

COPY

BIBIYAN LAW GROUP, P.C.

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

david@tomorrowlaw.com

Diego Aviles (Cal. Bar No. 315533)

diego@tomorrowlaw.com

Anton Swain-Gil (Cal. Bar No. 323237)

anton@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

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

Attorneys for Plaintiffs, JUAN VALDEZ
and CESAR VALDEZ, as individuals and
on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JUAN VALDEZ and CESAR
VALDEZ, as individuals and on
behalf of all others similarly situated,

Plaintiffs,

v.

INTEGRATED BUILDING SERVICES,
INC., a California corporation;
INTEGRATED BUILDING SERVICES,
LLC, a canceled California limited liability
company; PASADENA HOTEL OPERATOR,
INC., a surrendered Delaware corporation; F
& B ASSOCIATES, INC., a California
corporation; MERRITT HOSPITALITY,
LLC, a Delaware limited liability company;
ANGEL CIFUENTES, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV37793

**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 TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION.
10. CIVIL PENALTIES UNDER LABOR CODE § 210;
11. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
12. VIOLATION OF LABOR CODE § 558;
13. VIOLATION OF LABOR CODE § 1174.5;
14. VIOLATION OF LABOR CODE § 1197.1; and
15. CIVIL PENALTIES UNDER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COME NOW plaintiffs JUAN VALDEZ and CESAR VALDEZ ("Plaintiffs"), as
individuals and on behalf of all others similarly situated and aggrieved, and allege as follows:

1 **GENERAL ALLEGATIONS**

2 **INTRODUCTION**

3 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
4 INTERGRATED BUILDING SERVICES, INC., and any of its respective subsidiaries or affiliated
5 companies within the State of California ("IBS, INC."), INTEGRATED BUILDING SERVICES,
6 LLC, and any of its respective subsidiaries or affiliated companies within the State of California
7 ("IBS, LLC"), PASADENA HOTEL OPERATOR, INC. and any of its respective subsidiaries or
8 affiliated companies within the State of California ("PASADENA HOTEL"), F & B ASSOCIATES,
9 INC., and any of its respective subsidiaries or affiliated companies within the State of California ("F
10 & B"). MERRITT HOSPITALITY, LLC, and any of its respective subsidiaries or affiliated
11 companies within the State of California ("MERRITT") and ANGEL CIFUENTES
12 ("CIFUENTES," together with IBS, INC., IBS, LLC, PASADENA HOTEL, F & B, MERRITT,
13 and DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiffs and all
14 other current and former non-exempt California employees employed by or formerly employed by
15 Defendants ("Class Members").

16 2. This is also a Representative Action, pursuant to the Labor Code Private Attorneys
17 General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"). against Defendants,
18 as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"),
19 on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
20 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
21 for failure to pay overtime and minimum wages, to provide meal and rest breaks or compensation
22 in lieu thereof, to provide employees the opportunity to inspect employment records, pay timely
23 wages during employment and at the time of employment separation, provide uniform deposits and
24 interest thereon, comply with Labor Code section 2810.5, comply with Labor Code section 203,
25 comply with Labor Code section 226, comply with Labor Code section 246. *et seq.* and comply
26 Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty
27 Period (collectively, "Aggrieved Employees").

28 ///

PARTIES

A. Plaintiffs

3. Plaintiff JUAN VALDEZ is a resident of the State of California. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants employed Plaintiff JUAN VALDEZ as a non-exempt employee, with duties that included, but were not limited to, preparing and cooking food. Plaintiffs are informed and believe, and based thereon allege that Plaintiff JUAN VALDEZ worked for Defendants from approximately July of 2016 through approximately December of 2019.

4. Plaintiff CESAR VALDEZ is a resident of the State of California. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that Defendants employed Plaintiff CESAR VALDEZ as a non-exempt employee, with duties that included, but were not limited to, preparing and cooking food. Plaintiffs are informed and believe, and based thereon allege that Plaintiff CESAR VALDEZ worked for Defendants from approximately August of 2018 through approximately October of 2019.

B. Defendants

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

6. Plaintiffs are informed and believe and based thereon allege that defendant IBS, LLC is, and at all times relevant hereto was, a canceled limited liability company organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

7. Plaintiffs are informed and believe and based thereon allege that defendant PASADENA HOTEL is, and at all times relevant hereto was, a surrendered corporation organized and existing under and by virtue of the laws of the State of Delaware and doing business in the County of Los Angeles, State of California.

