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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL COURTHOUSE**

JEFFREY LEE CONNESS, an individual and on behalf of all others similarly situated and/or aggrieved,

Plaintiffs,

v.

THE CARLSON COMPANY, doing business as The Carlson Company, Inc., a California corporation, doing business as “Mission Janitorial & Abrasive Supplies”, doing business as “Mission Janitorial Supplies”; BRADY INDUSTRIES OF CALIFORNIA, INC., a California corporation; KEVIN CARLSON, an individual; CANDICE CARLSON, an individual; GREGORY CARLSON, an individual; TRAVIS BRADY, an individual; and DOES 1 through 100, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/09/2021 at 12:17:54 PM
Clerk of the Superior Court
By Keira McCray, Deputy Clerk

CASE NO.: 37-2021-00015907-CU-OE-CTL

**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 INDEMNIFY;
8. UNFAIR COMPETITION;
9. CIVIL PENALTIES UNDER LABOR CODE § 210;
10. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
11. CIVIL PENALTIES UNDER LABOR CODE § 558;
12. CIVIL PENALTIES UNDER LABOR CODE § 1174.5;
13. CIVIL PENALTIES UNDER LABOR CODE § 1197.1; and
14. CIVIL PENALTIES UNDER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff JEFFREY LEE CONNESS (“Plaintiff”), on behalf of Plaintiff and all others similarly situated and/or aggrieved (collectively, “Plaintiffs”), and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against THE CARLSON COMPANY, doing business as The Carlson Company, Inc., doing business as “Mission Janitorial & Abrasive Supplies”, and doing business as “Mission Janitorial Supplies” (collectively, “Carlson Company”), Brady Industries of California, Inc. (“Brady Industries”), KEVIN CARLSON (“K. Carlson”), CANDICE CARLSON (“C. Carlson”), GREGORY CARLSON (“G. Carlson”), TRAVIS BRADY (“Brady”), and any of their respective subsidiaries or affiliated companies within the State of California (Carlson Company, Brady Industries, K. Carlson, C. Carlson, G. Carlson, Brady, and DOES 1 through 100, as further defined below, are collectively hereinafter referred to as “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a Representative Action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to pay overtime and minimum wages, to provide meal and rest breaks or compensation in lieu thereof, to provide employees the opportunity to inspect employment records, pay timely wages during employment and at the time of employment separation, provide uniform deposits and interest thereon, comply with Labor Code section 2810.5, comply with Labor Code section 203, comply with Labor Code section 226, comply with Labor Code section 227.3, comply with Labor Code section 246, *et seq.*, and comply with Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

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1 **PARTIES**

2 **A. Plaintiff**

3 3. Plaintiff JEFFREY LEE CONNESS is a resident of the State of California. At all
4 relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants
5 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
6 cleaning, loading trucks, unloading trucks, and driving to deliver products. Plaintiff is informed and
7 believes, and based thereon alleges that Plaintiff JEFFREY LEE CONNESS worked for Defendants
8 from approximately January of 2019 through approximately May of 2020.

9 **B. Defendants**

10 4. Plaintiff is informed and believes and based thereon alleges that defendant Carlson
11 Company is, and at all times relevant hereto was, a corporation and DBA organized and existing
12 under and by virtue of the laws of the State of California and doing business in, among other places,
13 the County of San Diego, State of California. At all relevant times herein, defendant Carlson
14 Company employed Plaintiff and similarly situated and aggrieved employees within the State of
15 California.

16 5. Plaintiff is informed and believes and based thereon alleges that defendant Carlson
17 Company is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17
18 and Cal. Bus. & Prof. Code § 17201.

19 6. Plaintiff is informed and believes and based thereon alleges that defendant Brady
20 Industries is, and at all times relevant hereto was, a corporation and DBA organized and existing
21 under and by virtue of the laws of the State of California and doing business in, among other places,
22 the State of California. At all relevant times herein, defendant Brady Industries employed Plaintiff
23 and similarly situated and aggrieved employees within the State of California.

