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behalf of himself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ZEPHARAN HARRIS, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

AMERICA ONE SECURITY, INC., a Nevada
corporation; STRATUM GROUP
INTERNATIONAL, a California corporation;
GREG LABE, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 21STCV01399

[Assigned to the Hon. Lawrence P. Riff in
Dept. 7]

**FIRST AMENDED 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; and
9. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1197.1 and 2699, et seq.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff ZEPHARAN HARRIS (“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, against AMERICA ONE SECURITY, INC., and any of its respective subsidiaries or affiliated companies within the State of California (“AMERICA ONE”), STRATUM GROUP INTERNATIONAL, and any of its respective subsidiaries or affiliated companies within the State of California (“STRATUM”), and owner GREG LABE, an individual (“LABE” and collectively with AMERICA ONE, STRATUM and DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”), against Defendants, and any of their respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for violations of the Labor Code, including but not limited to, failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, et seq., Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

3. Plaintiff 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, patrolling and securing properties. Plaintiff is informed and believes that Plaintiff worked for Defendants from

1 approximately November of 2019 through approximately January of 2020.

2 **B. Defendants**

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

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

11 6. Plaintiff is informed and believes, and based thereon alleges, that defendant LABE
12 is, and at all times relevant hereto was, an individual residing in California, as well as the owner of
13 STRATUM, and DOES 1 through 50, as further defined below.

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

27 **JOINT LIABILITY ALLEGATIONS**

28 8. Plaintiff is informed and believes and based thereon alleges that all the times

1 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
2 representative, joint venture or co-conspirator of each of the other defendants, either actually or
3 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
4 employment, joint venture, and conspiracy.

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

14 10. Plaintiff is further informed and believes and based thereon alleges that LABE
15 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
16 provisions in violation of Labor Code section 558.1.

17 11. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
18 unity of interest and ownership between Defendants, and each of them, that their individuality and
19 separateness have ceased to exist.

20 12. Plaintiff is informed and believes, and based thereon alleges that despite the
21 formation of the purported corporate existence of AMERICA ONE, STRATUM, and DOES 1
22 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same
23 with LABE and DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not
24 limited to, the following reasons:

- 25 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
26 Defendants who personally committed the wrongful and illegal acts and violated the
27 laws as set forth in this Complaint, and who has hidden and currently hide behind the
28 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some

- 1 other wrongful or inequitable purpose;
- 2 B. The Individual Defendants derive actual and significant monetary benefits by and
- 3 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
- 4 Defendants as the funding source for the Individual Defendants' own personal
- 5 expenditures;
- 6 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
- 7 and the Alter Ego Defendants, while really one and the same, were segregated to
- 8 appear as though separate and distinct for purposes of perpetrating a fraud,
- 9 circumventing a statute, or accomplishing some other wrongful or inequitable
- 10 purpose;
- 11 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
- 12 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
- 13 mentioned herein were, so mixed and intermingled that the same cannot reasonably
- 14 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
- 15 are, and at all relevant times mentioned herein were, used by the Individual
- 16 Defendants as mere shells and conduits for the conduct of certain of their, and each
- 17 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
- 18 herein were, the alter egos of the Individual Defendants;
- 19 E. The recognition of the separate existence of the Individual Defendants and the Alter
- 20 Ego Defendants would promote injustice insofar that it would permit defendants to
- 21 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
- 22 Code, and other statutory violations. The corporate existence of these defendants
- 23 should thus be disregarded in equity and for the ends of justice because such
- 24 disregard is necessary to avoid fraud and injustice to Plaintiff herein;
- 25 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
- 26 Defendants (and vice versa), and the fiction of their separate corporate existence
- 27 must be disregarded;
- 28 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based

1 thereon alleges that Defendants, and each of them, are joint employers.

2 **JURISDICTION**

3 14. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
4 of Civil Procedure section 410.10.

