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5 Attorneys for Plaintiff, FERNANDO VIGIL and

6 DOUGLAS R. HERNANDEZ, as individuals and

on behalf of themselves and all others similarly situated

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA**8 FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**9 FERNANDO VIGIL and DOUGLAS R.
10 HERNANDEZ, as individuals and on behalf
of all others similarly situated,

11 Plaintiffs,

12 v.

13 CAPSTONE TURBINE CORPORATION, a
14 Delaware corporation; and DOES 1 through
100, inclusive,15 Defendants.
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CASE NO.: 20STCV41495

[Assigned for all purposes to Hon. Daniel J.
Buckley in Dept. 1]**SECOND AMENDED COMPLAINT FOR:****DEMAND FOR JURY TRIAL**

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. UNFAIR COMPETITION;
8. VIOLATION OF THE FAIR CREDIT REPORTING ACT;
9. VIOLATION OF THE CALIFORNIA INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT;
10. VIOLATION OF THE CONSUMER CREDIT REPORTING AGENCIES ACT;
11. CIVIL PENALTIES UNDER LABOR CODE SECTION 210;
12. CIVIL PENALTIES UNDER LABOR CODE SECTION 226.3;
13. CIVIL PENALTIES UNDER LABOR CODE SECTION 558;
14. CIVIL PENALTIES UNDER LABOR CODE SECTION 1174.5;
15. CIVIL PENALTIES UNDER LABOR CODE SECTION 1197.1; AND
16. CIVIL PENALTIES UNDER LABOR CODE SECTION 2699

[Amount in Controversy Exceeds \$25,000.00]

1 COME NOW plaintiffs FERNANDO VIGIL and DOUGLAS R. HERNANDEZ (“Plaintiffs”), as
2 individuals and on behalf of all others similarly situated, and allege as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
6 CAPSTONE TURBINE CORPORATION, and any of its respective subsidiaries or affiliated
7 companies within the State of California (“CAPSTONE”, and with DOES 1 through 100, as further
8 defined below, “Defendants”) on behalf of Plaintiffs and all other current and former non-exempt
9 California employees employed by or formerly employed by Defendants (“Class Members”).

10 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
11 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants,
12 and any of their respective subsidiaries or affiliated companies within the State of California, as a
13 proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
14 behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working
15 within the Civil Penalty Period, as described herein, and, as it pertains to the alleged claims for
16 violations of the Labor Code, including but not limited to, failure to comply with Labor Code section
17 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code
18 section 246, *et seq.*, Labor Code section 2802, on behalf of all employees of Defendants working
19 within the Civil Penalty Period (“Aggrieved Employees”).

20 **PARTIES**

21 **A. Plaintiffs**

22 3. Plaintiff FERNANDO VIGIL is a resident of the State of California. At all relevant
23 times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants employed
24 Plaintiff FERNANDO VIGIL as a non-exempt employee, with duties that included, but were not
25 limited to, engine assembly. Plaintiffs are informed and believe, and based thereon allege that
26 Plaintiff FERNANDO VIGIL worked for Defendants from approximately December of 2015 and
27 through approximately March of 2020.

28 4. Plaintiff DOUGLAS R. HERNANDEZ is a resident of the State of California. At

1 all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that
2 Defendants employed Plaintiff DOUGLAS R. HERNANDEZ as a non-exempt employee, with
3 duties that included, but were not limited to, engine assembly and packaging productions. Plaintiffs
4 are informed and believe, and based thereon allege that Plaintiff DOUGLAS R. HERNANDEZ
5 worked for Defendants from approximately November of 2014 and through approximately March
6 of 2020.

7 **B. Defendants**

8 5. Plaintiffs are informed and believe and based thereon allege that defendant
9 CAPSTONE is, and at all times relevant hereto was, a corporation organized and existing under and
10 by virtue of the laws of the State of Delaware and doing business in the County of Los Angeles,
11 State of California.

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

25 **JOINT LIABILITY ALLEGATIONS**

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

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

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

12 9. Plaintiffs are further informed and believe and based thereon allege that Defendants
13 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
14 provisions in violation of Labor Code section 558.1.

