

copy

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan (Cal. Bar No. 287811)
2 *david@tomorrowlaw.com*
Diego Aviles (Cal. Bar No. 315533)
3 *diego@tomorrowlaw.com*
Sara Ehsani-Nia (Cal. Bar No. 326501)
4 *sara@tomorrowlaw.com*
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
5 Telephone: (310) 438-5555
Facsimile: (310) 300-1705
6

Attorneys for Plaintiff, EARNEST C. RHEA, on
7 behalf of himself and all others similarly situated and aggrieved

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

11 EARNEST C. RHEA, on behalf of himself
and all others similarly situated and aggrieved,

13 Plaintiffs,

14 v.

15 STAR VIEW BEHAVIORAL HEALTH,
INC., a California corporation; and DOES 1
16 through 100, inclusive,

17 Defendants.

CASE NO.: **20STCV49490**
CLASS ACTION COMPLAINT FOR:

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

26 **DEMAND FOR JURY TRIAL**

27 [Amount in Controversy Exceeds \$25,000.00]

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 29 2020

Sherri K. Carter, CLERK OF COURT
By *[Signature]*, Deputy
Steven Brown

COMES NOW plaintiff EARNEST C. RHEA ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, and a representative action, pursuant to the Labor code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") against STAR VIEW BEHAVIORAL HEALTH, INC., and any of its respective subsidiaries or affiliated companies within the State of California ("STAR VIEW" and, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

PARTIES

A. Plaintiff

2. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, patrolling the facility, checking on patients, and ensuring the safety of patients and staff. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately July of 2018 through approximately October of 2019.

B. Defendants

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

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated

1 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
2 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
3 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
4 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
5 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
6 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
7 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
8 include STAR VIEW and any of their parent, subsidiary, or affiliated companies within the State of
9 California, as well as DOES 1 through 100 identified herein.

10 **JOINT LIABILITY ALLEGATIONS**

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

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

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

27 / / /

28 / / /

JURISDICTION

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

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

10. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. ("PAGA") plus reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current and former employees of Defendants during the Civil Penalty Period ("Aggrieved Employees").

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

12. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"), Defendants violated, *inter alia*, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5, among others.

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

14. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On or around August 10, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions of the Labor Code alleged to have been violated by it. The LWDA did not provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65) calendar days of the August 10, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

15. On April 6, 2020, the Judicial Council of California approved Appendix I – Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of action were tolled from April 6, 2020 until October 1, 2020.

FACTUAL BACKGROUND

16. 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 by, including but not limited to, detrimentally rounding, manipulating and/or editing time entries to show lesser minutes than actually worked during the pay period; and engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees to clock out for meal breaks and continue working and for pay straight pay instead of overtime pay, to the detriment of Plaintiff and Class Members.

1 17. For at least four (4) years prior to the filing of this Action and continuing to the
2 present, Defendants have failed to pay minimum wages to Plaintiff and Class Members, or some of
3 them, in violation of California state wage and hour laws as a result of, among other things, failing
4 to accurately track and/or pay for all minutes actually worked, detrimentally rounding, manipulating
5 and/or editing time entries to show lesser minutes than actually worked during the pay period; and
6 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
7 by requiring employees to clock out for meal breaks and continue working to the detriment of
8 Plaintiff and Class Members.

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

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

20 20. For at least three (3) years prior to the filing of this action and continuing to the
21 present, Defendants have failed to pay Plaintiff and Class Members, or some of them, the full
22 amount of their wages owed to them upon termination and/or resignation as required by Labor Code
23 sections 201 and 202.

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

1 subdivision (a). As a result thereof, Defendants have further failed to furnish employees with an
2 accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

3 22. For at least three (3) years prior to the filing of this action and continuing to the
4 present, Defendants have failed to indemnify Class Members, or some of them, for the costs incurred
5 in laundering mandatory work uniforms; using cellular phones for work-related purposes; and
6 purchasing tools necessary to perform work duties including, but not limited to, combat boots and
7 military pants.

8 23. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this action
9 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226,
10 226.3, 226.7, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 2699, 2802, and California Code of
11 Regulations, Title 8, section 11050, seeking overtime wages, minimum wages, payment of premium
12 wages for missed meal and rest periods, waiting time penalties, wage statement penalties, failure to
13 indemnify work-related expenses, other such provisions of California law, and reasonable attorneys'
14 fees and costs.

