

NOV 13 2020

Sherri R. Carter, Executive Officer/Clerk
By Amanda Flores Deputy

RECEIVED
LOS ANGELES SUPERIOR COURT

NOV 13 2020

S. DREW

BIBIYAN LAW GROUP, P.C.

David D. Bibiyani (SBN 287811)

david@tomorrowlaw.com

Diego Aviles (SBN 315533)

diego@tomorrowlaw.com

Sara Ehsani-Nia (SBN 326501)

sara@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

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

Attorneys for Plaintiff, KRYSTAL ESTORGA,
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

KRYSTAL ESTORGA, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

ZIBA INVESTMENTS CORP., a California
corporation; NIKRAD ENTERPRISES, INC.,
a California corporation; JNIK INC. a
California corporation; 3J LAND LLC; a
California limited liability company; 3J
CONSULTING, INC., a California
corporation; 3J FUND, LLC, a California
limited liability company; NED ELIAS NIK,
individually and doing business as NIK
CONSTRUCTION; JONATHAN NIK, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 20STCV20044

[Hon. Yvette M. Palazuelos Department 9]

FIRST AMENDED COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS
OR COMPENSATION IN LIEU THEREOF;
4. FAILURE TO PROVIDE REST PERIODS
OR COMPENSATION IN LIEU THEREOF;
5. FAILURE TO PAY DUE WAGES AT
TERMINATION;
6. WAGE STATEMENT VIOLATIONS;
7. VIOLATIONS OF LABOR CODE § 2802;
8. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *et seq.*
9. PENALTIES PER LABOR CODE § 210;
10. PENALTIES PER LABOR CODE § 226.3;
11. VIOLATION OF LABOR CODE § 558;
12. VIOLATION OF LABOR CODE § 1197.1;
and
13. PENALTIES PER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

ORIGINAL

11/17/2020

BY
FAX

COMES NOW plaintiff KRYSTAL ESTORGA ("Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, on behalf of Plaintiff and all other current and former similarly situated and aggrieved employees employed by or formerly employed by ZIBA INVESTMENTS CORP., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("ZIBA"), and NIKRAD ENTERPRISES, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("NIKRAD"), JNIK INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("JNIK," and together with ZIBA, NIKRAD, and DOES 1 through 100, as further defined below, "Defendants").

2. 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 and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and similarly situated and aggrieved employees, at times, working over eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, Defendants, at times, failing to accurately track and/or pay for all minutes actually worked; engaged, suffered, or permitted employees to work off the clock; paying straight pay instead of overtime pay; and/or by detrimentally rounding, manipulating and/or editing time entries to show lesser hours than actually worked, to the detriment of Plaintiff and other similarly situated and aggrieved employees.

///

///

1 3. For at least four (4) years prior to the filing of this Action and continuing to the
2 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and other non-
3 exempt employees in the State of California in violation of California state wage and hour laws as
4 a result of, among other things, Defendants, failing to accurately track and/or pay for all minutes
5 actually worked; engaged, suffered, or permitted employees to work off the clock; and/or by
6 detrimentally rounding, manipulating and/or editing time entries to show lesser hours than actually
7 worked, to the detriment of Plaintiff and other similarly situated and aggrieved employees.

8 4. For at least four (4) years prior to the filing of this Action and continuing to the
9 present, Defendants have, on occasion, failed to provide Plaintiff and other similarly situated and
10 aggrieved employees or former employees within the State of California a thirty (30) minute
11 uninterrupted meal period for days on which the employees worked more than five (5) hours in a
12 work day and a second thirty (30) minute uninterrupted meal period for days on which employees
13 worked in excess of ten (10) hours in a work day, and failed, at times, to provide compensation for
14 such unprovided meal periods as required by California wage and hour laws.

15 5. For at least four (4) years prior to the filing of this action and continuing to the
16 present, Defendants have, on occasion, failed to provide Plaintiff and similarly situated and
17 aggrieved employees or former employees within the State of California rest periods of at least ten
18 (10) minutes per four (4) hours worked or major fraction thereof and failed, at times, to provide
19 compensation for such unprovided rest periods as required by California wage and hour laws.