15 10. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
16 unity of interest and ownership between Defendants, and each of them, that their individuality and
17 separateness have ceased to exist.

18 **JURISDICTION**

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

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

1 Defendants employ numerous Class Members in Los Angeles County.

2 13. Plaintiffs are “aggrieved employees” under PAGA, as Plaintiffs were employed by
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code
4 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil
5 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
6 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”)
7 plus reasonable attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former
8 employees of Defendants during the Civil Penalty Period, including all other current and former
9 non-exempt employees of Defendants working within the Civil Penalty Period, as further defined
10 herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section
11 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code
12 section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and
13 freedom of speech on behalf of all employees of Defendants working within the Civil Penalty
14 Period (collectively, “Aggrieved Employees”).

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

19 15. During the period beginning one (1) year preceding the provision of notice to the
20 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
21 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
22 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
23 1197.1, 1197.5, 1198.5, 2699, and 2802, among others.

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

28 17. On or around July 28, 2020, Plaintiffs provided written notice pursuant to Labor

1 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
2 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
3 as well as by certified mail, with return receipt requested to Defendants, and each of them. On or
4 around October 27, 2020, Plaintiffs provided an amended written notice pursuant to 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 LWDA, as well as
7 by certified mail, with return receipt requested to Defendants, and each of them.

8 18. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
9 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
10 calendar days of the July 28, 2020 or the October 27, 2020 postmarked date of the herein-described
11 notices sent by Plaintiffs to the LWDA and Defendants.

12 **FACTUAL BACKGROUND**

13 19. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members,
15 or some of them, in violation of California state wage and hour laws as a result of, without limitation,
16 Plaintiffs and Class Members working over eight (8) hours per day, forty (40) hours per week, and
17 seven consecutive work days in a work week without being properly compensated for hours worked
18 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
19 worked on the seventh consecutive work day in a work week by, among other things, failing to
20 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay to the
21 detriment of Plaintiffs and Class Members.

22 20. For at least four (4) years prior to the filing of this Action and continuing to the
23 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
24 or some of them, in violation of California state wage and hour laws as a result of, among other
25 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
26 rate of pay that is above the minimum wage to the detriment of Plaintiffs and Class Members.

27 21. For at least four (4) years prior to the filing of this Action and continuing to the
28 present, Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them,

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

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

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

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

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

26 26. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action
27 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
28 246, 246.5, 510, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.5, 1198.5, 1199, 2802, and California

1 Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of
2 premium wages for missed meal and rest periods, waiting time penalties, wage statement penalties,
3 other such provisions of California law, and reasonable attorneys' fees and costs.

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

10 28. Plaintiffs are informed and believe, and based thereon allege that, in or around
11 November of 2014 Defendants purported to provide consumer report disclosures and requested from
12 Plaintiffs authorization to procure (investigative) consumer reports and background checks for
13 employment purposes.

14 29. Plaintiffs are informed and believe and based thereon allege that Defendants did not
15 provide legally compliant disclosure and authorization forms to Plaintiffs and Class Members as
16 they failed to contain, among other things, a "clear and conspicuous" disclosure, made in writing
17 prior to the report being procured or caused to be procured, in a document that consisted solely of
18 the disclosure, that a consumer report may be obtained for employment purposes as well as an
19 authorization, in writing, for the procurement of the report, which are in violation of 15 U.S.C. §§
20 1681b(b)(2)(A) and 1681d(a). Specifically, Plaintiffs are informed and believe the disclosures did
21 not comply as a result of, without limitation: including superfluous information within the
22 disclosure, such as identifying information of a third-party consumer reporting agency, which may
23 not have been the reporting agency used to obtain or procure the consumer report for Plaintiff and
24 Class members; surplusage of other states; and/or failing to obtain proper authorization before
25 procuring a consumer report, including by either obtaining consumer reports without authorization
26 or when such authorization had expired.

