

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 5/11/2020 12:31 PM
Reviewed By: R. Walker
Case #20CV364524
Envelope: 4326280**

1 Cristina Molteni (Bar No. 244715)
2 cmolteni@moltenilaw.com
3 **MOLTENI EMPLOYMENT LAW**
4 100 Pine Street, Suite 1250
5 San Francisco, California 94111
6 Telephone: (415) 762-0270
7 Facsimile: (415) 762-0271

8 *Attorney for Plaintiffs and the Proposed Class*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

FELIX AGUILAR, JOSE MARTINEZ, and
JOSE CAZARES, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

ALL SEASONS ROOFING &
WATERPROOFING, INC., VLADISLAV
N. GORSHTEYN, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20CV364524

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) **FAILURE TO PAY MINIMUM WAGES;**
- (2) **BREACH OF CONTRACT FOR FAILURE TO PAY FOR ALL HOURS WORKED;**
- (3) **FAILURE TO PAY OVERTIME and DOUBLE TIME WAGES;**
- (4) **FAILURE TO PROVIDE MEAL PERIODS and REST PERIODS;**
- (5) **FAILURE TO PAY EARNED WAGES UPON DISCHARGE;**
- (6) **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;**
- (7) **PRIVATE ATTORNEYS GENERAL ACT (“PAGA”) PENALTIES;**
- (8) **UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES;**
- (9) **DECLARATORY and INJUNCTIVE RELIEF; and**
- (10) **ATTORNEY’S FEES.**

DEMAND FOR JURY TRIAL

1 Plaintiffs Felix Aguilar, Jose Martinez, and Jose Cazares, suing on behalf of themselves
2 and others similarly situated (“Plaintiffs”), bring this action against All Seasons Roofing &
3 Waterproofing, Inc., Vladislav N. Gorshteyn, and DOES 1-50 (collectively “Defendants” or “All
4 Seasons”), claiming unfair business practices and violations of the California Labor Code
5 (“Labor Code”). Plaintiffs seek damages, restitution, statutory penalties, declaratory and
6 injunctive relief, including an equitable accounting, attorney’s fees and costs of suit.

7 **PARTIES**

8 1. Plaintiff Felix Aguilar is an individual who resides in California and who was
9 employed by All Seasons in California as a non-exempt, skilled roofer, from approximately 2009
10 to January 2020.

11 2. Plaintiff Jose Martinez is an individual who resides in California and who was
12 employed by All Seasons in California as a non-exempt, skilled roofer from approximately 2009
13 to June 2019.

14 3. Plaintiff Jose Cazares is an individual who resides in California and who was
15 employed by All Seasons in California as a non-exempt, skilled roofer from approximately 2016
16 to December 2019.

17 4. Defendant All Seasons Roofing & Waterproofing, Inc. (“ASRW”) is a California
18 corporation allegedly with locations in San Jose and Sacramento and its principal place of
19 business in San Jose, California. Defendant ASRW has a “B” license as general building
20 contractor and a “C-39” license as a roofing contractor and provides services on various
21 commercial and residential construction projects, mostly throughout the State of California. On
22 information and belief, Plaintiffs allege that the practices and policies that are complained of by
23 way of this Complaint were also present at all ASRW locations throughout the proposed Class
24 Period. ASRW is, and at all relevant times was, an employer subject to California’s wage-and-
25 hour laws.

26 5. Upon information and belief, Plaintiffs allege that Defendant Vladislav N.
27 Gorshteyn (“Gorshteyn”) is, and at all times relevant hereto was, a resident and citizen of the

1 State of California. Plaintiffs are informed and believe and on that basis allege that Gorshteyn
2 has, and at all relevant times herein had, an ownership interest in ASRW. Vladislav N.
3 Gorshteyn is a natural person, who acted and acts on behalf of ASRW and is an owner, director,
4 officer, or managing agent of ASRW, as defined by Labor Code § 558.1.

5 6. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein
6 as DOES 1-50, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs
7 will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs
8 are informed and believe and thereupon allege that each of the fictitiously-named Defendants is
9 responsible in some manner for the occurrences herein alleged and that Plaintiffs' damages as
10 herein alleged are proximately caused by such occurrences.

11 7. At all relevant times herein, Defendants were agents of each other and acting
12 within the course and scope of their agency.

13 JURISDICTION AND VENUE

14 8. This Court has jurisdiction over all causes of action asserted herein pursuant to
15 the California Constitution, Article VI, §10, which grants the Superior Court original jurisdiction
16 in all cases except those given to other trial courts. Plaintiffs seek damages in this case in an
17 amount exceeding the jurisdictional minimum of this Court. The Court also has jurisdiction over
18 certain causes of action pursuant to Business & Professions Code §§ 17203 and 17204, which
19 provide for exclusive jurisdiction for enforcement of this statute in any court of competent
20 jurisdiction.

21 9. Venue in County of Santa Clara is proper under Business & Professions Code §
22 17203 and California Code of Civil Procedure § 395.5 because a substantial part of All Seasons'
23 unlawful conduct occurred in this County, All Seasons had and has on-going projects in this
24 County, All Seasons conducts substantial business in this County, and All Seasons' liability
25 arose in this County. The relief requested is within the jurisdiction of this Court.

26 //
27

1 **FACTUAL ALLEGATIONS**

2 10. All Seasons provides roofing services on various commercial and residential
3 construction projects, throughout the State of California. As part of its business, All Seasons
4 employed skilled roofers to perform services and to work on projects under its management and
5 control.

