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ZELAYA BERRIOS and ESTEFANI VERENICE
6 RAMIREZ, as individuals and on behalf of
all others similarly situated and aggrieved
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**
10

11 CRISTIAN ALBERTO ZELAYA BERRIOS
and ESTEFANI VERENICE RAMIREZ, as
12 individuals and on behalf of all others
similarly situated and aggrieved,

13 Plaintiffs,

14 v.

15 LEBLEUCHATEAU, INC., a California
corporation; and DOES 1 through 100,
16 inclusive,

17 Defendants.
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FILED
Superior Court of California
County of Los Angeles

01/05/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Miro Deputy

CASE NO.: 20STCV48283

[Assigned to the Hon. Daniel J. Buckley in
Dept. 1]

**FIRST AMENDED CLASS AND
REPRESENTATIVE 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 THE PRIVATE ATTORNEYS GENERAL ACT (2004) FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, AND 2699, et seq.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 COME NOW plaintiffs CRISTIAN ALBERTO ZELAYA BERRIOS and ESTEFANI
2 VERENICE RAMIREZ (“Plaintiffs”), as individuals and on behalf of all others similarly situated
3 and aggrieved, and allege as follows:

4 **GENERAL ALLEGATIONS**

5 **INTRODUCTION**

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

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

21 **PARTIES**

22 **A. Plaintiffs**

23 3. Plaintiff CRISTIAN ALBERTO ZELAYA BERRIOS is a resident of the State of
24 California. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege
25 that Defendants employed Plaintiff CRISTIAN ALBERTO ZELAYA BERRIOS as a non-exempt
26 employee, with duties that included, but were not limited to, assisting patients, janitorial duties, and
27 housekeeping. Plaintiffs are informed and believe, and based thereon allege that Plaintiff
28 CRISTIAN ALBERTO ZELAYA BERRIOS worked for Defendants from approximately July of

1 2019 through approximately January of 2020.

2 4. Plaintiff ESTEFANI VERENICE RAMIREZ is a resident of the State of California.
3 At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege that
4 Defendants employed Plaintiff ESTEFANI VERENICE RAMIREZ as a non-exempt employee,
5 with duties that included, but were not limited to, doing laundry and housekeeping. Plaintiffs are
6 informed and believe, and based thereon allege that Plaintiff ESTEFANI VERENICE RAMIREZ
7 worked for Defendants from approximately November of 2019 through approximately January of
8 2020.

9 **B. Defendants**

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

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

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1 **JOINT LIABILITY ALLEGATIONS**

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

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

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

18 **JURISDICTION**

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

21 11. 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 and Defendants was due to be performed; the county in which the employment contract, or part of
26 it, between Plaintiffs and Defendants was actually performed; and the county in which Defendants,
27 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs
28 and Class Members in Los Angeles County, and because Defendants employ numerous Class

1 Members in Los Angeles County.

2 12. Plaintiffs are each an “aggrieved employee” under PAGA, as they were employed
3 by 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, on behalf of themselves and all
5 other aggrieved current and former employees of Defendants, the civil penalties provided by PAGA
6 plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v.*
7 *Superior Court* (2019) 8 Cal.5th 175.

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

12 14. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 432,
15 510, 512, 558, 1174, 1194, 1197, 1198.5, 2802, and 2810.3, and 2810.5, among others.

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

20 16. On or around July 27, 2020, both Plaintiffs provided written notice under Labor Code
21 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
22 of various, including the herein-described, provisions of the Labor Code, to the Labor and
23 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
24 requested to Defendants, and each of them.

25 17. Plaintiffs also provided Defendants, and each of them, with notice under Labor Code
26 section 2810.3, subdivision (d) that Plaintiffs would seek to hold them liable for each other’s wage
27 and hour violations under Labor Code section 2810.3 on the same date by certified mail with return
28 receipt requested.