5 15. Venue is proper in Los Angeles County, California pursuant to Code of Civil
6 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
7 causes of action complained of herein arose; the county in which the employment relationship
8 began; the county in which performance of the employment contract, or part of it, between Plaintiff
9 and Defendants was due to be performed; the county in which the employment contract, or part of
10 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
11 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
12 and Class Members in Los Angeles County, and because Defendants employ numerous employees
13 in Los Angeles County.

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

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

24 18. During the period beginning one (1) year preceding the provision of notice to the
25 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
26 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 256,
27 432, 510, 512, 558, 1174, 1194, 1197, 1198.5, 2802, and 2810.3, and 2810.5, among others.

28 19. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees

1 such as Plaintiff, on behalf of himself and all other aggrieved current and former employees within
2 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
3 specified in Labor Code section 2699.3.

4 20. On or around July 28, 2020, Plaintiff provided written notice under Labor Code
5 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
6 of various, including the herein-described, provisions of the Labor Code, to the Labor and
7 Workforce Development Agency ("LWDA"), as well as by certified mail, with return receipt
8 requested to Defendants, and each of them.

9 21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
10 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
11 calendar days of the July 28, 2020 postmarked date of the herein-described notice sent by Plaintiff
12 to the LWDA and Defendants.

13 **FACTUAL BACKGROUND**

14 22. For at least four (4) years prior to the filing of this action and continuing to the
15 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
16 some of them, in violation of California state wage and hour laws as a result of, without limitation,
17 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
18 seven consecutive work days in a work week without being properly compensated for hours worked
19 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
20 worked on the seventh consecutive work day in a work week by, among other things, failing to
21 accurately track and/or pay for all minutes actually worked to the detriment of Plaintiff and Class
22 Members. In addition, Defendants would also be liable for civil penalties pursuant to Labor Code
23 sections 558 and 2699.

24 23. For at least four (4) years prior to the filing of this Action and continuing to the
25 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
26 or some of them, in violation of California state wage and hour laws as a result of, among other
27 things, at times, failing to accurately track and/or pay for all minutes actually worked, to the
28 detriment of Plaintiff and Class Members. Defendants would also be liable for civil penalties

1 pursuant to Labor Code sections 558, 1197.1, and 2699.

2 24. For at least four (4) years prior to the filing of this Action and continuing to the
3 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
4 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
5 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
6 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
7 for such unprovided meal periods as required by California wage and hour laws.

8 25. For at least four (4) years prior to the filing of this action and continuing to the
9 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
10 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
11 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
12 California wage and hour laws. Defendants would also be liable for civil penalties pursuant to Labor
13 Code sections 558 and 2699.

14 26. For at least three (3) years prior to the filing of this action and continuing to the
15 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
16 full amount of their wages owed to them upon termination and/or resignation as required by Labor
17 Code sections 201 and 202. Defendants would also be liable for civil penalties pursuant to Labor
18 Code sections 558 and 2699.

19 27. For at least one (1) year prior to the filing of this Action and continuing to the present,
20 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
21 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
22 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
23 hours worked at each hourly rate; and other such information as required by Labor Code section
24 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
25 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.
26 Defendants would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558 and
27 2699.

28 28. For at least three (3) years prior to the filing of this action and continuing to the

1 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
2 costs incurred in using cellular phones for work-related purposes.

3 29. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
5 California in violation of California state wage and hour laws as a result of, without limitation,
6 Plaintiff and other Aggrieved Employees working over eight (8) hours in a workday or forty (40)
7 hours in a workweek; over twelve (12) hours in a workday; and/or seven (7) consecutive workdays
8 in a workweek without being properly compensated for all hours worked in excess of eight (8) hours
9 in a workday or forty (40) hours in a workweek; all hours worked in excess of twelve (12) hours in
10 a workday; and/or for all hours worked on the seventh consecutive workday in a workweek, as a
11 result of, among other things, Defendants, failing to accurately track and/or pay for all hours actually
12 worked; engaging, suffering, or permitting employees to work off the clock, including, without
13 limitation, detrimental rounding of employee time entries; by manipulating and/or editing time
14 entries to show lesser hours than actually worked; by auto-deducting meal periods not taken; and by
15 paying overtime hours at the regular or otherwise improper rate(s) of pay, to the detriment of
16 Plaintiff and other Aggrieved Employees.

