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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

NOV 02 2020

BY

MELISSA PEREZ, DEPUTY

1 BIBIYAN LAW GROUP

David D. Bibiyan (SBN 287811)

2 david@tomorrowlaw.com

Diego Aviles (SBN 315533)

3 diego@tomorrowlaw.com

Sara Ehsani-Nia (SBN 326501)

4 sara@tomorrowlaw.com

8484 Wilshire Blvd., Suite 500

5 Beverly Hills, California 90211

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

6 Attorneys for Plaintiff, NATHAN M. PETERSON,
 7 on behalf of himself and all others similarly situated
 and aggrieved

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA**9 FOR THE COUNTY OF SAN BERNARDINO**

10
 11 NATHAN M. PETERSON, on behalf of
 12 himself and all others similarly situated and
 aggrieved,

13 Plaintiffs,

14 v.

15 SORENSON ENGINEERING, INC., a
 16 California corporation; and DOES 1 through
 17 100, inclusive,

18 Defendants.

CASE NO.: **CIV DS 2023994****CLASS 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 INDEMNIFY;
8. UNFAIR COMPETITION;
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]

COMES NOW plaintiff NATHAN M. PETERSON (“Plaintiff”), on behalf of himself 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 and Labor Code section 2698, *et seq.*, against SORENSON ENGINEERING, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“SORENSON” and collectively 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”).

PARTIES

A. Plaintiff

2. Plaintiff, NATHAN M. PETERSON, is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, production, manufacturing, and order fulfillment. Plaintiff is informed and believes that he worked for Defendants from approximately March of 2019 through March of 2020.

B. Defendants

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

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true

1 names and capacities of the defendants designated hereinafter as DOES when such identities
2 become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant
3 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
4 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
5 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
6 reference is made to "Defendants," it shall include SORENSON, and any of its parent, subsidiary,
7 or affiliated companies within the State of California, as well DOES 1 through 100 identified
8 herein.

9 **JOINT LIABILITY ALLEGATIONS**

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

15 6. All of the acts and conduct described herein of each and every corporate defendant
16 was duly authorized, ordered, and directed by the respective and collective defendant corporate
17 employers, and the officers and management-level employees of said corporate employers. In
18 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
19 their said employees, agents, and representatives, and each of them; and upon completion of the
20 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
21 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
22 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
23 aforementioned corporate employees, agents and representatives.

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

26 **JURISDICTION**

27 8. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
28 of Civil Procedure section 410.10.

1 9. Venue is proper in San Bernardino County, California pursuant to Code of Civil
2 Procedure sections 392, *et seq.* because, among other things, San Bernardino County is where
3 Defendants, or some of them reside, the county in which the employment relationship began; the
4 unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated and
5 aggrieved within San Bernardino County and the State of California, and because Defendants
6 employ numerous Class Members in San Bernardino County and the State of California.

7 10. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
8 Defendants during the applicable statutory period and suffered one or more of the Labor Code
9 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term
10 “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor
11 Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.*
12 (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current
13 and former employees of Defendants during the Civil Penalty Period.

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

18 12. During the period beginning one (1) year preceding the provision of notice to the
19 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
20 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3,
21 226.7, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1197.5, 1198.5,
22 2699, 2802, and 2810.5, among others.

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

27 14. Plaintiff has complied with the procedures for bringing suit specified in Labor
28 Code section 2699.3. On or around July 27, 2020, Plaintiff gave written notice to the Labor and

1 Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions of the
2 Labor Code alleged to have been violated by it. The LWDA did not provide notice of its intention
3 to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the July 30,
4 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and
5 Defendants.

6 **FACTUAL BACKGROUND**

7 15. For at least four (4) years prior to the filing of this Action and continuing to the
8 present, Defendants have failed to pay all overtime wages due to Plaintiff, Class Members, and
9 other aggrieved employees, as a result of, including but not limited to, Plaintiff, Class Members,
10 and other aggrieved employees working over eight (8) hours per day, forty (40) hours per week or
11 seven (7) consecutive work days in a work week without being properly compensated for the
12 hours worked in excess of (8) hours per day, forty (40) hours per week, or seven (7) consecutive
13 work days in a workweek at the proper overtime rate of pay by, among other things, failing to
14 accurately track and/or pay for all hours actually worked; detrimental rounding and/or
15 manipulation of time entries; engaging, suffering, or permitting employees to work off the clock,
16 including, without limitation, by requiring employees to complete pre-shift tasks before clocking
17 in (including having to wait in line to clock in); and or paying overtime wages at the regular or
18 otherwise improper rates of pay.