27 30. Plaintiffs are informed and believe and based thereon allege that Defendants did not
28 provide legally compliant disclosure and authorization forms to Plaintiff and Class Members as they

1 failed to contain, among other things, a “clear and conspicuous” disclosure in writing to Plaintiffs
2 and Class Members at any time before the report is or was procured or caused to be made in a
3 document that consisted solely of the disclosure, that: an investigative consumer report may be
4 obtained; notified Plaintiff and Class Members in writing of the nature and scope of the investigation
5 requested, including a summary of the provisions of Civ. Code § 1786.22; and notified Plaintiff and
6 Class Members of the internet web site of the investigative consumer reporting agency, or, if the
7 agency had no internet web site address, the telephone number of the agency where Plaintiffs and
8 Class Members may find information about the investigative reporting agency’s privacy practices,
9 including whether Plaintiffs and Class Member’s personal information will be sent outside of the
10 United States or its territories and information that complies with subdivision (d) of Section 1786.22.

11 31. Plaintiffs are further informed and believe, and based thereon allege, that Defendants
12 routinely acquire consumer, investigative and/or consumer credit reports (referred to collectively as
13 “background checks”) to conduct back ground checks as described herein on Plaintiff and other
14 prospective, current and former employees and use information from the background checks without
15 providing proper disclosures and obtaining proper authorization in compliance with the law,
16 including Civil Code § 1785 *et seq.* (the “Consumer Credit Reporting Agencies Act” or the
17 “CCRAA”).

18 **CLASS ACTION ALLEGATIONS**

19 32. Plaintiffs bring this action on behalf of themselves and Class Members as a class
20 action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all
21 current and former non-exempt employees of Defendants within the State of California at any time
22 commencing four (4) years preceding the filing of Plaintiffs’ Complaint in this Action up until the
23 time that notice of the class action is provided to the class (collectively referred to as “Class
24 Members”).

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

28 34. This action has been brought and may properly be maintained as a class action under

1 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
2 of interest in the litigation and the proposed Class is easily ascertainable.

3 **A. Numerosity**

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

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

12 **B. Commonality**

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

- 15 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
16 worked at a proper overtime rate of pay?
- 17 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
18 for all other time worked at the employee's regular rate of pay and a rate of pay that
19 is greater than the applicable minimum wage?
- 20 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
21 Class Members to take compliant meal periods?
- 22 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
23 with additional wages for missed or interrupted meal periods?
- 24 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
25 Class Members to take compliant rest periods?
- 26 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
27 with additional wages for missed rest periods?
- 28 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class

Members upon termination or resignation all wages earned?

H. Are Defendants liable to Class Members for waiting time penalties under Labor Code section 203?

I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?

J. Did Defendants fail to indemnify Class Members for all necessary expenditures or 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. Did Defendants fail to comply with the requirements of the FCRA under 15 U.S.C. section 1681, *et seq.*, including by failing to include the proper disclosures and proper authorizations required by law?

N. Did Defendants fail to comply with the requirements of the ICRAA under California Civil Code section 1786, *et seq.*, including by failing to include the proper disclosures and proper authorizations required by law?

O. Did Defendants fail to comply with the requirements of the Consumer Credit Reporting Agencies Act under California Civil Code section 1785 *et seq.*, including by failing to include the proper disclosures and proper authorizations required by law?

P. Did Defendants willfully fail to comply with the FCRA?

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

R. Are Class Members entitled to interest?

C. Typicality

38. The claims of Plaintiffs 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

1 by each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and
2 damages arising out of and caused by Defendants' common course of conduct in violation of laws
3 and regulations that have the force and effect of law and statutes as alleged herein.

4 **D. Adequacy of Representation**

5 39. Plaintiffs will fairly and adequately represent and protect the interest of Class
6 Members. Counsel who represents Plaintiffs are competent and experienced in litigating wage and
7 hour class actions.

8 **E. Superiority of Class Action**

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

15 41. Class action treatment will allow Class Members to litigate their claims in a manner
16 that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware
17 of any difficulties that are likely to be encountered in the management of this action that would
18 preclude its maintenance as a class action.

19 **FIRST CAUSE OF ACTION**

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

21 42. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
22 preceding paragraphs as though fully set forth hereat.

