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9 Attorneys for Defendant
10 BORAL INDUSTRIES INC. and
BORAL ROOFING LLC
11

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**
14

15 RYAN BISHOP, on behalf of himself
and all others similarly situated,

16 Plaintiff,

17 vs.

18 BORAL INDUSTRIES, INC, a
19 California Corporation, BORAL
ROOFING, LLC, a Delaware Limited
20 Liability Corporation, and DOES 1-10,

21 Defendants.
22

CASE NO. '18CV2701 BEN MSB

[San Diego County Superior Court Case
No. 37-2018-00054773-CU-OE-CTL]

**DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION
FROM STATE COURT**

Complaint Filed: October 29, 2018

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **SOUTHERN DISTRICT OF CALIFORNIA:**

3
4 PLEASE TAKE NOTICE that Defendants BORAL INDUSTRIES INC. and
5 BORAL ROOFING LLC (collectively, “Defendants”), by and through their
6 undersigned counsel, hereby remove the above-entitled action currently pending in
7 the Superior Court of the State of California in and for the County of San Diego (the
8 “State Court”) to the United States District Court for the Southern District of
9 California on the ground that this Court has original jurisdiction over this civil
10 action pursuant to 28 U.S.C. § 1332, 1441 and 1446. In support of their Notice of
11 Removal, Defendants aver as follows:

12
13 **STATE COURT ACTION**

14
15 1. On October 29, 2018, Plaintiff Ryan Bishop (“Plaintiff”) filed a
16 Complaint against Defendants in the State Court, styled as *RYAN BISHOP, on*
17 *behalf of himself and all other similarly situated v. BORAL INDUSTRIES, INC., a*
18 *California Corporation, BORAL ROOFING, LLC, a Delaware Limited Liability*
19 *Corporation, and DOES 1-10*, Case No. 37-2018-00054773-CU-OE-CTL (the
20 “State Court Action”), a true and correct copy of which is attached hereto as Exhibit
21 A.

22
23 2. On or about October 30, 2018, Defendants’ registered agents for
24 service of process were personally served with a copy of the Summons and
25 Complaint.

26
27 3. True and correct copies of the Summons, Complaint, and every other
28 process, pleading, and order served on Defendants in this action to date are attached

1 hereto as the Exhibits identified below:

2	<u>Exhibit</u>	<u>Document</u>
3	A	Complaint
4	B	Summons on Complaint – Boral Industries Inc.
5	C	Summons on Complaint – Boral Roofing LLC
6	D	Civil Case Cover Sheet
7	E	Notice of Case Assignment and Case Management Conference on Mandatory eFile Case
8	F	Alternative Dispute Resolution (ADR) Information
9	G	Stipulation to Use of Alternate Dispute Resolution

10
11 4. Defendants are informed and believe that they are the only defendants
12 that have been served with process in the State Court Action and are the only
13 defendants needed to join and consent to this removal.

14
15 **REMOVAL JURISDICTION**

16
17 5. This court has original jurisdiction under the Class Action Fairness Act
18 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453 and 1711-15, and all other applicable bases
19 for removal.

20
21 6. As required by 28 U.S.C. § 1441, Defendants remove this case to the
22 United States District Court for the Southern District of California, which is the
23 District Court embracing the place where the State Court Action was filed.

24
25 7. This action has not been previously removed to federal court.

26
27 8. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b),
28 which provides that a Notice of Removal “shall be filed within thirty days after the

1 receipt by the defendant, through service or otherwise, of a copy of the initial
2 pleading setting forth the claim upon which such action or proceeding is based.”
3 Defendants have timely filed this Notice of Removal within thirty days of the date
4 they were served with and received the Summons and Complaint in this action.

5
6 9. In accordance with 28 U.S.C. § 1446(d), Defendants will provide
7 contemporaneous written notice of this Notice of Removal to all adverse parties and
8 to the Clerk of the State Court.

9
10 **CAFA JURISDICTION**
11

12 10. There is no presumption against removal under CAFA. *Dart Cherokee*
13 *Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 550, 554 (2014) (“*Dart*
14 *Cherokee*”) (“no antiremoval presumption attends cases invoking CAFA, which
15 Congress enacted to facilitate adjudication of certain class actions in federal court”).
16 To the contrary, “CAFA’s ‘provisions should be read broadly, with a strong
17 preference that interstate class actions should be heard in federal court if properly
18 removed by any defendant.’” *Id.* at 554, *quoting* S. Rep. No. 109-14, p. 43 (2005).

19
20 11. This Court has original jurisdiction over this action pursuant to CAFA,
21 28 U.S.C. § 1332(d)(2). Under CAFA, this Court has jurisdiction over class actions
22 where any member of the class is a citizen of a State different from any defendant,
23 and where the aggregate amount in controversy (“AIC”) exceeds the sum of \$5
24 million, exclusive of interest and costs, and the number of members of all proposed
25 plaintiff classes in the aggregate is at least 100 class members. 28 U.S.C. §
26 1332(d)(2)-(6). CAFA authorizes removal of such actions under 28 U.S.C. § 1446.

27
28 12. This action is one which may be removed to this Court by Defendants

1 because: (1) the number of members of all proposed plaintiff classes in the
2 aggregate is more than 100 class members; (2) there is diversity of citizenship
3 between Plaintiff and at least one Defendant; and (3) the amount in controversy for
4 all class members exceeds \$5,000,000.00.

5
6 **CAFA Minimal Diversity of Citizenship**

7
8 **13. Plaintiff's Citizenship.** Although the Complaint does not specifically
9 allege the citizenship of Plaintiff, Plaintiff alleges in his Complaint that he is a
10 resident of San Diego County, California. *See* Exh. A (Complaint), ¶ 4. In addition,
11 Defendants are informed and believe, and based thereon aver, that Plaintiff presently
12 has and at all times relevant to this action has had a driver's license issued by the
13 State of California. Accordingly, Plaintiff is a resident and citizen of the State of
14 California. *See, e.g., Mondragon v. Capital One Auto Finance*, 776 F.3d 880, 885-
15 86 (9th Cir. 2013) (holding that, in connection with removal to federal court, a
16 person's continuing domicile in a state establishes citizenship "unless rebutted with
17 sufficient evidence of change"); *Lew v. Moss*, 797 F.2d 747, 751-52 (9th Cir. 1986)
18 (holding that California was the state of domicile for a party with a California
19 residential address and a valid California drivers' license).

