

ENDORSED
FILED
ALAMEDA COUNTY

JUL 20 2021

CLERK OF THE SUPERIOR COURT

By  Deputy

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan, Esq. (SBN 287811)
david@tomorrowlaw.com
Diego Aviles, Esq. (SBN 315533)
diego@tomorrowlaw.com
Sara Ehsani-Nia (SBN 326501)
sara@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, ERIC PEREZ, on behalf
of himself and all others aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ERIC PEREZ, on behalf of himself and all
others aggrieved,

Plaintiff,

v.

GREER PAINTING; a sole proprietorship;
GREGORY C. GREER, an individual; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: **RG21105806**
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. WAGE STATEMENT VIOLATIONS;
6. FAILURE TO PAY DUE WAGES AT TERMINATION;
7. VIOLATION OF LABOR CODE § 2802;
8. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq*;
9. PENALTIES PER LABOR CODE § 210;
10. PENALTIES PER LABOR CODE 226.3;
11. PENALTIES PER LABOR CODE § 558;
12. PENALTIES PER LABOR CODE § 1197.1; and
13. PENALTIES UNDER LABOR CODE § 2699,

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

COMES NOW plaintiff ERIC PEREZ ("Plaintiff"), as an individual, and as an aggrieved employee on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, and alleges as follows:

PARTIES

1. Plaintiff is and was, at all times relevant hereto, a resident of the State of California.

2. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, defendant GREER PAINTING ("GREER PAINTING") is and was a sole proprietorship, or a corporation of unknown origin operating in the State of California. Plaintiff is informed and believes and based thereon alleges that GREER PAINTING primarily operates as a painting and carpentry business.

3. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, defendant GREGORY C. GREER ("MR. GREER") is and was a resident of the State of California. Plaintiff is further informed and believes and based thereon alleges that MR. GREER is the owner and/or principal of GREER PAINTING.

4. The true names and capacities, whether individual, corporate or associate, or otherwise, of the defendant's name herein as DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sue said defendants by such fictitious names pursuant to California Code of Civil Procedure section 474, and Plaintiff will amend this complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believes and based thereon alleges that all defendants sued herein as DOES are in some manner responsible for the acts herein alleged and that Plaintiff's damages were proximately caused by their conduct. Defendants GREER PAINTING, MR. GREER, and DOES 1 through 100, inclusive, shall be referred to collectively herein as "Defendants."

AGENCY, ALTER EGO AND JOINT EMPLOYER ALLEGATIONS

5. Plaintiff is informed and believes and based thereon alleges that all the times mentioned herein, each of the defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or

1 ostensibly, and in doing the things alleged herein acted within the course and scope of such
2 agency, employment, joint venture, and conspiracy.

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

13 7. Plaintiff is informed and believes, and based thereon alleges, that there exists such
14 a unity of interest and ownership between Defendants, and each of them, that their individuality
15 and separateness have ceased to exist.

16 8. Plaintiff is informed and believes, and based thereon alleges that despite the
17 formation of the purported corporate existence of GREER PAINTING and DOES 1 through 50,
18 inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with MR.
19 GREER and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not
20 limited to, the following reasons:

21 (1) The Alter Ego Defendants are completely dominated and controlled by the
22 Individual Defendants who personally committed the wrongful and illegal acts and violated the
23 laws as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
24 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
25 inequitable purpose.

26 (2) The Individual Defendants derive actual and significant monetary benefits
27 by and through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
28 Defendants as the funding source for the Individual Defendants' own personal expenditures.

1 (3) Plaintiff is informed and believes and thereon alleges that the Individual
2 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to
3 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a
4 statute, or accomplishing some other wrongful or inequitable purpose.

5 (4) Plaintiff is informed and believes and thereon alleges that the business
6 affairs of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times
7 mentioned herein were, so mixed and intermingled that the same cannot reasonably be segregated,
8 and the same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times
9 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the
10 conduct of certain of their, and each of their, affairs. The Alter Ego Defendants are, and at all
11 relevant times mentioned herein were, the alter egos of the Individual Defendants.

