

1 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (Cal. Bar No. 287811)

2 *david@tomorrowlaw.com*

Vedang J. Patel (Cal. Bar No. 328647)

3 *vedang@tomorrowlaw.com*

Brandon M. Chang (Cal. Bar No. 316197)

4 *brandon@tomorrowlaw.com*

1460 Westwood Boulevard

5 Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

6 Attorneys for Plaintiff, ANITA GAMARRO
7 an individual and on behalf of all others similarly
8 situated and aggrieved

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 ANITA GAMARRO, an individual, on behalf
12 of all others similarly situated, as an aggrieved
13 employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

14 Plaintiff,

15 v.

16 WALGREEN PHARMACY SERVICES
17 MIDWEST, LLC, an Illinois limited liability
18 company; WALGREEN CO., an Illinois
19 corporation; and DOES 1 through 100,
inclusive,

20 Defendants.

CASE NO.: 23STCV00615

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

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION;
10. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004, CAL. LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5,
1197.1, and 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff ANITA GAMARRO (“Plaintiff”), an individual and on behalf of all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against WALGREEN PHARMACY SERVICES MIDWEST, LLC (“PHARMACY SERVICES”), an Illinois limited liability company; WALGREEN CO. (“WALGREEN”), an Illinois corporation; and any of their respective subsidiaries or affiliated companies within the State of California (and, with DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, and any of their respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as described herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

3. Plaintiff ANITA GAMARRO is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon allege that Defendants employed Plaintiff ANITA GAMARRO as a non-exempt employee, with duties that included, but were not limited to, performing pharmacy duties for Defendants from approximately May of 2020 and through approximately November of 2021.

1 **B. Defendants**

2 4. Plaintiff is informed and believes and based thereon alleges that defendant
3 PHARMACY SERVICES is, and at all times relevant hereto was, a limited liability company
4 organized and existing under and by virtue of the laws of the State of Illinois and doing business in
5 the County of Los Angeles, State of California. At all relevant times herein, PHARMACY
6 SERVICES employed Plaintiff and similarly situated employees within the State of California.

7 5. Plaintiff is informed and believes and based thereon alleges that defendant
8 WALGREEN is, and at all times relevant hereto was, a corporation organized and existing under
9 and by virtue of the laws of the State of California and doing business in the County of Los Angeles,
10 State of California. At all relevant times herein, WALGREEN employed Plaintiff and similarly
11 situated employees within the State of California.

12 6. The true names and capacities, whether individual, corporate, associate, or otherwise,
13 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
14 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
15 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
16 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
17 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
18 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
19 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
20 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
21 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
22 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
23 include PHARMACY SERVICES, WALGREEN, and any of their parent, subsidiary, or affiliated
24 companies within the State of California, as well as DOES 1 through 100 identified herein.

25 **JOINT LIABILITY ALLEGATIONS**

26 7. Plaintiff is informed and believes and based thereon alleges that all the times
27 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
28 representative, joint venture or co-conspirator of each of the other defendants, either actually or

1 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
2 employment, joint venture, and conspiracy.

3 8. All of the acts and conduct described herein of each and every corporate defendant
4 was duly authorized, ordered, and directed by the respective and collective defendant corporate
5 employers, and the officers and management-level employees of said corporate employers. In
6 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
7 their said employees, agents, and representatives, and each of them; and upon completion of the
8 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
9 corporations respectively and collectively ratified, accepted the benefits of, condoned, lauded,
10 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
11 aforementioned corporate employees, agents and representatives.

12 9. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
13 thereon alleges that Defendants, and each of them, are joint employers.

14 **JURISDICTION AND VENUE**

15 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
16 of Civil Procedure section 410.10.

17 11. Venue is proper in Los Angeles County, California pursuant to Code of Civil
18 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
19 causes of action complained of herein arose; the county in which the employment relationship
20 began; the county in which performance of the employment contract, or part of it, between Plaintiff,
21 or some of them, and Defendants was due to be performed; the county in which the employment
22 contract, or part of it, between Plaintiff, or some of them, and Defendants was actually performed;
23 and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged
24 herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because
25 Defendants employ numerous Class Members in Los Angeles County.

26 12. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
27 Defendants during the applicable statutory period and suffered one or more of the Labor Code
28 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil

penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former employees of Defendants during the Civil Penalty Period.

13. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

14. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

15. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

16. On or around August 10, 2022, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the August 10, 2022, postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FACTUAL BACKGROUND

18. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff, Class Members, and

1 Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a
2 result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty
3 (40) hours per week, and seven consecutive work days in a work week without being properly
4 compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per
5 week in a work week, and/or hours worked on the seventh consecutive work day in a work week
6 by, among other things, failing to accurately track and/or pay for all minutes actually worked at the
7 proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
8 including, without limitation, by requiring employees to complete pre-shift tasks before clocking in
9 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to make
10 phone calls off the clock; to drive off the clock, and/or go through security screenings and/or
11 temperature checks off the clock; failing to include all forms of remuneration, including piece rate
12 compensation, non-discretionary bonuses, incentive pay, meal allowances, and other forms of
13 remuneration into the regular rate of pay for the workweeks in which overtime was worked and the
14 additional compensation was earned for the purpose of calculating the overtime rate of pay;
15 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
16 less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment
17 of Plaintiff, Class Members and other Aggrieved Employees.

18 19. For at least four (4) years prior to the filing of this Action and continuing to the
19 present, Defendants had and have a practice or policy of failing to compensate Plaintiff, Class
20 Members, and Aggrieved Employees with minimum wages for all hours worked or otherwise under
21 Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all
22 hours actually worked at their regular rate of pay that is above the minimum wage engaging,
23 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
24 employees to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
25 clock out for meal periods and continue working, to make phone calls off the clock; to drive off the
26 clock, and/or go through security screenings and/or temperature checks off the clock; detrimental
27 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
28 than actually worked; failing to track and pay for all nonproductive time and failing to accurately

1 track and pay for rest and recovery periods that is separate and apart from any piece-rate
2 compensation, to the detriment of Plaintiff, Class Members, and Aggrieved Employees.

3 20. For at least four (4) years prior to the filing of this Action and continuing to the
4 present, Defendants have, at times, failed to provide Plaintiff, Class Members, and Aggrieved
5 Employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on
6 which they worked more than five (5) hours in a work day and a second thirty (30) minute
7 uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day.
8 Moreover, Defendants failed to provide compensation for such unprovided meal periods as required
9 by California wage and hour laws including, without limitation: by interrupting meal periods; failing
10 to provide timely meal periods; failing to provide first and second meal periods; providing short
11 meal periods; otherwise requiring on-duty/on-call meal periods in violation of California state wage
12 and hour laws to the detriment of Plaintiff, Class Members, and Aggrieved Employees.

13 21. For at least four (4) years prior to the filing of this Action and continuing to the
14 present, Defendants have, at times, failed to authorize and permit Plaintiff, Class Members, and
15 Aggrieved Employees, or some of them, to take rest periods of at least ten (10) minutes per four (4)
16 hours worked or major fraction thereof and failed to provide compensation for such unprovided rest
17 periods as required by California wage and hour laws by, without limitation: failing to provide rest
18 periods all together; not permitting employees to leave the premises; and otherwise requiring on-
19 duty/on-call rest periods in violation of California state wage and hour laws to the detriment of
20 Plaintiff, Class Members, and Aggrieved Employees.

21 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
22 of failing to timely pay Plaintiff, Class Members, and Aggrieved Employees, among other wages,
23 all wages owed as a result of Defendants' practice or policy of failing to pay, among other wages,
24 overtime wages, minimum wages, premium wages, paid time off and vacation time owed as required
25 by Labor Code sections 201, 202, and 203.

26 23. For at least one (1) year prior to the filing of this action and continuing to the present,
27 Defendants have, at times, failed to pay Plaintiff, Class Members, and Aggrieved Employees, or
28 some of them, the full amount of their wages for labor performed in a timely fashion as required

1 under Labor Code section 204, and are liable for civil penalties under Labor Code sections 210, 556,
2 and 2699.