23 43. At all relevant times, Plaintiffs and Class Members were employees or former
24 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
25 Wage Orders.

26 44. At all times relevant to this Complaint, Labor Code section 510 was in effect and
27 provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
28 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated

1 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

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

7 46. Four (4) years prior to the filing of the Complaint in this Action through the present,
8 Plaintiffs and Class Members, at times, worked for Defendants during shifts that consisted of more
9 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
10 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
11 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
12 actually worked at the proper overtime rate of pay to the detriment of Plaintiffs and Class Members.

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

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

22 **SECOND CAUSE OF ACTION**

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

24 49. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
25 preceding paragraphs as though fully set forth hereat.

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

28 51. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiffs and

1 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
2 Defendants' control.

3 52. For four (4) years prior to the filing of the Complaint in this Action through the
4 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
5 their regular rate of pay that is above the minimum wage to the detriment of Plaintiffs and Class
6 Members.

7 53. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
8 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
9 for all hours worked or otherwise due.

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

14 **THIRD CAUSE OF ACTION**

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

16 55. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
17 preceding paragraphs as though fully set forth hereat.

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

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

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

1 of compensation for each workday that the meal period is not provided.

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

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

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

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

19 **FOURTH CAUSE OF ACTION**

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

21 63. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
22 preceding paragraphs as though fully set forth hereat.

23 64. At all relevant times, Plaintiffs and Class Members were employees or former
24 employees of Defendants covered by applicable Wage Orders.

25 65. California law and applicable Wage Orders require that employers "authorize and
26 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
27 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
28 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who

1 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
2 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
3 thirty (30) minutes of paid rest period.

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

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

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

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

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

26 **FIFTH CAUSE OF ACTION**

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

28 71. Plaintiffs reallege and incorporate by reference all of the allegations contained in the

1 preceding paragraphs as though fully set forth hereat.

2 72. At all relevant times, Plaintiffs and Class Members were employees or former
3 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
4 Wage Orders.

5 73. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were
6 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
7 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
8 discharge immediately upon termination. Class Members who resigned were entitled to payment
9 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
10 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
11 unpaid at the time of resignation.

12 74. Plaintiffs are informed and believe, and based thereon allege, that in the three (3)
13 years before the filing of the Complaint in this Action through the present, Defendants, due to the
14 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiffs and Class
15 Members all wages earned prior to resignation or termination in accordance with Labor Code
16 sections 201 or 202.

17 75. Plaintiffs are informed and believe that Defendants' failure, at times, to pay Plaintiffs
18 and Class Members all wages earned prior to termination or resignation in accordance with Labor
19 Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by
20 Plaintiffs and Class Members at the time of termination in accordance with Labor Code sections
21 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of
22 Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to
23 termination or resignation.

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

27 77. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
28 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned

1 prior to termination or resignation.

2 78. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
3 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
4 waiting time penalties, interest, and their costs of suit, as well.

5 **SIXTH CAUSE OF ACTION**

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

7 79. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
8 preceding paragraphs as though fully set forth hereat.

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

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

16 82. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
17 before the filing of the Complaint in this Action through the present, Defendants failed to comply
18 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
19 failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that
20 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
21 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate, among other things.

23 83. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate
24 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
25 Plaintiffs and the other Class Members with accurate wage statements, but, at times, willfully
26 provided wage statements that Defendants knew were not accurate.

27 84. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
28 suffered injury. The absence of accurate information on Class Members' wage statements at times

1 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
2 mathematical computations to determine the amount of wages owed; causes difficulty and expense
3 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
4 about wages and amounts deducted from wages to state and federal governmental agencies, among
5 other things.

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

10 86. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
11 Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to
12 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
13 attorneys' fees, and costs of suit.

14 **SEVENTH CAUSE OF ACTION**

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

16 87. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
17 preceding paragraphs as though fully set forth hereat.

18 88. Plaintiffs are informed and believe, and based thereon allege that the unlawful
19 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
20 and Professions Code section 17200. Due to their unlawful business practices in violation of the
21 Labor Code, Defendants have gained a competitive advantage over other comparable companies
22 doing business in the State of California that comply with their obligations to compensate employees
23 in accordance with the Labor Code.