20 6. For at least three (3) years prior to the filing of this action and continuing to the
21 present, Defendants have failed, on occasion, to pay Plaintiff and other similarly situated and
22 aggrieved employees the full amount of their wages owed to them upon termination and/or
23 resignation as required by Labor Code sections 201 and 202 as a result of their occasional failure
24 to pay wages as herein mentioned.

25 7. For at least one (1) year prior to the filing of this Action and continuing to the
26 present, Defendants have, at times, failed to furnish Plaintiff and similarly situated and aggrieved
27 employees within the State of California with itemized wage statements that accurately reflect
28 gross wages earned; total hours worked; net wages earned; the name and address of the legal entity

1 that is the employer; all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate; and other such information as required
3 by Labor Code section 226, subdivision (a). As a result thereof, Defendants have, as herein
4 mentioned, further failed to furnish employees with an accurate calculation of gross and gross
5 wages earned, as well as gross and net wages paid.

6 8. For at least three (3) years prior to the filing of this Action and continuing to the
7 present, Defendants have, at times, failed to indemnify Plaintiff and other similarly situated and
8 aggrieved employees or former employees within the State of California for expenses incurred,
9 including without limitation, for the separate laundering of work uniforms, in furtherance of their
10 work duties, in violation of, among other authorities, Labor Code section 2802.

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

17 10. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members and aggrieved
18 employees, brings this Action pursuant to, including but not limited to, Labor Code sections 200,
19 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246 *et seq.*, 432, 510, 512, 558, 1174, 1194, 1194.2,
20 1197, 1197.1, 2699, 2802, 2810.5, and California Code of Regulations, Title 8, section 11010,
21 seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest
22 periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to
23 indemnify work-related expenses, other such provisions of California law, and reasonable
24 attorneys' fees and costs.

25 11. Plaintiff, on behalf of herself and all other similarly situated and aggrieved
26 employees, pursuant to California Business and Professions Code sections 17200 through 17208,
27 also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and
28 requiring the establishment of appropriate and effective means to prevent further violations, as

1 well as all monies owed but withheld and retained by Defendants to which Plaintiff and Class
2 Members are entitled, as well as restitution of amounts owed.

3 **PARTIES**

4 **A. Plaintiff**

5 12. Plaintiff, KRYSTAL ESTORGA, is a resident of the State of California. At all
6 relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants
7 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
8 cashier duties and store clerk for gas stations operated by Defendants. Plaintiff began working for
9 Defendants in approximately March of 2019 and worked through approximately June of 2019.

10 **B. Defendants**

11 13. Plaintiff is informed and believes and based thereon alleges that defendant ZIBA is,
12 and at all times relevant hereto was, a corporation organized and existing under and by virtue of
13 the laws of the State of California and doing business in the County of Los Angeles, State of
14 California.

15 14. Plaintiff is informed and believes and based thereon alleges that defendant
16 NIKRAD is, and at all times relevant hereto was, a corporation organized and existing under and
17 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
18 State of California.

19 15. Plaintiff is informed and believes and based thereon alleges that defendant JNIK is,
20 and at all times relevant hereto was, a corporation organized and existing under and by virtue of
21 the laws of the State of California and doing business in the County of Los Angeles, State of
22 California.

23 **ALTER EGO, AGENCY, AND JOINT EMPLOYER ALLEGATIONS**

24 16. Plaintiff is informed and believes and based thereon alleges that all the times
25 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
26 representative, joint venture or co-conspirator of each of the other defendants, either actually or
27 ostensibly, and in doing the things alleged herein acted within the course and scope of such
28 agency, employment, joint venture, and conspiracy.

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

11 18. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
13 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
14 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
15 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
16 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
17 names and capacities of the defendants designated hereinafter as DOES when such identities
18 become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant
19 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
20 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
21 defendant are legally attributable to the other defendants.

22 19. Plaintiff is further informed and believes, and based thereon alleges, that there
23 exists such a unity of interest and ownership between ZIBA, NIKRAD, JNIK, and DOES 1
24 through 100, that the individuality and separateness of defendants have ceased to exist.