20
21 **14. Defendant Boral Roofing LLC's Citizenship.** Defendant Boral
22 Roofing LLC is an unincorporated limited liability company organized under the
23 laws of Delaware with its principal place of business in Roswell, Georgia. At its
24 headquarters in Roswell, Georgia, Boral Roofing LLC's officers direct, control and
25 coordinate its activities and the majority of its executive and administrative
26 functions are performed there. Thus, Boral Roofing LLC was not and is not a
27 citizen of California but, rather, was and is a citizen of Delaware and/or Georgia for
28 the purpose of determining jurisdiction. *See* 28 U.S.C. § 1332(d)(10) (for purposes

1 of removal under CAFA, unincorporated associations such as limited liability
2 companies “shall be deemed to be a citizen of the State where it has its principal
3 place of business and the State under whose laws it is organized”); *Abrego v. Dow*
4 *Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (recognizing CAFA’s departure from
5 the rule that frequently destroys diversity jurisdiction, that “a limited [liability
6 company’s] citizenship for diversity purposes can be determined only by reference
7 to all of the entity’s members”).

8
9 15. Based on the foregoing, CAFA’s minimal diversity requirement is
10 satisfied because Plaintiff purports to be a member of the putative class he seeks to
11 represent and is a citizen of a state that is different from at least one Defendant.

12
13 **THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000.00**

14
15 16. Defendants allege based on the following calculations that the amount
16 in controversy exceeds \$5,000,000.00 only for the purpose of establishing subject
17 matter jurisdiction under CAFA. Defendants’ allegations and calculations are not
18 admissions of liability or damages with respect to any aspect of this case, or to the
19 proper legal test(s) applicable to Plaintiff’s allegations, or whether a class action is
20 proper.¹

21
22 17. A removing defendant’s notice of removal need only contain plausible
23 allegations to demonstrate the amount in controversy. Evidentiary submissions are
24 not required unless and until the removing defendant’s allegations are contested by
25

26
27
28 ¹ See *LaCrosse v. Knight Truck and Trailer Sales, LLC*, 775 F.3d 1200, 1203
(9th Cir. 2015), quoting *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1198
n. 1 (9th Cir. 2015) (“Even when defendants have persuaded a court upon a CAFA
removal that the amount in controversy exceeds \$5 million, they are still free to
challenge the actual amount of damages in subsequent proceedings and trial.”).

1 the plaintiff or questioned by the court:

2 In sum, as specified in 1446(a), a defendant’s notice of removal need
3 include only a plausible allegation that the amount in controversy
4 exceeds the jurisdictional threshold. Evidence establishing the amount
is required by 1446(c)(2)(B) only when the plaintiff contests, or the
court questions, the defendant’s allegation.

5 *Dart Cherokee*, 135 S.Ct. at 554.

6
7 18. This standard applies to complaints like the Complaint here, which
8 affirmatively state that the amount in controversy does not exceed \$5 million:

9 When plaintiffs favor state court and have prepared a complaint that ...
10 affirmatively states that the amount in controversy does not exceed \$5
11 million, the Supreme Court has said that a defendant can establish the
amount in controversy by an unchallenged, plausible assertion of the
amount in controversy in its notice of removal.

12 *Ibarra*, 775 F.3d at 1197-98 (citing *Dart Cherokee*, 135 S.Ct. at 554-55).

13
14 19. The plaintiff’s complaint is a court’s “first source of reference in
15 determining the amount in controversy.” *LaCrosse*, 775 F.3d at 1202 (citing *St.*
16 *Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). The ultimate
17 inquiry is what amount is put “in controversy” by Plaintiff’s Complaint, not what a
18 court or jury might later determine to be the actual amount of damages, if any.²

19

20

21

22 ² See *Ibarra*, 775 F.3d at 1198 n. 1, citing *Sparta Surgical Corp. v. Nat’l*
23 *Ass’n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998) (defendants “are
24 not stipulating to damages suffered” in a removal petition, “but only estimating the
25 damages that are in controversy,” because “jurisdiction must be analyzed on the
26 basis of pleadings filed at the time of removal”); *St. Paul Mercury*, 303 U.S. at 291
27 (“the status of the case as disclosed by the complaint is controlling in the case of a
28 removal”); *Scherer v. Equitable Life Assurance Soc’y of the United States*, 347 F.3d
394, 399 (2d Cir. 2003) (the “‘amount in controversy’ ... for jurisdictional purposes,
[is] the sum put in controversy by the plaintiff’s complaint”); *Wilder v. Bank of*
America, 2014 U.S. Dist. LEXIS 168932, *4 (C.D. Cal. Dec. 5, 2014) (citing cases
holding that in measuring the amount in controversy, the court assumes that a jury
will return a verdict on all claims asserted in the complaint, and that the ultimate
inquiry is what the complaint alleges, not what the defendant might actually owe).

1 25. Plaintiff’s Complaint alleges that Defendants “regularly schedule
2 [their] non-exempt employees to work 12 hour shifts” but their “policy is to only
3 permit each employee to take one meal break and two ten-minute rest breaks during
4 his or her scheduled shift, even though a 12-hour shift requires two (2) meal breaks
5 and three (3) rest breaks.” See Exh. A (Complaint), ¶¶ 9-10. Plaintiff also alleges
6 that Defendants’ “policy and practice is to only allow Plaintiff and other employees
7 to take one off-duty meal break if their shifts exceeded ten (10) hours, which was
8 customary.” *Id.* at ¶ 11. The Complaint further alleges that “[b]ased on the policies
9 and practices set forth above, Defendant[s] failed to provide Plaintiff and non-
10 exempt employees with proper wage statements in violation of Labor Code § 226”
11 and “did not pay all final wages owed to terminated non-exempt [employees] under
12 the Labor Code § 203.”