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

FACTUAL BACKGROUND

19. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to wait in long lines to clock in and out, and to clock out for meal periods and continue working; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked; and paying straight pay instead of overtime pay, to the detriment of Plaintiffs and Class Members. As such, Plaintiffs are informed and believe, and based thereon allege, that Defendants violated Labor Code sections 510 and 1194, and applicable Wage Orders based on their practice of providing total compensation that is less than the required legal overtime compensation, entitling Plaintiff and other aggrieved employees to relief under, without limitation, these sections. In addition, Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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

1 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
2 off the clock, including, without limitation, by requiring employees: to suffer under Defendants'
3 control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to wait
4 in long lines to clock in and out, and to clock out for meal periods and continue working; detrimental
5 rounding of employee time entries; and editing and/or manipulation of time entries to show less
6 hours than actually worked, to the detriment of Plaintiffs and Class Members. As such, Plaintiffs
7 are informed and believe, and based thereon allege, that Defendants violated, without limitation,
8 Labor Code section 1197 and applicable Wage Orders, based on their continued failure to pay
9 minimum wages, entitling Plaintiffs and other aggrieved employees to relief under, without
10 limitation, Labor Code sections 1194 and 1194.2. Defendants would also be liable for civil penalties
11 pursuant to Labor Code sections 558, 1197.1, and 2699.

12 21. For at least four (4) years prior to the filing of this Action and continuing to the
13 present, Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them,
14 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
15 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
16 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
17 for such unprovided meal periods as required by California wage and hour laws. As such, Plaintiffs
18 are informed and believe, and based thereon allege, that Defendants violated Labor Code section
19 512, entitling Plaintiffs and other aggrieved employees to premium payments under Labor Code
20 section 226.7. Defendants would also be liable for civil penalties pursuant to Labor Code sections
21 558 and 2699.

22 22. 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 authorize and permit Plaintiffs and Class Members, or
24 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
25 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
26 California wage and hour laws. As such, Plaintiffs are informed and believe, and based thereon
27 allege, that they and other aggrieved employees are entitled to relief under, without limitation, Labor
28 Code section 226.7. Defendants would also be liable for civil penalties pursuant to Labor Code

1 sections 558 and 2699.

2 23. For at least three (3) years prior to the filing of this action and continuing to the
3 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
4 full amount of their wages owed to them upon termination and/or resignation as required by Labor
5 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
6 minimum wages, and premium wages. As such, Defendants would be liable for waiting time
7 penalties for having violated California Labor Code sections 201, 202, and 203. Defendants would
8 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

9 24. For at least one (1) year prior to the filing of this Action and continuing to the present,
10 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with
11 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
12 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
13 hours worked at each hourly rate; and other such information as required by Labor Code section
14 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
15 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.
16 Consequently, since Defendants would have failed to comply with Labor Code section 226,
17 subdivision (a), Plaintiffs and other aggrieved employees would be entitled to recover penalties
18 under, without limitation, Labor Code section 226, subdivision (e). Defendants would also be liable
19 for civil penalties pursuant to Labor Code sections 226.3, 558 and 2699.

20 25. 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 and Class Members, or some of them, the full
22 amount of their wages for labor performed in a timely fashion as required under Labor Code section
23 204.

24 26. For at least three (3) years prior to the filing of this action and continuing to the
25 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
26 costs incurred in purchasing mandatory work uniforms; laundering mandatory work uniforms;
27 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using
28 cellular phones for work-related purposes; for the purchase of tools and safety equipment, including

1 slip-resistant shoes, cleaning materials, and rags, necessary to perform work duties; and for the
2 purchase of tuberculosis tests and fingerprinting.

3 27. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action
4 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
5 510, 512, 1194, 1194.2, 1197, 2802., and applicable Wage Orders of the Industrial Welfare
6 Commission, seeking overtime wages, minimum wages, payment of premium wages for missed
7 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
8 failure to indemnify work-related expenses, other such provisions of California law, and reasonable
9 attorneys' fees and costs.

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

16 29. At all relevant times mentioned herein, Defendants have had a policy or practice of
17 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
18 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
19 Employees with the rates of pay and overtime rates of pay applicable to their employment;
20 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
21 name, address, and telephone number of the workers' compensation insurance carrier; information
22 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
23 under Labor Code section 2810.5. As a result of these violations, Defendants are liable for civil
24 penalties pursuant to Labor Code sections 558 and 2699.