24 89. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class
25 Members have suffered injury in fact and lost money or property.

26 90. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class
27 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
28 Code and requiring the establishment of appropriate and effective means to prevent further

1 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
2 including interest thereon, in which they had a property interest and which Defendants nevertheless
3 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
4 to Plaintiffs and Class Members is necessary to prevent Defendants from becoming unjustly
5 enriched by their failure to comply with the Labor Code.

6 91. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
7 Procedure section 1032 and interest under Civil Code section 3287.

8 **EIGHTH CAUSE OF ACTION**

9 **(Violation of the Fair Credit Reporting Act – Against All Defendants)**

10 92. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
11 preceding paragraphs of this Complaint as though fully set forth hereat.

12 93. Defendants are “persons” as defined by section 1681a(b) of the FCRA

13 94. Plaintiffs and Class Members are “consumers” within the meaning of Section
14 1681a(c) of the FCRA because they are “individuals.”

15 95. Pursuant to 15 U.S.C. section 1681b(b)(2)(A), an employer may not procure, or
16 cause to be procured, consumer reports for employment purposes without providing the [employee]
17 with “a clear and conspicuous disclosure... made in writing... in a document that consists solely of
18 the disclosure that a consumer report may be obtained for employment purposes” and which the
19 consumer has “authorized in writing” the procurement of the report by that person.

20 96. 15 U.S.C. section 1681d(a)(1)(B) further provides that an employer may not procure
21 or cause to be prepared an investigative consumer report on any consumer unless it is “clearly and
22 accurately disclosed to the [employee] that an investigative consumer report... may be made and
23 such disclosure includes a statement informing the consumer of his right to request the additional
24 disclosures provided for under subsection (b) of this section and the written summary of the rights
25 of the consumer prepared pursuant to section 1681g(c) of this title.”

26 97. Plaintiffs are informed and believe, and based thereon allege, that during the relevant
27 time periods alleged herein, Defendants have, at times, obtained and used information in consumer
28 reports to conduct background checks on prospective and existing employees which failed to comply

1 with the requirements under the FCRA because they, among other things, included superfluous
2 information within the disclosure, such as identifying information of a third party consumer
3 reporting agency, which may not have been the reporting agency used to obtain or procure the
4 consumer report for Plaintiffs and Class Members and/or failed to obtain proper authorization before
5 procuring a consumer report, including by either obtaining consumer reports without authorization
6 or when such authorization had expired.

7 98. Plaintiffs are informed and believe, and based thereon allege, that Defendants'
8 violations of the FCRA were willful. Defendants knew or should have known about its obligations
9 under the FCRA as a result of the plain language of the statutes.

10 99. Plaintiffs, on behalf of themselves and Class Members, seeks all statutory remedies
11 available under the FCRA, including statutory penalties, actual damages, punitive damages, and
12 attorneys' fees and costs pursuant to, without limitation, 15 U.S.C. §§ 1681n and 1681o.

13 **NINTH CAUSE OF ACTION**

14 **(Viol. of the Cal. Investigative Consumer Reporting Agencies Act – Against All Defendants)**

15 100. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
16 preceding paragraphs as though fully set forth hereat

17 101. At all relevant times, Plaintiffs and Class Members were current, former, and
18 prospective employees of Defendants covered by the California Investigative Consumer Reporting
19 Agencies Act, California Civil Code section 1786 *et seq.* ("ICRAA").

20 102. Plaintiffs are informed and believes that Plaintiffs and Class Members are
21 "consumers" within the meaning Section 1786.2(b) of the ICRAA, because they are "individuals."

22 103. Section 1786.2(c) of the ICRAA defines an "investigative consumer report" as "a
23 consumer report in which information on a consumer's character, general reputation, personal
24 characteristics, or mode of living is obtained through any means."

25 104. Plaintiffs are informed and believe that Defendants obtained background checks
26 from Plaintiffs and Class Members, which qualify as an "investigative consumer report" under the
27 ICRAA.