13
14 26. Plaintiff seeks to recover on behalf of himself and the putative class
15 members he seeks to represent, *inter alia*, “wages and penalties for...lost meal
16 breaks,” “additional pay for missed rest periods,” “restitution and disgorgement of
17 owed wages,” “statutory damages and penalties,” “general damages in the form of
18 owed wages,” and “costs and attorneys’ fees.” *Id.* at ¶¶ 32, 38, 41, 44, 53 and
19 Prayer for Relief ¶¶ D-H. Assuming for purposes of removal only that the
20 allegations of Plaintiff’s Complaint regarding his theories of liability are true but
21 without any type of express or implied admission that any such liability in fact
22 exists, the amount in controversy on Plaintiff’s claims alleged in this action is
23 plausibly estimated to exceed \$5 million.

24
25 27. Defendants’ payroll, operational and employment data for the putative
26 class members (“PCMs”) comprised of California-based non-exempt employees
27
28

1 who were employed from October 29, 2014 through April 19, 2018⁴ was used to
 2 determine the CAFA amount in controversy for purposes of this Notice of Removal,
 3 and that voluminous data can be summarized as follows:

- 4 • The PCMs worked an aggregate of **210,617 days** during the time period from
October 29, 2014 through April 19, 2018;
- 5 • The PCMs were paid an **average regular hourly rate of \$19.86** during the
 6 time period from **October 29, 2014 through April 19, 2018;**
- 7 • The employment of **203 PCMs terminated** during the time period from
 8 **October 29, 2015 through April 19, 2018;**
- 9 • The PCMs were paid an **average effective hourly rate of \$21.50** during the
 time period from **October 29, 2015 through April 19, 2018;**
- 10 • From **October 29, 2017 through April 19, 2018, 315 PCMs were employed**
 11 and **5,769 itemized wage statements** were issued to them;

12 **First And Fifth Causes of Action for Failure to Provide Required Meal Breaks**

13
 14 28. Plaintiff's **First Cause of Action** alleges that "Defendant[s] failed to
 15 provide lawful meal breaks" and "Defendant[s] ha[ve] a company-wide policy of
 16 prohibiting employees from taking off-duty breaks because employees are not
 17 relieved of all duties during breaks." *Id.* at ¶¶ 30-31. For this cause of action,
 18 Plaintiff seeks one additional hour of pay for himself and each putative class
 19 member at each employee's regular rate for each day that the ostensibly required
 20 meal break was not provided. *Id.* at ¶¶ 32. Plaintiff's **Fifth Cause of Action** seeks

21 _____
 22
 23 ⁴ Although the amount in controversy may include all relief available to
 24 Plaintiff through the end of trial, and the Complaint was filed on October 29, 2018,
 25 Defendants conservatively utilize only the truncated period to April 19, 2018 for the
 26 amount in controversy calculations for purposes of this Notice of Removal.
 27 Defendants expressly reserve and do not waive their right to amend this Notice of
 28 Removal and/or offer evidence pertaining to the proposed class period to establish
 the amounts in controversy related to Plaintiff's claims against Defendants and/or in
 supporting the Court's jurisdiction over this action under CAFA or otherwise.
 Additionally, Defendants assume that the proposed class is as defined by Plaintiff in
 the Complaint for purposes of this Notice of Removal only, but expressly reserve
 and do not waive their position that the proposed class definition is improper and/or
 cannot be certified.

1 “restitution” of the same payments under the California Unfair Competition Law
 2 (“UCL”). *Id.* at ¶¶ 47-49, 53. This claim is subject to a four-year statute of
 3 limitations.

4
 5 29. Based on Plaintiff’s allegations that the putative class members
 6 “regularly” work 12 hour shifts but Defendants “policy is to only permit
 7 [PCMs]...to take one meal break..., even though a 12-hour shift requires two (2)
 8 meal breaks,” and that Defendants “policy and practice is to only allow Plaintiff and
 9 [the PCMs] to take one off-duty meal break even if their shifts exceeded ten (10)
 10 hours, which was customary,” Defendants reasonably assume for purposes of
 11 removal that each of the PCMs will claim to have not been provided and/or paid for
 12 at least one compliant meal break for each day they worked for Defendants.
 13 Therefore, based on the data set forth above, Defendants conservatively calculate
 14 the total amount in controversy on Plaintiff’s putative class claims for meal break
 15 violations for the truncated time period from **April 19, 2014 through April 19,**
 16 **2018** to be at least **\$4,182,853.62**, as follows:

10/29/2014 – 4/19/2018		
Days Worked x	Average Regular Hourly Rate =	Amount in Controversy
210.617	\$19.86	\$4,182,853.62 ⁵

20
 21 30. Accordingly, based on the foregoing. Defendants calculate the total
 22 amount in controversy with respect to Plaintiff’s claims for meal break violations to
 23 be at least **\$4,182,853.62**.

24
 25
 26 ⁵ Based on the unqualified allegations of meal break violations, it is
 27 reasonable for Defendants to assume that the PCMs experienced meal break
 28 violations every day they worked. But, even assuming that PCMs experienced meal
 break violations on only half the days they worked (i.e., only \$2,091,426.81
 [\$4,182,853.62 ÷ 2] is in controversy on the meal break violation claims), the CAFA
 AIC requirement is *still satisfied* as discussed *post*.

10/29/2014 – 4/19/2018		
Days Worked x	Average Regular Hourly Rate =	Amount in Controversy
210,617	\$19.86	\$ 4,182,853.62 ⁶

33. Accordingly, based on the foregoing, Defendant calculates the total amount in controversy with respect to Plaintiff's claims for rest break violations to be at least **\$4,182,853.62**.

Third Cause of Action for Failure to Provide Final Wages

34. Plaintiff's **Third Cause of Action** alleges that Defendants willfully failed to pay all terminated employees their wages upon termination. *See* Exh. A (Complaint), ¶ 40. Plaintiff seeks recovery of statutory waiting time penalties under Cal. Labor Code §§ 201-203, in a sum equal to the wages of each terminated or resigning employee from the due date thereof and for thirty days thereafter. *Id.* at ¶¶ 40-41. This claim is subject to a three-year statute of limitations.