17 30. At all relevant times mentioned herein, Defendants had and have a practice or policy
18 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
19 worked, as a result of, without limitation, Defendants routinely failing to pay Plaintiff or other
20 aggrieved employees' wages for all hours worked or otherwise under Defendants' control due to,
21 without limitation, failing to accurately track and/or pay for all hours actually worked; engaging,
22 suffering, or permitting employees to work off the clock, including, without limitation, detrimental
23 rounding of employee time entries; by manipulating and/or editing time entries to show lesser hours
24 than actually worked; by auto-deducting meal periods not taken, to the detriment of Plaintiff and
25 other Aggrieved Employees.

26 31. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
28 timely, and complete meal period for days on which the employee worked in excess of five (5) hours

1 in a workday; a second thirty (30) minute uninterrupted, timely, and complete meal period for days
2 on which the employee worked in excess of ten (10) hours in a workday; or compensation in lieu
3 thereof, including, without limitation, by interrupting meal periods, not providing timely duty-free
4 meal periods, failing to provide first and second meal periods all together, providing short meal
5 periods, and/or auto-deducting meal periods even when they were not taken, as required by
6 California wage and hour laws.

7 32. At all relevant times mentioned herein, Defendants had and have a policy or practice
8 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
9 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
10 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide duty-
11 free rest periods all together, as required by California wage and hour laws.

12 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
13 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
14 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect all
15 gross wages earned; total hours worked by the employee; net wages earned; all deductions; all
16 applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee; and other such information as required by Labor Code
18 section 226, subdivision (a).

19 34. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
21 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
22 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
23 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
24 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
25 Aggrieved Employees.

26 35. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
28 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime

1 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
2 Code sections 201, 202, and 203.

3 36. At all relevant times mentioned herein, Defendants have had a policy or practice of
4 failing and refusing, and continue to fail and refuse, to reimburse employees Plaintiff and other
5 aggrieved employees for their costs incurred, including but not limited to costs incurred for driving
6 personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, separately laundering mandatory
7 uniforms, and for purchase and maintenance of a cellular phone in direct consequence of the
8 discharge of their duties, as required by Labor Code section 2802.

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

17 38. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
18 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
19 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
20 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
21 all other Aggrieved Employees.

22 39. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
24 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
25 any calendar month shall be paid for between the 16th and 26th day of the month during which the
26 labor was performed, and labor performed between the 16th and the last day, inclusive of any
27 calendar month, shall be paid for between the 1st and 10th day of the following month."

28 40. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and

1 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
2 California law (including, without limitation Labor Code section 246, et seq.), and also did not
3 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
4 all other Aggrieved Employees.

5 41. Plaintiff, in his representative capacity, seek civil penalties under Labor Code
6 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
7 California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
8 Employees pursuant to PAGA.

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

13 **CLASS ACTION ALLEGATIONS**

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

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

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

25 **A. Numerosity**

26 46. The potential Class Members as defined are so numerous that joinder of all the
27 members of the Class is impracticable. Plaintiff is informed and believes that there are two hundred
28 nineteen (219) Class Members employed by Defendants within the State of California.

1 47. Accounting for employee turnover during the relevant periods necessarily increases
2 this number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of all Class Members. Joinder of all members of the proposed Class is not
4 practicable.

5 **B. Commonality**

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

- 8 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
9 hours worked at a proper overtime rate of pay?
- 10 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
11 for all other time worked at the employee's regular rate of pay and a rate of pay that
12 is greater than the applicable minimum wage?
- 13 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
14 Class Members to take compliant meal periods?
- 15 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
16 with additional wages for missed or interrupted meal periods?
- 17 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
18 Class Members to take compliant rest periods?
- 19 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
20 with additional wages for missed rest periods?
- 21 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
22 Members upon termination or resignation all wages earned?
- 23 H. Are Defendants liable to Class Members for waiting time penalties under Labor
24 Code section 203?
- 25 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
26 Class Members with accurate wage statements?
- 27 J. Did Defendants fail to indemnify Class Members for all necessary expenditures or
28 losses incurred in direct consequence of the discharge of their duties or by

obedience to the directions of Defendants as required under Labor Code section 2802?