3 24. At all relevant times mentioned herein, Defendants have, at times, failed to furnish
4 Plaintiff, Class Members, and Aggrieved Employees, or some of them, with itemized wage
5 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all
6 applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate; applicable piece rates in effect during the pay period and the
8 corresponding number of pieces earned; the name and address of the legal entity that is the employer;
9 name and address of the entity securing the services of the farm labor contractor who employed
10 Plaintiff and Class Members; the total hours of compensable rest and recovery periods; the total
11 hours of nonproductive time, and other such information as required by Labor Code sections 226,
12 subdivision (a) and 226.2. As a result thereof, Defendants have further failed to furnish employees
13 with an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

14 25. For at least three (3) years prior to the filing of this action and continuing to the
15 present, Defendants have, at times, failed to indemnify Plaintiff, Class Members, and Aggrieved
16 Employees, or some of them, for the necessary expenditures or losses in direct consequence of the
17 discharge of their duties, including, but not limited to, mileage and/or gas costs incurred in driving
18 personal vehicles for work-related purposes and using cellular phones for work-related purposes .

19 26. At all relevant times mentioned herein, Defendants have had a policy or practice of
20 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
21 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
22 Employees with the rates of pay and overtime rates of pay applicable to their employment;
23 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
24 name, address, and telephone number of the workers' compensation insurance carrier; information
25 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
26 under Labor Code section 2810.5.

27 27. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
28 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to

1 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
2 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
3 all other Aggrieved Employees.

4 28. At all relevant times mentioned herein, Defendants had and have a policy or practice
5 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
6 and experience they obtained at Defendants for purposes of competing with Defendants, including,
7 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
8 a prospective employer, and from disclosing who else works at Defendants and under what
9 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
10 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
11 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
12 Code sections 232, 232.5, and 1197.5, subdivision (k).

13 29. Defendants had and have a policy or practice of preventing Plaintiff and/or other
14 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
15 to their managers or outside to private attorneys or government officials, among others, in violation
16 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
17 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
18 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
19 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
20 of Labor Code section 232 and 232.5.

21 30. Defendants had and have a policy or practice of preventing Plaintiff and/or other
22 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
23 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
24 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
25 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
26 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
27 economic liberty.

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31. Plaintiff, on their own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1194, 1194.2, 1197, 2802, 2810.3, *et seq.*, and California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, other such provisions of California law, and reasonable attorneys' fees and costs.

32. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as restitution of amounts owed.

33. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

35. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class into subclasses, and to further specify or limit the issues for which certification is sought.

36. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community

1 of interest in the litigation and the proposed Class is easily ascertainable.

2 **A. Numerosity**

3 37. The potential Class Members as defined are so numerous that joinder of all the
4 members of the Class is impracticable. While the precise number of Class Members has not been
5 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
6 Members employed by Defendants within the State of California.

7 38. Accounting for employee turnover during the relevant periods necessarily increases
8 this number. Plaintiff alleges Defendants' employment records would provide information as to the
9 number and location of all Class Members. Joinder of all members of the proposed Class is not
10 practicable.

11 **B. Commonality**

12 39. There are questions of law and fact common to Class Members. These common
13 questions include, but are not limited to:

- 14 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
15 worked at a proper overtime rate of pay?
- 16 B. Did Defendants violate Labor Code sections 226.2, 510 and 1194 by failing to
17 include piece rate compensation in calculation of the legal piece rate overtime rate?
- 18 C. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
19 for all other time worked at the employee's regular rate of pay and a rate of pay that
20 is greater than the applicable minimum wage?
- 21 D. Did Defendants violate Labor Code section 226.2 by failing to track and pay for all
22 nonproductive time that is separate and apart from any piece rate compensation?
- 23 E. Did Defendants violate Labor Code section 226.2 by failing to track and pay for all
24 rest and recovery time that is separate and apart from any piece rate compensation?
- 25 F. Did Defendants violate Labor Code section 512 by not authorizing or permitting
26 Class Members to take compliant meal periods?
- 27 G. Did Defendants violate Labor Code section 226.7 by not providing Class Members
28 with additional wages for missed or interrupted meal periods?