35. As set forth above, 203 PCMs left their employment with Defendants during the truncated period beginning three years prior to the filing the Complaint in this action and April 19, 2018, and the PCMs' average effective hourly rate during that time period was \$21.50. Additionally, while, as set forth above, Plaintiff alleges that the PCMs "regularly" worked an average of 12 hours per day, for

⁶ Like the meal break violation claims, based on Plaintiff's unqualified allegations of rest break violations, it is reasonable for Defendants to assume that the PCMs experienced rest break violations every day they worked. But, even assuming that PCMs experienced rest break violations on only half the days they worked (i.e., only \$2,091,426.81 [$\$4,182,853.62 \div 2$] is in controversy on the rest break violation claims), the CAFA AIC requirement is *still satisfied* as discussed *post*.

1 purposes of removal Defendants utilize a conservative 8-hour workday.⁷
 2 Accordingly, the amount in controversy on Plaintiff’s Third Cause of Action for
 3 statutory waiting time penalties is **\$1,047,480.00**⁸ (203 PCMs x [\$21.50 per hour
 4 average hourly rate x 8 hours per day x 30 days]).

5
 6 **Fourth Cause of Action for Failure to**
 7 **Furnish Timely and Accurate Wage Statements**
 8

9 36. Plaintiff’s **Fourth Cause of Action** alleges that Defendants
 10 “knowingly and intentionally failed to furnish and continue to knowingly and
 11 intentionally fail to furnish Plaintiff and the Class with accurate itemized statements,
 12 as a required by California Labor Code § 226(a).” *See* Exh. A (Complaint), ¶ 44.
 13 On that basis, Plaintiff seeks to recover the “amount provided by California Labor
 14 Code § 226” for the proposed class which, pursuant to Cal. Lab. Code § 226(e)
 15 (“Section 226(e)”), is an amount equal to fifty dollars (\$50) per employee for the
 16 initial pay period in which a violation occurs and one hundred dollars (\$100) per
 17 employee for each violation in a subsequent period, up to a statutory maximum of
 18 \$4,000 per employee. *See id.* at ¶ 44; Cal. Lab. Code § 226(e). This claim is
 19 subject to a one-year statute of limitations.

20
 21 37. Plaintiff’s inaccurate wage statement claim is expressly tied to his
 22 claims for meal and rest break violations which, as discussed above, are reasonably
 23

24 ⁷ If challenged, Defendants expressly reserve and do not waive their right to
 25 supplement and/or amend their removal submissions to rely on other, higher,
 reasonable assumptions and/or estimates in calculating the amount in controversy.

26 ⁸ Defendants’ waiting time penalty AIC assumptions and calculation are
 27 reasonable based on the allegations in the Complaint. *But*, even assuming that only
 28 half the PCMs were entitled to waiting time penalties (i.e., only \$523,740.00
 [\$1,047,480.00 ÷ 2] is in controversy on this claim), the CAFA AIC requirement is
still satisfied as discussed *post*.

1 interpreted to allege one meal break violation and one rest break violation by the
 2 PCMs on each day they worked. *See* Exh. A (Complaint), ¶ 13. Thus, Defendants
 3 reasonably assume for purposes of removal that the PCMs were never provided
 4 accurate wage statements for any pay period. Accordingly, based on the data set
 5 forth above, the amount in controversy on Plaintiff’s Fourth Cause of Action for
 6 inaccurate wage statement penalties is **\$561,150.00**⁹ calculated as follows:

$$7 \quad [(315 \text{ PCMs} \times 1 \text{ initial wage statement}) = 315 \text{ initial wage statements}] \times \$50$$

$$8 \quad = \$15,750$$

$$9 \quad [(5,769 - 315 \text{ initial wage statements}) = 5,454 \text{ subsequent wage statements}] \times$$

$$10 \quad \$100 = \$545,400$$

11 38. \$15,750 initial wage statement penalties + \$545,400 subsequent wage
 12 statement penalties = \$561,150 total penalties (or \$1,781.43 per PCM)

13 14 **Statutory Attorneys’ Fees**

15
16 39. Plaintiff also seeks **statutory attorneys’ fees** in connection with all of
 17 his causes of action in the Complaint. *See* Exh. A (Complaint), ¶¶ 32, 38, 41, 43,
 18 and Prayer for Relief at ¶ H. In the Ninth Circuit, when attorneys’ fees are
 19 authorized by statute, they are appropriately part of the calculation of the “amount in
 20 controversy” for purposes of removal. *Chavez, supra*, F.3d at 416; *Kroske v. U.S.*
 21 *Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Johnson v. America Online, Inc.*,
 22 280 F.Supp.2d 1018 (N.D. Cal. 2003); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150,
 23 1155-56 (9th Cir. 1998) (“[W]here an underlying statute authorizes an award of
 24 attorneys’ fees, either with mandatory or discretionary language, such fees may be
 25 _____

26 ⁹ Defendants’ wage statement violation AIC assumptions and calculation are
 27 reasonable based on the allegations in the Complaint. But, even assuming that only
 28 half of the PCMs’ wage statements were inaccurate (i.e., only \$280,575.00
 [\$561,150.00 ÷ 2] is in controversy on this claim), the CAFA AIC requirement is
still satisfied as discussed *post*.

1 included in the amount in controversy.”). Where, as here, a common fund recovery
 2 potentially is sought, the Ninth Circuit uses a benchmark rate of 25% of the
 3 potential award as an estimate for attorneys’ fees. *See, e.g., Hanlon v. Chrysler*
 4 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (“This circuit has established 25% ... as
 5 a benchmark award for attorney fees.”); *Glass v. UBS Fin. Servs.*, 331 Fed.Appx.
 6 452, 457 (9th Cir. 2009). Utilizing the 25% benchmark for attorneys’ fees used in
 7 the Ninth Circuit, Defendants calculate the amount in controversy on Plaintiff’s
 8 **statutory attorneys’ fees claim** to be **\$2,493,584.31**¹⁰ [(\$4,182,853.62 +
 9 \$4,182,853.62 + \$1,047,480.00 + \$561,150.00) x 25%].