12 (5) The recognition of the separate existence of the Individual Defendants from
13 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
14 insulate themselves from liability to Plaintiff for violations to the Civil Code, Labor Code, and
15 other statutory violations. The corporate existence of these defendants should thus be disregarded
16 in equity and for the ends of justice because such disregard is necessary to avoid fraud and
17 injustice to Plaintiff, and all other similarly situated employees, herein;

18 (6) Accordingly, the Alter Ego Defendants constitute the alter ego of the
19 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must
20 be disregarded.

21 9. As a result of the aforementioned facts, among others, Plaintiff is informed and
22 believes, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants, and
23 each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an
24 employee of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed
25 services for each and every defendant, and to the mutual benefit of all defendants, and all
26 defendants shared control of Plaintiff and all other similarly situated employees, either directly or
27 indirectly, and in the manner in which defendants' business was and is conducted.

28 / / /

10. Plaintiff is informed and believes and based thereon alleges that MR. GREER employed Plaintiff, by, among other things, exercising control over Plaintiff's wages, hours and/or working conditions, including by informing Plaintiff and others when to report to work, what hours constituted work hours, and determined which employment policies applied to Plaintiff and other employees. Plaintiff is further informed and believes and based thereon alleges that MR. GREER, in his capacity as the owner and/or managing agent of GREER PAINTING, violated, or caused to be violated, the below-referenced Labor Code provisions in violation of Labor Code section 558.1.

FACTS MATERIAL TO ALL CLAIMS

11. Plaintiff is informed and believes and based thereon alleges that Plaintiff was hired as a full-time employee by Defendants in or around June of 1996 through July of 2020 with duties that included, without limitation, plumbing and electrical repair, replacement of toilets and sinks, and other property maintenance tasks. Plaintiff was paid (or purportedly paid) an hourly wage.

12. Plaintiff, and at all times pertinent hereto, was a non-exempt employee within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

13. Plaintiff is informed and believes, and based thereon alleges that over the relevant time periods, Plaintiff and other aggrieved employees were not paid one-and-one half times the regular rate of pay for work performed over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting Plaintiff and other aggrieved employees to work off-the-clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, failing to record hours all together (including time spent driving to and from job locations), detrimentally rounding time entries, by having employees work through their meal periods but still have that time deducted from his hours worked even if they did not actually

1 take a meal period; as well as failing to pay all overtime wages due by paying overtime hours at
2 the regular or otherwise improper rate(s) of pay; failing to include all forms of remuneration,
3 including non-discretionary bonuses and other forms of remuneration into the regular rate of pay
4 for the pay periods where overtime was worked and the additional compensation was earned for
5 the purpose of calculating the overtime rate of pay.

6 14. Plaintiff is informed and believes, and based thereon alleges that over the relevant
7 time periods, Defendants failed to pay Plaintiff and other aggrieved employees at the regular rate
8 of pay for all minimum wages due, as a result of, without limitation, failing to accurately track
9 and/or pay for all hours actually worked; engaging, suffering, or permitting Plaintiff to work off-
10 the-clock, including, without limitation, by requiring employees: to come early to work and leave
11 late work without being able to clock in for all that time, failing to record hours all together
12 (including time spent driving to and from job locations), failing to pay for reporting time pay,
13 detrimentally rounding time entries, and by having Plaintiff work through his meal periods but still
14 have that time deducted from his hours worked even if they did not actually take a meal period.

15 15. Plaintiff is informed and believes, and based thereon alleges over the relevant time
16 periods, Defendants failed to provide Plaintiff and other aggrieved employees with timely thirty
17 (30) minute timely and uninterrupted meal periods for days on which he worked more than five (5)
18 hours in a work day and a second timely thirty (30) minute uninterrupted meal period for days on
19 which he worked in excess of ten (10) hours in a work day, and failed to provide compensation for
20 such unprovided or untimely meal periods as required by California wage and hour laws.