25 20. Plaintiff is informed and believes, and based thereon alleges that despite the
26 formation of the purported corporate existence of ZIBA, NIKRAD, JNIK, and DOES 1 through
27 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with
28 DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the

1 following reasons:

2 a. The Alter Ego Defendants are completely dominated and controlled by the
3 Individual Defendants, or some of them, who personally committed the wrongful and illegal acts
4 and violated the laws as set forth in this Complaint, and who has hidden and currently hide behind
5 the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some other
6 wrongful or inequitable purpose;

7 b. The Individual Defendants derive actual and significant monetary benefits
8 by and through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
9 Defendants as the funding source for the Individual Defendants' own personal expenditures;

10 c. Plaintiff is informed and believes and thereon alleges that the Individual
11 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to
12 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a
13 statute, or accomplishing some other wrongful or inequitable purpose;

14 d. Plaintiff is informed and believes and thereon alleges that the business
15 affairs of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times
16 mentioned herein were, so mixed and intermingled that the same cannot reasonably be segregated,
17 and the same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times
18 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the
19 conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all
20 relevant times mentioned herein were, the alter egos of the Individual Defendants;

21 e. The recognition of the separate existence of the Individual Defendants and
22 the Alter Ego Defendants would promote injustice insofar that it would permit defendants to
23 insulate themselves from liability to Plaintiff for violations of the California Government Code,
24 Civil Code, Labor Code, and other statutory violations. The corporate existence of these
25 defendants should thus be disregarded in equity and for the ends of justice because such disregard
26 is necessary to avoid fraud and injustice to Plaintiff, and all other similarly situated and aggrieved
27 employees, herein;

28 / / /

1 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
2 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must
3 be disregarded;

4 g. As a result of the aforementioned facts, among others, Plaintiff is informed
5 and believes, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants,
6 and each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an
7 employee of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed
8 services for each and every defendant, and to the mutual benefit of all defendants, and all
9 defendants shared control of Plaintiff and all other similarly situated and aggrieved employees,
10 either directly or indirectly, and in the manner in which defendants' business was and is
11 conducted.

12 21. As such, Defendants, and each of them, are either solely, and/or jointly and
13 severally, liable for the damages alleged in Plaintiff's operative complaint.

14 22. Whenever, in this Complaint, reference is made to "Defendants," such allegations
15 refer to the conduct, acts and/or omissions of defendants ZIBA, NIKRAD, JNIK, and DOES 1
16 through 100 acting individually, jointly and/or severally.

17 JURISDICTION

18 23. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
19 of Civil Procedure section 410.10.

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

25. Plaintiff is also an “aggrieved employee” under PAGA, as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Other aggrieved employees Plaintiff seeks to represent are all other non-exempt employees of Defendants. Accordingly, Plaintiff seeks to recover, on behalf of herself and all other current and former employees of Defendants (“other aggrieved employees”), the civil penalties provided by PAGA plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175.

26. Plaintiff also seeks to recover the 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.

27. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of herself 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.

28. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On or around May 22, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions of the Labor Code alleged to have been violated by it. The LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the May 22, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FACTUAL BACKGROUND

29. Plaintiff and other similarly situated and aggrieved employees have not been paid, during the relevant liability periods, wages for all time worked, including overtime wages, as a result of, including but not limited to, Defendants at times failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and similarly situated and aggrieved

1 employees occasionally working over eight (8) hours per day, twelve (12) hours per day, forty
2 (40) hours per week or seven (7) consecutive work days in a work week without being properly
3 compensated for the hours worked in excess of (8) hours per day, forty (40) hours per week, or
4 seven (7) consecutive work days in a workweek at the proper overtime rate of pay. Specifically,
5 among other things, Defendants, at times, failing to accurately track and/or pay for all hours
6 actually worked; engaged, suffered, or permitted employees to work off the clock; paying straight
7 pay instead of overtime pay; and/or by detrimentally rounding, manipulating and/or editing time
8 entries to show lesser hours than actually worked.

9 30. Plaintiff and other similarly situated and aggrieved employees, on occasion, have
10 not been paid during the relevant liability periods, minimum wages for all regular hours worked,
11 as a result of, among other things, Defendants, occasionally, failing to accurately track and/or pay
12 for all hours actually worked; engaged, suffered, or permitted employees to work off the clock;
13 and/or by detrimentally rounding, manipulating and/or editing time entries to show lesser hours
14 than actually worked.

