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on behalf of himself and all others situated and aggrieved

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

11 CARLOS MARTINEZ BANAGA, on behalf
12 of himself and all others similarly situated and
aggrieved,

13
14 Plaintiff,

15 v.

16 ST. MARY AUTO SALES, INC., a California
corporation; ST. GEORGE AUTO SALES,
17 INC., a California corporation; and DOES 1
through 100, inclusive,

18 Defendants.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 14 2020

BY ELISABETH MARTINEZ DEPUTY

CASE NO.: **CIV DS 2022333**

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. UNFAIR COMPETITION;
9. CIVIL PENALTIES UNDER LABOR CODE § 210;
10. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
11. VIOLATION OF LABOR CODE § 558;
12. VIOLATION OF LABOR CODE § 1197.1; and
13. CIVIL PENALTIES UNDER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff CARLOS MARTINEZ BANAGA ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action and a Representative Action, pursuant to Code of Civil Procedure section 382 and the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against ST. MARY AUTO SALES, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("ST. MARY"), ST. GEORGE AUTO SALES, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("ST. GEORGE" and collectively with ST. MARY, and DOES 1 through 100, as further defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), and on behalf of Plaintiff and all other current and former similarly situated and aggrieved employees employed by or formerly employed by Defendants.

PARTIES

A. Plaintiff

2. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, selling and delivering automobiles, preparing contracts and related paperwork from approximately December of 2015 through approximately October of 2019.

B. Defendants

3. Plaintiff is informed and believes, and based thereon alleges, that defendant ST. MARY 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 San Bernardino, State of California. At all relevant times herein, Defendant ST. MARY employed Plaintiff and all other similarly situated and aggrieved employees within the State of California.

4. Plaintiff is informed and believes and based thereon alleges that ST. GEORGE 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 San Bernardino, State of
3 California. At all relevant times herein, Defendant ST. GEORGE employed Plaintiff and all other
4 similarly situated and aggrieved employees within the State of California.

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

18 **JOINT LIABILITY ALLEGATIONS**

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

24 7. All of the acts and conduct described herein of each and every corporate defendant
25 was duly authorized, ordered, and directed by the respective and collective defendant corporate
26 employers, and the officers and management-level employees of said corporate employers. In
27 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
28 their said employees, agents, and representatives, and each of them; and upon completion of the

1 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
2 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
3 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
4 aforementioned corporate employees, agents and representatives.

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

7 **JURISDICTION AND VENUE**

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

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

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

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

13. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 210, 226, 226.3, 226.7, 227.3, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5, among others

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

15. On or around July 24, 2020, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

16. 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 24, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FACTUAL BACKGROUND

17. 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 Plaintiff and other similarly situated and aggrieved employees, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other similarly situated and aggrieved employees working over eight (8) hours per day, twelve (12) 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, twelve (12) hours 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, at times: failing to accurately track and/or pay for all hours actually worked; requiring employees: to begin work early and leave late work without being able to clock in for all

1 that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
2 make phone calls or drive off the clock, to clock out for meal periods and continue working; failing
3 to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal
4 allowances, and other forms of remuneration into the regular rate of pay for the pay periods where
5 overtime was worked and the additional compensation was earned for the purpose of calculating the
6 overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of
7 time entries to show less hours than actually worked, and for paying straight pay instead of overtime
8 pay, to the detriment of Plaintiff and other similarly situated and aggrieved employees in the State
9 of California.

10 18. For at least four (4) years prior to the filing of this Action and continuing to the
11 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and other similarly
12 situated and aggrieved employees, or some of them, in violation of California state wage and hour
13 laws as a result of, among other things, at times, failing to accurately track and/or pay for all minutes
14 actually worked; engaging, suffering, or permitting employees to work off the clock, including,
15 without limitation, by requiring employees: to begin work early and leave work late without being
16 able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks
17 after clocking out, to clock out for meal periods and continue working, and to make phone calls or
18 drive off the clock; detrimental rounding of employee time entries; and editing and/or manipulation
19 of time entries to show less hours than actually worked to the detriment of Plaintiff and other
20 similarly situated and aggrieved employees in the State of California.