21 16. Plaintiff is informed and believes, and based thereon alleges that over the relevant
22 time periods, Defendants failed to provide Plaintiff and other aggrieved employees with
23 uninterrupted and timely paid rest periods of at least ten (10) minutes per four (4) hours worked or
24 major fraction thereof and failed to provide compensation for such un provided or untimely rest
25 periods as required by California wage and hour laws.

26 17. Plaintiff is informed and believes, and based thereon alleges that over the relevant
27 time periods, Defendants failed to furnish Plaintiff and other aggrieved employees with itemized
28 wage statements that accurately reflected, among other things: gross wages earned; total hours

1 worked by Plaintiff; all deductions; net wages earned; the name and address of the legal entity that
2 is the employer; and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate, as required by California wage and
4 hour laws.

5 18. Plaintiff is informed and believes and based thereon alleges that at Defendants have
6 a practice of failing to timely pay Plaintiff and other aggrieved employees, among other wages, all
7 wages owed as a result of Defendants' practice or policy of failing to pay, among other wages,
8 overtime wages, minimum wages, and premium wages, as required by Labor Code sections 201,
9 202, and 203.

10 19. Plaintiff is informed and believes, and based thereon alleges that over the relevant
11 time periods, Defendants failed to indemnify Plaintiff and other aggrieved employees for the out-
12 of-pocket expenses incurred in furtherance of their work duties, including but not limited to, costs
13 incurred in having to purchase his own work tools, such as plumbing tools, electrical tools, hand
14 drills, which were required to be used in furtherance of their work duties, and costs incurred for
15 utilizing their cellular phones and driving personal vehicles.

16 20. Plaintiff is informed and believes, and based thereon alleges that Defendants have
17 failed to comply with Labor Code section 226, subdivision (c) by failing to, upon written request
18 to inspect or receive copies of records pursuant to Labor Code section 226, subdivision (b),
19 pertaining to Plaintiff and other aggrieved employees, complying with the request within 21 days
20 from the date thereof, in connection with Plaintiff.

21 21. Plaintiff is informed and believes, and based thereon alleges that Defendants have
22 failed to comply with Labor Code section 1198.5 by failing to make the contents of Plaintiff's and
23 other aggrieved employees' personnel records that the employer maintains available for inspection
24 within 30 calendar days from the date of a written request, as required by Labor Code section
25 1198.5.

26 22. At all relevant times mentioned herein, Defendants have had a policy or practice of
27 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
28 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other aggrieved

employees with the rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the name, address, and telephone number of the workers' compensation insurance carrier; information regarding paid sick leave; and other pertinent information required to be disclosed by Defendants under Labor Code section 2810.5.

23. At all relevant times mentioned herein, Defendants have had a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires 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."

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

25. Plaintiff in his individual and representative capacity brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, *et seq.*, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197.1, 1198.5, 2699, *et seq.*, 2802, 2810.5, and California Code of Regulations, Title 8, section 11160, and applicable wage orders, seeking unpaid overtime wages, premium wages for missed meal periods, premium wages for missed rest periods, not being paid all wages owed by termination, unpaid reimbursements, interest thereon, civil penalties under Labor Code sections 210, 226.3, 558, 1197.1, and 2699, and reasonable attorneys' fees and costs.

26. Plaintiff further brings this action pursuant to California Business and Professions Code sections 17200 through 17208, and seeks all monies owed and withheld and retained by Defendants to which Plaintiff is entitled.

///

JURISDICTION AND VENUE

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

28. Venue is proper in the County of Alameda, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Alameda County is the county in which the unlawful practices herein alleged have been committed and the county in which performance of the employment agreement between Plaintiff and Defendants, or part of that performance, was due and/or occurred, and the county in which Defendants, or some of them, reside.

29. 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.

30. 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.

31. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

32. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

1 33. Plaintiff has complied with the procedures for bringing suit specified in Labor
2 Code section 2699.3. On or around October 23, 2020, Plaintiff gave written notice to the Labor
3 and Workforce Development Agency ("LWDA") and to Defendants of the specified provisions of
4 the Labor Code alleged to have been violated by it. The LWDA did not provide notice of its
5 intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the
6 October 23, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA
7 and Defendants.