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

21 **CLASS ACTION ALLEGATIONS**

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

27 26. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
28 to amend or modify the class description with greater specificity, further divide the defined class

1 into subclasses, and to further specify or limit the issues for which certification is sought.

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

5 **A. Numerosity**

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

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

14 **B. Commonality**

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

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

28 / / /

- 1 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
2 with additional wages for missed rest periods?
- 3 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
4 Members upon termination or resignation all wages earned?
- 5 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
6 section 203?
- 7 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
8 Class Members with accurate wage statements?
- 9 J. Did Defendants fail to indemnify Class Members for all necessary expenditures or
10 losses incurred in direct consequence of the discharge of their duties or by obedience
11 to the directions of Defendants as required under Labor Code section 2802?
- 12 K. Did Defendants violate the Unfair Competition Law, Business and Professions Code
13 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 14 L. Are Class Members entitled to restitution of wages under Business and Professions
15 Code section 17203?
- 16 M. Are Class Members entitled to costs and attorneys' fees?
- 17 N. Are Class Members entitled to interest?

18 **C. Typicality**

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

24 **D. Adequacy of Representation**

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

28 / / /

1 **E. Superiority of Class Action**

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

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

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

28 / / /

1 39. Four (4) years prior to the filing of the Complaint in this Action through the present,
2 Plaintiff and Class Members worked for Defendants during shifts that consisted of more than eight
3 (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive
4 workdays in a workweek, without being paid overtime wages for all hours worked as a result of,
5 including but not limited to, Defendants failing to accurately track and/or pay for all minutes actually
6 worked by, including but not limited to, detrimentally rounding, manipulating and/or editing time
7 entries to show lesser minutes than actually worked during the pay period; and engaging, suffering,
8 or permitting employees to work off the clock, including, without limitation, by requiring employees
9 to clock out for meal breaks and continue working, and for paying straight pay instead of overtime
10 pay to the detriment of Plaintiff and Class Members.

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

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

20 **SECOND CAUSE OF ACTION**

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

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

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

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

1 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
2 of compensation for each workday that the meal period is not provided.

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

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

13 54. 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 paid additional pay
15 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

26 58. California law and applicable Wage Orders require that employers "authorize and
27 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
28 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-

1 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
2 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
3 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
4 thirty (30) minutes of paid rest period.

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

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

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

19 62. 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 additional pay
21 owed for rest periods that they were not authorized or permitted to take.

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

26 / / /

27 / / /

28 / / /

FIFTH CAUSE OF ACTION

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

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

65. 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.

66. 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.

67. 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.

68. 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.

69. 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

1 resignation, until paid, up to a maximum of thirty (30) days.

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

5 71. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 waiting time penalties, interest, and their costs of suit, as well.

8 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

26 76. Defendants' failure to, provide Plaintiff and Class Members with accurate wage
27 statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff
28 and the other Class Members with accurate wage statements, but willfully provided wage statements

1 that Defendants knew were not accurate.

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

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

13 79. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
14 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
15 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
16 attorneys' fees, and costs of suit.

17 **SEVENTH CAUSE OF ACTION**

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

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

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

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

26 83. For three (3) years prior to the filing of the Complaint in this Action through the
27 present, Defendants required Plaintiff and Class Members, or some of them, to incur necessary
28 expenditures or losses in direct consequence of the discharge of their duties or at the obedience to

1 the directions of Defendants that included, without limitation: laundering mandatory work uniforms;
2 using cellular phones for work-related purposes; and purchasing tools necessary to perform work
3 duties including, but not limited to, combat boots and military pants.

4 84. During that time period, Plaintiff is informed and believes, and based thereon alleges
5 that Defendants failed and refused, and still fail and refuse to reimburse Plaintiff and Class Members
6 for those losses and/or expenditures.

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

10 86. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
11 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
12 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
13 costs of suit.

14 **EIGHTH CAUSE OF ACTION**

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

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

18 88. Plaintiff is informed and believes, and based thereon alleges that the unlawful
19 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
20 and Professions Code section 17200. Due to their unlawful business practices in violation of the
21 Labor Code, Defendants have gained a competitive advantage over other comparable companies
22 doing business in the State of California that comply with their obligations to compensate employees
23 in accordance with the Labor Code.

