see what the work for the day required, and talked to the production manager. Plaintiff and Defendant California employees were also required to start his computer and clock in. It took Plaintiff on the average of 15 minutes to complete these tasks. Moreover, Plaintiff and Defendant's California employees were required to work off the clock for Defendant, such as answering inquiries from Defendant. These communications took 5-10 minutes each time. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

58. Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

59. Additionally, Labor Code Section 1194(a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage

1 or the legal overtime compensation applicable to the employee is entitled to recover in a civil
2 action the unpaid balance of the full amount of this minimum wage or overtime compensation,
3 including interest thereon, reasonable attorney's fees, and costs of suit. Plaintiff and Defendant's
4 California employees claim that Defendant engaged in "rounding." This essentially means that
5 the Defendant underpaid Plaintiff by rounding the time Plaintiff worked in violation of Labor
6 Code Section 1194(a).

6 60. As a result, Plaintiff and Defendant's California employees were not paid for all
7 hours worked including all straight time wages, and overtime wages. These failures to pay wages
8 constitute violations of Labor Code § 510 and 1194.

9 61. As a result of the unlawful acts of Defendants in willfully failing to pay all alleges,
10 Plaintiff and Defendant's California employees have been deprived of wages in amounts to be
11 determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon,
12 attorneys' fees, and costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor
13 Code § 1194.2.

13 **FOURTH CAUSE OF ACTION**

14 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED** 15 **EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a),(e), 1174(d))**

16 62. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
17 forth herein.

18 63. Section 226(a) of the California Labor Code requires Defendants to provide wage
19 statements to employees. In those wage statements, Defendants must accurately set forth, among
20 other things, the total gross and net wages earned, and all hourly rates in effect, for Plaintiff.
21 Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

22 64. Defendant failed to issue Plaintiff and Defendant's California employees accurately
23 itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant's California
24 employees with all wages due, as detailed above, their wage statements failed to accurately state all
25 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
26 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
27 Plaintiff and the California employees wage statements' failed to accurately state the name and
28 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
applicable hourly rates during the pay period and the corresponding number of hours worked, in

1 violation of Labor Code § 226(a)(9), as a result of Defendant's failure to pay all overtime wages due.
2 Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
3 Plaintiff's worked hours, due to the rounding. These violations also violate Labor Code §§ 226(e)
4 and 226.3 with respect to Plaintiff and Defendants' California employees.

5 65. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
6 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
7 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
8 Defendant's California employees, and the records maintained by Defendants, have not accurately
9 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
10 premiums, and total hour worked.

11 66. The wage statements provided to Plaintiff and members of the Class fail to accurately
12 itemize in wage statements total gross and net wages earned, and all hourly rates in effect for
13 Plaintiff. Defendants' violations of Labor Code § 226(a) are knowing and intentional, and Plaintiff
14 has suffered injury as a result of the receipt of defective wage statements, thereby entitling them to
15 penalties pursuant to Labor Code § 226(e).

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES DUE AT THE TIME OF DISCHARGE IN VIOLATION** 18 **OF LABOR CODE §§ 201-202, RESULTING IN SECTION 203 WAGES AND** 19 **PENALTIES (WAITING TIME PENALTIES)**

20 67. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though
21 fully set forth herein.

22 68. At all times material herein, the California Labor Code Sections 201, 202, and
23 203 were in effect and binding on Defendant.

24 69. California Labor Code § 202 requires employers to pay employees all wages due
25 within seventy-two (72) hours of resignation. California Labor Code § 201 states in pertinent
26 part that "if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately." California Labor Code § 203 provides that if an
28 employer willfully fails to timely pay such wages the employer must, as penalty, continue to
pay the subject employee's wages until the back wages are paid in full or an action is
commenced. The penalty cannot exceed 30 days of wages.

70. Plaintiff was entitled to compensation for unpaid wages, but to date has not

1 received such compensation. Specifically, Defendant failed to pay Plaintiff all wages due to
2 Plaintiff at the time of his separation of employment from Defendant's. Thus, since Defendant
3 failed to promptly pay Plaintiff all wages due to Plaintiff at the time of his separation of
4 employment, Defendant violated Section 201 of the Labor Code and Plaintiff is therefore
entitled to wages and penalties pursuant to Labor Code Section 203.