10
 11 40. Based on the foregoing calculations, which are based on only a limited
 12 portion of the putative class period, the **amount in controversy** for the putative
 13 class action claims of the proposed classes Plaintiff seeks to represent, exclusive of
 14 interest and costs, is conservatively calculated to be **at least \$12,467,921.55**, which
 15 exceeds the \$5 million jurisdictional threshold under CAFA:

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 24 ¹⁰ If the even more conservative meal break, rest break, waiting time penalty,
 25 and wage statements violation AICs set forth in footnotes 5, 6, 8, and 9, *supra*, are
 26 used, the attorneys’ fees AIC is **\$1,246,792.16** [(\$2,091,426.81 + \$2,091,426.81 +
 27 \$523,740.00 + \$280,575.00) x .25]. Regardless of which set of AIC calculations is
 28 used, Defendants’ calculation based on only the AIC on the underlying claims
 through April 19, 2018 renders it conservative since attorneys’ fees through the
 resolution of this action at trial can properly be included and considered to
 determine if the jurisdictional AIC is satisfied. *See Chavez, supra*, 888 F.3d 413 at
 414-15, 417-18.

<u>Cause of Action / Claim</u>	<u>Amount in Controversy</u>
Meal Break Violations (First and Fifth Causes of Action)	\$4,182,853.62
Rest Break Violations (Second and Fifth Causes of Action)	\$4,182,853.62
Waiting Time Penalties (Third Cause of Action)	\$1,047,480.00
Inaccurate Wage Statement Penalties (Fourth Cause of Action)	\$561,150.00
Statutory Attorneys' Fees (25%)	\$2,493,584.31
TOTAL AMOUNT IN CONTROVERSY:	\$12,467,921.55¹¹

41. Accordingly, this Court has original jurisdiction in this action under 28 U.S.C. § 1332 because CAFA permits removal of a class action where, as here: (1) there is minimal diversity of citizenship between the parties; (2) the membership of all proposed plaintiff classes in the aggregate is at least 100; and (3) the amount in controversy exceeds \$5 million.

¹¹ Defendants' amount in controversy is conservative and underestimated because it does not "encompass[] all relief a court may grant on that complaint if the plaintiff is victorious" given that it is only calculated through April 19, 2018 as opposed to through the resolution of this action at trial (or even the filing of the Complaint on October 29, 2018). *See Chavez, supra*, 888 F.3d 413 at 414-15, 417-18. Moreover, if the even more conservative meal break, rest break, waiting time penalty, wage statement violations and waiting time penalties AICs are utilized, and the even more conservative attorneys' fees AIC, as set forth in footnotes 5, 6, 8, 9, and 10, *supra*, are utilized, the CAFA AIC requirement is still satisfied (\$2,091,426.81 + \$2,091,426.81 + \$523,740.00 + \$280,575.00 + \$1,246,792.16 = **\$6,233,960.78**).

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1800 Century Park East, 8th Floor, Los Angeles, CA 90067.

On November 29, 2018, I served the following document described as **DEFENDANTS’ NOTICE OF REMOVAL OF CIVIL ACTION FROM STATE COURT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Alisa A. Martin
AMARTIN LAW, PC
600 West Broadway, Suite 700
San Diego, CA 92101

Lindsay C. David
BRENNAN & DAVID LAW GROUP
2888 Loker Avenue East, Suite 302
Carlsbad, California 92010

- BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3))
- BY FACSIMILE:** At approximately _____, I caused said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 310.315.8210. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.
- BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder. (C.C.P. § 1013(d)(e))
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered the addressee(s). (C.C.P. § 1011)

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 29, 2018, at Los Angeles, CA.


Matthew Whitney

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/29/2018 at 04:15:41 PM

Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

1 Alisa A. Martin, State Bar No. 224037
2 **AMARTIN LAW, PC**
3 600 West Broadway, Suite 700
4 San Diego, CA 92101
5 Telephone: (619) 308-6880
6 Facsimile: (619) 308-6881

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9 2888 Loker Avenue East, Suite 302
10 Carlsbad, California 92010
11 Telephone: 760-730-9408
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13 *Attorneys for Plaintiff and the Class*

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

RYAN BISHOP, on behalf of himself and all others similarly situated,

Plaintiff,

v.

BORAL INDUSTRIES, INC, a California Corporation, BORAL ROOFING, LLC, a Delaware Limited Liability Corporation, and DOES 1-10

Defendants.

CASE NO.: 37-2018-00054773-CU-0E-CTL

CLASS ACTION

COMPLAINT FOR:

- 1. FAILURE TO PROVIDE MEAL BREAKS
- 2. FAILURE TO PROVIDE REST BREAKS
- 3. FAILURE TO PAY FINAL WAGES
- 4. FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS
- 5. UNFAIR BUSINESS PRACTICES

[DEMAND FOR JURY TRIAL]

I.

NATURE OF ACTION

1. Based on personal knowledge, information and belief, plaintiff Ryan Bishop, a non-exempt employee, brings this putative class action, on behalf of himself and all other similarly situated non-exempt employees, against his employer BORAL INC. for numerous wage and hour violations, including: (1) failing to provide meal breaks; (2) failing to provide rest breaks; (3) failing to pay final wages; and (3) failing to provide timely and accurate wage statements.

1 II.

2 JURISDICTION AND VENUE

3 2. The San Diego Superior Court has jurisdiction over Plaintiff's and the Class'
4 claims for premium wages for missed breaks, unpaid final wages, and inaccurate wage
5 statements under the California Labor Code, as well as for injunctive relief and restitution of
6 wages and ill-gotten benefits arising from Defendant's unlawful business practices under
7 Business & Professions Code §§ 17203 and 17204, because: (1) Plaintiff's individual claims do
8 not exceed the jurisdictional limit of \$75,000; (2) the Class' claims as a whole do not exceed the
9 jurisdictional limit of \$5,000,000; and (3) no federal claims or questions are being disputed,
10 precluding federal jurisdiction. Thus, Defendant is within this Court's jurisdiction.

11 3. Venue is proper under Code of Civil Procedure § 395(a) because Defendant
12 operates throughout California, including San Diego, and employed, and continues to employ
13 numerous putative class members in San Diego during the class period.

14 III.

15 PARTIES

16 Plaintiff

17 4. Ryan Bishop (hereafter "Plaintiff") resides in San Diego County, California.
18 Plaintiff commenced employment with Defendant in April 2018 as a non-exempt employee in
19 Defendant's manufacturing factory. Defendant terminated Bishop in May 2018.