25 30. Plaintiffs, in their representative capacity, seek civil penalties under Labor Code
26 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
27 California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
28 Employees pursuant to PAGA.

1 **CLASS ACTION ALLEGATIONS**

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

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

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

14 **A. Numerosity**

15 34. The potential Class Members as defined are so numerous that joinder of all the
16 members of the Class is impracticable. While the precise number of Class Members has not been
17 determined yet, Plaintiffs are informed and believe that there are over fifty (50) Class Members
18 employed by Defendants within the State of California.

19 35. Accounting for employee turnover during the relevant periods necessarily increases
20 this number. Plaintiffs allege Defendants' employment records would provide information as to the
21 number and location of all Class Members. Joinder of all members of the proposed Class is not
22 practicable.

23 **B. Commonality**

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

- 26 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
27 worked at a proper overtime rate of pay?

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- 1 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
2 for all other time worked at the employee's regular rate of pay and a rate of pay that
3 is greater than the applicable minimum wage?
- 4 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
5 Class Members to take compliant meal periods?
- 6 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
7 with additional wages for missed or interrupted meal periods?
- 8 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
9 Class Members to take compliant rest periods?
- 10 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
11 with additional wages for missed rest periods?
- 12 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
13 Members upon termination or resignation all wages earned?
- 14 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
15 section 203?
- 16 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
17 Class Members with accurate wage statements?
- 18 J. Did Defendants fail to pay Class Members in a timely fashion as required under
19 Labor Code section 204?
- 20 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
21 losses incurred in direct consequence of the discharge of their duties or by obedience
22 to the directions of Defendants as required under Labor Code section 2802?
- 23 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
24 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 25 M. Are Class Members entitled to restitution of wages under Business and Professions
26 Code section 17203?
- 27 N. Are Class Members entitled to costs and attorneys' fees?
- 28 O. Are Class Members entitled to interest?

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

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

10 45. Four (4) years prior to the filing of the Complaint in this Action through the present,
11 Plaintiffs and Class Members, at times, worked for Defendants during shifts that consisted of more
12 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
13 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
14 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
15 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
16 work off the clock, including, without limitation, by requiring employees: to suffer under
17 Defendants’ control to complete pre-shift tasks before clocking in and post-shift tasks after clocking
18 out, to wait in long lines to clock in and out, and to clock out for meal periods and continue working;
19 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
20 less hours than actually worked; and paying straight pay instead of overtime pay, to the detriment
21 of Plaintiffs and Class Members.

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

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47. 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)

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

49. 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.

50. 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.

51. 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; engaged, suffered, or permitted employees to work off the clock, including, without limitation, by requiring employees: to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to wait in long lines to clock in and out, and to clock out for meal periods and continue working; detrimental rounded employee time entries; and edited and/or manipulated time entries to show less hours than actually worked, to the detriment of Plaintiffs and Class Members.

52. 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.

53. 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.

1 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

27 / / /

28 / / /

60. 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 additional pay owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

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

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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 applicable Wage Orders.

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

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

66. 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 authorized or permitted to take complete, timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class

1 Member's regular rate of compensation on the occasions that Class Members were not authorized
2 or permitted to take compliant rest periods.

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

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

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

15 **FIFTH CAUSE OF ACTION**

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

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

19 71. At all relevant times, Plaintiffs and Class Members were employees or former
20 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
21 Wage Orders.

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

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

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

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

76. 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 for all wages earned prior to termination or resignation.

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

SIXTH CAUSE OF ACTION

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

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

79. 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.

/ / /

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

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

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

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

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

28 / / /

1 85. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
2 Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to
3 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
4 attorneys' fees, and costs of suit.

5 **SEVENTH CAUSE OF ACTION**

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

7 86. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
8 incorporate each by reference as though fully set forth hereat.

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

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

16 89. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
17 independent and apart from, any other penalty provided in this article, every person who fails to pay
18 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
19 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
20 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
21 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
22 percent of the amount unlawfully withheld.”