24 7. Plaintiff is informed and believes and based thereon alleges that defendant Brady
25 Industries is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17
26 and Cal. Bus. & Prof. Code § 17201.

27 8. Plaintiff is informed and believes and based thereon alleges that defendant K.
28 Carlson is, and at all times relevant hereto was, an individual residing in California, as well as the

1 principal, owner, officer, director and/or managing agent for Carlson Company and DOES 1 through
2 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges
3 that K. Carlson violated, or caused to be violated, the above-referenced and below-referenced Labor
4 Code provisions in violation of Labor Code section 558.1.

5 9. Plaintiff is informed and believes and based thereon alleges that defendant C. Carlson
6 is, and at all times relevant hereto was, an individual residing in California, as well as the principal,
7 owner, officer, director and/or managing agent for Carlson Company and DOES 1 through 100, as
8 further defined below. Plaintiff is further informed and believes and based thereon alleges that C.
9 Carlson violated, or caused to be violated, the above-referenced and below-referenced Labor Code
10 provisions in violation of Labor Code section 558.1.

11 10. Plaintiff is informed and believes and based thereon alleges that defendant G.
12 Carlson is, and at all times relevant hereto was, an individual residing in California, as well as the
13 principal, owner, officer, director and/or managing agent for Carlson Company and DOES 1 through
14 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges
15 that G. Carlson violated, or caused to be violated, the above-referenced and below-referenced Labor
16 Code provisions in violation of Labor Code section 558.1.

17 11. Plaintiff is informed and believes and based thereon alleges that defendant Brady is,
18 and at all times relevant hereto was, an individual residing in California, as well as the principal,
19 owner, officer, director and/or managing agent for Brady Industries and DOES 1 through 100, as
20 further defined below. Plaintiff is further informed and believes and based thereon alleges that
21 Brady violated, or caused to be violated, the above-referenced and below-referenced Labor Code
22 provisions in violation of Labor Code section 558.1.

23 12. The true names and capacities, whether individual, corporate, associate, or otherwise,
24 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
25 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
26 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
27 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
28 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of

1 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
2 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
3 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
4 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
5 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
6 include Carlson Company, Brady Industries, K. Carlson, C. Carlson, G. Carlson, Brady, and any of
7 their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1
8 through 100 identified herein.

9 **JOINT LIABILITY ALLEGATIONS**

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

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

24 15. Plaintiff is further informed and believes and based thereon alleges that K. Carlson,
25 C. Carlson, G. Carlson, and Brady violated, or caused to be violated, the above-referenced and
26 below-referenced Labor Code provisions in violation of Labor Code section 558.1.

27 16. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
28 unity of interest and ownership between and among Defendants, and each of them, that their

1 individuality and separateness have ceased to exist.

2 17. Plaintiff is informed and believes, and based thereon alleges that despite the
3 formation of the purported corporate, DBA, and/or limited liability existence of Carlson Company,
4 Brady Industries, and DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each
5 of them, are one and the same with K. Carlson, C. Carlson, G. Carlson, Brady, and DOES 51 through
6 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following reasons:

- 7 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
8 Defendants who personally committed the wrongful and illegal acts and violated the
9 laws as set forth in this Complaint, and who has hidden and currently hide behind the
10 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
11 other wrongful or inequitable purpose;
- 12 B. The Individual Defendants derive actual and significant monetary benefits by and
13 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
14 Defendants as the funding source for the Individual Defendants’ own personal
15 expenditures;
- 16 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
17 and the Alter Ego Defendants, while really one and the same, were segregated to
18 appear as though separate and distinct for purposes of perpetrating a fraud,
19 circumventing a statute, or accomplishing some other wrongful or inequitable
20 purpose;
- 21 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
22 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
23 mentioned herein were, so mixed and intermingled that the same cannot reasonably
24 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
25 are, and at all relevant times mentioned herein were, used by the Individual
26 Defendants as mere shells and conduits for the conduct of certain of their, and each
27 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
28 herein were, the alter egos of the Individual Defendants;

1 E. The recognition of the separate existence of the Individual Defendants and the Alter
2 Ego Defendants would promote injustice insofar that it would permit defendants to
3 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
4 Code, and other statutory violations. The corporate existence of these defendants
5 should thus be disregarded in equity and for the ends of justice because such
6 disregard is necessary to avoid fraud and injustice to Plaintiff herein;

7 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
8 Defendants (and vice versa), and the fiction of their separate corporate, limited
9 liability, and/or DBA existence must be disregarded.