21 19. 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 provide Plaintiff and other similarly situated and
23 aggrieved employees or former employees within the State of California, or some of them, full,
24 timely thirty (30) minute uninterrupted meal periods for days on which they worked more than five
25 (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which
26 they worked in excess of ten (10) hours in a work day, and failed to provide compensation for such
27 unprovided meal periods as required by California wage and hour laws. including, without
28 limitation, by not providing timely meal periods, interrupting meal periods, failing to provide first

1 and second meal periods altogether, providing short meal periods, requiring that employees carry
2 cellular telephones during meal periods, and otherwise requiring on-duty and/or on-call meal
3 periods.

4 20. For at least four (4) years prior to the filing of this action and continuing to the
5 present, Defendants have, at times, failed to authorize and permit Plaintiff and other similarly
6 situated and aggrieved employees, or some of them, to take rest periods of at least ten (10) minutes
7 per four (4) hours worked or major fraction thereof and failed to provide compensation for such
8 unprovided rest periods as required by California wage and hour laws, including, without limitation,
9 by failing to provide rest periods altogether, interrupting rest periods, requiring that they be bundled
10 together and/or with meal periods; requiring that employees carry cellular phones during rest
11 periods; failing to provide timely rest periods; and otherwise requiring on-duty and/or on-call rest
12 periods.

13 21. For at least three (3) years prior to the filing of this action and continuing to the
14 present, Defendants have, at times, failed to pay Plaintiff and other similarly situated and aggrieved
15 employees, or some of them, the full amount of their wages owed to them upon termination and/or
16 resignation as required by Labor Code sections 201 and 202.

17 22. For at least one (1) year prior to the filing of this Action and continuing to the present,
18 Defendants have, at times, failed to furnish Plaintiff and other similarly situated and aggrieved
19 employees, or some of them, with itemized wage statements that accurately reflect gross wages
20 earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours worked at each hourly rate; the name and address of
22 the legal entity that is the employer; and other such information as required by Labor Code section
23 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
24 an accurate calculation of gross and net wages earned, as well as gross and net wages paid.

25 23. For at least three (3) years prior to the filing of this action and continuing to the
26 present, Defendants have, at times, failed to indemnify Plaintiff and other similarly situated and
27 aggrieved employees, or some of them, for the costs incurred in using cellular telephones for work-
28 related purposes; purchasing gas while driving customers; and renting a car for work-related

1 purposes, in violation of, among other authorities, Labor Code section 2802.

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

10 25. At all relevant times mentioned herein, Defendants had and have a policy or practice
11 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
12 Plaintiff and other similarly situated and aggrieved employees with documents signed to obtain or
13 hold employment under Labor Code section 432, personnel records under Labor Code section
14 1198.5, and time records under Labor Code section 1174, making it difficult for Plaintiff and other
15 aggrieved employees to calculate their unpaid wages and/or premium payments, to the detriment of
16 Plaintiff and other aggrieved employees.

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

22 27. Plaintiff, on behalf of himself and all other similarly situated and aggrieved
23 employees of Defendants in the State of California, brings this action pursuant to, including but not
24 limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7, 246, *et seq.*, 510, 512, 558, 1102.5,
25 1174, 1194, 1194.2, 1197, 1197.1, 2699, 2802, and 2810.5, and California Code of Regulations,
26 Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for
27 missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement
28 penalties, failure to indemnify work-related expenses, other such provisions of California law, and

1 reasonable attorneys' fees and costs.

2 28. Plaintiff, on Plaintiff's own behalf and on behalf of all other similarly situated and
3 aggrieved employees of Defendants in the State of California, pursuant to Business and Professions
4 Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from
5 further violating the Labor Code and requiring the establishment of appropriate and effective means
6 to prevent further violations, as well as all monies owed but withheld and retained by Defendants to
7 which Plaintiff and all other similarly situated and aggrieved employees are entitled, as well as
8 restitution of amounts owed.

9 **CLASS ACTION ALLEGATIONS**

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

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

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

21 **A. Numerosity**

22 32. The potential Class Members as defined are so numerous that joinder of all the
23 members of the Class is impracticable. While the precise number of Class Members has not been
24 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
25 Members employed by Defendants within the State of California.

26 33. Accounting for employee turnover during the relevant periods necessarily increases
27 this number. Plaintiff alleges Defendants' employment records would provide information as to the
28 number and location of all Class Members. Joinder of all members of the proposed Class is not

1 practicable.

2 **B. Commonality**

3 34. There are questions of law and fact common to Class Members. These common
4 questions include, but are not limited to:

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

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

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

4 N. Are Class Members entitled to interest?

5 **C. Typicality**

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

11 **D. Adequacy of Representation**

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

15 **E. Superiority of Class Action**

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

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

26 **FIRST CAUSE OF ACTION**

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

28 39. Plaintiff realleges and incorporates by reference all of the allegations contained in

1 the preceding paragraphs as though fully set forth hereat.