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

12 35. The amount of damages sought by Plaintiff herein exceeds the minimum
13 jurisdictional limit of this Court: \$25,000.00.

14 **FIRST CAUSE OF ACTION**

15 **(Unpaid Overtime – Against all Defendants)**

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

18 37. At all times relevant to this Complaint, Plaintiff was an employee of Defendants
19 covered by Labor Code section 510.

20 38. At all times relevant to this Complaint, Labor Code section 510 provided that
21 "[e]ight hours of labor constitutes a day's work." Moreover, at all times relevant to this
22 Complaint, Labor Code section 510 provided that, "[a]ny work in excess of eight hours in one
23 workday and any work in excess of forty hours in any one workweek and the first eight hours on
24 the seventh day of work in any one workweek shall be compensated at the rate of no less than one
25 and one-half times the regular rate of pay for an employee."

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

1 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
2 rate of pay of an employee.”

3 40. By requiring Plaintiff to work during shifts that consisted of more than eight (8)
4 hours per day, more than forty (40) hour in a work week, or seven (7) days in a row in one
5 workweek without receiving compensation for those hours at a rate of one-and-one-half times his
6 regular rate of work, and requiring Plaintiff to work more than twelve (12) hours in one day or in
7 excess of eight hours on any seventh day of a workweek without receiving compensation for those
8 hours at a rate of no less than twice his regular rate of pay, Defendants failed to pay Plaintiff all
9 his overtime wages due, as result of, including but not limited to, failing to accurately track and/or
10 pay for all hours actually worked; engaging, suffering, or permitting Plaintiff to work off-the-
11 clock, including, without limitation, by requiring Plaintiff: to come early to work and leave late
12 work without being able to clock in for all that time, failing to record hours all together (including
13 time spent driving to and from job locations), detrimentally rounding time entries, by having
14 Plaintiff work through his meal periods but still have that time deducted from his hours worked
15 even if Plaintiff did not actually take a meal period; as well as failing to pay all overtime wages
16 due by paying overtime hours at the regular or otherwise improper rate(s) of pay; failing to include
17 all forms of remuneration, including non-discretionary bonuses and other forms of remuneration
18 into the regular rate of pay for the pay periods where overtime was worked and the additional
19 compensation was earned for the purpose of calculating the overtime rate of pay, Defendants
20 willfully violated the provisions of Labor Code section 1194.

21 41. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
22 wages, including overtime and/or double time wages, in amounts to be determined at trial, and is
23 entitled to recovery of such amounts, plus interest and penalties thereon, as well as attorneys’ fees
24 and costs pursuant to Labor Code sections 1194 and 218.6, Code of Civil Procedure sections
25 1021.5 and 1032, and Civil Code section 3287.

26 / / /

27 / / /

28 / / /

1 **SECOND CAUSE OF ACTION**

2 **(Unpaid Minimum Wages – Against all Defendants)**

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

5 43. At all relevant times, Plaintiff was an employee of Defendants covered by Labor
6 Code section 1197 and applicable Wage Orders.

7 44. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff was
8 entitled to receive minimum wages for all hours worked.

9 45. Defendants failed to pay Plaintiff minimum wages for all hours worked in violation
10 of Labor Code section 1197 and applicable wage orders as a result of, failing to accurately track
11 and/or pay for all hours actually worked; engaging, suffering, or permitting Plaintiff to work off-
12 the-clock, including, without limitation, by requiring Plaintiff: to come early to work and leave
13 late work without being able to clock in for all that time, failing to record hours all together
14 (including time spent driving to and from job locations), failing to pay for reporting time pay,
15 detrimentally rounding time entries, and by having Plaintiff work through his meal periods but still
16 have that time deducted from his hours worked even if Plaintiff did not actually take a meal
17 period.

18 46. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
19 amount, subject to proof, to the extent Plaintiff was not paid minimum wages for all hours worked
20 or otherwise under Defendants' control.