6 11. Plaintiffs were, at all relevant times herein, employed by All Seasons as non-
7 exempt employees who were paid hourly wages, in on-site construction occupations, as defined
8 by Industrial Welfare Commission Wage Order 16-2001, 8 CCR § 11160(2)(C) (“Wage Order
9 16”).

10 12. All Seasons has provided roofing services on projects located in San Jose,
11 Monterey, Emeryville, Santa Rosa, San Francisco, Oakland, Fremont, and Berkeley, among
12 other cities in California. In addition, All Seasons has provided roofing services on “public
13 works” construction projects as defined by Labor Code § 1720, including, but not limited to the
14 following projects in California: schools in Atherton, a care center in San Jose, and apartments in
15 San Mateo, among others.

16 13. Public works construction projects are regulated by the Department of Industrial
17 Relations, Office of Policy, Research, and Legislation which, pursuant to Labor Code §§ 1770,
18 1773, and 1773.1, determines the appropriate job classifications for different types of workers
19 and the required rate of pay for those classifications (“prevailing wage”).

20 14. For at least the past four years, All Seasons has had a policy and practice of
21 failing to pay its construction workers the correct minimum prevailing wage rate for all the hours
22 worked on public works jobs. Plaintiffs and Class Members work on public work projects, like
23 the ones mentioned above; however, All Seasons did not pay for all the hours worked on public
24 work jobs and did not pay the proper minimum wage rate for work performed on public work
25 jobs.

26 15. Additionally, All Seasons failed to pay Plaintiffs and other Class Members the
27 contracted wages for all hours worked, in violation of California state law and in breach of their

1 employment agreements with these employees. During the period Plaintiffs and the Class were
2 employed by All Seasons, Defendants had and still have a policy and practice of failing to pay
3 their construction workers for all hours worked by failing to pay them any wages, including
4 contractually-agreed wages, for compensable time in the yard and for compensable travel time.
5 All Seasons required Plaintiffs and Class Members to arrive at the yard between 5:00 a.m. to
6 6:00 a.m. each workday to receive the assignment for the day, load and unload material,
7 equipment, and tools and clean up trucks, but did not pay the workers for those hours worked. In
8 fact, since at least 2016, All Seasons used different time tracking systems that (1) did not allow
9 Plaintiffs and Class Members to claim time for all the hours worked, including shop time and
10 travel time to projects and in between projects; (2) allowed All Seasons' management to edit
11 hours, including travel time; (3) did not allow Plaintiffs and Class Members direct access to their
12 timecards; and (4) allowed All Seasons' management to avoid paying overtime for hours worked
13 over 8 hours on a day.

14 16. Since at least the last four years, All Seasons engaged in a pattern and practice of
15 under budgeting each of the projects that it provided services by (1) allocating fewer man/days
16 on a project and (2) pressuring Plaintiffs and Class Members to finish those projects in fewer
17 days than possible, all in order to increase the profits of the company. Furthermore, workers were
18 retaliated or even threatened that they would lose their jobs if they complained about these
19 practices to All Seasons; thus, Plaintiffs and Class Members had no other choice but to keep
20 working hard and beyond their hours so they would have work the following week.

21 17. Furthermore, All Seasons failed to pay for the time that Plaintiffs and Class
22 Members were driving in between different projects to provide roofing repairs and for the time
23 spent working on punch lists at the jobsite.

24 18. During the class period, All Seasons regularly required employees, including
25 Plaintiffs, to work overtime hours without providing overtime and double time pay as required
26 by both the Labor Code and Wage Order 16. For at least the past four years, All Seasons has also
27 refused to pay its construction workers overtime and double time pay for all overtime hours

1 worked. All Seasons regularly required Plaintiffs and the Class to work on the roof more than
2 eight hours in a day, but Defendants regularly did not pay Plaintiffs and the Class the proper
3 overtime and double time rates for their work over eight hours in a day or forty hours in a week.
4 In fact, All Seasons has an illegal policy and practice of “banking” the actual hours that Plaintiffs
5 and Class Members worked over eight hours in a day, in an unlawful attempt to avoid paying
6 overtime rates for overtime hours. The payment of those overtime hours was spread out in
7 different workweeks and eventually those hours were paid at a regular rate instead of overtime or
8 double time rate if they were paid at all.

9 19. During the respective periods in which Plaintiffs were employed by All Seasons,
10 they were required to work more than 10 hours in a day. When All Seasons required Plaintiffs
11 and Class Members to work more than 10 hours, it had a policy and practice of failing to provide
12 Plaintiffs and Class Members with a second meal period of at least 30 minutes as required by
13 Labor Code §§ 226.7 and 512 and Wage Order 16, § 10(B). Plaintiffs allege that they and, on
14 information and belief, other Class Members never waived their right to a second meal period.
15 Further, Plaintiffs and other Class Members often worked more than 12 hours in a day. Under
16 Labor Code § 512(a), second meal periods are not waivable for employees who work more than
17 12 hours a day.

18 20. Since at least 2016, All Seasons had a policy and practice of combining both rest
19 periods with a lunch break, providing a 50-minute break to Plaintiffs and Class Members, in
20 violation of the rest break requirements pursuant to Labor Code § 226.7 and Wage Order 16, §
21 11(A). In addition, on those occasions when All Seasons required Plaintiffs and Class Members
22 to work more than 10 hours, All Seasons had a policy and practice of failing to authorize a third
23 uninterrupted rest period of not less than 10 minutes, as required by Labor Code § 226.7 and
24 Wage Order 16, § 11(A).