15 31. Defendants failed, at times, during the relevant liability periods, to provide Plaintiff
16 and similarly situated and aggrieved employees or former employees within the State of California
17 a thirty (30) minute, uninterrupted, and timely meal period for days on which the employees
18 worked more than five (5) hours in a workday; a second thirty (30) minute, uninterrupted, and
19 timely meal period for days on which employees worked in excess of ten (10) hours in a workday;
20 and/or compensation for such unprovided meal periods as required by California wage and hour
21 laws.

22 32. Defendants failed, to provide Plaintiff and similarly situated and aggrieved
23 employees or former employees within the State of California rest periods of at least ten (10)
24 minutes per four (4) hours worked or major fraction thereof and failed, to provide compensation
25 for such unprovided rest periods as required by California wage and hour laws.

26 33. At the time Plaintiff's employment and the employment of other former employees
27 of Defendants ended, Defendants willfully failed, at times, to pay overtime and minimum wages at
28 the proper rate and failed, at times, to pay one hour of wages in lieu of each non-compliant meal

1 and/or rest period, among other things.

2 34. Defendants have failed, at times, to comply with Labor Code section 226,
3 subdivision (a) by not providing itemized wage statements accurately showing, including but not
4 limited to, gross wages earned; total hours worked; net wages earned; the name of the legal entity
5 that is the employer; all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate; and other such information as required
7 by Labor Code section 226, subdivision (a).

8 35. Defendants have failed, at times, to reimburse Plaintiff and similarly situated and
9 aggrieved employees, during the relevant liability periods, as required under Labor Code section
10 2802 for the costs incurred in separately laundering work uniforms, in furtherance of their work
11 duties, in violation of, among other authorities, Labor Code section 2802.

12 36. Plaintiff and other similarly situated and aggrieved employees or former employees
13 at all times pertinent hereto were not exempt from the payment of overtime wages, minimum
14 wages, payment of premium wages for missed rest periods, waiting time penalties, wage statement
15 penalties, reimbursement for expenses incurred in furtherance of work duties, and other such
16 provisions of California law, and the implementing rules and regulations of the IWC California
17 Wage Orders.

18 **CLASS ACTION ALLEGATIONS**

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

24 38. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision
25 (b) to amend or modify the class description with greater specificity or further division into
26 subclasses or limitation to particular issues.

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

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

A. Numerosity

40. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are at least eighty (80) Class Members employed by Defendants within the State of California, which may be increased due to employee turnover. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality

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

- (a) Did Defendants violate Labor Code sections 510, 1194, and 1197 by their occasional failure to adequately track, and therefore adequately pay, for all minutes Class Members were suffered, engaged, or permitted to work?
- (b) Did Defendants violate Labor Code sections 510, 1194, and 1197 by detrimentally rounding and/or editing of time entries to show lesser hours than actually worked?
- (c) Did Defendants violate Labor Code sections 510 and 1194 by at times failing to pay overtime at the proper rate of pay?
- (d) Are Class Members entitled to liquidated damages under Labor Code section 1194.2 for Defendants' failure to pay minimum wages for all hours worked?
- (e) Did Defendants violate Labor Code section 512 by not providing Class Members with compliant meal periods?
- (f) Did Defendants violate Labor Code section 226.7 by failing to providing Class Members with premium wages for non-compliant meal periods?
- (g) Did Defendants violate applicable Wage Orders by not providing Class