19 16. For at least four (4) years prior to the filing of this Action and continuing to the
20 present, Defendants have failed to pay all minimum wages due to Plaintiff and Class Members, or
21 some of them, in violation of California state wage and hour laws as a result of, among other
22 things, Defendants failing to accurately track and/or pay for all hours actually worked; detrimental
23 rounding and/or manipulation of time entries; engaging, suffering, or permitting employees to
24 work off the clock, including, without limitation, by requiring employees to complete pre-shift
25 tasks before clocking in (including having to wait in line to clock in).

26 17. For at least four (4) years prior to the filing of this Action and continuing to the
27 present, Defendants have failed to provide Plaintiff, Class Members, and other aggrieved
28 employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on

1 which they worked more than five (5) hours in a work day and a second thirty (30) minute
2 uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work
3 day, and failing to provide compensation for such unprovided meal periods as required by
4 California wage and hour laws.

5 18. For at least four (4) years prior to the filing of this action and continuing to the
6 present, Defendants have failed to authorize and permit Plaintiff, Class Members, and other
7 aggrieved employees, or some of them, to take rest periods of at least ten (10) minutes per four (4)
8 hours worked or major fraction thereof and failed to provide compensation for such unprovided
9 rest periods as required by California wage and hour laws.

10 19. For at least three (3) years prior to the filing of this action and continuing to the
11 present, Defendants have failed to pay Plaintiff, Class Members, and other aggrieved employees,
12 or some of them, the full amount of their wages owed to them upon termination and/or resignation
13 as required by Labor Code sections 201 and 202.

14 20. For at least one (1) year prior to the filing of this Action and continuing to the
15 present, Defendants have failed to furnish Plaintiff, Class Members, and other aggrieved
16 employees, or some of them, with itemized wage statements that accurately reflect gross wages
17 earned; total hours worked; net wages earned; the name of the employee and only the last four
18 digits of his or her social security number; all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate; and other such
20 information as required by Labor Code section 226, subdivision (a). As a result thereof,
21 Defendants have further failed to furnish employees with an accurate calculation of gross and
22 gross wages earned, as well as gross and net wages paid.

23 21. For at least three (3) years prior to the filing of this action and continuing to the
24 present, Defendants have failed to indemnify Class Members and other aggrieved employees, or
25 some of them, for the costs incurred for, including but not limited to, mileage to drive to and from
26 job sites, the purchase and maintenance of cellular phones, and the purchase of mandatory work
27 boots, in furtherance of their work duties, in violation of, among other authorities, Labor Code
28 section 2802.

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

7 23. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
8 other aggrieved employees with, or permit them inspection of, records pertaining to their
9 employment, including wage statements and similar payroll documents under Labor Code section
10 226, documents signed to obtain or hold employment under Labor Code section 432, personnel
11 records under Labor Code section 1198.5, and time records under Labor Code section 1174, to the
12 detriment of Plaintiff and all other aggrieved employees. As a result of these violations,
13 Defendants are liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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

22 25. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
23 other aggrieved employees with the amount of paid sick leave required to be provided pursuant to
24 California law, and also did not permit its use upon request as contemplated under California laws,
25 to the detriment of Plaintiff and all other aggrieved employees.

26 26. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
27 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
28 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not

1 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
2 all other Aggrieved Employees.

3 27. At all relevant times mentioned herein, Defendants have had a policy or practice of
4 failing to pay employees their wages in accordance with Labor Code Section 204, which requires
5 that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be
6 paid for between the 16th and 26th day of the month during which the labor was performed, and
7 labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid
8 for between the 1st and 10th day of the following month.”

9 28. Plaintiff, on Plaintiff’s own behalf and on behalf of Class Members and aggrieved
10 employees, brings this Action pursuant to, including but not limited to, Labor Code sections 200,
11 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246 *et seq.*, 432, 510, 512, 558, 1174, 1194, 1194.2,
12 1197, 1197.1, 2699, 2802, 2810.5, and California Code of Regulations, Title 8, section 11010,
13 seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest
14 periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to
15 indemnify work-related expenses, other such provisions of California law, and reasonable
16 attorneys’ fees and costs.