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

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

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

14 43. Four (4) years prior to the filing of the Complaint in this Action through the present,
15 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
16 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
17 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
18 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
19 actually worked; requiring employees: to begin work early and leave late work without being able
20 to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after
21 clocking out, to make phone calls or drive off the clock, to clock out for meal periods and continue
22 working; failing to include all forms of remuneration, including non-discretionary bonuses,
23 incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the
24 pay periods where overtime was worked and the additional compensation was earned for the purpose
25 of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
26 manipulation of time entries to show less hours than actually worked, and for paying straight pay
27 instead of overtime pay, to the detriment of Plaintiff and other similarly situated and aggrieved
28 employees in the State of California.

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

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

10 **SECOND CAUSE OF ACTION**

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

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

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

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

19 49. For four (4) years prior to the filing of the Complaint in this Action through the
20 present, Defendants failed, at times, failing to accurately track and/or pay for all minutes actually
21 worked; engaging, suffering, or permitting employees to work off the clock, including, without
22 limitation, by requiring employees: to begin work early and leave work late without being able to
23 clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after
24 clocking out, to clock out for meal periods and continue working, to make phone calls or drive off
25 the clock; detrimental rounding of employee time entries; and editing and/or manipulation of time
26 entries to show less hours than actually worked to the detriment of Plaintiff and other similarly
27 situated and aggrieved employees in the State of California.

28 50. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have

1 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
2 for all hours worked or otherwise due.

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

7 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

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

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

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

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

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

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

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

18 **FIFTH CAUSE OF ACTION**

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

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

22 69. At all relevant times, Plaintiff and Class Members were employees or former
23 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
24 Wage Orders.

25 70. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
26 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
27 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
28 discharge immediately upon termination. Class Members who resigned were entitled to payment

1 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
2 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
3 unpaid at the time of resignation.

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

9 72. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
10 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
11 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
12 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
13 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
14 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
15 or resignation..

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

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

22 75. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
23 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
24 waiting time penalties, interest, and their costs of suit, as well.

25 **SIXTH CAUSE OF ACTION**

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

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

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

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

8 79. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
9 before the filing of the Complaint in this Action through the present, Defendants failed to comply
10 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
11 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
12 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
13 all applicable hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
15 other things.

16 80. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
17 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
18 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
19 provided wage statements that Defendants knew were not accurate.

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

27 82. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
28 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor

1 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
2 pay period, not to exceed an aggregate \$4,000.00 per employee.

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

7 **SEVENTH CAUSE OF ACTION**

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

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

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

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

16 87. For three (3) years prior to the filing of the Complaint in this Action through the
17 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
18 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
19 obedience to the directions of Defendants.

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

23 89. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
24 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
25 herein-described losses and/or expenditures.

26 90. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
27 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
28 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and

costs of suit.

EIGHTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

92. Plaintiff is informed and believes, and based thereon alleges 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.

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

94. Pursuant to Business and Professions Code section 17203, Plaintiff 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 Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

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

NINTH CAUSE OF ACTION

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

96. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

97. At all relevant times herein, Labor Code section 204, requires and required that:

1 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
2 between the 16th and 26th day of the month during which the labor was performed, and labor
3 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
4 between the 1st and 10th day of the following month.”

5 98. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
6 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
7 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
8 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
9 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
10 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
11 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

20 **TENTH CAUSE OF ACTION**

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

22 100. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
23 and incorporates each by reference as though fully set forth hereat.

24 101. Defendants had and have a policy or practice of failing to comply with Labor Code
25 section 226, subdivision (a) by intentionally failing to furnish Plaintiff with itemized wage
26 statements that accurately reflect gross wages earned; total hours worked; net wages earned; the
27 name and address of each employer with whom they have been placed to work; all applicable hourly
28 rates in effect during the pay period and the corresponding number of hours worked at each hourly

1 rate; the legal name of the employer and/or the name and address of the legal entity securing the
2 employer's services if the employer is a farm labor contractor; and other such information as required
3 by Labor Code section 226, subdivision (a).

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

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

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

19 105. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees are
20 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
21 (a) in the amount of two hundred fifty dollars (\$250) for each aggrieved employee per pay period
22 for the initial violation, and one thousand dollars (\$1,000) for each aggrieved employee per pay
23 period for each subsequent violation.