- 1 Members with compliant rest periods?
- 2 (h) Did Defendants violate Labor Code section 226.7 by failing to provide
- 3 Class Members with premium wages for non-compliant rest periods?
- 4 (i) Did Defendants violate Labor Code sections 201 and 202 by failing to pay
- 5 Class Members upon termination or resignation all wages earned?
- 6 (j) Are Defendants liable to Class Members for waiting time penalties under
- 7 Labor Code section 203?
- 8 (k) Did Defendants violate Labor Code section 226, subdivision (a) by not
- 9 furnishing Class Members with accurate wage statements?
- 10 (l) Did Defendants violate Labor Code section 2802 by requiring employees to,
- 11 on occasion, incur expenses from the separate laundering of their work
- 12 uniforms for work purposes?
- 13 (m) Did Defendants violate the Unfair Competition Law, Business and
- 14 Professions Code section 17200, *et seq.*, by their unlawful practices as
- 15 alleged herein?
- 16 (n) Are Class Members entitled to restitution of wages under Business and
- 17 Professions Code section 17203?
- 18 (o) Are Class Members entitled to costs and attorneys' fees?
- 19 (p) Are Class Members entitled to interest?

20 **C. Typicality**

21 42. The claims of Plaintiff herein alleged are typical of those claims which could be

22 alleged by any Class members, and the relief sought is typical of the relief which would be sought

23 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and

24 damages arising out of and caused by Defendants' common course of conduct in violation of laws

25 and regulations that have the force and effect of law and statutes as alleged herein.

26 **D. Adequacy of Representation**

27 43. Plaintiff will fairly and adequately represent and protect the interest of Class

28 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and

1 hour class actions.

2 **E. Superiority of Class Action**

3 44. A class action is superior to other available means for the fair and efficient
4 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
5 questions of law and fact common to Class Members predominate over any questions affecting
6 only individual Class Members. Class Members, as further described therein, have been damaged
7 and are entitled to recovery by reason of Defendants' illegal policy and/or practices, including,
8 without limitation, occasionally failing to pay overtime wages and minimum wages; at times
9 failing to provide meal and rest breaks or compensation in lieu thereof; at times failing to provide
10 accurate wage statements; occasionally failing to pay all wages due upon termination and/or
11 resignation; and at times failing to reimburse expenses incurred in furtherance of work duties.

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

16 **FIRST CAUSE OF ACTION**

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

18 46. Plaintiff realleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

20 47. At all times relevant to this First Amended Complaint, Labor Code section 510 was
21 in effect and provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of
22 eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall
23 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
24 employee."

25 48. At all times relevant to this First Amended Complaint, Labor Code section 510
26 further provided that "[a]ny work in excess of 12 hours in one day shall be compensated at the rate
27 of no less than twice the regular rate of pay for an employee. In addition, any work in excess of
28 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than

twice the regular rate of pay.”

49. At all times mentioned, Plaintiff and Class Members, on occasion, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday, more than twelve (12) hours in a workday, and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants, failing to accurately track and/or pay for all hours actually worked; engaged, suffered, or permitted employees to work off the clock; paying straight pay instead of overtime pay; and/or by detrimentally rounding, manipulating and/or editing time entries to show lesser hours than actually worked by Plaintiff and other similarly situated and aggrieved employees in the State of California.

50. Accordingly, by occasionally requiring Plaintiff and Class Members to work greater than eight (8) hours per workday, twelve (12) 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.

51. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have, at times been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, 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)

52. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

53. At all relevant times, Plaintiff and Class Members were employees of Defendants covered by Labor Code section 1197 and applicable Wage Orders.

///

54. 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.

55. Defendants, at times, failed to pay Plaintiff and Class Members minimum wages for all minutes worked as a result of, including but not limited to, Defendants. failing to accurately track and/or pay for all hours actually worked; engaged, suffered, or permitted employees to work off the clock; and/or by detrimentally rounding, manipulating and/or editing time entries to show lesser hours than actually worked.

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

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

58. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

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

60. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the

1 employee's regular rate of compensation for each workday that the meal period is not provided.

2 61. Plaintiff and Class Members were, during the relevant time period, not provided
3 with compliant meal periods as contemplated under the law.

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

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

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

17 **FOURTH CAUSE OF ACTION**

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

19 65. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

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

28 / / /

1 67. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
2 with a meal period or rest period as provided in the applicable Wage Order of the Industrial
3 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
4 employee's regular rate of compensation for each work day that the rest period is not provided.

5 68. By their failure to provide Plaintiff and Class Members with the rest periods
6 contemplated by California law, and failure to provide compensation for such unprovided rest
7 periods, as alleged above, Defendants at times willfully violated the provisions of Labor Code
8 section 226.7 and applicable Wage Orders.