- 1 H. Did Defendants violate applicable Wage Orders by not authorizing or permitting
2 Class Members to take compliant rest periods?
- 3 I. Did Defendants violate Labor Code section 226.7 by not providing Class Members
4 with additional wages for missed rest periods?
- 5 J. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
6 Members upon termination or resignation all wages earned?
- 7 K. Are Defendants liable to Class Members for waiting time penalties under Labor Code
8 section 203?
- 9 L. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
10 Class Members with accurate wage statements?
- 11 M. Did Defendants violate Labor Code sections 226 and 226.2 by failing to furnish
12 employees paid on a piece rate basis with an itemized statement that included the
13 total hours of compensable nonproductive time, the rate of compensation, and the
14 gross wages paid for those periods during the pay period?
- 15 N. Did Defendants violate Labor Code sections 226 and 226.2 by failing to furnish
16 employees paid on a piece rate basis with an itemized statement that included the
17 total hours of compensable rest and recovery periods, the rate of compensation, and
18 the gross wages paid for those periods during the pay period?
- 19 O. Did Defendants fail to pay Class Members in a timely fashion as required under
20 Labor Code section 204?
- 21 P. Did Defendants fail to indemnify Class Members for all necessary expenditures or
22 losses incurred in direct consequence of the discharge of their duties or by obedience
23 to the directions of Defendants as required under Labor Code section 2802?
- 24 Q. Did Defendants violate the Unfair Competition Law, Business and Professions Code
25 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 26 R. Are Class Members entitled to restitution of wages under Business and Professions
27 Code section 17203?
- 28 S. Are Class Members entitled to costs and attorneys' fees?

1 T. Are Class Members entitled to interest?

2 C. **Typicality**

3 40. The claims of Plaintiff herein alleged are typical of those claims which could be
4 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
5 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
6 damages arising out of and caused by Defendants' common course of conduct in violation of laws
7 and regulations that have the force and effect of law and statutes as alleged herein.

8 D. **Adequacy of Representation**

9 41. Plaintiff will fairly and adequately represent and protect the interest of Class
10 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
11 hour class actions.

12 E. **Superiority of Class Action**

13 42. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
15 questions of law and fact common to Class Members predominate over any questions affecting only
16 individual Class Members. Class Members, as further described therein, have been damaged and
17 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
18 violation of the Labor Code at times, as set out herein.

19 43. Class action treatment will allow Class Members to litigate their claims in a manner
20 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
21 any difficulties that are likely to be encountered in the management of this action that would
22 preclude its maintenance as a class action.

23 **FIRST CAUSE OF ACTION**

24 **(Failure to Pay Overtime Wages – Against All Defendants)**

25 44. Plaintiff realleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs as though fully set forth hereat.

27 45. At all relevant times, Plaintiff and Class Members were employees or former
28 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable

1 Wage Orders.

2 46. At all times relevant to this Complaint, Labor Code section 510 was in effect and
3 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
4 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
5 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

6 47. At all times relevant to this Complaint, Labor Code section 510 further provided that
7 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
8 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
9 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
10 pay.”

11 48. Four (4) years prior to the filing of the Complaint in this Action through the present,
12 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
13 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
14 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
15 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
16 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
17 work off the clock, including, without limitation, by requiring employees to complete pre-shift tasks
18 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
19 working, to make phone calls off the clock; to drive off the clock, and/or go through security
20 screenings and/or temperature checks off the clock; failing to include all forms of remuneration,
21 including piece rate compensation, non-discretionary bonuses, incentive pay, meal allowances, and
22 other forms of remuneration into the regular rate of pay for the workweeks in which overtime was
23 worked and the additional compensation was earned for the purpose of calculating the overtime rate
24 of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries
25 to show less hours than actually worked, and for paying straight pay instead of overtime pay to the
26 detriment of Employee and other aggrieved employees, to the detriment of Plaintiff and Class
27 Members.

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49. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

50. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

51. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

52. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

53. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

54. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to make phone calls off the clock; to drive off the clock, and/or go through security screenings and/or temperature checks off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked; failing to track and pay for all nonproductive time and failing to accurately track and pay for rest and recovery periods that is separate and apart from any piece rare compensation, to the detriment of

1 Plaintiff and Class Members.

2 55. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
3 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
4 for all hours worked or otherwise due.

5 56. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
6 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
7 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
8 damages, reasonable attorneys' fees and costs of suit.

9 **THIRD CAUSE OF ACTION**

10 **(Failure to Provide Meal Periods – Against All Defendants)**

11 57. Plaintiff realleges and incorporates by reference all of the allegations contained in
12 the preceding paragraphs as though fully set forth hereat.

13 58. At all relevant times, Plaintiff and Class Members were employees or former
14 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

15 59. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
16 employ an employee for a work period of more than five (5) hours without a timely meal break of
17 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
18 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
19 per day without providing the employee with a second timely meal period of not less than thirty (30)
20 minutes in which the employee is relieved of all of his or her duties.

21 60. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
22 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
23 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
24 of compensation for each workday that the meal period is not provided.