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

12 **JURISDICTION**

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

15 20. Venue is proper in San Diego County, California pursuant to Code of Civil Procedure
16 sections 392, *et seq.* because, among other things, San Diego County is where the causes of action
17 complained of herein arose; the county in which the employment relationship began; the county in
18 which performance of the employment contract, or part of it, between Plaintiffs, or some of them,
19 and Defendants was due to be performed; the county in which the employment contract, or part of
20 it, between Plaintiffs, or some of them, and Defendants was actually performed; the county in which
21 Defendants, or some of them, have their principal place of business; and the county in which
22 Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect
23 on Class Members and Aggrieved Employees, or some of them, who reside in San Diego County
24 and the State of California.

25 21. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
28 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code

1 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
2 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
3 employees of Defendants Carlson Company and K. Carlson during the Civil Penalty Period.

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

8 23. During the period beginning one (1) year preceding the provision of notice to the
9 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
10 Defendants Carlson Company and K. Carlson violated, *inter alia*, Labor Code sections 200, 201,
11 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, *et seq.*, 404, 432, 510, 512, 558, 1174, 1174.5,
12 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5, among others.

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

17 25. On or around August 19, 2020, Plaintiff provided written notice pursuant to Labor
18 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants
19 Carlson Company and K. Carlson’s violations of various, including the herein-described, provisions
20 of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to
21 Defendants Carlson Company and K. Carlson, and each of them.

22 26. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
23 provide notice of its intention to investigate Defendants Carlson Company and K. Carlson’s alleged
24 violations within sixty-five (65) calendar days of the August 19, 2020 postmarked date of the herein-
25 described notice sent by Plaintiff to the LWDA and Defendants Carlson Company and K. Carlson.

26 **FACTUAL BACKGROUND**

27 27. For at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or

1 some of them, in violation of California state wage and hour laws as a result of, without limitation,
2 Plaintiff and Class Members working over eight (8) hours per day, twelve (12) hours per day, forty
3 (40) hours per week, and/or seven (7) consecutive work days in a work week without being properly
4 compensated for hours worked in excess of (8) hours per day in a work day, twelve (12) hours per
5 day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh
6 consecutive work day in a work week by, among other things, failing to accurately track and/or pay
7 for all minutes actually worked at the proper overtime rate of pay; engaging, suffering, or permitting
8 employees to work off the clock, including, without limitation, by requiring employees: to come
9 early to work and leave work late without being able to clock in for all that time, to suffer under
10 Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in
11 and post-shift tasks after clocking out, to clock out for meal periods and continue working and/or
12 suffering under Defendants' control, to make or respond to telephone calls and/or text messages off
13 the clock and/or drive off the clock; detrimental rounding of employee time entries, editing and/or
14 manipulation of time entries to show lesser hours than actually worked, and for paying straight pay
15 instead of overtime pay, to the detriment of Plaintiff and Class Members.

16 28. For at least four (4) years prior to the filing of this Action and continuing to the
17 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
18 or some of them, in violation of California state wage and hour laws as a result of, among other
19 things, at times, failing to accurately track and/or pay for all minutes actually worked at their regular
20 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
21 off the clock, including, without limitation, by requiring employees: to come early to work and leave
22 work late without being able to clock in for all that time, to suffer under Defendants' control due to
23 long lines for clocking in, 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 and/or suffering under Defendants'
25 control, to make or respond to telephone calls and/or text messages off the clock and/or drive off
26 the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries
27 to show lesser hours than actually worked; failing to pay all reporting time pay; and failing to pay
28 split shift premiums, to the detriment of Plaintiff and Class Members.