24 **ELEVENTH CAUSE OF ACTION**

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

26 106. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
27 and incorporates each by reference as though fully set forth hereat.

28 107. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person

1 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
2 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
3 penalty as follows:

- 4 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
5 pay period for which the employee was underpaid in addition to an amount sufficient
6 to recover underpaid wages;
- 7 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
8 employee for each pay period for which the employee was underpaid in addition to
9 an amount sufficient to recover underpaid wages;
- 10 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

11 108. Plaintiff is informed and believes, 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 Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum
14 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
15 their employment and after their employment separation; receive accurate, itemized wage
16 statements; be provided with the opportunity to inspect employment records; be provided with
17 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
18 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
19 of pay.

20 109. As a direct and proximate result of the herein-described Labor Code violations,
21 pursuant to Labor Code section 558, Plaintiff and other aggrieved employees are entitled to recover
22 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
23 (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars
24 (\$100) for each aggrieved employee per pay period for each subsequent violation.

25 **TWELFTH CAUSE OF ACTION**

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

27 110. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
28 and incorporates each by reference as though fully set forth hereat.

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

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

12 (2) 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
14 employee is underpaid regardless of whether the initial violation is
15 intentionally committed. This amount shall be in addition to an amount
16 sufficient to recover underpaid wages, liquidated damages pursuant to Section
17 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

21 112. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
22 Plaintiff and aggrieved employees not to be paid minimum wages as a result of Defendants, without
23 limitation, routinely failing to pay Plaintiff or other aggrieved employees’ wages for all hours
24 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
25 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
26 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
27 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

28 113. As a direct and proximate result of the herein-described Labor Code violations,

1 pursuant to Labor Code section 1197.1, Plaintiff and other aggrieved employees are entitled to
2 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
3 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
4 hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent
5 violation.

6 **THIRTEENTH CAUSE OF ACTION**

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

8 114. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
9 and incorporates each by reference as though fully set forth hereat.

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

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

22 117. Plaintiff is informed and believes and based thereon alleges that Defendants, and
23 each of them, violated the Labor Code sections described herein, including, without limitation, for
24 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
25 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
26 employment and after employment separation; provide employees the opportunity to inspect
27 employment records; reimburse aggrieved employees for costs incurred in furtherance of their work
28 duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual and

1 use of paid sick leave; and pay employees all owed paid time off and vacation time owed by
2 separation at the proper rate of pay, entitling Plaintiff and other aggrieved employees to civil
3 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
4 2699, subdivision (f).

5 118. Moreover, Plaintiff and other aggrieved employees within the State of California
6 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
7 connection with their herein-described claims for civil penalties.

8 **DEMAND FOR JURY TRIAL**

9 119. Plaintiff demands a trial by jury on all causes of action contained herein.

10 **PRAYER**

11 WHEREFORE, on behalf of Plaintiff and all other similarly situated and aggrieved
12 employees of Defendants in the State of California, Plaintiff prays for judgment against
13 Defendants as follows:

- 14 A. An order certifying this case as a Class Action;
- 15 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
16 counsel as class counsel;
- 17 C. Damages for all wages earned and owed, including minimum and overtime wages
18 under Labor Code sections 510, 1194, 1197 and 1199;
- 19 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 20 E. Damages for unpaid premium wages from missed meal and rest periods under,
21 among other Labor Code sections, 512 and 226.7;
- 22 F. Penalties for inaccurate wage statements under Labor Code section 226,
23 subdivision (e);
- 24 G. Waiting time penalties under Labor Code section 203;
- 25 I. Damages under Labor Code section 2802;
- 26 K. Preliminary and permanent injunctions prohibiting Defendants from further
27 violating the California Labor Code and requiring the establishment of appropriate
28 and effective means to prevent future violations;

- 1 L. Restitution of wages and benefits due which were acquired by means of any unfair
2 business practice, according to proof;
3 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
4 N. For attorneys' fees in prosecuting this action;
5 O. For costs of suit incurred herein; and
6 P. For such other and further relief as the Court deems just and proper.
7

8 Dated: October 13, 2020

BIBIYAN LAW GROUP, P.C.

9
10 BY: 

11 SARA EHSANI-NIA

12 DAVID D. BIBIYAN

13 Attorney for Plaintiff CARLOS BANAGA
14 MARTINEZ on behalf of himself and all others
15 similarly situated and aggrieved
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