25 21. Labor Code § 226 provides that every employer is required, “semimonthly or at
26 the time of each payment of wages,” to give each employee an itemized wage statement,
27 including, inter alia, the total hours worked by the employee (except for salaried employees), and

1 “all applicable hourly rates in effect during the pay period and the corresponding number of
2 hours worked at each hourly rate by the employee.” Lab. Code § 226(a). All Seasons had a
3 policy and practice of failing to provide proposed Class Members, including Plaintiffs, with a
4 properly itemized wage statement with each paycheck in compliance with California law.
5 Specifically, All Seasons’ wage statements did not indicate the total hours worked by the
6 employee—including roof time, yard time, or travel time—failed to indicate the rate for travel
7 time, failed to indicate the net wages earned, and incorrectly indicated the number of hours paid
8 and the applicable wage rate. Thus, Plaintiffs and Class Members often could not understand
9 what work they were being paid for and what rate they had been paid.

10 22. Labor Code § 204(a) provides that all wages must be paid at least twice during
11 each calendar month, on the days designated in advance as regular paydays. This requirement is
12 satisfied by the payment of wages biweekly, “if the wages are paid not more than seven calendar
13 days following the close of the payroll period.” Lab. Code § 204(d). All Seasons has had a policy
14 and practice of “banking” hours, i.e. putting hours aside and not paying those hours when their
15 payment was due. Most of the time, those hours either disappear and were not paid or were paid
16 as a regular rate, instead of overtime or double time when they were earned. Therefore, Plaintiffs
17 and Class Members did not receive their wages in timely manner during their employment with
18 All Seasons.

19 23. All Seasons had a policy and practice of failing to pay former employees all
20 wages due and owing at the time of discharge or voluntary quit, in violation of Labor Code §§
21 201, 201, and 203. Defendants have also violated California common and statutory law as
22 described with more particularity below.

23 NATURE OF ACTION

24 24. Plaintiffs bring this proposed class action on behalf of themselves and a proposed
25 plaintiff Class of all hourly, non-exempt, construction employees who worked for Defendants
26 performing roofing work at any time during the previous four years in the State of California up
27

1 through the present and until compliance with the law. Plaintiffs seek recovery of all allowable
2 compensation and other sums for the violations described below, including unpaid minimum
3 wages, unpaid contractually agreed wages, unpaid overtime and double time wages, liquidated
4 damages for failure to pay minimum and overtime wages, penalties/premium pay for missed
5 meal and rest periods, penalties, restitution and restoration of sums owed and property
6 unlawfully held, declaratory and injunctive relief, interest, attorney’s fees, and costs.

7 25. Plaintiffs’ action is brought under the Industrial Welfare Commission Wage
8 Orders and applicable California Code of Regulations, and Labor Code §§ 200, 201-203, 204,
9 218, 221, 226, 226.7, 510-512, 1194, 1194.2, 1197, 1197.1, 1199, 2699, and 2699.3. In
10 particular, Plaintiffs have complied with all Labor Code § 2699.3 requirements for commencing
11 a civil action under the California Private Attorneys General Act of 2004, Labor Code §§ 2698 et
12 seq. (“PAGA”).

13 26. Under California Business and Professions Code (“Bus. & Prof. Code”) §§ 17200
14 et seq., and pursuant to the class action procedures provided for in this statute, Plaintiffs, on
15 behalf of themselves and the proposed Class, also seek restitution of all benefits Defendants have
16 received from—including but not limited to—their failure to pay compensation due for all hours
17 worked, their failure to maintain proper records of hours worked, and their failure to permit
18 proper meal and rest breaks to their employees.

19 27. The “Class Period” is designated as the time from March 2016, through the trial
20 date, based upon the allegation that the violations of California’s wage-and-hour laws as
21 described more fully below, have been ongoing for at least the four years prior to the filing of the
22 complaint in this action.

23 28. During the Class Period, All Seasons has had a consistent policy of permitting,
24 encouraging, and/or requiring Plaintiffs and proposed Class Members to engage in the following
25 activities, among others, without compensating its construction employees for the time they
26 spent performing these activities as required by California’s wage-and-hours laws and common
27 law: (1) arriving at work between 5:00 to 6:00 a.m. to receive the assignment for the day, clean

1 the trucks, load the trucks with materials, equipment, and tools and wait for the assignment each
2 day; (2) travelling from the shop to the jobsite/s each day; (3) working through meal and rest
3 breaks; and (4) working on the roof without proper compensation for all hours worked, including
4 over 8 hours in a day.

5
6 **CLASS ACTION ALLEGATIONS**

7 29. Plaintiffs bring this action individually and as a class action on behalf of a
8 proposed class defined as follows:

9 All persons who, at any time from March 2016 to the present, worked for All
10 Seasons, in the State of California as non-exempt construction employees,
11 performing roofing work.

12 30. This action is brought, and may properly be maintained, as a class action pursuant
13 to California Code of Civil Procedure § 382 because there is a well-defined community of
14 interest in the litigation, and the proposed class is easily ascertainable. This action presents
15 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
16 predominance, and superiority requirements of this provision.

17 31. Plaintiffs reserve the right under California Rules of Court, Rule 3.765(b), to
18 amend or modify the class description with greater specificity or further division into subclasses
19 or limitation to particular issues.

20 **Numerosity:**

21 32. The Class is so numerous that the individual joinder of all of its members is
22 impracticable. While the exact number and identities of Class Members are unknown to
23 Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs are
24 informed and believe that the Class includes more than 200 persons.