20 Defendants

21 Boral Industries, Inc. is a California corporation that does business in California with its
22 principal place of business in Georgia. Boral Roofing, LLC is a Delaware limited liability
23 corporation that does business in California with principal place of business in Irvine, California.
24 Boral Industries Inc. and Boral Roofing LLC are collectively referred to as Defendant throughout
25 this complaint. Defendant employs individuals in California and throughout the United States.
26 Defendant's alleged acts were authorized, directed or accomplished by its agents, officers,
27 employees or representatives, while actively engaged in the operation and management of its
28 business.

1 shift requires two (2) meal breaks and three (3) rest breaks.

2 11. Plaintiff is informed and believes that Defendant has not received an exemption
3 from providing off-duty meal and rest breaks to employees, yet its policy and practice is to only
4 allow Plaintiff and other employees to take one off-duty meal break even if their shifts exceeded
5 ten (10) hours, which was customary.

6 12. Further, Defendant failed to provide Plaintiff and other employees with any
7 compensation for the missed meal and rest breaks.

8 **Defendant's Practices Resulted in Improper Wage Statements And Unpaid Final**
9 **Wages**

10 13. Based on the policies and practices set forth above, Defendant failed to provide
11 Plaintiff and non-exempt employees with proper wage statements in violation of Labor Code §
12 226.

13 14. Defendant did not pay all final wages owed to terminated non-exempt under the
14 Labor Code § 203.

15 **Plaintiff's Facts**

16 15. Plaintiff began working for Defendant as a non-exempt hourly employee on April
17 12, 2018.

18 16. After his employment commenced, Plaintiff complained that he was not receiving
19 his second meal break, even though he was scheduled to work 12-hour shifts. Defendant
20 responded by telling Plaintiff he was only allowed to take one meal break per 12-hour shift.

21 17. On or around May 4, 2018, Plaintiff took a second meal break.

22 18. On May 5, 2018, Defendant Terminated Plaintiff.

23 19. The paycheck Plaintiff received after his termination did not include the
24 compensation owed to him as outlined in the preceding paragraphs.

25 **VI.**

26 **CLASS ALLEGATIONS**

27 20. **Class A:** Plaintiff brings this action on behalf of himself and an ascertainable
28 statewide Class consisting of:

1 All persons who worked in California who worked for Defendant
2 as a non-exempt employee and worked a shift greater than or equal
3 to ten hours at any time since four years before the filing of this
4 case.

5 21. **Ascertainable Class:** The Class is ascertainable in that each member can be
6 identified using information contained in Defendant's payroll, scheduling and personnel records.

7 22. **Common Questions of Law or Fact Predominate:** There is a well-defined
8 community of interest in the questions of law and fact affecting the class. The questions of law
9 and fact common to the Class predominate over questions that may affect individual class
10 members. These questions of law and fact include, but are not limited to, the following:

- 11 a. Whether Defendant provided lawful rest breaks;
- 12 b. Whether Defendant provided lawful meal breaks;
- 13 c. Whether Defendant paid final wages;
- 14 d. Whether Defendant furnished untimely and inaccurate wage statements;
- 15 e. Whether Defendant engaged in unfair and unlawful business practices.

16 23. **Numerosity:** The Class is so numerous that the individual joinder of all members is
17 impractical under the circumstances of this case. While the exact number of class members is
18 unknown to Plaintiff at this time, Plaintiff is informed and believes the Class consists of over 100
19 individuals. Individual joinder of class members is also impracticable.

20 24. **Typicality:** Plaintiff, like the class members, worked for Defendant during the class
21 period as a non-exempt employee and was subjected to Defendant's wrongful conduct as set
22 forth above. For instance, Plaintiff routinely was deprived of the opportunity to take lawful
23 breaks, was not provided final wages, and was not provided accurate wage statements. Plaintiff
24 and the Class suffered the same injuries.

25 25. **Adequacy:** Plaintiff will fairly and adequately represent and protect the Class'
26 interest in that he has no disabling conflicts of interest that would be antagonistic to those of the
27 other class members. Plaintiff seeks no relief that is antagonistic or adverse to the Class and the
28 infringement of the rights and the damages she suffered are typical of all other class members.
Plaintiff retained competent counsel, experienced in class action litigation and employment law,
and intends to prosecute this action vigorously.

1 **26. Superiority:** The class action format is a particularly efficient and appropriate
2 procedure to afford relief to Plaintiff and the class members because:

- 3 a. The individual amounts of damages involved, while not insubstantial, are such
4 that individual actions or other individual remedies are impracticable and
5 litigating individual actions would be too costly;
- 6 b. This case essentially involves a single employer and a large number of
7 individual employees with many relatively small claims with common issues
8 of law and fact;
- 9 c. If each Class member was required to file an individual lawsuit, Defendant
10 would gain an unconscionable advantage since it would be able to exploit and
11 overwhelm each Class member's limited resources with their vastly superior
12 financial and legal resources;
- 13 d. The costs of individual suits could unreasonably consume the amounts that
14 would be recovered;
- 15 e. Requiring each Class member to pursue an individual remedy would also
16 discourage the assertion of lawful claims by employees who would be
17 disinclined to pursue an action against their present and/or former employer
18 for an appreciable and justifiable fear of retaliation and permanent damage to
19 their immediate and/or future employment;
- 20 f. Proof of a common business practice or factual pattern which Plaintiff
21 experienced is representative of that experienced by the Class and will
22 establish the right of each of the members to recover on the causes of action
23 alleged; and
- 24 g. Individual actions would create a risk of inconsistent results and would be
25 unnecessary and duplicative of this litigation.

26 **27. Notice:** Notice to the class members may be made by first-class mail addressed to all
27 persons who have been individually identified by Defendant through access to its payroll and
28 personnel records. Alternatively, if Defendant cannot produce certain class members' names and

1 addresses, those class members may be notified by publication in the appropriate media outlets,
2 and by posting notices in Defendant's places of business in the State of California.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Provide Required Meal Periods**

5 28. Plaintiff incorporates every preceding paragraph as if fully set forth herein.

6 29. Defendant is required to provide their employees with duty free meal breaks under
7 IWC Order No. 4-2001 and Labor Code §§ 200, 500, 512, 11198, among other sections.