23 90. Plaintiffs are informed and believe, and based thereon alleges, that in the one (1) year
24 before the filing of the Complaint in this Action through the present, Defendants employed policies
25 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
26 Labor Code section 204.

27 / / /

28 / / /

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

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

EIGHTH CAUSE OF ACTION

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

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

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

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

96. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: purchasing mandatory work uniforms; laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using cellular phones for work-related purposes; for the purchase of tools and safety equipment, including slip-resistant shoes, cleaning materials, and rags, necessary to perform work duties; and for the purchase of tuberculosis tests and fingerprinting.

97. During that time period, Plaintiffs are informed and believe, and based thereon allege that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand Class Members for those losses and/or expenditures.

98. 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 reimbursed for the herein-described losses and/or expenditures.

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

NINTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

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

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

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

/ / /

1 104. 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 the Private Attorneys General Act (2004) – Against All Defendants)**

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

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

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

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

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

28 / / /

Civil Penalties Under Labor Code § 226.3

109. 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: 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).

110. 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.”

111. 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.”

112. 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, itemized wage statements that accurately reflect: 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).

113. 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.

Violation of Labor Code § 558

114. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating

1 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
2 penalty as follows:

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

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

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

11 115. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
12 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
13 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
14 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
15 regular payday designated by Employer, the name of the employer, including any “doing business
16 as” names used, the name, address and telephone number of the workers’ compensation insurance
17 carrier, information regarding paid sick leave, and other pertinent information.

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

23 Violation of Labor Code § 1174.5

24 117. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
25 every person employing labor in California to “[a]llow any member of the commission or the
26 employees of the Division of Labor Standards Enforcement free access to the place of business or
27 employment of the person to secure any information or make any investigation that they are
28 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,

1 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
2 or papers of the person.”

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

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

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

20 121. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
21 willfully failed keep adequate or accurate time records including wage statements and similar
22 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
23 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
24 under Labor Code section 1174.

25 122. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees are entitled to
27 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
28 hundred dollars (\$500) per violation per Aggrieved Employee.

1 Violation of Labor Code § 1197.1

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

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

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

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

19 124. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
20 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
21 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
22 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
23 and liquidated damages.

24 125. As a direct and proximate result of the herein-described Labor Code violations,
25 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to
26 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
27 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
28 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each

1 subsequent violation.

2 Civil Penalties Under Labor Code § 2699

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

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

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

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

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1 **DEMAND FOR JURY TRIAL**

2 130. Plaintiffs demand a trial by jury on all causes of action contained herein.

3 **PRAYER**

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

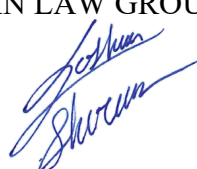
- 6 A. An order certifying this case as a Class Action;
- 7 B. An Order appointing Plaintiffs as Class Representatives and appointing Plaintiffs’
8 counsel as class counsel;
- 9 C. Damages for all wages earned and owed, including minimum. overtime wages and,
10 under Labor Code sections 510, 1194, 1197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

28 / / /

- 1 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
2 O. For attorneys' fees in prosecuting this action;
3 P. For costs of suit incurred herein; and
4 Q. For such other and further relief as the Court deems just and proper.
5

6 Dated: January 5, 2022

BIBIYAN LAW GROUP, P.C.

7
8 BY: 

9 JOSHUA SHIRIAN

SARA EHSANI-NIA

10 Attorneys for Plaintiffs CRISTIAN ALBERTO
11 ZELAYA BERRIOS and ESTEFANI VERENICE
12 RAMIREZ, as individuals and on behalf of all others
13 similarly situated and aggrieved
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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 January 5, 2022, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION 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:

Beth A. Kahn, Esq
Ryan C. McKim
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1055 West Seventh Street, 24th Floor
Los Angeles, California 90017
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Counsel for Defendant Lebluechateau, Inc.

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

Executed on January 5, 2022 at Beverly Hills, California.

/s/ Rosemary Martir

Rosemary Martir