28 105. Section 1786.16(a)(2) of the ICRAA provides, in relevant part, that "[i]f, at any time,

1 an investigative consumer report is sought for employment purposes... the person seeking the
2 investigative consumer report may procure the report, or cause the report to be made, only if all of
3 the following apply:

4 “(A) The person procuring or causing the report to be made has a permissible
5 purpose, as defined in Section 1786.12.

6 (B) The person procuring or causing the report to be made provides a clear and
7 conspicuous disclosure in writing to the consumer at any time before the report is
8 procured or caused to be made in a document that consists solely of the
9 disclosure...” that, among other things, an investigative report may be obtained;
10 identifies the name, address, and telephone number of the investigative consumer
11 reporting agency conducting the investigation; notifies the consumer in writing of
12 the nature of the scope of the investigation, including a summary of the provision
13 of section 1786.22; and notifies the consumer of the internet website address of the
14 investigative consumer reporting agency or the address, the telephone number of
15 the agency, where the consumer may find information about the investigative
16 reporting agency’s privacy practices, including whether the consumer’s personal
17 information will be sent outside of the United States or its territories and
18 information that complies with subdivision (d) of section 1786.20.

19 (C) The consumer has authorized in writing the procurement of the report.

20 106. Plaintiffs are informed and believe and based thereon alleges that the plain language
21 of the statute indicates that the inclusion of extraneous information in a disclosure form violates the
22 disclosure and authorization requirements of the ICRAA, because such a form would not consist
23 “solely” of the disclosure and that the notice provided be “clear and conspicuous.” Additionally,
24 section 1786.16 requires that the consumer authorize in writing the procurement of the report.

25 107. Plaintiffs are informed and believe that during the relevant time periods alleged
26 herein, Defendants have, at times, failed to make a “clear and conspicuous” disclosure in writing to
27 Plaintiffs and Class Members at any time before the report is or was procured or caused to be made
28 in a document that consists solely of the disclosure, that: an investigative consumer report may be
obtained; notified Plaintiff and Class Members in writing of the nature and scope of the investigation
requested, including a summary of the provisions of Civ. Code § 1786.22; and notified Plaintiffs
and Class Members of the internet web site of the investigative consumer reporting agency, or, if
the agency had no internet web site address, the telephone number of the agency where Plaintiff and
Class Members may find information about the investigative reporting agency’s privacy practices,

1 including whether Plaintiffs and Class Member's personal information will be sent outside of the
2 United States or its territories and information that complies with subdivision (d) of Section 1786.22.

3 108. Plaintiffs are informed and believe that as a result of the above, Defendants have, at
4 times, willfully violated the strict disclosure and authorization requirements under the California
5 Investigative Consumer Reporting Agencies Act, California Civil Code section 1786 *et seq.*
6 ("ICRAA").

7 109. As a result of Defendants' unlawful procurement of background reports by way of its
8 inadequate disclosures and authorizations, as set forth above, Plaintiffs and Class Members have
9 been deprived of their consumer rights and prevented from making informed decisions about
10 whether to permit Defendants to obtain their personal information. As such, Plaintiffs and Class
11 Members have been injured, including, but not limited to, having their privacy and statutory rights
12 invaded in violation of the ICRAA.

13 110. Plaintiffs, on behalf of themselves and Class Members, seeks all available remedies
14 pursuant to, without limitation, California Civil Code section 1786.50, including statutory damages
15 and/or actual damages, punitive damages, and attorneys' fees and costs.

16 **TENTH CAUSE OF ACTION**

17 **(Violation of the Consumer Credit Reporting Agencies Act – Against All Defendants)**

18 111. Plaintiffs realleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs as though fully set forth hereat

20 112. At all relevant times, Plaintiff and Class Members were employees or former
21 employees of Defendants covered by the Consumer Credit Reporting Agencies Act, California Civil
22 Code section 1785 *et seq.* ("CCRAA").

23 113. Section 1785.3(c) of the ICRAA defines "consumer credit report" as "[a]ny written,
24 oral, or other communication or any information by a consumer credit reporting agency bearing on
25 a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to
26 be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the
27 consumer's eligibility for: ... (2) employment purposes..."