17 29. Plaintiff, Class Members, and other aggrieved employees or former employees at
18 all times pertinent hereto were not exempt from the payment of overtime wages, minimum wages,
19 payment of premium wages for missed rest periods, waiting time penalties, wage statement
20 penalties, reimbursement for expenses incurred in furtherance of job duties, and other such
21 provisions of California law, and the implementing rules and regulations of the IWC California
22 Wage Orders.

23 **CLASS ACTION ALLEGATIONS**

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

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

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

7 **A. Numerosity**

8 33. The potential Class Members as defined are so numerous that joinder of all the
9 members of the Class is impracticable. While the precise number of Class Members has not been
10 determined yet, Plaintiff is informed and believes that there are at least ninety (90) Class Members
11 employed by Defendants within the State of California.

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

16 **B. Commonality**

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

- 19 (a) Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing
20 to adequately track, and therefore adequately pay, wages for time worked
21 by Class Members?
- 22 (b) Did Defendants violate Labor Code sections 510, 1194, and 1197 by
23 rounding, shaving and/or manipulating Class Members' time entries to their
24 detriment?
- 25 (c) Did Defendants violate Labor Code sections 510, 1194, and 1197 by
26 engaging, suffering or permitting Class Members to work off the clock,
27 including, without limitation, by requiring Class Members' to work before
28 clocking in and after clocking out?

- (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 not providing Class Members with additional wages for missed or interrupted meal periods?
- (g) Did Defendants violate Labor Code section 512 by not providing Class Members with rest periods?
- (h) Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed rest periods?
- (i) Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class Members upon termination or resignation all wages earned?
- (j) Are Defendants liable to Class Members for penalty wages under Labor Code section 203?
- (k) Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?
- (l) Did Defendants violate Labor Code section 2802 by not reimbursing Class Members for work-related expenses, including without limitation, purchase and maintenance of cellular phones, and the purchase of mandatory work boots, in furtherance of work duties?
- (m) Did Defendants violate the Unfair Competition Law, Business and Professions Code section 17200, *et seq.*, by their unlawful practices as alleged herein?
- (n) Are Class Members entitled to restitution of wages under Business and Professions Code section 17203?
- (o) Are Class Members entitled to costs and attorneys' fees?
- (p) Are Class Members entitled to interest?

1 **C. Typicality**

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

7 **D. Adequacy of Representation**

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

11 **E. Superiority of Class Action**

12 38. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
14 questions of law and fact common to Class Members predominate over any questions affecting
15 only individual Class Members. Class Members, as further described therein, have been damaged
16 and are entitled to recovery by reason of Defendants' illegal policy and/or practices, including,
17 without limitation, failing to pay overtime wages, minimum wages; failing to provide meal and
18 rest breaks or compensation in lieu thereof; failing to provide accurate wage statements; failing to
19 pay all wages due upon termination and/or resignation; and failing to reimburse employees for
20 expenses incurred in furtherance of job duties.

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

25 **FIRST CAUSE OF ACTION**

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

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

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

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

11 43. At all times mentioned, Plaintiff and Class Members, worked for Defendants
12 during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours
13 in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid
14 overtime wages for all hours worked as a result of, including but not limited to, Defendants failing
15 to accurately track and/or pay for all hours actually worked; detrimental rounding and/or
16 manipulation of time entries; engaging, suffering, or permitting employees to work off the clock,
17 including, without limitation, by requiring employees to complete pre-shift tasks before clocking
18 in (including having to wait in line to clock in); and or paying overtime wages at the regular or
19 otherwise improper rates of pay, to the detriment of Plaintiff and Class Members.

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

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

1 section 3287.

2 **SECOND CAUSE OF ACTION**

3 **(Failure to Pay Minimum Wages – Against All Defendants)**

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

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

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

11 49. Defendants failed to pay Plaintiff and Class Members minimum wages for all hours
12 worked as a result of, including but not limited to, Defendants failing to accurately track and/or
13 pay for all hours actually worked by, including but not limited to, failing to accurately track and/or
14 pay for all hours actually worked; detrimental rounding and/or manipulation of time entries;
15 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
16 and by requiring employees to complete pre-shift tasks before clocking in (including having to
17 wait in line to clock in).