25 33. A class action is the only available method for the fair and efficient adjudication
26 of this controversy. The members of the Class are so numerous that joinder of all members is
27 impractical, if not impossible, insofar as the Plaintiffs are informed and believe and, on that
basis, allege that the total number of Class Members is more than 200 individuals. The identity

1 of Class Members can be determined upon analysis of, inter alia, employee and payroll records
2 maintained by All Seasons.

3 **Commonality:**

4 34. Common questions of fact and law exist as to all members of the Class that
5 predominate over any questions affecting only individual Class Members. These common legal
6 and factual questions, which do not vary from Class Member to Class Member and which may
7 be determined without reference to the individual circumstances of any Class Member include,
8 but are not limited to, the following:

9 (a) whether Defendants had a policy or practice of failing to pay Plaintiffs and
10 Class Members the statutory minimum prevailing wage for all hours worked on public works
11 projects, in violation of Labor Code § 1194, Cal. Code Regs., Title 8 §11160, and California
12 common law;

13 (b) whether Defendants had a policy or practice of failing to pay Plaintiffs and
14 Class Members for all hours worked, including their time spent on the yard and travelling to the
15 jobsites; in violation of Cal. Code Regs., Title 8 §11160 and California common law;

16 (c) whether Defendants had a policy or practice of failing to pay Plaintiffs and
17 Class Members overtime and double time pay for all the hours worked over 8 hours in a day and
18 40 in a week;

19 (d) whether Defendants had a policy or practice of violating Labor Code §
20 226.7, by failing to permit second meal breaks to Plaintiffs and Class Members as required under
21 Wage Order 16, §10;

22 (e) whether Defendants had a policy or practice of combining both rest
23 periods with a lunch break, in violation of Labor Code § 226.7 and Wage Order 16, § 11(A);

24 (f) whether Defendants had a policy or practice of failing to provide Plaintiffs
25 and Class Members who worked more than 10 hours in a day with their required third rest
26 periods as required under Wage Order 16, §11;

27

1 (g) whether Defendants had a policy or practice of failing to pay Plaintiffs and
2 Class Members all wages due at the time of discharge or voluntary quit, in violation of Labor
3 Code §§ 201-203;

4 (h) whether Defendants, in violation of Cal. Labor Code §§ 226 and 1174, had
5 a systematic policy or practice of failing to keep and provide timely and accurate wage
6 statements of all of the hours worked by Plaintiffs and Class Members and their applicable
7 hourly rates;

8 (i) whether members of the Class are entitled to equitable relief under Bus. &
9 Prof. Code §§ 17200 et seq.; and

10 (j) what amounts Plaintiffs and Class Members are entitled to receive in
11 interest on unpaid compensation due and owing to them.

12 **Typicality:**

13 35. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and all Class
14 Members sustained injuries and damages arising out of and caused by Defendants' policies,
15 practices, and common course of conduct in violation of law as alleged herein.

16 **Adequacy of Representation:**

17 36. Plaintiffs are adequate representatives of the Class, in that their claims are typical
18 of those of the Class. Plaintiffs have the same interests in the litigation of this case as the Class
19 Members; they are committed to vigorous prosecution of this case and have retained competent
20 counsel experienced in class action and wage-and-hour litigation of this nature. Plaintiffs are not
21 subject to any individual defenses unique from those conceivably applicable to the Class as a
22 whole and anticipate no management difficulties in this litigation.

23 **Predominance:**

24 37. Defendants have engaged in a common course of wage-and-hour abuse toward
25 Plaintiffs and Class Members. The common issues arising from this conduct that affect
26 Plaintiffs and Class Members predominate over any individual issues. Adjudication of these
27 common issues in a single action has important and desirable advantages of judicial economy.

1 **Superiority of Class Action:**

2 38. A class action is superior to other available methods for the fair and efficient
3 adjudication of this controversy because individual litigation of the claims of all Class Members
4 is impracticable. Even if every Class Member could afford individual litigation, the court system
5 could not. It would be unduly burdensome to the courts in which individual litigation of
6 numerous cases would proceed. Individualized litigation would also present the potential for
7 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to
8 all parties and to the court system resulting from multiple trials of the same complex factual
9 issues. Moreover, individual actions by Class Members may establish inconsistent standards of
10 conduct for All Seasons. By contrast, the conduct of this action as a class action, with respect to
11 some or all of the issues presented herein, presents fewer management difficulties, conserves the
12 resources of the parties and the court system, and protects the rights of each Class Member.

13 39. Defendants have acted or refused to act in respects generally applicable to the
14 Class, thereby making appropriate relief with regard to the Members of the Class as a whole, as
15 requested herein.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Pay Minimum Wages**

18 **(brought by Plaintiffs on behalf of themselves and all Class Members**
19 **against all Defendants)**

20 40. Plaintiffs, individually and on behalf of all employees similarly situated, refer to
21 and hereby incorporate by reference all preceding paragraphs, as though fully set forth herein.

22 41. Pursuant to Labor Code § 1194, “any employee receiving less than the legal
23 minimum wage or the legal overtime compensation applicable to the employee is entitled to
24 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
25 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

26 42. As alleged in the foregoing paragraphs, throughout the Class Period, Plaintiffs
27 and Class Members were not paid the proper minimum prevailing wage rate for all the hours
worked on public works jobs.

1 48. At all times herein relevant, Wage Order No. 16 and California Code of Regulations
2 Title 8 § 11160 have applied and continue to apply to Plaintiffs and the Class Members’
3 employment with Defendants. Wage Order No. 16 and California Code of Regulations Title 8,
4 § 11160 state that “every employer shall pay to each employee wages [. . .] for all hours
5 worked.” Cal. Code Regs., Tit. 8, § 11160(4)(A).