21 47. Pursuant to Labor Code sections 218.6, 1194, and 1194.2, Plaintiff is entitled to
22 recover the full amount of unpaid minimum wages, prejudgment interest, liquidated damages, as
23 well as attorneys' fees and costs pursuant to Labor Code sections 1194 and 218.6, Code of Civil
24 Procedure section 1021.5 and 1032, and Civil Code section 3287.

25 **THIRD CAUSE OF ACTION**

26 **(Failure to Provide Meal Periods or Compensation – Against all Defendants)**

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

1 49. Pursuant to Labor Code section 512, no employer shall employ an employee for a
2 work period of more than five (5) hours without an uninterrupted meal break of not less than thirty
3 (30) minutes in which the employee is relieved of all of his or her duties. The “first meal periods
4 must start after no more than five hours.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53
5 Cal.4th 1004, 1042.)

6 50. Furthermore, pursuant to Labor Code section 512, no employer shall employ an
7 employee for a work period of more than ten (10) hours per day without providing the employee
8 with a second uninterrupted meal period of not less than thirty (30) minutes in which the employee
9 is relieved of all of his or her duties. The second meal period must begin “after no more than 10
10 hours of work in a day, i.e., no later than what would be the start of the 11th hour of work...”
11 (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042.)

12 51. Plaintiff was not provided with the requisite meal breaks as required under the law,
13 including without limitation, by Defendants failing to provide and preventing Plaintiff from taking
14 meal periods altogether, providing untimely meal periods, shortened meal periods, and
15 interrupting Plaintiff’s meal periods, without compensation in lieu thereof.

16 52. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
17 with a timely and complete meal period as provided in an applicable statute or Wage Order of the
18 Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at
19 the employee’s regular rate of compensation for each workday that an uninterrupted timely meal
20 period is not provided.

21 53. By failing to provide Plaintiff with the meal periods contemplated by California
22 law, and by failing to provide compensation for such unprovided meal periods, as alleged above,
23 Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage
24 Orders.

25 54. As a result of Defendants’ unlawful conduct, Plaintiff has been deprived of one
26 additional hour of pay at Plaintiff’s regular rate of compensation for each workday that an
27 uninterrupted meal period was not provided, in amounts to be determined at trial, and is entitled to
28

recovery of such amounts, plus interest and costs under Labor Code sections 226.7, Code of Civil Procedure section 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods or Compensation – Against all Defendants)

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

56. 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.

57. Moreover, the Industrial Wage Orders require that the rest periods “insofar as practicable ... shall be in the middle of each work period.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1032-1033, citing DLSE Opn. Letter No. 2001.09.17 (Sept. 17, 2001) at p.4.)

58. Plaintiff was not provided with requisite rest periods as contemplated under the law, including without limitation, by Defendants failing to provide and preventing Plaintiff from taking rest periods altogether, providing untimely rest periods, interrupting rest periods, and providing shortened rest periods, without compensation in lieu thereof.

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

60. By their failure to provide Plaintiff with timely rest periods contemplated by California law, and failing to provide compensation for such unprovided timely and complete rest

1 periods, as alleged above, Defendants willfully violated the provisions of Labor Code section
2 226.7 and applicable Wage Orders.

3 61. As a result of Defendants' unlawful conduct, Plaintiff has been deprived of one
4 additional hour of pay at Plaintiff's regular rate of compensation for each workday that an
5 uninterrupted rest period was not provided, in amounts to be determined at trial, and is entitled to
6 recovery of such amounts, plus interest and costs under Labor Code sections 226.7, Code of Civil
7 Procedure section 1032, and Civil Code section 3287.

8 **FIFTH CAUSE OF ACTION**

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

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

12 63. Pursuant to Labor Code section 226, subdivision (a), Plaintiff was entitled to
13 receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement
14 showing gross wages earned, net wages earned, all applicable hourly rates in effect during the pay
15 period and the corresponding number of hours worked at each hourly rate by the employee.