1 29. For at least four (4) years prior to the filing of this Action and continuing to the
2 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
3 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
4 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
5 which they worked in excess of ten (10) hours in a work day, including, without limitation: by
6 interrupting meal periods; not providing timely meal periods; failing to provide first and second
7 meal periods; providing short meal periods; otherwise requiring on-duty/on-call meal periods; and
8 auto-deducting meal periods that could not be auto-deducted by law or during which employees
9 worked, and failing to provide compensation for such unprovided meal periods as required by
10 California wage and hour laws.

11 30. For at least four (4) years prior to the filing of this action and continuing to the
12 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
13 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
14 fraction thereof in which they are completely relieved of all of their duties, including, without
15 limitation: by failing to provide rest periods all together; requiring that they be bundled together
16 and/or with meal periods; interrupting them; not providing them in a timely fashion; not permitting
17 employees to leave the premises; and otherwise requiring on-duty/on-call rest periods, and failed to
18 provide compensation for such unprovided rest periods as required by California wage and hour
19 laws.

20 31. For at least three (3) years prior to the filing of this action and continuing to the
21 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
22 full amount of their wages owed to them upon termination and/or resignation as required by Labor
23 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
24 minimum wages, premium wages, and paid time off as well as vacation pay pursuant to Labor Code
25 section 227.3.

26 32. For at least one (1) year prior to the filing of this Action and continuing to the present,
27 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
28 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages

1 earned; all deductions; all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate; the name(s) and address(es) of the legal
3 entity(ies) that is/are the employer(s); and other such information as required by Labor Code section
4 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
5 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

6 33. For at least three (3) years prior to the filing of this action and continuing to the
7 present, Defendants have, at times, failed to indemnify Plaintiff and Class Members, or some of
8 them, for their mileage and/or gas costs incurred by them in driving their personal vehicles for work-
9 related purposes; for the purchase of tools and safety equipment, including, without limitation, steel
10 toe boots, Diesel Exhaust Fluid (DEF) for trucks, personal protective equipment (including, e.g.,
11 face masks and disinfectants); and for the purchase and maintenance of cellular phones and cellular
12 phone plans, in direct consequence of the discharge of their duties, or of their obedience to the
13 directions of Defendants, as required by Labor Code section 2802, and other statutory and common
14 law offenses.

15 34. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members and Aggrieved
16 Employees, pursuant to Business and Professions Code sections 17200 through 17208, also seeks
17 (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the
18 establishment of appropriate and effective means to prevent further violations, as well as all monies
19 owed but withheld and retained by Defendants to which Plaintiff, Class Members, and Aggrieved
20 Employees are entitled, as well as restitution of amounts owed.

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

1 36. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing to pay employees their wages in accordance with Labor Code Section 204, which requires
3 that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be
4 paid for between the 16th and 26th day of the month during which the labor was performed, and
5 labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid
6 for between the 1st and 10th day of the following month.”

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

15 38. At all relevant times mentioned herein, Defendants occasionally failed to provide
16 Plaintiff and Aggrieved Employees with the amount of paid sick leave required to be provided
17 pursuant to California law and also did not permit its use upon request as contemplated under
18 California laws, to the detriment of Plaintiff and Aggrieved Employees.

19 39. Plaintiff, on his own behalf and on behalf of Class Members and Aggrieved
20 Employees, brings this action pursuant to, including but not limited to, Labor Code sections 200,
21 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, *et seq.*, 404, 432, 510, 512, 558, 558.1, 1174,
22 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.1, 1198.5, 2699, 2802, 2810.5, and the
23 applicable rules and regulations of the IWC California Wage Orders, seeking overtime wages,
24 minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely
25 wages, waiting time penalties, wage statement penalties, reimbursement for expenses incurred in
26 furtherance of work duties, compensation for Defendants’ failure to pay vested vacation time at the
27 proper rate of pay, penalties, other such provisions of California law, and reasonable attorneys’ fees
28 and costs.