6 49. “Hours worked” is defined at California Code of Regulations Title 8,
7 § 11160(2)(J) as “the time during which an employee is subject to the control of an employer,
8 and includes all the time the employee is suffered or permitted to work, whether or not required
9 to do so.” Under this definition of “hours worked,” the time spent by Defendants’ employees to
10 unload and load the trucks, clean the trucks, wait for the assignment, clean and pick up materials
11 at the jobsite, secure tools at the yard, and travel from the yard to the jobsite are “hours worked”
12 and must be compensated.

13 50. By the conduct alleged above, All Seasons breached an implied agreement with
14 Plaintiffs and Class Members to pay them their agreed-upon contract rate for all hours worked as
15 understood and required under California state laws. All Seasons’ failure to perform its part of
16 the contract by paying its employees for all of their hours worked is unjustified and constitutes a
17 breach of contract.

18 51. Defendant Gorshteyn is liable for violations of Wage Order No. 16 and California
19 Code of Regulations Title 8 § 11160 because he is “other person acting on behalf of an
20 employer” pursuant to Labor Code § 558.1.

21 52. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
22 herein, Plaintiffs and the Class Members have sustained damages, including loss of earnings paid
23 at the agreed-upon rate for hours worked on behalf of All Seasons, in an amount to be
24 established at trial, plus prejudgment interest pursuant to statute.

25 //

26 //

27 //

1 **THIRD CAUSE OF ACTION**

2 **Failure to Pay Overtime and Double Time**
3 **(brought by Plaintiffs on behalf of themselves and all Class Members**
4 **against all Defendants)**

5 53. Plaintiffs, individually and on behalf of themselves and all employees similarly
6 situated, refer to and hereby incorporate by reference all preceding paragraphs as though fully set
7 forth herein.

8 54. As alleged in the foregoing paragraphs, throughout the Class Period, Plaintiffs
9 and Class Members were required to work more than the eight hours per day. Although
10 Defendants regularly required Plaintiffs and the Class to work more than 40 hours in a week,
11 including time worked off-the-clock, and often worked as much as 50 hours or more per week.
12 Defendants, however, did not pay Plaintiffs and Class Members overtime and double time
13 compensation for all the hours they worked over 8 hours in a day and 40 hours in a week.

14 55. At all times herein relevant, Labor Code § 510 and California Code of
15 Regulations Title 8 § 11160 applied to Plaintiffs' work with Defendants and continue to apply to
16 Class Members' employment with Defendants. Labor Code § 510 and California Code of
17 Regulations Title 8, § 11160 state that "employers must pay one and a half times an employee's
18 'regular rate' if he or she works more than 40 hours per week or more than eight hours per day."
19 Lab. Code § 510(a). In addition, Labor Code provides that "[a]ny work in excess of 12 hours in
20 one day shall be compensated at the rate of no less than twice the regular rate of pay for an
21 employee." Lab. Code § 510(a).

22 56. California Code of Regulations Title 8, § 11160(3)(a)(1) provides that
23 "employees shall not be employed more than eight (8) hours in any workday or more than 40
24 hours in any workweek unless the employee receives one and one-half (1 1/2) times such
25 employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment
26 beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible
27 provided the employee is compensated [...]: (a) One and one-half times regular rate of pay for all
hours worked in excess of eight (8) hours [...]; and (b) Double the employee's regular rate of

1 pay for all hours worked in excess of 12 hours in any workday [...]” All Seasons violated
2 California law by requiring its employees to arrive at work between 5:00 to 6:00 a.m., to receive
3 their assignment, clean the trucks and load the trucks with materials, equipment, and tools, and
4 not paying them overtime and double time wages for these overtime hours worked. In addition,
5 Plaintiffs and proposed Class Members were required to travel to the jobsite each day, without
6 compensation.

7 57. Employees, therefore, regularly worked more than 8 hours in a day, but All
8 Seasons failed to compensate them with premium wages for the overtime and double time hours
9 they worked.

10 58. Defendant Gorshteyn is liable for violations of Wage Order No. 16 and California
11 Code of Regulations Title 8 § 11160 because he is “other person acting on behalf of an
12 employer” pursuant to Labor Code § 558.1.

13 59. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
14 herein, Plaintiffs and the Class Members have sustained damages, including but not limited to
15 loss of earnings. Plaintiffs seek to recover unpaid wages and penalties, attorney’s fees and costs
16 of suit under Labor Code §§ 1194, 1194.2, and 218, and further relief, as described below.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Provide Meal and Rest Breaks**

19 **(brought by Plaintiffs on behalf of themselves and all Class Members
20 against all Defendants)**

21 60. Plaintiffs, individually and on behalf of all employees similarly situated, refer to
22 and hereby incorporate by reference all preceding paragraphs, as though fully set forth herein.

23 61. As alleged in the foregoing paragraphs, throughout the Class Period, All Seasons
24 had a policy and practice of requiring Plaintiffs and Class Members to work more than 10 hours
25 in a single day. Often, Plaintiffs and Class Members worked 12 hours or more. On those
26 occasions, when Plaintiffs and Class members worked more than 10 hours on a single day, All
27 Seasons has had a policy and practice of refusing and/or failing to provide employees a second
meal period of not less than 30 minutes as required by Labor Code § 512 (a) and Wage Order 16,

1 § 10(B). In addition, All Seasons has had an policy and practice of combining two ten-minute
2 rest periods with a lunch break, providing a 50-minute break to Plaintiffs and Class Members, in
3 violation of the rest break requirements pursuant to Labor Code § 226.7 and Wage Order 16, §
4 11(A). In addition, on those occasions when All Seasons required Plaintiffs and Class Members
5 to work more than 10 hours, All Seasons had a policy and practice of failing to authorize a third
6 uninterrupted rest period of not less than 10 minutes, as required by Labor Code § 226.7 and
7 Wage Order 16, § 11(A). In addition, on those occasions, Plaintiffs allege that they and, on
8 information and belief, other Class Members did not waive their rights to a second meal period
9 or a third rest period.