16 64. Defendants failed to provide Plaintiff with accurate itemized wage statements in
17 accordance with Labor Code section 226, subdivision (a), that accurately reflected, among other
18 things: gross wages earned; total hours worked by Plaintiff; all deductions; net wages earned; the
19 name and address of the legal entity that is the employer; and all applicable hourly rates in effect
20 during the pay period and the corresponding number of hours worked at each hourly rate, as
21 required by California wage and hour laws.

22 65. Defendants' failure to provide Plaintiff with wage statements was knowing and
23 intentional. Defendants had the ability to provide Plaintiff with wage statements, but intentionally
24 failed to provide Plaintiff with wage statements.

25 66. As a result of Defendants' unlawful conduct, Plaintiff has suffered injury. The
26 absence of accurate information on his wage statements has delayed timely challenge to
27 Defendants' unlawful pay practices, requires discovery and mathematical computations to
28 determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct

time and pay records, and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies.

67. Pursuant to Labor Code section 226, subdivision (e), Plaintiff is entitled to recover Fifty Dollars (\$50) for the initial pay period during the Penalty Period in which violation of Labor Code section 226 occurred and One Hundred Dollars (\$100) for each violation of Labor Code section 226 in a subsequent pay period, not to exceed an aggregate penalty of Four Thousand Dollars (\$4,000).

68. Furthermore, pursuant to Labor Code section 226, subdivisions (e) and (g), Plaintiff is entitled to recover the full amount of penalties due under Labor Code section 226, subdivision (e), as well as reasonable attorney's fees and costs of suit.

SIXTH CAUSE OF ACTION

(Failure to Provide Due Wages at Termination – Against All Defendants)

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

70. At all relevant times, Plaintiff was an employee of Defendants covered by Labor Code section 201 and 202.

71. California Labor Code sections 201 and 202 require Defendants to pay all of an employee's wages immediately upon termination of employment or within seventy-two hours of resignation.

72. Labor Code section 203 provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

73. Defendants failed to pay Plaintiff all wages earned and unpaid prior to resignation or termination in accordance with Labor Code sections 201 or 202, including, without limitation, as a consequence of, among other things, failure to pay all overtime and minimum wages owed.

74. Defendants' failure to pay Plaintiff all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the

1 ability to pay all wages earned by Plaintiff at the time of termination or resignation in accordance
2 with Labor Code sections 201 and 202, but intentionally adopted policies or practices
3 incompatible with the requirements of Labor Code sections 201 and 202.

4 75. As alleged above and below, Plaintiff is entitled to compensation for wages earned,
5 wages earned at the legal overtime minimum wage rate, but to date has not received such
6 compensation.

7 76. Pursuant to Labor Code section 203, Plaintiff is entitled to penalty wages from the
8 date her earned and unpaid wages were due, upon termination or resignation, until paid, up to a
9 maximum of 30 days.

10 77. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
11 amount subject to proof, to the extent Plaintiff was not paid for all wages earned prior to
12 termination or resignation.

13 78. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
14 amount subject to proof, to the extent Plaintiff was not paid all penalty wages owed under Labor
15 Code section 203.

16 79. As a consequence of Defendants' willful conduct in not paying all compensation
17 due, Plaintiff is entitled to thirty (30) days wages as a penalty under Labor Code section 203,
18 together with interest and costs pursuant to Code of Civil Procedure section 1032 and Civil Code
19 section 3287.

20 **SEVENTH CAUSE OF ACTION**

21 **(Violation of Labor Code § 2802 – Against all Defendants)**

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

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

27 82. At all relevant times, Defendants required Plaintiff to incur expenses to perform job
28 duties by requiring Plaintiff to incur charges for, including but not limited to, costs incurred in

1 having to purchase his own work tools, such as plumbing tools, electrical tools, hand drills, which
2 were required to be used in furtherance of his work duties, and costs incurred for utilizing his
3 cellular phone and driving his personal vehicle.