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

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

25 **THIRD CAUSE OF ACTION**

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

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

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

54. 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.

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

56. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were not provided complete, timely 30-minute, duty-free uninterrupted meal periods every five hours of work without waiving the right to take them, as permitted. Moreover, Defendants failed to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions that Class Members were not provided compliant meal periods.

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

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

59. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and

226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

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

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

63. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest 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 employee’s regular rate of compensation for each work day that the rest period is not provided.

64. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were not authorized or permitted to take complete, timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, Defendants failed to provide one (1) additional hour of pay at the Class Member’s regular rate of compensation on the occasions that Class Members were not authorized or permitted to take compliant rest periods.

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

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

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

FIFTH CAUSE OF ACTION

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

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

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

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

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

72. Defendants' failure to pay Plaintiff and Class Members all wages earned prior to termination in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices

1 incompatible with the requirements of Labor Code sections 201 and 202.

2 73. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members are
3 entitled to all wages earned prior to termination that Defendants failed to pay them.

4 74. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
5 penalty wages from the date their earned and unpaid wages were due, upon termination, until paid,
6 up to a maximum of thirty (30) days.

7 75. 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 for all wages
9 earned prior to termination.

10 76. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
11 suffered damages in an amount subject to proof, to the extent they were not paid all penalty wages
12 owed under Labor Code section 203.

13 77. Pursuant to Labor Code sections 203, 218 and 218.5, Code of Civil Procedure
14 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
15 to recover the full amount of their unpaid wages, and penalty wages under Labor Code section
16 203, reasonable attorneys' fees on their unpaid wages, and costs of suit.

17 78. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
18 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
19 waiting time penalties, interest, and other costs of suit on the waiting time penalties, as well.

20 **SIXTH CAUSE OF ACTION**

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

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

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

26 81. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
27 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate
28 itemized statement that accurately reflects, among other things, gross wages earned; total hours

1 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate; and the name and address of the legal
3 entity that is the employer, among other things.

4 82. Plaintiff is informed and believes, and based thereon alleges, that in the one (1)
5 year before the filing of the Complaint in this Action through the present, Defendants failed to
6 comply with Labor Code section 226, subdivision (a) by adopting policies and practices that
7 resulted in their failure to furnish Plaintiff and Class Members with accurate itemized statements
8 that accurately reflect, among other things, gross wages earned; total hours worked; net wages
9 earned; the name of the employee and only the last four digits of his or her social security number;
10 all applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate, among other things.

12 83. Defendants' failure to provide Plaintiff and Class Members with accurate wage
13 statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff
14 and the other Class Members with accurate wage statements, but willfully provided wage
15 statements that Defendants knew were not accurate.

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

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

27 86. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
28 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to

1 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
2 attorneys' fees, and costs of suit.

3 **SEVENTH CAUSE OF ACTION**

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

5 87. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs of this Complaint as though full set forth hereat.

7 88. At all relevant times, Plaintiff and Class Members were employees of Defendants
8 covered by Labor Code section 2802.

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

12 90. At all relevant times, Defendants failed and refused, and still fail and refuse, to
13 reimburse Plaintiff and Class Members for the costs incurred for, including but not limited to, the
14 purchase and maintenance of cellular phones, and the purchase of mandatory work boots.

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

18 92. Pursuant to Labor Code section 2802, Code of Civil Procedure section 1032, and
19 Civil Code section 3287, Plaintiff and Class Members are entitled to recover actual costs incurred
20 for their mileage, separate laundering, purchase of tools, reasonable attorney's fees and costs of
21 suit.

22 **EIGHTH CAUSE OF ACTION**

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

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

26 94. The unlawful conduct of Defendants alleged herein constitutes unfair competition
27 within the meaning of Business and Professions Code section 17200. Due to their unlawful
28 business practices in violation of the Labor Code, Defendants have gained a competitive

1 advantage over other comparable companies doing business in the State of California that comply
2 with their obligations to compensate employees in accordance with the Labor Code.