28 114. Plaintiffs are informed and believe that the employment background checks procured

1 by Defendants on behalf of Plaintiffs and Class Members qualify as consumer credit reports under
2 the CCRAA.

3 115. Section 1785.20.5(a) of the CCRAA provides, in relevant part, that “[p]rior to
4 requesting a consumer credit report for employment purposes, the user of the report shall provide
5 written notice to the person involved. The notice shall inform the person that a report will be used,
6 and shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for
7 use of the report. The notice shall also inform the person of the source of the report...”

8 116. Plaintiffs are informed and believe and based thereon alleges that for the relevant
9 time periods described herein, Defendants have, at times, obtained and used information in
10 consumer reports to conduct background checks on prospective and existing employees without
11 providing proper notice informing Plaintiffs and Class Members of the source of the reports, without
12 identifying the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of
13 the report and/or without supplying the name and address of the consumer credit reporting agency
14 making the report, as required by California Civil Code section 1785.20.5(b).

15 117. Plaintiffs are informed and believe that as a result of the above, Defendants have, at
16 times, willfully violated the strict disclosure and authorization requirements under the CCRAA.

17 118. Plaintiffs are informed and believes Defendants' conduct in violation of Section
18 1785.20.5(a) of the CCRAA was and is willful and/or grossly negligent. Defendants acted in
19 deliberate or reckless disregard of their obligations and the rights of applicants and employees,
20 including Plaintiffs and Class Members.

21 119. As a result of Defendants' illegal procurement of credit reports by way of their
22 inadequate notice, as set forth above, Plaintiffs and Class Members have been injured including, but
23 not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

24 120. Plaintiffs, on behalf of himself and Class Members, seeks all available remedies
25 pursuant to, without limitation, California Civil Code section 1785.31, including statutory damages
26 and/or actual damages, punitive damages, injunctive relief, and attorneys' fees and costs.

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ELEVENTH CAUSE OF ACTION

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

121. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs and incorporate each by reference as though fully set forth hereat.

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

123. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in 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.”

124. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other Aggrieved Employees 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 for each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204.

TWELFTH CAUSE OF ACTION

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

125. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

1 126. Defendants had and have a policy or practice of failing to comply with Labor Code
2 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
3 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
4 wages earned; the name and address of each employer with whom they have been placed to work;
5 all applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
7 entity securing the employer's services if the employer is a farm labor contractor; and other such
8 information as required by Labor Code section 226, subdivision (a).

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

14 128. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
15 this section are in addition to any other penalty provided by law."

16 129. Plaintiffs are informed and believe, and based thereon alleges, that Defendants had
17 and have a policy or practice of failing to furnish non-exempt employees, including, without
18 limitation, Plaintiffs, with itemized wage statements that accurately reflect gross wages earned; total
19 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
20 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
21 name of the employer and/or the name and address of the legal entity securing the employer's services
22 if the employer is a farm labor contractor; and other such information as required by Labor Code
23 section 226, subdivision (a).

24 130. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are
25 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
26 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
27 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
28 period for each subsequent violation.

1 **THIRTEENTH CAUSE OF ACTION**

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

3 131. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

16 133. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
17 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
18 causing Plaintiffs and other Aggrieved Employees not to: be paid overtime wages and minimum
19 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
20 their employment and after their employment separation; receive accurate, itemized wage
21 statements; be provided with the opportunity to inspect employment records; be provided with
22 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
23 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
24 of pay.

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

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

2 **FOURTEENTH CAUSE OF ACTION**

3 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

4 135. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
5 and incorporates each by reference as though fully set forth hereat.

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

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

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

25 139. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
26 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
27 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
28 member of the commission or employees of the division to inspect records pursuant to subdivision

1 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

2 140. Plaintiffs are informed and believe, and based thereon alleges, that Defendants have
3 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
4 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
5 inspection of records as required by Labor Code subdivision (b).

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

10 **FIFTEENTH CAUSE OF ACTION**

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

12 142. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
13 and incorporates each by reference as though fully set forth hereat.