4 83. At all relevant times, Defendants failed and refused, and still fails and refuses, to
5 reimburse costs incurred in furtherance of his work duties for Defendants.

6 84. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
7 amount subject to proof, to the extent Plaintiff was not reimbursed, for costs Plaintiff incurred in
8 furtherance of his work duties for Defendants.

9 85. Pursuant to Labor Code section 2802, Code of Civil Procedure section 1032, and
10 Civil Code section 3287, Plaintiff is entitled to reimbursement for costs Plaintiff incurred, interest
11 and penalties thereon, reasonable attorney's fees, and costs of suit.

12 **EIGHTH CAUSE OF ACTION**

13 **(Unfair Competition – Against all Defendants)**

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

16 87. The unlawful conduct of Defendants alleged herein constitutes unfair competition
17 within the meaning of Business and Professions Code section 17200. Due to their unlawful
18 business practices in violation of the Labor Code, Defendants have gained a competitive
19 advantage over other comparable companies doing business in the State of California that comply
20 with their obligations to compensate employees in accordance with the Labor Code.

21 88. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
22 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
23 avoid a multiplicity of lawsuits

24 89. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
25 suffered injury in fact and lost money or property. Plaintiff has been deprived from not being
26 compensated overtime wages, from not being provided with meal and rest breaks or compensation
27 in lieu thereof, from being provided with wage statements, and for not indemnifying costs incurred
28 in furtherance of his work duties.

1 90. As a direct and proximate result of the unfair business practices of Defendants, and
2 each of them, Plaintiff is entitled to equitable and injunctive relief, including full restitution and/or
3 disgorgement of all wages and overtime which have been unlawfully withheld from Plaintiff as a
4 result of the business acts and practices described herein and enjoining Defendants to cease and
5 desist from engaging in the practices described herein. Restitution of the money owed to Plaintiff
6 is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply
7 with the Labor Code.

8 91. The illegal conduct alleged herein is continuing, and there is no indication that
9 Defendants will not continue such activity into the future. Plaintiff alleges that if Defendants, and
10 each defendant constituting Defendants, is not enjoined from the conduct set forth in the
11 Complaint, they will continue to fail to pay overtime wages, will continue fail to pay premium pay
12 for missed meal and rest periods, will continue to fail to issue wage statements, will continue to
13 fail to reimburse for costs incurred in furtherance of work duties, and will continue to fail to pay
14 appropriate taxes, and insurance, and unemployment withholdings.

15 92. Plaintiff is entitled to recover reasonable attorneys' fees in connection with his
16 unfair competition claims pursuant to Code of Civil Procedure section 1021.5, the substantial
17 benefit doctrine and/or the common fund doctrine. Plaintiff is entitled to costs of suit under Code
18 of Civil Procedure section 1032 and interest under Civil Code sections 218.6 and 3287.

19 **NINTH CAUSE OF ACTION**

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

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

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

28 / / /

1 95. At all relevant times herein, Labor Code section 210, subdivision (a) states and
2 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
3 this article, every person who fails to pay the wages of each employee as provided in Sections
4 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
5 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and
6 “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
7 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

16 **TENTH CAUSE OF ACTION**

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

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

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

26 99. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
27 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee

1 for each violation in a subsequent citation, for which the employer fails to provide the employee a
2 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

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

5 101. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
6 and have a policy or practice of failing to furnish non-exempt employees, including, without
7 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned;
8 total hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
9 corresponding number of hours worked at each hourly rate in effect during the pay period; and
10 other such information as required by Labor Code section 226, subdivision (a).

11 102. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees he
12 seeks to represent are entitled to recover civil penalties for Defendants’ violation of Labor Code
13 section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each aggrieved
14 current or former employee per pay period for the initial violation, and one thousand dollars
15 (\$1,000) for each aggrieved current or former employee per pay period for each subsequent
16 violation.

17 **ELEVENTH CAUSE OF ACTION**

18 **(Penalties Under Labor Code section 558 – Against All Defendants)**

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

21 104. Plaintiff believes and thereon alleges that during the period beginning one (1) year
22 preceding the filing of the Complaint in this action (the “Civil Penalty Period”), Defendants
23 violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 226, 226.2, 226.7, 510, 512, 1194,
24 1194.2, 1197, and 2802.