5 71. More than 30 days have passed since Plaintiff's employment ended with
6 Defendant.

7 72. As a consequence of Defendant's willful conduct in not paying wages owed to
8 Plaintiff, Plaintiff is entitled to 30 days of wages as a penalty pursuant to Labor Code § 203 for
9 Defendant's failure to timely pay legal wages, together with attorney's fees and cost of suit,
and interest pursuant to California Labor Code Section 218.5.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF** 12 **LABOR CODE § 204(a)(b)**

13 73. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
14 forth herein.

15 74. At all times relevant herein, Labor Code § 204 was in full force and effect and
16 binding on Defendants.

17 75. Wages must be paid according to a regularly set schedule. (Labor Code § 204). All
18 earned wages must be paid at least twice a month, on days designated in advance by the employer.
19 Work performed between the 1st and the 15th days, inclusive, of any calendar month must be paid
20 between the 16th and 26th day of the same month. Work performed between the 16th and the last
21 day of the month must be paid between the 1st and 10th day of the following month. (Labor Code §
22 204). Weekly or bi-weekly (every two weeks) payroll must be paid within seven (7) days of the end
of the pay period in which the wages were earned (Labor Code §§ 204(a), 204(b)).

23 76. Defendants pay Plaintiff and its California employees on a bi-monthly basis and have
24 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis
25 must be paid no later than ten calendar days following the close of the payroll period. Due to the
26 violations described above, Plaintiff and Defendant's California employees did not receive all of
their wages earned in a timely manner as required by Labor Code § 204(a)(b).

27 77. Defendants have failed to comply with the above-section because they waited longer
28

1 than ten days from the close of the pay period to pay its bi-monthly paid employees.

2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF**
4 **CALIFORNIA LABOR CODE § 2802**

5 78. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though
6 fully set forth herein.

7 79. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties.”

10 80. Defendant failed to reimburse Plaintiff and Defendant’s California employees for
11 using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides
12 that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses
13 incurred by the employee in direct consequence of the discharge of his or her duties.” As
14 such, Plaintiff and Defendant’s California employees have incurred reasonable and necessary
15 expenses in the course of their job duties, which were not reimbursed by Defendant, in violation
16 of Labor Code § 2802.

17 81. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
18 interest and attorneys’ fees and cost, under Labor Code § 2802.

19 82. Plaintiff also requests relief as described below.

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS**
22 **WORKED IN VIOLATION OF (LABOR CODES §§ 210, 218)**

23 83. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
24 set forth herein.

25 84. Section 2(K) or Wage Order 5 defines “hours worked” as “the time during
26 which an employee is subject to the control of an employer, and including all the time the
27 employee is suffered or permitted to work, whether or not required to do so.” Labor Code §§
28 1194 and 1197 required employers to compensate Plaintiff for all hours worked at least at a
minimum wage ad established by the Wage Order. Defendants did not pay for all hours worked
and frequently required Plaintiff to work off the clock. Defendants have been engaged in many
unlawful employment practices which resulted in underpayment for hours worked each pay

1 period as more set forth below:

2 85. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to
3 pay Plaintiff all wages earned twice during each calendar month pursuant to Labor Code §
4 204(a). Defendants failed to pay all wages earned to Plaintiff as a result of the unlawful
5 employment policies and practices herein. As a result of these practices, Plaintiff was
6 underpaid for hours worked, including overtime and penalty wages, and this underpayment
7 resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are
8 liable under Labor Code § 210 for failure to pay wages as required by law.

9 **NINTH CAUSE OF ACTION**

10 **ALLEGATIONS AS TO UNLAWFUL DEDUCTION IN VIOLATION OF**
11 **CALIFORNIA LABOR CODE § 221**

12 86. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
13 forth herein.

14 87. Defendant violated Labor Code § 221 by collecting and/or receiving from Plaintiff
15 and Defendant's California employees, part of their wages.