8 30. Defendant failed to provide lawful meal breaks. There are no valid legal or
9 applicable exceptions to the meal break requirement that would otherwise allow Defendant to
10 avoid providing regular meal breaks.

11 31. As described in detail above, Defendant has a company-wide policy of prohibiting
12 employees from taking off-duty breaks because employees are not relieved of all duties during
13 breaks.

14 32. California Labor Code § 226.7(b) provides for one hour of additional pay at the
15 employee's regular pay rate for each meal period that is not provided. Plaintiff and the Class
16 demand all applicable wages and penalties for their lost meal breaks, including the one hour's
17 compensation due under California Labor Code §§ 226.7, 512 and IWC Order No. 4-2001, as
18 well as reasonable attorney's fees and costs of suit, pursuant to California Labor Code §218.5.

19 **SECOND CAUSE OF ACTION**

20 **Failure to Provide Required Rest Periods**

21 33. Plaintiff incorporates every preceding paragraph as if fully set forth herein.

22 34. At all times herein mentioned, Defendant was required to provide their employees
23 with duty-free rest periods pursuant to IWC Order No. 4-2001 and Labor Code §§ 200, 500, 512,
24 1198, among other sections.

25 35. Defendant failed to provide Plaintiff and the Class with duty-free rest periods. There
26 are no valid legal or applicable exceptions to the rest period requirement that would otherwise
27 allow Defendant to avoid providing regular duty-free rest breaks.

28 36. As described above, Defendant's policy and practice is to require employees to
remain on-duty during their rest breaks.

1 37. Employees are never relieved of all duties during any breaks therefore employees also
2 are not permitted to take off-duty rest breaks during a shift.

3 38. Wages are due to employees for "all hours worked" under IWC Order 4-2001 ¶4(a)
4 and applicable California laws, rules, orders, requirements, and regulations. Plaintiff and the
5 Class request relief under California Labor Code § 226.7(b) and IWC Order No. 4-2001, which
6 provide for additional pay for missed rest periods in a sum to be proven at trial, and demand
7 reasonable attorney's fees and costs of suit, pursuant to California Labor Code §218.5.

8 **THIRD CLAIM FOR RELIEF**
9 **Failure to Provide Pay Final Wages**

10 39. Plaintiff re-alleges and incorporates all preceding paragraph.

11 40. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and
12 owing to all formerly employed California Class members at the time employment was
13 terminated. Labor Code § 203 provides that if an employer willfully fails to pay compensation
14 promptly upon discharge or resignation, the employer is liable for penalties in the form of
15 continued compensation for up to 30 workdays. Based up information and belief, Defendant
16 willfully failed to pay upon termination all wages owed to the California Class who are no longer
17 employed by Defendant and thus is liable to such class members for penalties pursuant to Labor
18 Code § 203.

19 41. As a result, Defendant is liable to Plaintiff and the California Class for the amounts
20 provided by California Labor Code § 201 and 202 in addition to attorney's fees, interest and
21 costs of suit.

22 **FOURTH CAUSE OF ACTION**
23 **Failure to Furnish Timely and Accurate Wage Statements**

24 42. Plaintiff incorporates every preceding paragraph as if fully set forth herein.

25 43. California Labor Code § 226(a) requires employers semi-monthly, or at the time of
26 each payment of wages, to furnish each employee with a statement itemizing with the applicable
27 pay rate, the total hours worked by the employee or other basis upon which compensation is
28 determined. California Labor Code § 226(e) provides that if an employer knowingly and
intentionally fails to provide such a statement, then the employee is entitled to recover the greater

1 of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100)
2 for each subsequent violation, up to four thousand dollars (\$4000).

3 44. Defendant knowingly and intentionally failed to furnish and continue to knowingly
4 and intentionally fail to furnish Plaintiff and the Class with accurate itemized statements, as
5 required by California Labor Code § 226(a). As a result, Defendant is liable to Plaintiff and the
6 Class for the amounts provided by California Labor Code § 226 in addition to attorney's fees,
7 interest and costs of suit.

8 **FIFTH CAUSE OF ACTION**
9 **Unlawful and Unfair Business Acts and Practices**

10 45. Plaintiff incorporates every preceding paragraph as if fully set forth herein.

11 46. The acts, omissions, and practices of Defendant as alleged herein constitute unlawful
12 and unfair business acts and practices within the meaning of Section 17200, *et seq.* of the
13 California Business & Professions Code.

14 47. Throughout the class period, Defendant has engaged in "unlawful" business acts and
15 practices based on the policies and practices described above, including, among other things,
16 their: nonpayment of missed break penalties; failure to provide accurate wage statements; and
17 failure to provide final wages owed.

18 48. Throughout the class period, Defendant also engaged in "unfair" business acts or
19 practices in that the harm caused by Defendant's nonpayment of the above-mentioned wages,
20 including penalties for missed breaks. Moreover, that conduct offends public policy, is immoral,
21 unscrupulous, unethical, deceitful and offensive, causes substantial injury to Plaintiff and the
22 Class, and provides Defendant with an unfair competitive advantage over those employers that
23 abide by the law and properly compensate their employees in accordance with the law.

24 49. Throughout the class period, Defendant also engaged in "fraudulent" business acts or
25 practices by fraudulently disregarding and/or manipulating employee time records. This was
26 done pursuant to written and otherwise understood policies and procedures, which constitute
27 "fraudulent" business acts or practices as set forth herein.

28 50. Plaintiff reserves the right to allege other violations of California law that constitute
unlawful acts or practices.

- 1 the conduct alleged herein;
- 2 **C.** Other injunctive and declaratory relief as may be appropriate;
- 3 **D.** Restitution and disgorgement of owed wages, together with interest thereon from
- 4 the date of payment;
- 5 **E.** For statutory damages and penalties according to proof;
- 6 **F.** For general damages in the form of owed wages and business expenses;
- 7 **G.** A declaration that Defendant is financially responsible for notifying all class
- 8 members of the pendency of this action;
- 9 **H.** Reasonable costs and attorneys' fees;
- 10 **I.** Statutory pre-judgment interest; and
- 11 **J.** For such other relief as the Court may deem proper.

12 Dated: October 26, 2018

AMartin Law, PC

13
14
15 By: /s/ Alisa Martin
Alisa Martin
Attorneys for the Plaintiff and the Class

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff demands a jury trial.