9 69. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class
10 Members have at times suffered damages in an amount, subject to proof, to the extent they were
11 not paid additional pay owed for missed rest periods.

12 70. Pursuant to Labor Code section 226.7, Code of Civil Procedure section 1032, and
13 Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of
14 their premium pay for unprovided rest periods, interest and penalties thereon, and costs of suit.

15 **FIFTH CAUSE OF ACTION**

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

17 71. Plaintiff realleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

19 72. At all relevant times, Plaintiff and Class Members were employees of Defendants
20 covered by Labor Code sections 201 and 202.

21 73. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
22 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
23 Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge
24 immediately upon termination. Employees who resigned were entitled to payment of all wages
25 earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they
26 gave 72 hours' previous notice, they were entitled to payment of all wages earned and unpaid at
27 the time of resignation.

28 / / /

1 74. Plaintiff is informed and believes, and based thereon alleges, that Defendants, due
2 to the occasional failure to provide wages as mentioned above, at times failed to pay Plaintiff and
3 Class Members all wages earned and unpaid, including overtime wages and minimum wages,
4 prior to resignation or termination in accordance with Labor Code sections 201 or 202.

5 75. Defendants' occasional failure to pay Plaintiff and Class Members all wages earned
6 prior to termination in accordance with Labor Code sections 201 and 202 was willful. Defendants
7 had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination
8 in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or
9 practices incompatible with the requirements of Labor Code sections 201 and 202.

10 76. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
11 waiting time penalties from the date their earned and unpaid wages were due, upon termination,
12 until paid, up to a maximum of thirty (30) days.

13 77. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have at
14 times suffered damages in an amount subject to proof, to the extent they were not paid for all
15 wages earned prior to termination.

16 78. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class
17 Members have suffered damages in an amount subject to proof, to the extent they were not paid all
18 waiting time penalties owed under Labor Code section 203.

19 79. Pursuant to Labor Code sections 203, 218, 218.5, 218.6, Code of Civil Procedure
20 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
21 to recover waiting time penalties under Labor Code section 203, reasonable attorneys' fees on
22 their unpaid wages, and costs of suit.

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

26 / / /

27 / / /

28 / / /

SIXTH CAUSE OF ACTION

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

81. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

82. At all relevant times, Plaintiff and Class Members were employees of Defendants covered by Labor Code section 226.

83. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

84. Plaintiff is informed and believe, and based thereon alleges, that at all relevant times, Defendants, due to the failure to pay due wages for the reasons described herein, also failed, to issue wage statements that accurately set out amounts due to, among other things, gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

85. Thus, Defendants occasionally failed to provide Plaintiff and Class Members accurate itemized wage statements in accordance with Labor Code section 226, subdivision (a).

86. Defendants' occasional failure to provide Plaintiff and Class Members with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff and Class Members with accurate wage statements, but willfully provided wage statements that Defendants knew were not accurate.

87. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered injury. The absence of accurate information on their wage statements has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and mathematical computations to determine the amount of wages owed; causes difficulty and expense in

1 attempting to reconstruct time and pay records; and led to submission of inaccurate information
2 about wages and amounts deducted from wages to state and federal governmental agencies.

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

7 89. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
8 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
9 recover the full amount of penalties due under Labor Code section 226, subdivision (e),
10 reasonable attorneys' fees, and costs of suit.

11 **SEVENTH CAUSE OF ACTION**

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

13 90. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though full set forth hereat.

15 91. At all relevant times, Plaintiff and Class Members were employees of Defendants
16 covered by Labor Code section 2802.

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

20 93. At all relevant times, Defendants, at times, failed and refused, and still fail and
21 refuse, to reimburse Plaintiff and Class Members for the costs incurred in the separate laundering
22 of their work uniforms.

23 94. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class
24 Members have suffered damages in an amount subject to proof, to the extent they were not
25 reimbursed for costs incurred in furtherance of their work duties for Defendants.

26 95. Pursuant to Labor Code section 2802, Code of Civil Procedure section 1032, and
27 Civil Code section 3287, Plaintiff and Class Members are entitled to recover actual costs incurred,
28 reasonable attorney's fees and costs of suit.

EIGHTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

97. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

98. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class Members have suffered injury in fact and lost money or property. Plaintiff and Class Members have been, on occasion, deprived of overtime compensation; minimum wage compensation; provision of meal breaks or compensation in lieu thereof; provision of rest breaks or compensation in lieu thereof; provision of all wages upon termination or resignation; accurate wage statements; and reimbursements for costs incurred in furtherance of job duties, among other things.

99. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members are entitled to restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

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

NINTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 210 – Against All Defendants)

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

///

1 102. At all relevant times herein, Labor Code section 204, requires and required that:
2 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
3 for between the 16th and 26th day of the month during which the labor was performed, and labor
4 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
5 between the 1st and 10th day of the following month.”

6 103. At all relevant times herein, Labor Code section 210, subdivision (a) states and
7 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
8 this article, every person who fails to pay the wages of each employee as provided in Sections
9 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
10 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and
11 “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
12 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

13 104. At all relevant times herein, Defendants have had a consistent policy or practice of,
14 failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per
15 Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved
16 employees or former employees she seeks to represent are entitled to recover civil penalties for
17 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100)
18 for each aggrieved employee or former employee for each initial violation per employee, and two
19 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
20 violation in connection with each payment that was made in violation of Labor Code section 204.

21 **TENTH CAUSE OF ACTION**

22 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

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

25 106. Defendants have had a consistent policy or practice of failing to comply with Labor
26 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage
27 statements that accurately reflect gross wages earned; total hours worked by the employee; all
28 deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee; and other such information as required by Labor
3 Code section 226, subdivision (a).

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

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

11 109. Plaintiff is informed and believes and based thereon alleges that Defendants failed
12 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with
13 itemized wage statements that accurately reflect gross wages earned; total hours worked by the
14 employee; all deductions; net wages earned; the inclusive dates of the period for which the
15 employee is paid; all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee; and other such information, as
17 required by Labor Code section 226, subdivision (a) and 226.2.

18 110. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees or
19 former employees Plaintiff seeks to represent are entitled to recover civil penalties for Defendants’
20 violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars
21 (\$250) for each aggrieved employee or former employee per pay period for the initial violation,
22 and one thousand dollars (\$1,000) for each aggrieved employee or former employee per pay
23 period for each subsequent violation.

24 **ELEVENTH CAUSE OF ACTION**

25 **(Violation of Labor Code § 558 – Against All Defendants)**

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

28 / / /

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

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

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

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

113. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum wages; receive meal and rest periods or compensation in lieu thereof; reimburse costs incurred in separately laundering work uniforms, in furtherance of their work duties; and be paid timely wages during their employment and after their employment separation.

114. As a direct and proximate result of Defendants' conduct, Plaintiff and other aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to Labor Code section 558 in amounts to be determined at trial.

TWELFTH CAUSE OF ACTION

(Violation of Labor Code § 1197.1 – Against All Defendants)

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

116. 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

1 local law, or by an order of the commission shall be subject to a civil penalty. restitution of wages,
2 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
3 Section 203 as follows: For any initial violation that is intentionally committed, one hundred
4 dollars (\$100) 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 underpaid wages,
6 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to
7 Section 203.

8 (1) For any initial violation that is intentionally committed. one hundred dollars
9 (\$100) for each underpaid employee for each pay period for which the employee is underpaid.
10 This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
11 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
12 203.

13 (2) For each subsequent violation for the same specific offense, two hundred
14 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
15 underpaid regardless of whether the initial violation is intentionally committed. This amount shall
16 be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
17 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

18 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant
19 to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

20 117. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
21 the decision that Plaintiff would not be paid their due minimum wages as required due to, among
22 other things, Defendants, failing to accurately track and/or pay for all minutes actually worked;
23 engaged, suffered, or permitted employees to work off the clock; paying straight pay instead of
24 overtime pay; and/or by detrimentally rounding, manipulating and/or editing time entries to show
25 lesser hours than actually worked, to the detriment of Plaintiff and other aggrieved employees.