8. Plaintiffs are informed and believe and based thereon allege that defendant F & B is,

1 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
2 laws of the State of California and doing business in the County of Los Angeles, State of California.

3 9. Plaintiffs are informed and believe and based thereon allege that defendant
4 MERRITT is, and at all times relevant hereto was, a limited liability company organized and existing
5 under and by virtue of the laws of the State of Delaware and doing business in the County of Los
6 Angeles, State of California.

7 10. Plaintiffs are informed and believe and based thereon alleges that defendant
8 CIFUENTES is, and at all times relevant hereto was, an individual residing in California, as well as
9 Chief Executive Officer and/or principal for IBS, INC., and DOES 1 through 100, as further defined
10 below. Plaintiffs are further informed and believe and based thereon alleges that CIFUENTES
11 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
12 provisions in violation of Labor Code section 558.1.

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

27 ///

28 ///

JOINT LIABILITY ALLEGATIONS

12. Plaintiffs are informed and believe and based thereon allege that all the times mentioned herein, each of the Defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing the things alleged herein acted within the course and scope of such agency, employment, joint venture, and conspiracy.

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

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

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

16. Plaintiffs are informed and believe, and based thereon allege that despite the formation of the purported corporate existence of IBS, INC., and DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with CIFUENTES and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following reasons:

A. The Alter Ego Defendants are completely dominated and controlled by the Individual Defendants who personally committed the wrongful and illegal acts and violated the

1 laws as set forth in this First Amended Complaint, and who has hidden and currently
2 hide behind the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or
3 accomplish some other wrongful or inequitable purpose;

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

8 C. Plaintiffs are informed and believe and thereon alleges that the Individual Defendants
9 and the Alter Ego Defendants, while really one and the same, were segregated to
10 appear as though separate and distinct for purposes of perpetrating a fraud,
11 circumventing a statute, or accomplishing some other wrongful or inequitable
12 purpose;

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

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

27 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
28 Defendants (and vice versa), and the fiction of their separate corporate existence

1 must be disregarded;

2 17. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
3 thereon alleges that Defendants, and each of them, are joint employers.

4 **JURISDICTION**

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

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

16 20. Plaintiffs are "aggrieved employees" under PAGA, as Plaintiffs were employed by
17 Defendants during the applicable statutory period and suffered one or more of the Labor Code
18 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term "civil
19 penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under PAGA plus
20 reasonable attorneys' fees and costs, for Plaintiffs and all other aggrieved current and former
21 employees of Defendants during the Civil Penalty Period.

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

26 22. During the period beginning one (1) year preceding the provision of notice to the
27 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
28 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7,

1 246, *et seq.*, 404, 432, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and
2 2810.5, among others.

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

7 24. On or around July 28, 2020, Plaintiffs provided written notice pursuant to Labor
8 Code section 2699.3 online and by certified mail, with return receipt requested, of IBS, INC.,
9 PASDENA HOTEL, and CIFUENTES' violation of various, including the herein-described,
10 provisions of the Labor Code, to the LWDA, as well as by certified mail. with return receipt
11 requested to IBS, INC., PASDENA HOTEL, and CIFUENTES, and each of them. On or around
12 October 1, 2020, Plaintiffs provided an amended written notice pursuant to Labor Code section
13 2699.3 online and by certified mail, with return receipt requested. of Defendants' violation of
14 various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by
15 certified mail, with return receipt requested to Defendants, and each of them.

16 25. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A). the LWDA did not
17 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
18 calendar days of the October 1, 2020 postmarked date of the herein-described amended notice sent
19 by Plaintiffs to the LWDA and Defendants.

20 **FACTUAL BACKGROUND**

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

1 detriment of Plaintiffs and Class Members.