10 62. At all times herein relevant, Labor Code § 226.7 and California Code of
11 Regulations Title 8 § 11160 have applied and continue to apply to Plaintiffs and the Class
12 Members' employment with Defendants. Labor Code § 226.7 states "No employer shall require
13 any employee to work during any meal or rest period mandated by an applicable order of the
14 Industrial Welfare Commission." Lab. Code § 226.7(a). In addition, Wage Order 16, § 10(B)
15 provides that an employer may not employ an employee for a work period of more than ten (10)
16 hours per day without providing the employee with a second meal period of not less than 30
17 minutes"

18 63. Section 11 of Wage Order No. 16 provides in relevant part that:

19
20 (A) Every employer shall authorize and permit all employees to
21 take rest periods, which insofar as practicable shall be in the
22 middle of each work period. The authorized rest period time shall
23 be based on the total hours worked daily at the rate of ten (10)
24 minutes net rest time per four (4) hours or major fraction thereof.
25 However, a rest period need not be authorized for employees
26 whose total daily work time is less than three and one-half (3 ½)
27 hours. Authorized rest period time shall be counted, as hours
worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the

1 employee's regular rate of compensation for each work day that
2 the rest period is not provided.

3 64. Defendants failed to permit Plaintiffs and Class Members to take adequate meal
4 periods as required by law, and failed to authorize and permit Plaintiffs and Class Members to
5 take adequate rest periods as required by law. Plaintiffs and the Class Members are therefore
6 entitled to payment of additional wages as provided by law.

7 65. Defendant Gorshteyn is liable for violations of Labor Code § 226.7, Wage Order
8 No. 16, and California Code of Regulations Title 8 § 11160 because he is "other person acting on
9 behalf of an employer" pursuant to Labor Code § 558.1.

10 66. As a direct and proximate result of Defendants' unlawful conduct, as set forth
11 herein, Plaintiffs and the Class Members have sustained damages, in an amount to be established
12 at trial, plus prejudgment interest pursuant to statute.

13 **FIFTH CAUSE OF ACTION**

14 **Failure to Pay Earned Wages Upon Discharge (Waiting Time Penalties)**
15 **(Brought by Plaintiffs on behalf of themselves and Class Members who are no longer**
16 **employed by Defendants against all Defendants)**

17 67. Plaintiffs incorporate by reference in this cause of action each allegation of all
18 preceding paragraphs, as though fully set forth herein.

19 68. Labor Code § 201 requires All Seasons to pay its discharged employees all wages
20 due immediately upon discharge.

21 69. Labor Code § 202 requires that if an employee quits his or her employment, "his
22 or her wages shall become due and payable not later than 72 hours thereafter, unless the
23 employee has given 72 hours previous notice of his or her intention to quit, in which case the
24 employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
25 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to
26 receive payment by mail if he or she so requests and designates a mailing address."

27 70. Labor Code § 203 provides that if an employer willfully fails to timely pay any
wages that are due to an employee who quits or is discharged, the employer must, as a penalty,

1 continue to pay the employee's wages until the back wages are paid in full or an action is
2 commenced. The penalty cannot exceed 30 days of wages.

3 71. Plaintiffs and Class Members who have been discharged or who have quit are
4 entitled to all unpaid compensation, pursuant to Labor Code § 203, but, as alleged above, to date
5 have not received such compensation.

6 72. Defendant Gorshteyn liable for violations of Labor Code § 203, Wage Order No.
7 16, and California Code of Regulations Title 8 § 11160 because he is "other person acting on
8 behalf of an employer" pursuant to Labor Code § 558.1.

9 73. As a consequence of Defendants' willful conduct in not paying compensation for
10 all hours worked, Plaintiffs and many members of the proposed Class are entitled to up to
11 30 days' wages as a penalty under Labor Code § 203, together with interest thereon.

12 **SIXTH CAUSE OF ACTION**

13 **Failure to Provide Accurate Wage Statements**
14 **(brought by Plaintiffs on behalf of themselves and all Class Members**
15 **against all Defendants)**

16 74. Plaintiffs incorporate by reference in this cause of action each allegation of all
17 preceding paragraphs, as though fully set forth herein.

18 75. Labor Code § 226 (a) provides that, at the time of each payment of wages, an
19 employer shall provide each employee with a wage statement itemizing, among other things, the
20 total hours worked by the employee in the pay period.

21 76. Labor Code § 226 (e) provides that an employee suffering injury as a result of a
22 knowing and intentional failure by an employer to comply with Labor Code § 226 (a) is entitled
23 to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in
24 which a violation occurs and \$100 per employee for each violation in a subsequent pay period
25 (up to a maximum of \$4,000), in addition to attorney's fees and costs.

26 77. All Seasons has banked the hours worked by Plaintiffs and Class Members
27 recorded on time cards. In addition, the wage statements of Plaintiffs and proposed Class
Members did not reflect hours they worked before and after their scheduled shifts, including

1 travel time, and did not reflect the overtime pay that they were entitled to as a result of working
2 more than eight hours in a day and forty hours in a week.

