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behalf of himself and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE GREGORIO GARCIA, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiffs,

v.

INWESCO INCORPORATED, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **20STCV46833**

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. VIOLATION OF LABOR CODE § 227.3;
6. WAITING TIME PENALTIES;
7. WAGE STATEMENT VIOLATIONS;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION;
10. PENALTIES PER LABOR CODE § 210;
11. PENALTIES PER LABOR CODE § 226.3;
12. VIOLATION OF LABOR CODE § 558;
13. VIOLATION OF LABOR CODE § 1197.1;
14. PENALTIES PER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff JOSE GREGORIO GARCIA ("Plaintiff"), on behalf of Plaintiff
and all others similarly situated and aggrieved, and alleges as follows:

CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT

DEC 08 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By [Signature], Deputy
Steven Drew

1 **GENERAL ALLEGATIONS**

2 **INTRODUCTION**

3 1. This is a Class Action and a Representative Action, pursuant to Code of Civil
4 Procedure section 382 and Labor Code section 2698, *et seq.*, against INWESCO INCORPORATED,
5 and any of its respective subsidiaries or affiliated companies within the State of California
6 (“INWESCO” and, with DOES 1 through 100, as further defined below, “Defendants”) on behalf
7 of Plaintiff and all other current and former non-exempt employees currently employed by or
8 formerly employed by Defendants (as further defined below, “Class Members”).

9 **PARTIES**

10 **A. Plaintiff**

11 2. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
12 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
13 exempt employee, with duties that included, but were not limited to, welding traffic lights and
14 materials for subways and highways. Plaintiff is informed and believes that Plaintiff worked for
15 Defendants from approximately January of 2013 through approximately June of 2020.

16 **B. Defendants**

17 3. Plaintiff is informed and believes and based thereon alleges that defendant
18 INWESCO is, and at all times relevant hereto was, a corporation organized and existing under and
19 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
20 State of California.

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

1 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
2 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
3 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
4 include INWESCO, and any of their parent, subsidiary, or affiliated companies within the State of
5 California, as well as DOES 1 through 100 identified herein.

6 **JOINT LIABILITY ALLEGATIONS**

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

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

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

23 **JURISDICTION**

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

26 9. Venue is proper in Los Angeles County, California pursuant to Code of Civil
27 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
28 causes of action complained of herein arose; the county in which the employment relationship

1 began; the county in which performance of the employment contract, or part of it, between Plaintiff
2 and Defendants was due to be performed; the county in which the employment contract, or part of
3 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
4 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
5 and Class Members in Los Angeles County, and because Defendants employ numerous employees
6 in Los Angeles County.

7 10. Plaintiff is also an “aggrieved employee” under PAGA, as he was employed by
8 Defendants during the applicable statutory period and suffered one or more of the Labor Code
9 violations set forth herein. Other aggrieved employees Plaintiff seeks to represent are all other
10 employees of Defendants. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other
11 current and former employees of Defendants working within the civil penalty period (“Aggrieved
12 Employees”), the civil penalties provided by PAGA plus reasonable attorneys’ fees and costs, as the
13 term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175.

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

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

22 13. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
23 section 2699.3. On or around August 13, 2020, Plaintiff gave written notice to the Labor and
24 Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions of the
25 Labor Code alleged to have been violated by it. The LWDA did not provide notice of its intention
26 to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the August 13,
27 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

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FACTUAL BACKGROUND

14. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all minutes actually worked as a result of, among other things, engaging, suffering, or permitting employees to work off the clock, including, without limitation by requiring employees complete pre-shift and post-shift tasks; wait in line for minutes to clock in and out; time spent donning and doffing mandatory uniforms and/or safety equipment off the clock; requiring employees to carry cellular phones and/or radios during off-duty times; detrimental rounding and/or manipulation of time entries; and failing to include all forms of remuneration, including non-discretionary bonuses and/or incentive pay into the regular rate of pay for the pay periods where overtime was worked for the purpose of calculating the overtime rate of pay; and failing to pay prevailing wages, as required by California wage and hour laws.

15. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have failed to pay minimum wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other things, failing to accurately track and/or pay for all minutes actually worked as a result of, among other things, engaging, suffering, or permitting employees to work off the clock, including, without limitation by requiring employees complete pre-shift and post-shift tasks; wait in line for minutes to clock in and out; time spent donning and doffing mandatory uniforms and/or safety equipment off the clock; requiring employees to carry cellular phones and/or radios during off-duty times; detrimental rounding and/or manipulation of time entries; failing to pay for reporting time pay; and failing to pay prevailing wages, as required by California wage and hour laws.

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

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

12 18. For at least four (4) years prior to the filing of this Action and continuing to the
13 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
14 employees or former employees within the State of California with compensation at their final rate
15 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

16 19. For at least three (3) years prior to the filing of this Action and continuing to the
17 present, Defendants have failed to pay Plaintiff, Class Members, or some of them, the full amount
18 of their wages owed to them upon termination and/or resignation as required by Labor Code sections
19 201 and 202, including for, without limitation, failing to pay overtime wages, minimum wages,
20 premium wages, and vacation pay pursuant to Labor Code section 227.3.

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

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21. For at least three (3) years prior to the filing of this Action and continuing to the present, Defendants have failed to indemnify Class Members and other aggrieved employees, or some of them, for the costs incurred in; for the purchase of tools and safety equipment, including, without limitation, a welder's helmet, and for the purchase and maintenance of cellular phones and cellular phone plans.

22. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly situated employees or former employees within the State of California with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

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

24. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members and Aggrieved Employees, brings this Action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 2699 *et seq.*, 2802, 2810.3, 2810.5, and California Code of Regulations, Title 8, section 11160, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, other such provisions of California law, and reasonable attorneys' fees and costs.

CLASS ACTION ALLEGATIONS

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

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

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

7 **A. Numerosity**

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

12 29. Accounting for employee turnover during the relevant periods necessarily increases
13 this number. Plaintiff alleges Defendants' employment records would provide information as to the
14 number and location of all Class Members. Joinder of all members of the proposed Class is not
15 practicable.

16 **B. Commonality**

17 30. There are questions of law and fact common to Class Members. These common
18 questions include, but are not limited to:

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

1 Class Members to take compliant rest periods?

2 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
3 with additional wages for missed rest periods?

4 G. Did Defendants violate Labor Code section 227.3 by not providing Class Members
5 with compensation at their final rate of pay for vested paid vacation time;

6 H. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
7 Members upon termination or resignation all wages earned?

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

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

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

15 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
16 with compensation at their final rate of pay for vested paid vacation time?

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

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

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

22 P. Are Class Members entitled to interest?

23 **C. Typicality**

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

1 || D. Adequacy of Representation

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

5 E. Superiority of Class Action

33. 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.

34. 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.

16 FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

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

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

37. 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.”

38. 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

1 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
2 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
3 pay.”

4 39. Four (4) years prior to the filing of the Complaint in this Action through the present,
5 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
6 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
7 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
8 result of, including but not limited to, Defendants failing to accurately track and/or pay for all
9 minutes actually worked as a result of, among other things, engaging, suffering, or permitting
10 employees to work off the clock, including, without limitation by requiring employees complete
11 pre-shift and post-shift tasks; wait in line for minutes to clock in and out; time spent donning and
12 doffing mandatory uniforms and/or safety equipment off the clock; requiring employees to carry
13 cellular phones and/or radios during off-duty times; detrimental rounding and/or manipulation of
14 time entries; failing to include all forms of remuneration, including non-discretionary bonuses
15 and/or incentive pay into the regular rate of pay for the pay periods where overtime was worked for
16 the purpose of calculating the overtime rate of pay; and failing to pay prevailing wages to the
17 detriment of Plaintiff and Class Members.