16 88. Plaintiff also requests relief as described below.

17 **TENTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION PURSUANT TO**
19 **BUSINESS & PROFESSIONS CODE § 17200**

20 89. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
21 set forth herein.

22 90. This is an Action for Unfair Business Practices. Plaintiff Victor Manuel Ibarra
23 brings this claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all
24 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
25 harmful to Plaintiff and Defendant's California employees as a result of Defendant's failure to
26 comply with the labor code sections as set out above. Plaintiff and Defendant's California
27 employees seek to enforce important rights affecting the public interest within the meaning of
28 *Code of Civil Procedure* § 1021.5.

91. Plaintiff is a "person" within the meaning of *Business & Professions Code* §
17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
and other appropriate equitable relief.

1 92. *Business & Profession Code* § 17200 *et. seq.* prohibits unlawful and unfair
2 business practices.

3 93. Defendants have violated statutes and public policies. Through the conduct
4 alleged in this Complaint, Defendants, and each of them, have acted contrary to these public
5 policies, have violated specific provisions of the *Labor Code*, and have engaged in other
6 unlawful and unfair business practices in violation of *Business & Professions Code* § 17200, *et*
7 *seq.*, depriving Plaintiff, of rights, benefits, and privileges guaranteed to Plaintiff under law.

8 94. Defendants' conduct, as alleged herein, constitutes unfair competition in
9 violation of § 17200 *et. seq.* of the *Business & Professions Code*.

10 95. As a proximate result of the above mentioned acts of Defendants, Plaintiff has
11 been damaged in a sum as may be proven.

12 96. Unless restrained by this Court, Defendants will continue to engage in the
13 unlawful conduct as alleged above. Pursuant to *Business & Professions Code*, this Court should
14 make such orders or judgments, including the appointment of a receiver, as may be necessary
15 to prevent the use or employment, by Defendants, their agents, or Plaintiff, of any unlawful or
16 deceptive practice prohibited by the *Business & Professions Code*, and/or, including but not
17 limited to, disgorgement of profits which may be necessary to restore Plaintiff to the money
18 Defendants have unlawfully failed to pay.

19 **ELEVENTH CAUSE OF ACTION**

20 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR** 21 **CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e),** 22 **201-203, 204(a)(b), 2802, 221, 210, 218**

23 97. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
24 forth herein.

25 98. As a result of the acts alleged herein, Plaintiff seeks penalties under Labor Code §
26 2698 *et seq.* because of Defendants' violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2,
27 226(a), (e), 201-203, 204(a)(b), 2802, 221, 210, 218.

28 99. For each such violation, Plaintiff and all aggrieved employees are entitled to penalties
in an amount to be shown at the time of trial subject to the following formula:

- 29 a. With respect to the violation of Labor Code § 2699(f) for violations of
30 Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 201-203,

204(a)(b), 2802, 221, 210, 218, \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.

100. These penalties will be allocated 75% to the Labor Workforce Development Agency, and 25% to the affected employees.

101. On July 25, 2024, Plaintiff sent a letter, by certified mail, return receipt requested, to the LWDA and Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* (**Exhibit “A”**). Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of July 25, 2024. Plaintiff may therefore commence this action to seek penalties pursuant to Labor Code § 2698 *et seq.*

102. Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as described herein.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For a money judgment representing compensatory damages including lost wages, earnings, retirement benefits and other employee benefits, and all other sums of money, together with interest on these amounts, according to proof;

2. That Defendants are found to have violated the requirements of Labor Code § 203;

3. That Defendants are found to have violated the requirements of Labor Code § 226(e);

4. That Defendants are found to have violated the requirements of Labor Code § 226.7;

5. That Defendants are found to have violated the requirements of Labor Code § 510;

6. That Defendants are found to have violated the requirements of Labor Code § 204(b);

7. That Defendants are found to have violated the requirements of Labor Code § 2802;

8. That Defendants are found to have violated the requirements Labor Code § 1174(d);

9. That Defendants are found to have violated the requirements Labor Code § 210;

10. That Defendants are found to have violated the requirements Labor Code § 221;

11. That Defendants are found to have violated the requirements of Business and Professions Code § 17200 *et seq.*

12. For penalties and other relief pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other aggrieved employees;

13. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1);
14. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1);
15. An award of prejudgment and post-judgment interest;
16. An award providing for payment of costs of suit;
17. An award of attorneys' fees; and
18. Such other and further relief as this Court may deem just and proper.