K. Did Defendants violate the Unfair Competition Law, Business and Professions Code section 17200, *et seq.*, by their unlawful practices as alleged herein?

L. Are Class Members entitled to restitution of wages under Business and Professions Code section 17203?

M. Are Class Members entitled to costs and attorneys' fees?

N. Are Class Members entitled to interest?

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

52. Class action treatment will allow Class Members to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would

1 preclude its maintenance as a class action.

2 **FIRST CAUSE OF ACTION**

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

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

6 54. At all relevant times, Plaintiff and Class Members were employees or former
7 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
8 Wage Orders.

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

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

18 57. Four (4) years prior to the filing of the Complaint in this Action through the present,
19 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
20 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
21 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
22 result of, including but not limited to, Defendants failing to accurately track and/or pay for all
23 minutes actually worked, to the detriment of Plaintiff and Class Members.

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

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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 Labor Code sections 1197, 1199 and applicable Wage Orders.

62. 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.

63. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants, at times, failed to accurately track and/or pay for all minutes actually worked to the detriment of Plaintiff and Class Members.

64. 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 minimum wages for all hours worked or otherwise due.

65. 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)

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

67. At all relevant times, Plaintiff and Class Members were employees or former

1 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

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

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

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

5 75. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by applicable Wage Orders. California law and applicable Wage
7 Orders require that employers “authorize and permit” employees to take ten (10) minute rest periods
8 in about the middle of each four (4) hour work period “or major fraction thereof.” Accordingly,
9 employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10)
10 minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours
11 must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of
12 more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

13 76. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
14 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
15 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s
16 regular rate of compensation for each work day that the rest period is not provided.

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

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

27 79. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
28 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay

1 owed for rest periods that they were not authorized or permitted to take.

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

6 **FIFTH CAUSE OF ACTION**

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

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

10 82. At all relevant times, Plaintiff and Class Members were employees or former
11 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
12 Wage Orders.

13 83. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
14 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
15 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
16 discharge immediately upon termination. Class Members who resigned were entitled to payment
17 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
18 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
19 unpaid at the time of resignation.

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

25 85. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
26 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
27 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
28 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,

1 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
2 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
3 or resignation. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
4 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
5 resignation, until paid, up to a maximum of thirty (30) days.

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

9 87. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
10 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
11 waiting time penalties, interest, and their costs of suit, as well.

12 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

1 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
2 other things.

3 92. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
4 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
5 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
6 provided wage statements that Defendants knew were not accurate.

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

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

18 95. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
19 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
20 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
21 attorneys' fees, and costs of suit.

22 **SEVENTH CAUSE OF ACTION**

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

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

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

28 98. Labor Code section 2802, subdivision (a) provides that "an employer shall indemnify

1 his or her employee for all necessary expenditures or losses incurred by the employee in direct
2 consequence of the discharge of his or her duties . . .”

3 99. For three (3) years prior to the filing of the Complaint in this Action through the
4 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
5 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
6 obedience to the directions of Defendants that included, without limitation: costs incurred in using
7 cellular phones for work-related purposes.

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

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

14 102. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
15 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
16 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
17 costs of suit.

18 **EIGHTH CAUSE OF ACTION**

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

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

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

28 105. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and Class

1 Members have suffered injury in fact and lost money or property. Pursuant to Business and
2 Professions Code section 17203, Plaintiff and Class Members are entitled to (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 restitution of all wages and
5 other monies owed to them under the Labor Code, including interest thereon, in which they had a
6 property interest and which Defendants nevertheless failed to pay them and instead withheld and
7 retained for themselves. Restitution of the money owed to Plaintiff and Class Members is necessary
8 to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor
9 Code.