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

23 41. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
24 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
25 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194
26 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

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1 SECOND CAUSE OF ACTION

2 (Failure to Pay Minimum Wages – Against All Defendants)

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

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

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

10 45. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Defendants failed to accurately track and/or pay for all minutes actually worked as a result
12 of, among other things, engaging, suffering, or permitting employees to work off the clock,
13 including, without limitation by requiring employees complete pre-shift and post-shift tasks; to wait
14 in line for minutes to clock in and out; failed to pay for time spent donning and doffing mandatory
15 uniforms and/or safety equipment off the clock; requiring employees to carry cellular phones and/or
16 radios during off-duty times; detrimental rounding and/or manipulation of time entries; failing to
17 pay for reporting time pay; and failing to pay prevailing wages, to the detriment of Plaintiff and
18 Class Members.

19 46. 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 minimum wages
21 for all hours worked or otherwise due.

22 Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections
23 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
24 the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages,
25 reasonable attorneys' fees and costs of suit.

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1 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

54. 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)

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

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

57. 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.

58. 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.

59. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were not authorized or permitted to take complete, timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, 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 authorized or permitted to take compliant rest periods.

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

61. 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 rest periods that they were not authorized or permitted to take.

62. 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.

FIFTH CAUSE OF ACTION

(Violation of Labor Code § 227.3 – Against All Defendants)

63. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereon.

64. According to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

65. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and that Plaintiff's employment contract with Defendants included paid vacations.

66. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated employees or former employees within the State of California with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

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67. As a proximate result of Defendants' failure to pay vested vacation at the final rate of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor Code sections 201, 202, and 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

68. As a further proximate result of Defendants' above-described acts and/or omissions, Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and prejudgment interest.

SIXTH CAUSE OF ACTION

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

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

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

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

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

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

74. 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.

75. 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.

76. 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.

SEVENTH CAUSE OF ACTION

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

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

78. 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.

79. 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 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the name and address of the legal entity that is the employer; and among other things.

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

8 81. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
9 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
10 Plaintiff and the other Class Members with accurate wage statements, but willfully provided wage
11 statements that Defendants knew were not accurate.

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

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

23 84. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
24 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
25 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
26 attorneys' fees, and costs of suit.

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1 **EIGHTH CAUSE OF ACTION**

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

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

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

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

10 88. For three (3) years prior to the filing of the Complaint in this Action through the
11 present, Defendants required Plaintiff and Class Members, or some of them, to incur, necessary
12 expenditures or losses in direct consequence of the discharge of their duties or at the obedience to
13 the directions of Defendants that included, without limitation: costs incurred for the purchase of
14 tools and safety equipment, including, without limitation, a welder’s helmet, and for the purchase
15 and maintenance of cellular phones and cellular phone plans. During that time period, Plaintiff is
16 informed and believes, and based thereon alleges that Defendants failed and refused, and still fail
17 and refuse, to reimburse Plaintiff and Class Members for those losses and/or expenditures.

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

21 90. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
22 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
23 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
24 costs of suit.

25 **NINTH CAUSE OF ACTION**

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

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

TENTH CAUSE OF ACTION

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

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

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

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

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

ELEVENTH CAUSE OF ACTION

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

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

101. Defendants have had a consistent policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage statements that accurately reflect gross wages earned; total hours worked by the employee; all deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and other such information as required by Labor Code section 226, subdivision (a).

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

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

104. Plaintiff is informed and believes and based thereon alleges that Defendants failed and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total hours worked by the employee; all deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and other such information, as required by Labor Code section 226, subdivision (a).

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

TWELFTH CAUSE OF ACTION

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

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

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

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

8 108. 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; and not receive all paid time
12 off and vacation time owed upon separation of employment as wages at their final rate of pay.

13 109. As a direct and proximate result of Defendants' conduct, Plaintiff and other
14 Aggrieved Employees are entitled to recover directly from Defendants civil penalties pursuant to
15 Labor Code section 558 in amounts to be determined at trial.