25 61. For four (4) years prior to the filing of the Complaint in this Action through the
26 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
27 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
28 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the

1 Class Member's regular rate of compensation on the occasions that Class Members were not
2 provided compliant meal periods.

3 62. By their failure to provide Plaintiff and Class Members compliant meal periods as
4 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
5 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
6 violated the provisions of Labor Code section 512 and applicable Wage Orders.

7 63. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
8 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
9 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

10 64. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
11 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
12 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
13 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

14 **FOURTH CAUSE OF ACTION**

15 **(Failure to Provide Rest Periods – Against All Defendants)**

16 65. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth hereat.

18 66. At all relevant times, Plaintiff and Class Members were employees or former
19 employees of Defendants covered by applicable Wage Orders.

20 67. California law and applicable Wage Orders require that employers "authorize and
21 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
22 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
23 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
24 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
25 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
26 thirty (30) minutes of paid rest period.

27 68. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
28 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare

1 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
2 regular rate of compensation for each work day that the rest period is not provided.

3 69. For four (4) years prior to the filing of the Complaint in this Action through the
4 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
5 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
6 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
7 Member's regular rate of compensation on the occasions that Class Members were not authorized
8 or permitted to take compliant rest periods.

9 70. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
10 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
11 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
12 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

13 71. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
14 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
15 owed for rest periods that they were not authorized or permitted to take.

16 72. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
17 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus
18 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
19 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

20 **FIFTH CAUSE OF ACTION**

21 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

22 73. Plaintiff realleges and incorporates by reference all of the allegations contained in
23 the preceding paragraphs as though fully set forth hereat.

24 74. At all relevant times, Plaintiff and Class Members were employees or former
25 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
26 Wage Orders.

27 75. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
28 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.

1 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
2 discharge immediately upon termination. Class Members who resigned were entitled to payment
3 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
4 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
5 unpaid at the time of resignation.

6 76. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
7 years before the filing of the Complaint in this Action through the present, Defendants, due to the
8 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class
9 Members all wages earned prior to resignation or termination in accordance with Labor Code
10 sections 201 or 202.

11 77. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
12 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
13 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
14 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
15 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
16 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
17 or resignation.

18 78. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
19 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
20 resignation, until paid, up to a maximum of thirty (30) days.

21 79. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
22 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
23 prior to termination or resignation.

24 80. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
25 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
26 waiting time penalties, interest, and their costs of suit, as well.

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1 **SIXTH CAUSE OF ACTION**

2 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

3 81. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 82. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

7 83. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
8 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
9 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
10 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
12 employer; and the name and address of the entity securing the services of the farm labor contractor
13 who employed Plaintiff and Class Members, among other things. Further, Labor Code section 226.2
14 requires that wage statements also include the total compensation earned for piece rate work
15 performed, total compensation for nonproductive work performed, total compensation for rest and
16 recovery periods, the total hours of nonproductive time worked and the rate of pay therefore, the
17 total hours of rest and recovery periods taken and the rate of pay therefore, the total amount of
18 overtime wages earned, and the proper overtime rate(s) of pay.

19 84. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
20 to provide Plaintiff and Class Members accurate itemized wage statements pursuant to Labor Code
21 sections 226, subdivision (a) and 226.2, subdivisions (a)(2)(A-B) on each and every wage statement
22 that should have been provided, including by failing to itemize and/or pay all nonproductive time
23 and rest and recovery time for each.

24 85. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
25 before the filing of the Complaint in this Action through the present, Defendants failed to comply
26 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
27 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
28 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;

1 all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate; applicable piece rates in effect during the pay period and the
3 corresponding number of pieces earned; the name and address of the legal entity that is the employer;
4 name and address of the entity securing the services of the farm labor contractor who employed
5 Plaintiff and Class Members; the total hours of compensable rest and recovery periods; the total
6 hours of nonproductive time, and other such information as required by Labor Code sections 226,
7 subdivision (a) and 226.2. Defendants' failure to, at times, provide Plaintiff and Class Members
8 with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to
9 provide Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
10 provided wage statements that Defendants knew were not accurate.

11 86. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
12 suffered injury. The absence of accurate information on Class Members' wage statements at times
13 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
14 mathematical computations to determine the amount of wages owed; causes difficulty and expense
15 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
16 about wages and amounts deducted from wages to state and federal governmental agencies, among
17 other things.