3 78. Defendant Gorshteyn is liable for violations of Labor Code § 226 because he is
4 “other person acting on behalf of an employer” pursuant to Labor Code § 558.1.

5 79. Defendants knowingly and intentionally failed to provide timely, accurate, and
6 itemized wage statements to Plaintiffs and Class Members in accordance with Labor Code § 226.
7 The statements provided to Plaintiffs and Class Members have not accurately reflected actual
8 hours worked, actual gross wages earned, the total hours worked by employees, including yard
9 time and travel time, and the net wages earned. Plaintiffs and the Class are therefore entitled to
10 the damages and penalties provided for under Labor Code § 226 (e).

11 **SEVENTH CAUSE OF ACTION**

12 **Civil Penalties under Private Attorneys General Act**
13 **(brought by Plaintiffs on behalf of themselves and all Class Members**
14 **against all Defendants)**

15 80. Plaintiffs reallege and incorporate in this cause of action each and every allegation
16 of all preceding paragraphs, as though fully set forth herein.

17 81. Plaintiffs, as aggrieved employees, bring this claim under Labor Code §§ 2698-
18 2699 in a representative capacity on behalf of current and former employees of Defendants
19 subjected to the alleged unlawful practices.

20 82. The Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code
21 section 2698 et seq., grants California employees the right to bring a civil action for violation of
22 any provision of the Labor Code on behalf of themselves and other current or former employees
23 in order to recover civil penalties. In passing PAGA, the California Legislature “declared that
24 adequate financing of labor law enforcement was necessary to achieve maximum compliance
25 with state labor laws, that staffing levels for labor law enforcement agencies had declined and
26 were unlikely to keep pace with the future growth of the labor market, and that it was therefore
27 in the public interest to allow aggrieved employees, acting as private attorneys general, to

1 recover civil penalties for Labor Code violations.” *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 980.
2 Because PAGA deputizes employees to act as private attorneys general, class action
3 requirements do not apply to representative actions brought under PAGA. *Id.*

4 83. PAGA permits an aggrieved employee to collect the civil penalty authorized by law
5 and normally collectible by the California Labor and Workforce Development Agency. To
6 address violations for which no penalty had been established, section 2699(f) creates a private
7 right of action for aggrieved employees and default penalty in the amount of \$100 for each
8 aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved
9 employee per pay period for each subsequent violation. Labor Code § 2699(f).

10 84. Plaintiffs hereby seek to collect these civil penalties for the above-described Labor
11 Code violations, including (1) the penalties provided for unpaid overtime and failure to provide
12 meal periods, authorized under Labor Code section 558; (2) the penalties provided for unlawfully
13 receiving and withholding earned wages, authorized under Labor Code section 225.5; (3) the
14 penalties provided for failure to provide accurate itemized wage statements, authorized under
15 Labor Code section 226.3; and (4) the penalties provided for payment of a wage less than the
16 minimum, authorized under Labor Code section 1197.1. In addition, Plaintiffs seek to collect
17 civil penalties for violations of Labor Code §§ 201, 202, 203, 204, 226 (a), 226.7, 510, 512,
18 1174, 1197, 1770-1777.5, 1810, 1811, 1812, and 1815, as authorized by Labor Code sections
19 2699(a) and 2699.3.

20 85. Labor Code § 2699(g) further provides that any employee who prevails in an action
21 for civil penalties is entitled to an award of reasonable attorney's fees and costs. Plaintiffs hereby
22 seek to recover their attorney's fees and costs under this one-way fee and cost shifting statute.

23 86. On March 2, 2020, pursuant to Labor Code § 2699.3, Plaintiffs filed notice with the
24 Labor and Workforce Development Agency, with a copy sent by certified mail to All Seasons
25 Roofing & Waterproofing, Inc., and Vladislav N. Gorshteyn of the specific provisions of the
26 Labor Code that have been violated, including the facts and theories to support the violations.
27 Plaintiffs have complied with the Private Attorneys General Act notice requirement because the

1 60-day time limit for the Labor and Workforce Development Agency's response has passed with
2 no response.

3
4 **EIGHTH CAUSE OF ACTION**

5 **Unlawful Business Practices under California Unfair Competition Act**
6 **(brought by Plaintiffs on behalf of themselves and all Class Members**
7 **against Defendant ASRW and DOES 1-50)**

8 87. Plaintiffs incorporate in this cause of action each and every allegation of all
9 preceding paragraphs, as though fully set forth herein.

10 88. Plaintiffs further bring this cause of action on behalf of the proposed Class,
11 seeking statutory relief to stop the misconduct of Defendants, as complained herein, and to
12 compel restitution and disgorgement of all profits obtained by Defendants through the unfair and
13 unlawful business practices described herein.

14 89. Beginning at an exact date unknown to Plaintiffs, but at least since 2016,
15 Defendants have committed unlawful acts as defined by Business & Professions Code § 17200.
16 Defendants have engaged in unlawful, unfair and deceptive business practices including, but not
17 limited to, the following:

- 18 (a) Failure to pay for all hours worked;
- 19 (b) Failure to pay the proper wage rate for all hours worked;
- 20 (c) Violations of Labor Code § 204.3 (Failure to pay overtime);
- 21 (d) Failure to provide, authorize, and permit uninterrupted meal and rest
22 breaks;
- 23 (e) Violations of Labor Code §§ 201, 202 (Failure to pay accrued wages at
24 termination or resignation);
- 25 (f) Violations of Labor Code § 226 (Failure to provide accurate itemized
26 wage statements).
- 27 (g) Violations of Labor Code §§ 1174 and 1174.5 (failure to maintain accurate
records);

1 (h) Violations of Labor Code §1773 (prevailing wage rate benefits);

2 (i) Violations of Labor Code §1194 (minimum and overtime wages).