16 **THIRTEENTH CAUSE OF ACTION**

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

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

20 111. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
21 person acting either individually or as an officer, agent, or employee of another person, who pays
22 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
23 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
24 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
25 Section 203 as follows: For any initial violation that is intentionally committed, one hundred dollars
26 (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This
27 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages
28 pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

- 1 (1) For any initial violation that is intentionally committed, one hundred dollars
2 (\$100) for each underpaid employee for each pay period for which the employee
3 is underpaid. This amount shall be in addition to an amount sufficient to recover
4 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
5 applicable penalties imposed pursuant to Section 203.
- 6 (2) For each subsequent violation for the same specific offense, two hundred fifty
7 dollars (\$250) for each underpaid employee for each pay period for which the
8 employee is underpaid regardless of whether the initial violation is intentionally
9 committed. This amount shall be in addition to an amount sufficient to recover
10 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
11 applicable penalties imposed pursuant to Section 203.
- 12 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
13 Section 203, recovered pursuant to this section shall be paid to the affected
14 employee.”

15 112. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
16 the decision that Plaintiff and other Aggrieved Employees would not be paid their due minimum
17 wages as required due to, among other things, Defendants, engaging, suffering, or permitting
18 employees to work off the clock, including, without limitation by requiring employees complete
19 pre-shift and post-shift tasks; wait in line for minutes to clock in and out; time spent donning and
20 doffing mandatory uniforms and/or safety equipment off the clock; requiring employees to carry
21 cellular phones and/or radios during off-duty times; and detrimental rounding and/or manipulation
22 of time entries, to the detriment of Plaintiff and other aggrieved employees.

23 113. As a direct and proximate result of Defendants’ conduct, Plaintiff is entitled to
24 recover directly from Defendants, civil penalties, as set forth above, pursuant to Labor Code section
25 1197.1.

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FOURTEENTH CAUSE OF ACTION

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

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

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

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

117. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; failed to pay all wages owed at the time of separation from employment (including vested paid time off and vacation time); failed to pay prevailing wages; failed to pay for reporting time pay; failed to provide employees the opportunity to inspect employment records; provide and pay for sick leave; and provide notice as required under Labor Code section 2810.5 entitling Plaintiff and other aggrieved employees to civil penalties for each of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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1 118. Moreover, Plaintiff and other Aggrieved Employees within the State of California
2 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
3 connection with their herein-described claims for civil penalties.

4 **DEMAND FOR JURY TRIAL**

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

6 **PRAYER**

7 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
8 against Defendants as follows:

- 9 A. An order certifying this case as a Class Action;
- 10 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
11 counsel as class counsel;
- 12 C. Damages for all wages earned and owed, including minimum wages, overtime
13 wages, and unpaid wages for vested vacation time under Labor Code sections
14 227.3, 510, 1194, 1197, and 1199;
- 15 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 16 E. Damages for unpaid premium wages from missed meal and rest periods under,
17 among other Labor Code sections, 512 and 226.7;
- 18 F. Penalties for inaccurate wage statements under Labor Code section 226,
19 subdivision (e);
- 20 G. For all unpaid wages in the form of vested paid vacation time at the final rate of
21 pay under Labor Code section 227.3;
- 22 H. Waiting time penalties under Labor Code section 203;
- 23 I. Damages under Labor Code sections 2802;
- 24 J. Preliminary and permanent injunctions prohibiting Defendants from further
25 violating the California Labor Code and requiring the establishment of appropriate
26 and effective means to prevent future violations;
- 27 K. Restitution of wages and benefits due which were acquired by means of any unfair
28 business practice, according to proof;

- 1 L. An award for civil penalties pursuant to Labor Code sections 210, 226.3, 558,
2 1197.1, and 2699;
3 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
4 210, 226.3, 558, 1197.1, and 2699;
5 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
6 O. For attorneys' fees in prosecuting this action;
7 P. For costs of suit incurred herein; and
8 Q. For such other and further relief as the Court deems just and proper.
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10 Dated: December 7, 2020

BIBIYAN LAW GROUP, P.C.

11
12 BY:

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14 DIEGO AVILES

15 Attorneys for Plaintiff JOSE GREGORIO GARCIA on
16 behalf of himself and all others similarly situated and
17 aggrieved
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