18 87. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
19 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
20 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
21 pay period, not to exceed an aggregate \$4,000.00 per employee.

22 88. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
23 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
24 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
25 attorneys' fees, and costs of suit.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

3 89. Plaintiff reallege each and every allegation set forth in the preceding paragraphs and
4 incorporate each by reference as though fully set forth hereat.

5 90. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

7 91. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
8 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
9 during which the labor was performed, and labor performed between the 16th and the last day,
10 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
11 month.”

12 92. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
13 independent and apart from, any other penalty provided in this article, every person who fails to pay
14 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
15 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
16 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
17 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
18 percent of the amount unlawfully withheld.”

19 93. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
20 before the filing of the Complaint in this Action through the present, Defendants employed policies
21 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
22 Labor Code section 204.

23 94. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to
24 recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one
25 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
26 for each subsequent violation in connection with each payment that was made in violation of Labor
27 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

28 95. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and

1 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
2 interest, and their costs of suit, as well.

3 **EIGHTH CAUSE OF ACTION**

4 **(Violation of Labor Code § 2802 – Against All Defendants)**

5 96. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth hereat.

7 97. At all relevant times, Plaintiff and Class Members were employees or former
8 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

9 98. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
10 his or her employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties . . .”

12 99. For three (3) years prior to the filing of the Complaint in this Action through the
13 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
14 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
15 obedience to the directions of Defendants that included, without limitation: purchasing and using
16 cellular phones for work-related purposes and mileage and/or gas costs incurred in driving personal
17 vehicles for work-related purposes.

18 100. During that time period, Plaintiff is informed and believes, and based thereon allege
19 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and
20 Class Members for those losses and/or expenditures.

21 101. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
22 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
23 herein-described losses and/or expenditures.

24 102. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
25 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
26 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
27 costs of suit.

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1 **NINTH CAUSE OF ACTION**

2 **(Unfair Competition – Against All Defendants)**

3 103. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 104. Plaintiff is informed and believes, and based thereon alleges that the unlawful
6 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
7 and Professions Code section 17200. Due to their unlawful business practices in violation of the
8 Labor Code, Defendants have gained a competitive advantage over other comparable companies
9 doing business in the State of California that comply with their obligations to compensate employees
10 in accordance with the Labor Code.

11 105. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
12 Members have suffered injury in fact and lost money or property.

13 106. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
14 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
15 Code and requiring the establishment of appropriate and effective means to prevent further
16 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
17 including interest thereon, in which they had a property interest and which Defendants nevertheless
18 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
19 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
20 by their failure to comply with the Labor Code.

21 107. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
22 Procedure section 1032 and interest under Civil Code section 3287.

23 **TENTH CAUSE OF ACTION**

24 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

25 108. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
26 and incorporates each by reference as though fully set forth hereat.

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1 by Labor Code section 226, subdivision (a).

2 113. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
3 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
4 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
5 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
6 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

7 114. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
8 this section are in addition to any other penalty provided by law.”

9 115. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
10 and have a policy or practice of failing to furnish non-exempt employees, including, without
11 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
12 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
13 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
14 name of the employer and; and other such information as required by Labor Code section 226,
15 subdivision (a).

16 116. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
17 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
18 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
19 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
20 period for each subsequent violation.

21 Violation of Labor Code § 558

22 117. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
23 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
24 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
25 penalty as follows:

- 26 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
27 pay period for which the employee was underpaid in addition to an amount sufficient
28 to recover underpaid wages;

1 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid in addition to
3 an amount sufficient to recover underpaid wages;

4 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

5 118. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
6 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
7 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
8 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
9 regular payday designated by Employer, the name of the employer, including any “doing business
10 as” names used, the name, address and telephone number of the workers’ compensation insurance
11 carrier, information regarding paid sick leave, and other pertinent information.

12 119. As a direct and proximate result of the herein-described Labor Code violations,
13 pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to
14 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty
15 dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred
16 dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

17 Violation of Labor Code § 1174.5

18 120. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
19 every person employing labor in California to “[a]llow any member of the commission or the
20 employees of the Division of Labor Standards Enforcement free access to the place of business or
21 employment of the person to secure any information or make any investigation that they are
22 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
23 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
24 or papers of the person.”

25 121. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
26 every person employing labor in California to “[k]eep a record showing the names and addresses of
27 all employees employed and the ages of all minors.”