26 118. As a direct and proximate result of Defendants’ conduct, Plaintiff is entitled to
27 recover directly from Defendants, civil penalties, as set forth above, pursuant to Labor Code
28 section 1197.1.

THIRTEENTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 2699 – Against All Defendants)

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

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

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

122. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; reimburse costs incurred in separately laundering work uniforms, in furtherance of their work duties pay timely wages during employment and after employment separation; provide employees the opportunity to inspect employment records; provide and pay for sick leave (including under Labor Code sections 246 *et seq.*); and provide notice as required under Labor Code section 2810.5 entitling Plaintiff and other aggrieved employees to civil penalties for each of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

///

///

1 123. Moreover, Plaintiff and other aggrieved current and former employees within the
2 State of California whom she seeks to represent are entitled to an award of reasonable attorneys'
3 fees and costs in connection with their herein-described claims for civil penalties.

4 **DEMAND FOR JURY TRIAL**

5 124. Plaintiff demands a trial by jury on all causes of action contained herein.

6 **PRAYER**

7 WHEREFORE, on behalf of herself and all others similarly situated and aggrieved,
8 Plaintiff prays for judgment against Defendants as follows:

- 9 A. An order certifying this case as a Class Action;
- 10 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
11 counsel as class counsel;
- 12 C. Damages for all wages earned and owed, including minimum and overtime wages
13 under Labor Code sections 510, 1194, 1197, and 1199;
- 14 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 15 E. Damages for unpaid premium wages from missed meal and rest periods under,
16 among other Labor Code sections, 512 and 226.7;
- 17 F. Penalties for inaccurate wage statements under Labor Code section 226,
18 subdivision (e);
- 19 G. Damages for unpaid penalty wages under Labor Code section 203;
- 20 H. Waiting time penalties under Labor Code section 203;
- 21 I. Reimbursement for costs incurred in furtherance of work duties under Labor Code
22 section 2802;
- 23 J. Preliminary and permanent injunctions prohibiting Defendants from further
24 violating the California Labor Code and requiring the establishment of appropriate
25 and effective means to prevent future violations;
- 26 K. Restitution of wages and benefits due which were acquired by means of any unfair
27 business practice, according to proof;

28 / / /

- 1 L. An award for civil penalties pursuant to Labor Code sections 210, 226.3, 558,
2 1197.1, and 2699;
3 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
4 210, 226.3, 558, 1197.1, and 2699;
5 O. Prejudgment and post-judgment interest at the maximum rate allowed by law;
6 P. For attorneys' fees in prosecuting this action;
7 Q. For costs of suit incurred herein; and
8 R. For such other and further relief as the Court deems just and proper
9

10 Dated: November 10, 2020

BIBIYAN LAW GROUP, P.C.

11
12 BY:


DIEGO AVILES

13 DAVID D. BIBIYAN

14 Attorneys for Plaintiff KRYSTAL ESTORGA, on
15 behalf of herself and all others similarly situated.
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd,
Suite 500, Beverly Hills, California 90211.

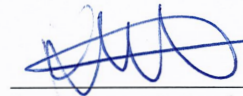
5 On November 12, 2020, I caused a true and correct copy of **PLAINTIFF'S FIRST**
6 **AMENDED COMPLAINT** to be served by electronic transmission via Case Anywhere to the
parties and/or counsel who are registered to use Case Anywhere and set forth in the below service
list:

7 O'Hagan Meyer
8 Andrea Rosenkranz, Esq. (arosenkranz@ohaganmeyer.com)
9 Matthew Sgnilek, Esq. (msgnilek@ohaganmeyer.com)
4695 MacArthur Court, Suite 210
Newport Beach, CA 92660
Phone: (949) 942-8500
10 Fax: (949) 942-8510

11 Counsel for Defendants 3J Consulting, Inc.; 3J Fund, LLC; 3J Land LLC; Jnik Inc.;
12 Jonathan Nik; Ned Elias Nik an individual and doing business as Nik Construction; Nikrad
Enterprises, Inc.; Ziba Investments Corp.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct

15 Executed on November 12, 2020 at Beverly Hills, California.

16
17 

18 _____
Rosemary Martir
19
20
21
22
23
24
25
26
27
28