1 **CLASS ACTION ALLEGATIONS**

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

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

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

13 **A. Numerosity**

14 43. The potential Class Members as defined are so numerous that joinder of all the
15 members of the Class is impracticable. While the precise number of Class Members has not been
16 determined yet, Plaintiff is informed and believes that there are at least forty (40) Class Members
17 employed by Defendants within the State of California.

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

22 **B. Commonality**

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

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

27 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by engaging,
28 suffering, or permitting employees to work off the clock?

- 1 C. Did Defendants violate Labor Code sections 510, 1194 and 1197 through the
2 detrimental rounding of employee time entries?
- 3 D. Did Defendants violate Labor Code sections 510, 1194 and 1197 by editing and/or
4 manipulation of time entries to show lesser hours than actually worked?
- 5 E. Did Defendants violate Labor Code sections 510 and 1194 by paying straight pay
6 instead of overtime pay to the detriment of Class Members?
- 7 F. 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 G. Did Defendants violate Labor Code sections 1194 and 1197 by failing to pay
11 reporting time pay?
- 12 H. Did Defendants violate Labor Code sections 1194 and 1197 by failing to pay split
13 shift premiums?
- 14 I. Did Defendants violate Labor Code section 512 by not authorizing or permitting
15 Class Members to take compliant meal periods?
- 16 J. Did Defendants violate Labor Code section 226.7 by not providing Class Members
17 with additional wages for missed or interrupted meal periods?
- 18 K. Did Defendants violate applicable Wage Orders by not authorizing or permitting
19 Class Members to take compliant rest periods?
- 20 L. Did Defendants violate Labor Code section 226.7 by not providing Class Members
21 with additional wages for missed rest periods?
- 22 M. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
23 Members upon termination or resignation all wages earned?
- 24 N. Are Defendants liable to Class Members for waiting time penalties under Labor Code
25 section 203?
- 26 O. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
27 Class Members with accurate wage statements?
- 28 P. Did Defendants fail to pay Class Members in a timely fashion as required under

Labor Code section 204?

Q. Did Defendants fail to indemnify Class Members for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties or by obedience to the directions of Defendants as required under Labor Code section 2802?

R. Did Defendants fail to return deposits made by Class Members with accrued interest thereon as required under Labor Code section 404?

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

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

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

V. Are Class Members entitled to interest?

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

violation of the Labor Code at times, as set out herein.

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

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

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

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

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

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

54. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday, more than twelve (12) hours in a workday, and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation,

1 by requiring employees: to come early to work and leave work late without being able to clock in
2 for all that time, to suffer under Defendants' control due to long lines for clocking in, to complete
3 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
4 and continue working and/or suffering under Defendants' control, to make or respond to telephone
5 calls and/or text messages off the clock and/or drive off the clock; detrimental rounding of employee
6 time entries, editing and/or manipulation of time entries to show lesser hours than actually worked,
7 and for paying straight pay instead of overtime pay, to the detriment of Plaintiff and Class Members.

8 55. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
9 than eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per workweek,
10 and/or seven (7) straight workdays without properly compensating overtime wages at the proper
11 overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code,
12 among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

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

17 **SECOND CAUSE OF ACTION**

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

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

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

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

26 60. For four (4) years prior to the filing of the Complaint in this Action through the
27 present, Defendants failed, at times, to accurately track and/or pay for all minutes actually worked
28 at Plaintiff and/or Class Members' regular rate of pay that is above the minimum wage; engaged,

1 suffered, or permitted employees to work off the clock, including, without limitation, by requiring
2 employees: to come early to work and leave work late without being able to clock in for all that
3 time, to suffer under Defendants' control due to long lines for clocking in, to complete pre-shift
4 tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and
5 continue working and/or suffering under Defendants' control, to make or respond to telephone calls
6 and/or text messages off the clock and/or drive off the clock; detrimentally rounded employee time
7 entries; edited and/or manipulated employee time entries to show lesser hours than actually worked;
8 failed to pay all reporting time pay; and failed to pay split shift premiums, to the detriment of
9 Plaintiff and Class Members.