Dated: October 1, 2024

OTKUPMAN LAW FIRM,
A Law Corporation

By:



ROMAN OTKUPMAN
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: October 1, 2024

OTKUPMAN LAW FIRM,
A Law Corporation

By:



ROMAN OTKUPMAN
Attorneys for Plaintiff

EXHIBIT “A”

OTKUPMAN LAW FIRM, A LAW CORPORATION

5743 Corsa Ave, Suite 123
Westlake Village, CA 91362
Tel.: 818-293-5623
Fax: 888-850-1310

July 25, 2024

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

Precision Metal Products, Inc.
5200 Upper Metro Place
Dublin, OH 43017
Defendant certified mail # 7022 1670 0001 4770 9256

VIA CERTIFIED MAIL

Agent for Service of Process
Jackson Yang
720 14th Street
Sacramento, CA 95814
Agent certified mail # 7022 1670 0001 4770 9263

VIA CERTIFIED MAIL

HBD Industries, Inc.
5200 Upper Metro Place
Dublin, OH 43017
Defendant certified mail # 7022 1670 0001 4770 9256

VIA CERTIFIED MAIL

Precision Metal Products, Inc.
850 West Bradley Ave
El Cajon, CA 92020
Defendant certified mail # 7022 1670 0001 4770 9270

Re: ***Victor Manuel Ibarra v. Precision Metal Products, Inc., HBD Industries, Inc. – Labor Code Violations of Precision Metal Products, Inc., HBD Industries, Inc. – Compliance Letter of California Labor Code § 2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Victor Manuel Ibarra (“Plaintiff”), a former California employee of Precision Metal Products, Inc., HBD Industries, Inc. (“Defendants”). The purpose of this letter is

to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non-exempt employees.

Plaintiff began working for Defendant on or about April 12, 2023. While working for Defendant as a Planner, Plaintiff was earning (\$72,000) annually.

Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff and Defendant's California employees were required to work off the clock for Defendants. Plaintiff and Defendant California employees were asked to perform tasks prior to clocking in without being compensated for it such as walking through the warehouse to see what the work for the day required, and talked to the production manager. Plaintiff and Defendant California employees were also required to start his computer and clock in. It took Plaintiff on the average of 15 minutes to complete these tasks. Moreover, Plaintiff and Defendant's California employees were required to work off the clock for Defendant, such as answering inquiries from Defendant. These communications took 5-10 minutes each time. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

Additionally, Labor Code Section 1194(a) states: “[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit. Plaintiff and Defendant’s California employees claim that Defendant engaged in “rounding.” This essentially means that the Defendant underpaid Plaintiff by rounding the time Plaintiff worked in violation of Labor Code Section 1194(a).

Defendant failed to issue Plaintiff and Defendant’s California employees accurately itemized wage statements. As Defendant failed to compensate Plaintiff and Defendant’s California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover, Plaintiff and the California employees wage statements’ failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendant’s failure to pay all overtime wages due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff’s worked hours, due to the rounding. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants’ California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant’s California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and Defendant’s California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

Our client further alleges that Defendants paid him and Defendant’s California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants’ failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendant pays Plaintiff and it’s California employees on a bi-monthly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-monthly basis must be paid no later than ten calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant’s California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

Labor & Workforce Development Agency

Precision Metal Products, Inc.

HBD Industries, Inc.

July 25, 2024

Page 4

Defendant failed to reimburse Plaintiff and Defendant's California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Defendant violated Labor Code § 221 by collecting and/or receiving from Plaintiff and Defendant's California employees, part of their wages.

Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM

A handwritten signature in black ink, appearing to read 'Roman Otkupman', is written over a horizontal line.

ROMAN OTKUPMAN