25 105. Labor Code section 558 provides that “[a]ny employer or other person acting on
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare Commission
28 shall be subject to a civil penalty as follows;

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

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

7 C. Wages recovered pursuant to this section shall be paid to the affected
8 employee.”

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

17 107. As a direct and proximate result of Defendants’ conduct, Plaintiff is entitled to
18 recover directly from Defendants, all civil penalties in amounts to be determined at trial, as
19 proscribed under Labor Code section 558, subdivision (a).

20 **TWELFTH CAUSE OF ACTION**

21 **(Penalties Under Labor Code Section 1197.1 – Against All Defendants)**

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

24 109. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
25 person acting either individually or as an officer, agent, or employee of another person, who pays
26 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
27 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
28 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to

1 Section 203 as follows:

2 A. For any initial violation that is intentionally committed, one hundred dollars
3 (\$100) for each underpaid employee for each pay period for which the employee is underpaid.
4 This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
5 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to section
6 203.

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

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

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

22 **THIRTEENTH CAUSE OF ACTION**

23 **(Penalties Under Labor Code Section 2699 – Against All Defendants)**

24 111. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs of this Complaint as though fully set forth hereat.

26 112. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
27 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
28 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or

1 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or herself and other current or
3 former employees pursuant to the procedures specified in Labor Code section 2699.3.

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

10 114. Plaintiff is informed and believes and based thereon alleges that Defendants, and
11 each of them, violated the Labor Code sections described herein, including, without limitation, for
12 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
13 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages
14 during employment and after employment separation; provide employees the opportunity to
15 inspect employment records; reimburse aggrieved employees for costs incurred in furtherance of
16 their work duties; provide notice as required under Labor Code section 2810.5; and provide the
17 proper accrual and use of paid sick leave, entitling Plaintiff and other aggrieved employees to civil
18 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
19 2699, subdivision (f).

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

23 **REQUEST FOR A JURY TRIAL**

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

25 **PRAYER**

26 WHEREFORE, Plaintiff prays for Judgment against Defendants as follows:

27 A. For general and compensatory damages according to proof;

28 B. For all wages earned and owed, including unpaid overtime wages and minimum

1 wages under, among other authorities, Labor Code sections 203, 510, 558.1, 1194, and 1197;
2 C. For liquidated damages under Labor Code section 558.1, 1194.2 and 1197.1;
3 D. Damages for missed meal periods under, among other authorities, Labor Code
4 sections 512, 558.1, and 226.7
5 E. Damages for missed rest periods under, among other authorities, Labor Code
6 sections 558.1, and 226.7;
7 F. Penalties for inaccurate wage statements under Labor Code section 226,
8 subdivision (e);
9 G. Penalties for failing to pay all owed wages within 24 hours of termination or 72
10 hours of resignation under Labor Code sections 203 and 558.1;
11 H. Damages in the form of reimbursement for costs Plaintiff incurred in to discharge
12 duties for Defendants under Labor Code sections 558.1 and 2802;
13 I. An Award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
14 1197.1, and 2699;
15 J. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
16 210, 226.3, 558, 1197.1, and 2699
17 K. Preliminary and permanent injunction(s) prohibiting Defendants from further
18 violating the Labor Code and requiring the establishment of appropriate and effective means to
19 prevent further violations;
20 L. Restitution under Business and Professions Code section 17203;
21 M. For prejudgment and post-judgment interest at the maximum rate allowed by law;
22 N. For reasonable attorneys' fees;
23 O. For costs of suit incurred herein; and
24 P. For such other and further relief as the Court deems just and proper.

25 Dated: July 19, 2021

BIBIYAN LAW GROUP, P.C.

26 BY:

27 DIEGO AVILES

28 Attorney for Plaintiff ERIC PEREZ, on behalf of
himself and all others aggrieved