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

20 (1) For any initial violation that is intentionally committed, one hundred dollars
21 (\$100) for each underpaid employee for each pay period for which the
22 employee is underpaid. This amount shall be in addition to an amount
23 sufficient to recover underpaid wages, liquidated damages pursuant to Section
24 1194.2, and any applicable penalties imposed pursuant to Section 203.

25 (2) For each subsequent violation for the same specific offense, two hundred fifty
26 dollars (\$250) for each underpaid employee for each pay period for which the
27 employee is underpaid regardless of whether the initial violation is
28 intentionally committed. This amount shall be in addition to an amount

1 sufficient to recover underpaid wages, liquidated damages pursuant to Section
2 1194.2, and any applicable penalties imposed pursuant to Section 203.
3 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
4 Section 203, recovered pursuant to this section shall be paid to the affected
5 employee.”

6 144. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
7 caused Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
8 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ wages for all
9 hours worked or otherwise under Defendants’ control due to, without limitation, failing to accurately
10 track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum
11 wage.

12 145. As a direct and proximate result of the herein-described Labor Code violations,
13 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to
14 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
15 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
16 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
17 subsequent violation.

18 **SIXTEENTH CAUSE OF ACTION**

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

20 146. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
21 and incorporates each by reference as though fully set forth hereat.

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

28 148. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor

1 Code except those for which a civil penalty is specifically provided, the established civil penalty for
2 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
3 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
5 employee per pay period for each subsequent violation.

6 149. Plaintiffs are informed and believe and based thereon allege that Defendants, and
7 each of them, violated the Labor Code sections described herein, including, without limitation, for
8 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
9 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
10 employment and after employment separation; provide employees the opportunity to inspect
11 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
12 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
13 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
14 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
15 freedom of speech, entitling Plaintiffs and other Aggrieved Employees to civil penalties for each of
16 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

17 150. Moreover, Plaintiffs and other Aggrieved Employees within the State of California
18 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
19 connection with their herein-described claims for civil penalties.

20 **DEMAND FOR JURY TRIAL**

21 151. Plaintiffs demand a trial by jury on all causes of action contained herein.

22 **PRAYER**

23 WHEREFORE, on behalf of Plaintiffs and Class Members, Plaintiffs pray for judgment
24 against Defendants as follows:

- 25 A. An order certifying this case as a Class Action;
- 26 B. An Order appointing Plaintiffs as Class Representatives and appointing Plaintiffs'
27 counsel as class counsel;
- 28 C. Damages for all wages earned and owed, including minimum and overtime wages

- 1 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- 2 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 3 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 4 among other Labor Code sections, 512, 558.1 and 226.7;
- 5 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 6 subdivision (e) and 558.1;
- 7 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 8 H. Damages under Labor Code sections 558.1 and 2802;
- 9 I. Preliminary and permanent injunctions prohibiting Defendants from further
- 10 violating the California Labor Code and requiring the establishment of appropriate
- 11 and effective means to prevent future violations;
- 12 J. Restitution of wages and benefits due which were acquired by means of any unfair
- 13 business practice, according to proof;
- 14 K. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,
- 15 1174.5, 1197.1, and 2699;
- 16 L. An award of attorneys' fees pursuant to Labor Code sections 210, 226.3, 558,
- 17 558.1, 1174.5, 1197.1, and 2699;
- 18 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 19 N. For attorneys' fees in prosecuting this action;
- 20 O. For costs of suit incurred herein; and
- 21 P. For such other and further relief as the Court deems just and proper.

22 Dated: May 2, 2022

BIBIYAN LAW GROUP, P.C.

24 BY: Vedang J. Patel

25 DAVID D. BIBIYAN

26 VEDANG J. PATEL

27 Attorneys for Plaintiffs FERNANDO VIGIL
and DOUGLAS R. HERNANDEZ, as
28 individuals and on behalf of all others
similarly situated

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 3, 2022, I caused a true and correct copy of the foregoing document(s) described as **SECOND AMENDED COMPLAINT** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below service list:

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Counsel for Defendant Capstone Turbine Corporation

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

Executed on May 3, 2022 at Beverly Hills, California.

/s/ Emanuel Munquia
Emanuel Munguia