2 27. At all times during the Civil Penalty Period, Defendants had and have a policy or
3 practice of failing to pay overtime wages to Aggrieved Employees in the State of California in
4 violation of California state wage and hour laws as a result of, without limitation, Aggrieved
5 Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight
6 workdays in a workweek without paying them proper overtime wages, as a result of, without
7 limitation, failing to accurately track and/or pay for all minutes actually worked; engaging,
8 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
9 employees: to come early to work and leave late work without being able to clock in for all that
10 time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks
11 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
12 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
13 clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing
14 to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal
15 allowances, and other forms of remuneration into the regular rate of pay for the pay periods where
16 overtime was worked and the additional compensation was earned for the purpose of calculating the
17 overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of
18 time entries to show less hours than actually worked, and for paying straight pay instead of overtime
19 pay to the detriment of Aggrieved Employees.

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

25 29. At all times during the Civil Penalty Period, Defendants had and have a policy or
26 practice of failing to compensate Aggrieved Employees with minimum wages for all hours worked
27 or otherwise under Defendants' control as a result of, without limitation, failing to accurately track
28 and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work

1 off the clock, including, without limitation, by requiring employees: to come early to work and leave
2 late work without being able to clock in for all that time, to suffer under Defendants' control due to
3 long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after
4 clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to
5 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
6 clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries;
7 editing and/or manipulation of time entries to show less hours than actually worked; failing to pay
8 reporting time pay; and failing to pay split shift premiums, to the detriment of Aggrieved Employees.

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

15 31. At all times during the Civil Penalty Period, Defendants had and have a policy or
16 practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without
17 being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu
18 thereof including, without limitation: by interrupting meal periods; not providing timely meal
19 periods; failing to provide first and second meal periods; providing short meal periods; requiring
20 that employees carry cellular telephones or walkie-talkies during meal periods; not permitting
21 employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-
22 deducting meal periods that could not be auto-deducted by law or during which employees worked.

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

28 33. At all times during the Civil Penalty Period, Defendants had and have a policy or

1 practice of compelling Aggrieved Employees to work over four-hour periods (or major fractions
2 thereof) without authorizing and permitting Aggrieved Employees to take uninterrupted, timely, and
3 complete ten-minute rest periods in which the employees are completely relieved of all of their
4 duties, including, without limitation: by failing to provide rest periods all together; requiring that
5 they be bundled together and/or with meal periods; interrupting them; requiring that employees carry
6 cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; not
7 permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods.

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

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

20 36. For at least one (1) year prior to the filing of this action and continuing to the present,
21 Defendants have, at times, failed to pay Plaintiffs, Aggrieved Employees, and Class Members, or
22 some of them, the full amount of their wages for labor performed in a timely fashion as required
23 under Labor Code section 204.

24 37. At all times during the Civil Penalty Period, Defendants had and have a policy or
25 practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing
26 to furnish Plaintiffs and other Aggrieved Employees with documents signed to obtain or hold
27 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,
28 and time records under Labor Code section 1174, making it difficult for Plaintiffs and other

1 Aggrieved Employees to calculate their unpaid wages and/or premium payments, to the detriment
2 of Plaintiffs and other Aggrieved Employees

3 38. For at least three (3) years prior to the filing of this action and continuing to the
4 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
5 costs incurred in purchasing mandatory work uniforms; laundering mandatory work uniforms; and
6 purchasing tools necessary to perform work duties including, without limitation, knives, aprons,
7 shoes and labels.

8 39. At all times during the Civil Penalty Period, Defendants have and had a policy or
9 practice of failing and refusing, and continue to fail and refuse, to reimburse Aggrieved Employees
10 with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing uniforms,
11 providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase
12 of tools and safety equipment, including, without limitation, knives, aprons, shoes and labels, and
13 for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence
14 of the discharge of their duties, or of their obedience to the directions of Defendants, as required by
15 Labor Code section 2802.

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

24 41. At all times during the Civil Penalty Period, Defendants failed to provide Plaintiffs
25 and other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant
26 to California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
27 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and
28 all other Aggrieved Employees.

42. At all times during the Civil Penalty Period, Defendants had and have a policy or practice of failing to reimburse deposits made by Aggrieved Employees, including uniform deposits, together with all interest owed at the separation of employment in violation of Labor Code section 404.

43. Plaintiffs, on their own behalf and on behalf of Class Members and other Aggrieved Employees, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, *et seq.*, 404, 432. 510, 512. 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198.5, 2699, 2802, *et al.*, 2810.5, and applicable Wage Orders of the Industrial Welfare Commission, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, civil penalties, other such provisions of California law, and reasonable attorneys' fees and costs.