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122. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

123. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

124. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174.

125. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

Violation of Labor Code § 1197.1

126. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,

1 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
2 Section 203 as follows:

- 3 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
4 for each underpaid employee for each pay period for which the employee is
5 underpaid. This amount shall be in addition to an amount sufficient to recover
6 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable
7 penalties imposed pursuant to Section 203.
- 8 (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
9 (\$250) for each underpaid employee for each pay period for which the employee is
10 underpaid regardless of whether the initial violation is intentionally committed. This
11 amount shall be in addition to an amount sufficient to recover underpaid wages,
12 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
13 pursuant to Section 203.
- 14 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
15 Section 203, recovered pursuant to this section shall be paid to the affected
16 employee.”

17 127. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
18 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
19 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
20 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
21 and liquidated damages.

22 128. As a direct and proximate result of the herein-described Labor Code violations,
23 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
24 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
25 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
26 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
27 subsequent violation.

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Violation of Labor Code section 1198

129. Plaintiff is informed and believes, and based thereon alleges that Defendants had and has a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Plaintiff is further informed and believes, and based thereon alleges that Defendants have failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

130. California Labor Code Section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

131. Section 14 of the applicable Wage Order provides that: “(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

132. At all relevant times, Defendants have failed to provide such suitable seating to Plaintiff and Class Members, including when Plaintiff and Class Members are not engaged in the active duties of their employment. Upon information and belief, the work performed by persons in these positions includes common tasks that could be performed while seated and the location of the tasks to be performed made it feasible to do so while seated.

133. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and

1 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
2 subsequent violation.

3 Violation of Labor Code section 6400 et seq.

4 134. Plaintiff is informed and believes and based thereon alleges that Defendants had and
5 have a policy or practice of failing to furnish and use safety devices and safeguards. And adopt and
6 use practices, means, methods, operations, and processes which are reasonably adequate to render
7 such employment and place of employment safe and healthful, pursuant to, including but not limited
8 to, Labor Code section 6401. Plaintiff is informed and believes and based thereon alleges that
9 Defendants had and has a policy or practice of requiring or permitting employees to go or be in any
10 employment or place of employment which is not safe and healthful, pursuant to Labor Code section
11 6402. Plaintiff is informed and believes, and based thereon alleges that Defendants had and has a
12 policy or practice of failing or neglecting to: provide and use safety devices and safeguards
13 reasonably adequate to render the employment and place of employment safe; adopt and use
14 methods and processes reasonably adequate to render the employment and place of employment
15 safe; and do every other thing reasonably necessary to protect the life, safety, and health of
16 employees, pursuant to Labor Code section 6403.

17 135. Plaintiff is informed and believes, and based thereon alleges that these failures
18 include, without limitation, failing to disinfect time clocks and other surfaces after use by Plaintiff
19 and/or other aggrieved employees; failing to provide adequate protection equipment to Plaintiff
20 and/or other aggrieved employees; and failing to provide adequate distance in working conditions
21 between Plaintiff and/or other aggrieved employees.

22 136. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
23 has a policy or practice of failing to give sufficient, adequate and proper notice to employees of the
24 Covid-19 exposure within one business day of receiving notice of potential Covid-19 workplace
25 exposure from a qualifying individual as required by Labor Code section 6409.6. Plaintiff is
26 informed and believes that numerous employees contracted COVID-19 during the relevant time
27 periods, but that Employer failed to provide notice to employees. Plaintiff is additionally informed
28 and believes that Defendants have not or did not keep adequate records of written notifications

1 required in subdivision (a) for a period of at least three years.

2 137. Specifically, Plaintiff is informed and believes, and based thereon alleges, that
3 Defendants had and have a practice or policy of failing within one business day after Defendants or
4 a representative of Defendants received a notice of potential exposure to COVID-19 to provide
5 written notice to Plaintiff and other aggrieved employees, or their exclusive representatives, who
6 were on the premises at the same worksite as a qualifying individual who was within the infectious
7 period that they may have been exposed to COVID-19. Furthermore, Plaintiff is informed and
8 believes, and based thereon alleges, that Defendants had and have a practice or policy of failing
9 within one business day after Defendants or a representative of Defendants received a notice of
10 potential exposure to COVID-19 to provide Plaintiff and other aggrieved employees who were on
11 the premises at the same worksite as the qualifying individual within the infectious period and the
12 exclusive representative, if any, with information regarding COVID-19-related benefits to which
13 the employee may be entitled under applicable federal, state, or local laws, including, but not limited
14 to, workers' compensation, and options for exposed employees, including COVID-19-related leave,
15 company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions,
16 as well as antiretaliation and antidiscrimination protections of the employee. Plaintiff is informed
17 and believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code
18 sections 6409.6 and 6432.