19
20 Dated: October 26, 2018

AMartin Law, PC

21
22 By: /s/ Alisa Martin
Alisa Martin
Attorneys for the Plaintiff and the Class

10/30/18 @BPR

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BORAL INDUSTRIES, INC, a California Corporation, BORAL ROOFING, LLC, a Delaware Limited Liability Corporation

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

RYAN BISHOP

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/29/2018 at 04:15:41 PM
Clerk of the Superior Court
By Linda Sheffa, 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.sucorta.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.sucorta.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 arrendados por imponer un gravamen sobre cualquier recuperación de \$10,000 o 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):

**SUPERIOR COURT OF CA, COUNTY OF SAN DIEGO
330 WEST BROADWAY, SAN DIEGO, CA 92101**

CASE NUMBER:
(Número del Caso):

37-2018-00054773-CU-0E-CTL

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):
ALISA MARTIN, SBN 224037, 600 W BROADWAY STE 700, SAN DIEGO, CA 92101

DATE: 10/30/2018
(Fecha)

Clerk, by L. Sheffa, Deputy
(Secretario) L. Sheffa (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): Boral Industries, Inc, a California Corporation
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):



SUM-100

**SUMMONS
(CITACION JUDICIAL)**

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(AVISO AL DEMANDADO):**

BORAL INDUSTRIES, INC, a California Corporation, **BORAL ROOFING, LLC**, a Delaware Limited Liability Corporation

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

RYAN BISHOP

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

ELECTRONICALLY FILED
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Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

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(El nombre y dirección de la corte es):

**SUPERIOR COURT OF CA, COUNTY OF SAN DIEGO
330 WEST BROADWAY, SAN DIEGO, CA 92101**

CASE NUMBER:
(Número del Caso):

37-2018-00054773-CU-0E-CTL

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):
ALISA MARTIN, SBN 224037, 600 W BROADWAY STE 700, SAN DIEGO, CA 92101

DATE: 10/30/2018
(Fecha)

Clerk, by
(Secretario)

L. Sheffa
L. Sheffa

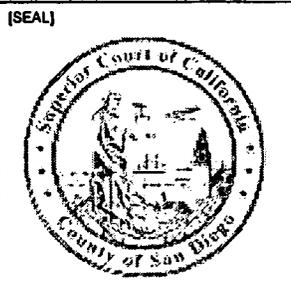
Deputy
(Adjunto)

(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).)

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- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **Boral Roofing, LLC, a Delaware Limited Liability Corporation**
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): **CCP § Corporation Code 17701.16 (Limited Liability Company)**
- by personal delivery on (date):



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alisa A. Martin, State Bar No. 224037 600 West Broadway, Suite 700, San Diego, CA 92101 Lindsay C. David, State Bar No. 283267 2888 Loker Avenue East, Suite 302, Carlsbad, CA 92010 TELEPHONE NO.: (619) 308-6880 FAX NO.: ATTORNEY FOR (Name): Ryan Bishop		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 10/29/2018 at 04:15:41 PM Clerk of the Superior Court By Linda Sheffa, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: San Diego Central		
CASE NAME:		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2018-00054773-CU-DE-CTL JUDGE: Judge Gregory W Pollack DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) Non-P/IPD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify):

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: Alisa Martin

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rules.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7071	
PLAINTIFF(S) / PETITIONER(S): Ryan Bishop	
DEFENDANT(S) / RESPONDENT(S): Boral Industries Inc et.al.	
BISHOP VS BORAL INDUSTRIES INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2018-00054773-CU-OE-CTL

CASE ASSIGNMENT

Judge: Gregory W Pollack

Department: C-71

COMPLAINT/PETITION FILED: 10/29/2018

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	04/05/2019	01:30 pm	C-71	Gregory W Pollack

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2018-00054773-CU-OE-CTL CASE TITLE: Bishop vs Boral Industries Inc [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), *and*
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Ryan Bishop	
DEFENDANT(S): Boral Industries Inc et.al.	
SHORT TITLE: BISHOP VS BORAL INDUSTRIES INC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2018-00054773-CU-OE-CTL

Judge: Gregory W Pollack

Department: C-71

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 10/30/2018

JUDGE OF THE SUPERIOR COURT

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RYAN BISHOP, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Alisa A. Martin (224037), Amartin Law, PC, 600 Broadway, Suite 700, San Diego, CA 92101; Lindsay C. David (283267), Brennan & David Law Group, 2888 Loker Ave E., Suite 302, Carlsbad, CA 92010 760.730.9408

DEFENDANTS

BORAL INDUSTRIES, INC, a California Corporation, BORAL ROOFING, LLC, a Delaware Limited Liability Corporation, and DOES 1-10,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Matthew C. Kane (SBN 171829), Sylvia J. Kim (SBN 258363), McGuireWoods LLP, 1800 Century Park East, 8th Floor Los Angeles, CA 90067-1501 Tel: (310) 315-8200

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Contains numerous checkboxes for specific legal categories.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332(d)
Brief description of cause: Claims for meal and rest break violations, unfair business practices, wage statement violations, and untimely final

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 12,467,921.55 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. S. James Otero (C.D. Cal.) DOCKET NUMBER 5:18-cv-1163-SJO-FFM

DATE 11/29/2018 SIGNATURE OF ATTORNEY OF RECORD McGuireWoods LLP /s/ Matthew C. Kane

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1800 Century Park East, 8th Floor, Los Angeles, CA 90067.

On November 29, 2018, I served the following document described as **CIVIL COVER SHEET** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Alisa A. Martin
AMARTIN LAW, PC
600 West Broadway, Suite 700
San Diego, CA 92101

Lindsay C. David
BRENNAN & DAVID LAW GROUP
2888 Loker Avenue East, Suite 302
Carlsbad, California 92010

- BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3))
- BY FACSIMILE:** At approximately _____, I caused said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 310.315.8210. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.
- BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder. (C.C.P. § 1013(d)(e))
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered the addressee(s). (C.C.P. § 1011)

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 29, 2018, at Los Angeles, CA.


Matthew Whitney

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Boral Industries, Boral Roofing Owe Millions in Unpaid Wages](#)