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

CLASS ACTION ALLEGATIONS

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

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

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

4 **A. Numerosity**

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

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

13 **B. Commonality**

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

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

- 1 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
2 Members upon termination or resignation all wages earned?
- 3 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
4 section 203?
- 5 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
6 Class Members with accurate wage statements?
- 7 J. Did Defendants fail to pay Class Members in a timely fashion as required under
8 Labor Code section 204?
- 9 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
10 losses incurred in direct consequence of the discharge of their duties or by obedience
11 to the directions of Defendants as required under Labor Code section 2802?
- 12 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
13 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 14 M. Are Class Members entitled to restitution of wages under Business and Professions
15 Code section 17203?
- 16 N. Are Class Members entitled to costs and attorneys' fees?
- 17 O. Are Class Members entitled to interest?

18 **C. Typicality**

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

24 **D. Adequacy of Representation**

25 52. Plaintiffs will fairly and adequately represent and protect the interest of Class
26 Members. Counsel who represents Plaintiffs are competent and experienced in litigating wage and
27 hour class actions.

28 ///

[illegible]

54. 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. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

(Failure to Pay Overtime Wages – Against All Defendants)

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

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

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

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

61. As a result of the unlawful acts of Defendants, Plaintiffs 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)

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

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

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

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

66. As a result of Defendants' unlawful conduct, Plaintiffs 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.

67. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs 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)

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

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

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

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

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

1 provided compliant meal periods.

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

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

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

13 **FOURTH CAUSE OF ACTION**

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

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

17 77. At all relevant times, Plaintiffs and Class Members were employees or former
18 employees of Defendants covered by applicable Wage Orders.

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

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

1 regular rate of compensation for each work day that the rest period is not provided.

2 80. 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 authorized or permitted to take complete,
4 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
5 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
6 Member's regular rate of compensation on the occasions that Class Members were not authorized
7 or permitted to take compliant rest periods.

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

27 ///

28 ///

SIXTH CAUSE OF ACTION

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

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

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

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

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

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

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

1 other things.

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

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

10 **SEVENTH CAUSE OF ACTION**

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

12 100. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
13 incorporate each by reference as though fully set forth hereat.

14 101. At all relevant times, Plaintiffs and Class Members were employees or former
15 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

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

21 103. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
22 independent and apart from, any other penalty provided in this article, every person who fails to pay
23 the wages of each employee as provided in Sections 201.3, 204, 204b. 204.1, 204.2, 205, 205.5, and
24 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
25 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
26 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
27 percent of the amount unlawfully withheld.”

28 104. Plaintiffs are informed and believe, and based thereon alleges, that in the one (1) year

1 before the filing of the Complaint in this Action through the present. Defendants employed policies
2 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
3 Labor Code section 204.

4 105. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to
5 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one
6 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
7 for each subsequent violation in connection with each payment that was made in violation of Labor
8 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

9 106. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
10 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
11 penalties, interest, and their costs of suit, as well.

12 **EIGHTH CAUSE OF ACTION**

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

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

16 108. At all relevant times, Plaintiffs and Class Members were employees or former
17 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

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

21 110. For three (3) years prior to the filing of the Complaint in this Action through the
22 present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times,
23 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
24 obedience to the directions of Defendants that included, without limitation: costs incurred in
25 purchasing mandatory work uniforms; laundering mandatory work uniforms; and purchasing tools
26 necessary to perform work duties including, without limitation, knives, aprons, shoes and labels.

27 111. During that time period, Plaintiffs are informed and believe, and based thereon allege
28 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiffs and

1 Class Members for those losses and/or expenditures.

2 112. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
3 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
4 herein-described losses and/or expenditures.

5 113. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
6 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
7 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
8 costs of suit.

9 **NINTH CAUSE OF ACTION**

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

11 114. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
12 preceding paragraphs as though fully set forth hereat.

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

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

21 117. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class
22 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
23 Code and requiring the establishment of appropriate and effective means to prevent further
24 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
25 including interest thereon, in which they had a property interest and which Defendants nevertheless
26 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
27 to Plaintiffs and Class Members is necessary to prevent Defendants from becoming unjustly
28 enriched by their failure to comply with the Labor Code.

1 118. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
2 Procedure section 1032 and interest under Civil Code section 3287.