19 138. Additionally, Plaintiff is informed and believes, and based thereon alleges, that
20 Defendants had and have a practice or policy of failing within one business day after Defendants or
21 a representative of Defendants received a notice of potential exposure to COVID-19 to notify
22 Defendants and other aggrieved employees who were on the premises at the same worksite as the
23 qualifying individual within the infectious period, and the employers of subcontracted employees
24 who were on the premises at the same worksite as the qualifying individual within the infectious
25 period and the exclusive representative, if any, of the cleaning and disinfection plan that the
26 employer is implementing per the guidelines of the federal Centers for Disease Control and
27 Prevention and the COVID-19 prevention program per the Cal-OSHA COVID-19 Emergency
28 Temporary Standards. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 violated, without limitation, Labor Code sections 6409.6 and 6432.

2 139. Moreover, Plaintiff is informed and believes, and based thereon alleges, that
3 Defendants had and have a practice or policy of failing to notify the local public health agency in
4 the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who
5 had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health;
6 a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19-related order to
7 isolate provided by a public health official; or died due to COVID-19, in the determination of a
8 county public health department or per inclusion in the COVID-19 statistics of a county. Plaintiff is
9 informed and believes, and based thereon alleges, that Defendants violated, without limitation,
10 Labor Code sections 6409.6 and 6432.

11 140. As a direct and proximate result of the herein-described Labor Code violations,
12 pursuant to Labor Code sections 6400 *et seq*, Plaintiff and other Aggrieved Employees are entitled
13 to recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
14 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
15 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
16 subsequent violation.

17 Civil Penalties Under Labor Code § 2699

18 141. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
19 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
20 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
21 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
22 action brought by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Labor Code section 2699.3.

24 142. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
25 Code except those for which a civil penalty is specifically provided, the established civil penalty for
26 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
27 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
28 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved

1 employee per pay period for each subsequent violation.

2 143. Plaintiff is informed and believes and based thereon alleges that Defendants, and
3 each of them, violated the Labor Code sections described herein, including, without limitation, for
4 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
5 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
6 name of the employer, including any “doing business as” names used, the name, address and
7 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
8 leave, and other pertinent information required to be disclosed by Employer under Labor Code
9 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
10 sick leave, including but not limited to, COVID paid sick leave , required to be provided pursuant
11 to California and local laws.

12 144. Moreover, Plaintiff and other Aggrieved Employees within the State of California
13 whom they seek to represent are entitled to an award of reasonable attorneys’ fees and costs in
14 connection with their herein-described claims for civil penalties.

15 **DEMAND FOR JURY TRIAL**

16 145. Plaintiff demands a trial by jury on all causes of action contained herein.

17 **PRAYER**

18 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
19 against Defendants as follows:

- 20 A. An order certifying this case as a Class Action;
21 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s
22 counsel as class counsel;
23 C. Damages for all wages earned and owed, including minimum and overtime wages,
24 under Labor Code sections 203, 510, 558.1, 1194, 1197 and 1199;
25 D. Liquidated damages pursuant to Labor Code section 1194.2 and 2810.3;
26 E. Damages for unpaid premium wages from missed meal and rest periods under,
27 among other Labor Code sections, 512, 558.1, and 226.7;
28 F. Penalties for inaccurate wage statements under Labor Code sections 226,

subdivision (e) and 226.2;

G. Waiting time penalties under Labor Code sections 203;

H. Penalties to timely pay wages under Labor Code section 210;

I. Damages under Labor Code sections 2802 and 558.1;

K. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;

L. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;

M. Prejudgment and post-judgment interest at the maximum rate allowed by law;

N. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;

O. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed *infra*;

P. For costs of suit incurred herein; and

Q. For such other and further relief as the Court deems just and proper.

Dated: August 12, 2024

BIBIYAN LAW GROUP, P.C.

BY: 

BRANDON M. CHANG

Attorneys for Plaintiff ANITA GAMARRO an individual and on behalf of all others similarly situated