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

12 **NINTH CAUSE OF ACTION**

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

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

16 **Civil Penalties Under Labor Code § 210**

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

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

1 110. At all relevant times herein, Defendants have had a consistent policy or practice of
2 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
3 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
4 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor
5 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
6 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
7 for each subsequent violation in connection with each payment that was made in violation of Labor
8 Code section 204.

9 Civil Penalties Under Labor Code § 226.3

10 111. Defendants had and have a policy or practice of failing to comply with Labor Code
11 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
12 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
13 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate; and other such information as required
15 by Labor Code section 226, subdivision (a).

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

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

23 114. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
24 and have a policy or practice of failing to furnish non-exempt employees, including, without
25 limitation, Plaintiff, itemized wage statements that accurately reflect: reflect gross wages earned;
26 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
27 the corresponding number of hours worked at each hourly rate; and other such information as
28 required by Labor Code section 226, subdivision (a).

1 115. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
2 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
3 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
4 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
5 period for each subsequent violation.

6 Violation of Labor Code § 558

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

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

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

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

18 117. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
19 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
20 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
21 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
22 regular payday designated by Employer, the name of the employer, including any "doing business
23 as" names used, the name, address and telephone number of the workers' compensation insurance
24 carrier, information regarding paid sick leave, and other pertinent information.

25 118. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
27 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
28 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars

1 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

2 Violation of Labor Code § 1197.1

3 119. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
4 person acting either individually or as an officer, agent, or employee of another person, who pays
5 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
6 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
7 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
8 Section 203 as follows:

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

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

18 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
19 Section 203, recovered pursuant to this section shall be paid to the affected employee.”
20

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

26 121. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
28 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one

1 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
2 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
3 subsequent violation.

4 Civil Penalties Under Labor Code § 2699

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

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

17 124. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
18 each of them, violated the Labor Code sections described herein, including, without limitation, for
19 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
20 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
21 name of the employer, including any “doing business as” names used, the name, address and
22 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
23 leave, and other pertinent information required to be disclosed by Employer under Labor Code
24 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
25 sick leave required to be provided pursuant to California and local laws.

26 125. Moreover, Plaintiff and other Aggrieved Employees within the State of California
27 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
28 connection with their herein-described claims for civil penalties.

1 **DEMAND FOR JURY TRIAL**

2 126. Plaintiff demands a trial by jury on all causes of action contained herein.

3 **PRAYER**

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

- 6 A. An order certifying this case as a Class Action;
- 7 B. An Order appointing Plaintiff as Class representative and appointing
8 Plaintiff's counsel as class counsel;
- 9 C. Damages for all wages earned and owed, including minimum and overtime
10 wages under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- 11 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 12 E. Damages for unpaid premium wages from missed meal and rest periods
13 under, among other Labor Code sections, 512, 558.1 and 226.7;
- 14 F. Penalties for inaccurate wage statements under Labor Code sections 226,
15 subdivision (e) and 558.1;
- 16 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 17 H. Damages under Labor Code sections 2802 and 558.1;
- 18 I Preliminary and permanent injunctions prohibiting Defendants from further
19 violating the California Labor Code and requiring the establishment of
20 appropriate and effective means to prevent future violations;
- 21 J. Restitution of wages and benefits due which were acquired by means of any
22 unfair business practice, according to proof;
- 23 K. Prejudgment and post-judgment interest at the maximum rate allowed by
24 law;
- 25 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3,
26 558, 1174.5, 1197.1, and 2699;
- 27 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code
28 sections 210, 226.3, 558, 1197.1, and 2699;

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- N. For attorneys’ fees in prosecuting this action;
- O. For costs of suit incurred herein; and
- P. For such other and further relief as the Court deems just and proper.

Dated: January 24, 2023

BIBIYAN LAW GROUP, P.C.

BY: *Vedang J. Patel*
VEDANG J. PATEL
Attorneys for Plaintiff ZEPHARAN HARRIS on behalf
of himself and all others similarly situated and
aggrieved