10 61. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
11 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
12 for all hours worked or otherwise due.

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

17 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

68. 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.

69. 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.

70. 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)

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

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

73. California law and applicable Wage Orders require that employers “authorize and

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

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

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

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

21 77. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
22 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
23 owed for rest periods that they were not authorized or permitted to take.

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

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1 **FIFTH CAUSE OF ACTION**

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

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

5 80. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
7 Wage Orders.

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

15 82. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
16 years before the filing of the Complaint in this Action through the present, Defendants, due to the
17 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class
18 Members all wages earned prior to resignation or termination in accordance with Labor Code
19 sections 201 or 202, including, without limitation, overtime wages, minimum wages, premium
20 wages, and paid time off and/or vacation pay pursuant to Labor Code section 227.3.

21 83. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
22 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
23 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
24 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
25 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
26 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
27 or resignation.

28 ///

84. Pursuant to Labor Code section 203, Plaintiff 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.

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

86. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff 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)

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

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

89. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name(s) and address(es) of the legal entity(ies) that is/are the employer(s), among other things.

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

1 that is/are the employer(s), among other things.

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

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

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

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

21 **SEVENTH CAUSE OF ACTION**

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

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

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

27 97. Labor Code section 2802, subdivision (a) provides that "an employer shall indemnify
28 his or her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties . . .”

2 98. For three (3) years prior to the filing of the Complaint in this Action through the
3 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
4 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
5 obedience to the directions of Defendants that included, without limitation: mileage and/or gas costs
6 incurred in driving personal vehicles for work-related purposes; for the purchase of tools and/or
7 safety equipment, including, without limitation, steel toe boots, Diesel Exhaust Fluid (DEF) for
8 trucks, personal protective equipment (including, e.g., face masks and disinfectants); and for the
9 purchase and maintenance of cellular phones and cellular phone plans.

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

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

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

20 **EIGHTH CAUSE OF ACTION**

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

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

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

1 in accordance with the Labor Code.

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

4 105. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
5 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
6 Code and requiring the establishment of appropriate and effective means to prevent further
7 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
8 including interest thereon, in which they had a property interest and which Defendants nevertheless
9 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
10 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
11 by their failure to comply with the Labor Code.

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

14 **NINTH CAUSE OF ACTION**

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

16 107. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
17 incorporates each by reference as though fully set forth hereat.

18 108. At all relevant times, Plaintiff, Class Members, and Aggrieved Employees were
19 employees or former employees of Defendants covered by Labor Code section 204 and applicable
20 Wage Orders.

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

26 110. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
27 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
28 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,

204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

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

TENTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 226.3 – Against Defendant Carlson Company, K. Carlson, and DOES 1-100)

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

114. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name(s) and address(es) of the legal entity(ies) that is/are the employer(s); and other such information as required by Labor Code section 226, subdivision (a).

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

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

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

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

20 **ELEVENTH CAUSE OF ACTION**

21 **(Civil Penalties Under Labor Code § 558 – Against Defendant Carlson Company, K.**
22 **Carlson, and DOES 1-100)**

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

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

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

8 121. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
9 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
10 causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum
11 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
12 their employment and after their employment separation; receive accurate, itemized wage
13 statements; to be reimbursed for work expenses; be provided with the opportunity to inspect
14 employment records; be provided with the proper accrual and use of paid sick leave; be paid out all
15 paid time off and/or vacation wages owed at the proper rate of pay; and/or be provided with notice
16 as required under Labor Code section 2810.5.

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

22 **TWELFTH CAUSE OF ACTION**

23 **(Civil Penalties Under Labor Code § 1174.5 – Against Defendant Carlson Company, K.**
24 **Carlson, and DOES 1-100)**

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

27 124. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
28 every person employing labor in California to “[a]llow any member of the commission or the

1 employees of the Division of Labor Standards Enforcement free access to the place of business or
2 employment of the person to secure any information or make any investigation that they are
3 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
4 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
5 or papers of the person.”