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

26 90. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
27 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
28 Code and requiring the establishment of appropriate and effective means to prevent further

1 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
2 including interest thereon, in which they had a property interest and which Defendants nevertheless
3 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
4 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
5 by their failure to comply with the Labor Code.

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

8 **NINTH CAUSE OF ACTION**

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

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

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

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

24 95. At all relevant times herein, Defendants have had a consistent policy or practice of,
25 failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per
26 Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other Aggrieved
27 Employees or former employees she seeks to represent are entitled to recover civil penalties for
28 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for

1 each aggrieved employee or former employee for each initial violation per employee, and two
2 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
3 violation in connection with each payment that was made in violation of Labor Code section 204.

4 **TENTH CAUSE OF ACTION**

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

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

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

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

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

22 100. Plaintiff is informed and believes and based thereon alleges that Defendants failed
23 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff and
24 other Aggrieved Employees, with itemized wage statements that accurately reflect gross wages
25 earned; total hours worked by the employee; all deductions; net wages earned; the inclusive dates
26 of the period for which the employee is paid; all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee; and
28 other such information, as required by Labor Code section 226, subdivision (a) and 226.2.

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

7 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

22 104. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
23 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
24 causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum
25 wages; receive meal and rest periods or compensation in lieu thereof; reimbursed for costs incurred
26 in cellular phone use for work purposes and reimbursement for mileage, in furtherance of their work
27 duties, and be paid timely wages during their employment and after their employment separation.

28 / / /

1 105. As a direct and proximate result of Defendants' conduct. Plaintiff and other
2 Aggrieved Employees are entitled to recover directly from Defendants civil penalties pursuant to
3 Labor Code section 558 in amounts to be determined at trial.

4 **TWELFTH CAUSE OF ACTION**

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

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

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

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

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

28 iii. Wages, liquidated damages, and any applicable penalties imposed pursuant to

1 Section 203, recovered pursuant to this section shall be paid to the affected
2 employee.”

3 108. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
4 the decision that Plaintiff and other Aggrieved employees would not be paid their due minimum
5 wages as required due to, among other things, Defendants, failing to accurately track and/or pay for
6 all minutes actually engaged, suffered, or permitted to work, to the detriment of Plaintiff and other
7 aggrieved employees.

8 109. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
9 Aggrieved Employees are entitled to recover directly from Defendants, civil penalties, as set forth
10 above, pursuant to Labor Code section 1197.1.

11 **THIRTEENTH CAUSE OF ACTION**

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

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

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

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

27 113. Plaintiff is informed and believes and based thereon alleges that Defendants, and
28 each of them, violated the Labor Code sections described herein, including, without limitation, for

1 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
2 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
3 employment and after employment separation; provide employees the opportunity to inspect
4 employment records; provide reimbursement for costs incurred in furtherance of their work duties;
5 failing to provide and pay for sick pay; and provide notice as required under Labor Code section
6 2810.5 entitling Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor
7 Code violations in the amounts set forth in Labor Code section 2699. subdivision (f).

8 114. Moreover, Plaintiff and other aggrieved current and former employees within the
9 State of California whom she seeks to represent are entitled to an award of reasonable attorneys'
10 fees and costs in connection with their herein-described claims for civil penalties

11 **DEMAND FOR JURY TRIAL**

12 115. Plaintiff demands a trial by jury on all causes of action contained herein.

13 **PRAYER**

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

- 16 A. An order certifying this case as a Class Action;
- 17 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
18 counsel as class counsel;
- 19 C. Damages for all wages earned and owed, including minimum and overtime wages
20 under Labor Code sections 510, 1194, 1197 and 1199;
- 21 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 22 E. Damages for unpaid premium wages from missed meal and rest periods under,
23 among other Labor Code sections, 512 and 226.7;
- 24 F. Penalties for inaccurate wage statements under Labor Code section 226,
25 subdivision (e);
- 26 G. Waiting time penalties under Labor Code section 203 and;
- 27 H. Damages under Labor Code sections 2802;
- 28 I. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,

1197.1, and 2699;

- J. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699;
- K. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;
- L. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- N. For attorneys' fees in prosecuting this action;
- O. For costs of suit incurred herein; and
- P. For such other and further relief as the Court deems just and proper.

Dated: December 29, 2020

BIBIYAN LAW GROUP, P.C.

BY:


DIEGO AVILES

Attorneys for Plaintiff EARNEST C. RHEA on behalf
of himself and all others similarly situated and
aggrieved