3 95. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
4 Members have suffered injury in fact and lost money or property. Plaintiff and Class Members
5 have been deprived of overtime compensation; minimum wage compensation; provision of meal
6 breaks or compensation in lieu thereof; provision of rest breaks or compensation in lieu thereof;
7 provision of all wages upon termination or resignation; from being provided with accurate wage
8 statements; and reimbursement for costs incurred in furtherance of job duties, among other things.

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

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

17 **NINTH CAUSE OF ACTION**

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

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

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

26 100. At all relevant times herein, Labor Code section 210, subdivision (a) states and
27 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
28 this article, every person who fails to pay the wages of each employee as provided in Sections

201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

TENTH CAUSE OF ACTION

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

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

103. Defendants have had a consistent policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage statements that accurately reflect gross wages earned; total hours worked by the employee; all deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and other such information as required by Labor Code section 226, subdivision (a).

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

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

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

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

ELEVENTH CAUSE OF ACTION

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

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

109. 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

1 amount sufficient to recover underpaid wages;

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

4 110. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
5 each of them, violated, or caused to be violated, the Labor Code sections described herein,
6 including causing Plaintiff and other aggrieved employees not to: be paid overtime wages and
7 minimum wages; receive meal and rest periods or compensation in lieu thereof; and be paid timely
8 wages during their employment and after their employment separation.

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

12 **TWELFTH CAUSE OF ACTION**

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

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

16 113. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
17 person acting either individually or as an officer, agent, or employee of another person, who pays
18 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
19 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
20 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
21 Section 203 as follows: For any initial violation that is intentionally committed, one hundred
22 dollars (\$100) for each underpaid employee for each pay period for which the employee is
23 underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages,
24 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to
25 Section 203.

26 (1) For each subsequent violation for the same specific offense, two hundred fifty
27 dollars (\$250) for each underpaid employee for each pay period for which the
28 employee is underpaid regardless of whether the initial violation is intentionally

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committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

114. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made the decision that Plaintiff would not be paid their due minimum wages as required due to, among other things, Defendants, failing to accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of time entries; engaging, suffering, or permitting employees to work off the clock, including, without limitation, requiring employees to begin working before clocking in and after clocking out; and or paying overtime hours at the regular or otherwise improper rates of pay, to the detriment of Plaintiff and other aggrieved employees.

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

THIRTEENTH CAUSE OF ACTION
(Civil Penalties Under Labor Code § 2699 – Against All Defendants)

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

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

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

13 119. Plaintiff is informed and believes and based thereon alleges that Defendants, and
14 each of them, violated the Labor Code sections described herein, including, without limitation, for
15 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
16 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages
17 during employment and after employment separation; provide employees the opportunity to
18 inspect employment records; provide and pay for sick leave; and provide notice as required under
19 Labor Code section 2810.5 entitling Plaintiff and other aggrieved employees to civil penalties for
20 each of these Labor Code violations in the amounts set forth in Labor Code section 2699,
21 subdivision (f).

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

25 **DEMAND FOR JURY TRIAL**

26 121. Plaintiff demands a trial by jury on all causes of action contained herein.

27 / / /

28 / / /

PRAYER

WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for judgment against Defendants as follows:

- A. An order certifying this case as a Class Action;
- B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;
- C. Damages for all wages earned and owed, including minimum and overtime wages under Labor Code sections 510, 1194, 1197 and 1199;
- D. Liquidated damages pursuant to Labor Code sections 1194.2;
- E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512 and 226.7;
- F. Penalties for inaccurate wage statements under Labor Code section 226, subdivision (e);
- G. Damages for unpaid penalty wages under Labor Code section 203;
- H. Waiting time penalties under Labor Code section 203;
- I. Reimbursement for costs incurred in furtherance of work duties under Labor Code section 2802;
- J. 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;
- K. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- L. An award for civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699;
- M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699;
- N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- O. For attorneys' fees in prosecuting this action;

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P. For costs of suit incurred herein; and

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

Dated: October 15, 2020

BIBIYAN LAW GROUP, P.C.

BY:



DIEGO AVILES

DAVID D. BIBIYAN

Attorneys for Plaintiff NATHAN M. PETERSON, on
behalf of himself and all others similarly situated and
aggrieved.