3 90. The conduct of Defendants, as alleged herein, constitutes unlawful practices as set
4 forth in Business & Professions Code §§ 17200, et seq. Specifically, Defendants conduct
5 business activities while failing to comply with California's wage-and-hour laws and the
6 California common law and statutory law as described herein.

7 91. Section 17200 of the Business & Professions Code prohibits unfair competition
8 by prohibiting unlawful, unfair, or fraudulent business practices or acts.

9 92. Defendants' failure to adopt policies in accordance with and/or adhere to these
10 laws, all of which are binding upon and burdensome to Defendants' competitors, engenders an
11 unfair competitive advantage for Defendants, thereby constituting an unfair business practice, as
12 set forth in Business & Professions Code §§ 17200, et seq.

13 93. Defendants' conduct as herein alleged has damaged Plaintiffs and members of the
14 proposed Class by wrongfully denying to them earned wages, overtime pay, and meal and rest
15 breaks and therefore was substantially injurious to Plaintiffs and the Class.

16 94. Under the circumstances alleged, it would be inequitable and result in a
17 miscarriage of justice for Plaintiffs and Class Members if Defendants were to retain the property
18 of Plaintiffs and Class Members, entitling Plaintiffs and the proposed Class to restitution of the
19 unfair benefits obtained and disgorgement of Defendants' ill-gotten gains.

20 95. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and
21 Class Members are entitled to and seek restitution and disgorgement, and other appropriate relief
22 available under Bus. & Prof. Code §§ 17200 et. seq.

23 **RELIEF SOUGHT**

24 **WHEREFORE**, Plaintiffs, on behalf of themselves and the proposed Class, prays for
25 judgment and the following specific relief against Defendants as follows:

26 //

1 A. That the Court determine that this action may be maintained as a class action
2 under California Code of Civil Procedure §382;

3 B. That Defendants are found to have violated the provisions of the California Labor
4 Code and Wage Order 16 by failing to pay Plaintiffs and the Class minimum wages;

5 C. That Defendants are found to have breached their implied contracts with Plaintiffs
6 and the Class by failing to pay them at the agreed-upon contract rate for all of their hours
7 worked;

8 D. That Defendants are found to have violated the provisions of the Labor Code §
9 510, as to the Plaintiffs and the Class by failing to pay Plaintiffs and the Class for overtime and
10 double time hours worked;

11 E. That Defendants are found to have violated Labor Code § 226 by not authorizing
12 and permitting adequate meal and rest breaks to Plaintiffs and the Class;

13 F. That Defendants are found to have violated Labor Code § 203 for failing to pay
14 wages upon termination or voluntary quit;

15 G. That Defendants are found to have violated the record-keeping provisions of
16 Labor Code §§ 1174(d) and 226 as to Plaintiffs and the Class Members;

17 H. That Defendants are found to have violated Labor Code § 226 for failing to
18 provide accurate wage statements to Plaintiffs and the Class Members;

19 I. That Defendants are found to have violated Business and Professions Code
20 § 17200 as to Plaintiffs and the Class by failing to pay Plaintiffs and Members of the Class for all
21 hours worked and failing to keep timely, accurate, itemized records of all hours worked and
22 failing to permit and authorize adequate meal and rest breaks to Plaintiffs and the Class;

23 J. That Plaintiffs and the Class be awarded damages for the amount of unpaid
24 compensation, including interest thereon, liquidated damages, and penalties subject to proof at
25 trial;

26 K. That Plaintiffs and the Class be awarded civil penalties as specified by Labor
27 Code § 2699(f) for Plaintiffs and each current and former aggrieved employee for each violation

1 of the Labor Code as explained herein during the applicable limitations period preceding the
2 filing of the Complaint and up to and including the present and until the date of compliance with
3 the law;

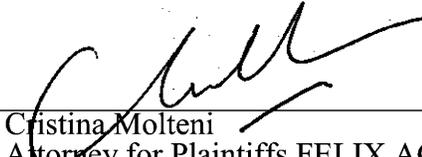
4 L. That Plaintiffs and the Class be awarded reasonable attorney's fees and costs
5 pursuant to Labor Code §§ 226, and 1194, and California Code of Civil Procedure § 1021.5;

6 M. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the
7 Class due to Defendants' unlawful activities, pursuant to Business and Professions Code
8 §§ 17200 et seq.; and

9 N. An award of such other and further relief as this Court may deem appropriate.

10 Dated: May 4, 2020

MOLTENI EMPLOYMENT LAW

11
12
13 By: 

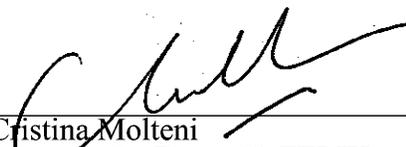
Cristina Molteni
Attorney for Plaintiffs FELIX AGUILAR, JOSE
MARTINEZ, and JOSE CAZARES,
individually, and on behalf of all others
similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs, on behalf of themselves and all others similarly situated, hereby request a jury
3 trial on the claims so triable.

4 Dated: May 4, 2020

MOLTENI EMPLOYMENT LAW

6
7 By: 
8 Cristina Molteni
9 Attorney for Plaintiffs FELIX AGUILAR,
10 JOSE MARTINEZ, and JOSE CAZARES,
11 individually, and on behalf of all others
12 similarly situated
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27