3 **TENTH CAUSE OF ACTION**

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

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

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

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

19 122. At all relevant times herein, Defendants have had a consistent policy or practice of
20 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
21 per Labor Code section 204. Thus, pursuant to Labor Code section 210. Plaintiffs and other
22 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
23 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
24 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
25 for each subsequent violation in connection with each payment that was made in violation of Labor
26 Code section 204.

27 ///

28 ///

ELEVENTH CAUSE OF ACTION

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

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

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

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

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

127. Plaintiffs are informed and believe, and based thereon allege, that Defendants had and have a policy or practice of failing to furnish non-exempt employees, including, without limitation, Plaintiffs, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and other such information as required by Labor Code section 226, subdivision (a)

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

1 **TWELFTH CAUSE OF ACTION**

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

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

5 130. 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.”

16 131. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 violated, or caused to be violated, the Labor Code sections described herein. including causing
18 Plaintiffs and other Aggrieved Employees not to: be paid overtime wages and minimum wages;
19 receive meal and rest periods or compensation in lieu thereof; be paid timely wages during their
20 employment and after their employment separation; receive accurate, itemized wage statements; be
21 provided with the opportunity to inspect employment records; be indemnified for necessary work
22 expenses; be provided with notice as required under Labor Code section 2810.5; and be provided
23 with the proper accrual and use of paid sick leave.

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

THIRTEENTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

9 **FOURTEENTH CAUSE OF ACTION**

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

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

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

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

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

1 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

5 142. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
6 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants
7 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ wages for all
8 hours worked or otherwise under Defendants’ control due to, without limitation, failing to accurately
9 track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to
10 work off the clock, including, without limitation, by requiring employees: to come early to work
11 and leave late work without being able to clock in for all that time, to suffer under Defendants’
12 control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift
13 tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest
14 periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings
15 off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time
16 entries; editing and/or manipulation of time entries to show less hours than actually worked; failing
17 to pay reporting time pay; and failing to pay split shift premiums.

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

24 **FIFTEENTH CAUSE OF ACTION**

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

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

28 145. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other

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

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

12 147. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 violated the Labor Code sections described herein, including, without limitation, for the failure to:
14 pay overtime wages and minimum wages; provide meal and rest periods or compensation in lieu
15 thereof; provide accurate, itemized wage statements; pay timely wages during employment and after
16 employment separation; provide employees the opportunity to inspect employment records;
17 reimburse Aggrieved Employees for costs incurred in furtherance of their work duties; reimburse
18 Aggrieved Employees for deposits made plus interest thereon, provide notice as required under
19 Labor Code section 2810.5; and provide the proper accrual and use of paid sick leave, entitling
20 Plaintiffs and other Aggrieved Employees to civil penalties for each of these Labor Code violations
21 in the amounts set forth in Labor Code section 2699, subdivision (f).

22 148. Moreover, Plaintiffs and other Aggrieved Employees within the State of California
23 whom they seek to represent are entitled to an award of reasonable attorneys' fees and costs in
24 connection with their herein-described claims for civil penalties.

25 **DEMAND FOR JURY TRIAL**

26 149. Plaintiffs demand a trial by jury on all causes of action contained herein.

27 ///

28 ///

PRAYER

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

- A. An order certifying this case as a Class Action;
- B. An Order appointing Plaintiffs as Class Representatives and appointing Plaintiffs' counsel as class counsel;
- C. Damages for all wages earned and owed, including minimum and overtime wages under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512, 558.1 and 226.7;
- F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision (e) and 558.1;
- G. Waiting time penalties under Labor Code sections 203 and 558.1;
- H. Penalties to timely pay wages under Labor Code sections 210 and 558.1;
- I. Damages under Labor Code sections 558.1 and 2802;
- J. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;
- K. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- N. For attorneys' fees in prosecuting this action;
- O. For costs of suit incurred herein; and

///

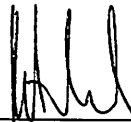
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: December 29, 2020

BIBIYAN LAW GROUP, P.C.

BY: 
ANTON SWAIN-GIL
DAVID D. BIBIYAN
Attorneys for Plaintiffs JUAN VALDEZ and CESAR
VALDEZ, as individuals and on behalf of all others
similarly situated