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

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

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

23 128. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
24 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
25 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
26 inspection of records as required by Labor Code subdivision (b).

27 129. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to

1 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
2 hundred dollars (\$500) per violation per Aggrieved Employee.

3 **THIRTEENTH CAUSE OF ACTION**

4 **(Civil Penalties Under Labor Code § 1197.1 – Against Defendant Carlson Company, K.
5 Carlson, and DOES 1-100)**

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

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

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

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

25 iii. Wages, liquidated damages, and any applicable penalties imposed pursuant to
26 Section 203, recovered pursuant to this section shall be paid to the affected
27 employee.”

28 132. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused

1 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
2 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' wages for all hours
3 actually worked at their regular rate of pay that is above the minimum wage; engaging suffering, or
4 permitting employees to work off the clock, including, without limitation, by requiring employees:
5 to come early to work and leave work late without being able to clock in for all that time, , to suffer
6 under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before
7 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
8 working and/or suffering under Defendants' control, to make or respond to telephone calls and/or
9 text messages off the clock and/or drive off the clock; detrimental rounding of employee time
10 entries; editing and/or manipulation of time entries to show lesser hours than actually worked;
11 failing to pay all reporting time pay; and failing to pay split shift premiums.

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

18 **FOURTEENTH CAUSE OF ACTION**

19 **(Civil Penalties Under Labor Code § 2699 – Against Defendant Carlson Company, K.**
20 **Carlson, and DOES 1-100)**

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

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

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

7 137. Plaintiff is informed and believes and based thereon alleges that Defendants, and
8 each of them, violated the Labor Code sections described herein, including, without limitation, for
9 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
10 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
11 employment and after employment separation; provide employees the opportunity to inspect
12 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
13 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
14 and use of paid sick leave; and paying employees all owed paid time off and vacation time owed by
15 separation at the proper rate of pay, entitling Plaintiff and other Aggrieved Employees to civil
16 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
17 2699, subdivision (f).

18 138. Moreover, Plaintiff and other aggrieved current and former employees within the
19 State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees
20 and costs in connection with their herein-described claims for civil penalties.

21 **DEMAND FOR JURY TRIAL**

22 139. Plaintiff demands a trial by jury on all causes of action contained herein.

23 **PRAYER**

24 WHEREFORE, on behalf of Plaintiff, Class Members, and Aggrieved Employees, Plaintiff
25 prays for judgment against Defendants as follows:

- 26 A. An order certifying this case as a Class Action;
27 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
28 counsel as class counsel;

- 1 C. Damages for all wages earned and owed, including minimum, overtime wages and
2 unpaid wages for vested vacation time and/or paid time off, under Labor Code
3 sections 227.3, 510, 558.1, 1194, 1197 and 1199;
4 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
5 E. Damages for unpaid premium wages from missed meal and rest periods under,
6 among other Labor Code sections, 512, 558.1 and 226.7;
7 F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision
8 (e) and 558.1;
9 G. Waiting time penalties under Labor Code sections 203 and 558.1;
10 I. Damages under Labor Code sections 2802 and 558.1;
11 K. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
12 1197.1, and 2699;
13 L. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
14 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699;
15 M. Preliminary and permanent injunctions prohibiting Defendants from further violating
16 the California Labor Code and requiring the establishment of appropriate and
17 effective means to prevent future violations;
18 N. Restitution of wages and benefits due which were acquired by means of any unfair
19 business practice, according to proof;
20 O. Prejudgment and post-judgment interest at the maximum rate allowed by law;
21 P. For attorneys' fees in prosecuting this action;
22 Q. For costs of suit incurred herein; and

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

Dated: April 9, 2021

BIBIYAN LAW GROUP, P.C.

BY: _____
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Attorneys for Plaintiff JEFFREY LEE CONNESS, an
individual and on behalf of all others similarly situated
and/or aggrieved