

1 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan, Esq. (SBN 287811)

2 *david@tomorrowlaw.com*

Diego Aviles, Esq. (SBN 315533)

3 *diego@tomorrowlaw.com*

Sara Ehsani-Nia (SBN 326501)

4 *sara@tomorrowlaw.com*

8484 Wilshire Boulevard, Suite 500

5 Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

6 Attorneys for Plaintiff, JAVIER PEREZ, an individual,
7 and on behalf of all others aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF FRESNO**

10
11 JAVIER PEREZ, an individual, and on behalf
12 of all others aggrieved

13 Plaintiff,

14 v.

15 FRED RAU DAIRY, INC., a California
16 corporation; and DOES 1 through 100,
17 inclusive,

18 Defendants.
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Superior Court of California

County of Fresno

By: E. Meyer, Deputy

CASE NO.: **21CECG03139**

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. VIOLATION OF LABOR CODE § 2802;
8. VIOLATION OF LABOR CODE § 227.3;
9. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq*;
10. PENALTIES PER LABOR CODE § 210;
11. PENALTIES PER LABOR CODE § 226.3;
12. PENALTIES PER LABOR CODE § 558;
13. PENALTIES PER LABOR CODE § 1197.1;
and
14. CIVIL PENALTIES UNDER LABOR CODE § 2699(a).

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

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

4 **PARTIES**

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

7 2. Plaintiff is informed and believes, and thereon alleges, that at all times herein
8 mentioned, defendant FRED RAU DAIRY, INC. ("FRED RAU") is and was a California
9 corporation duly organized, authorized, and licensed to do business in the State of California, with
10 its residence and principal place of business being in the City of Fresno, State of California.
11 Plaintiff is informed and believes and based thereon alleges that Defendant primarily operates as
12 an agriculture and dairy company.

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

22 **FACTS MATERIAL TO ALL CLAIMS**

23 4. Plaintiff is informed and believes and based thereon alleges that Plaintiff was hired
24 as a full-time employee by Defendants in or around May of 2017 through on or about November
25 of 2020 with duties that included, without limitation, driving machinery, watering and maintaining
26 almond trees, maintaining machines, performing welding tasks, and other agricultural duties.

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

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

20 7. Plaintiff is informed and believes, and based thereon alleges that throughout his
21 employment, Defendants failed to pay Plaintiff at the regular rate of pay for all minimum wages
22 due, as a result of, without limitation, failing to accurately track and/or pay for all hours actually
23 worked; engaging, suffering, or permitting Plaintiff to work off-the-clock, including, without
24 limitation, by requiring Plaintiff: to come early to work and leave late work without being able to
25 clock in for all that time, failing to record hours all together (including time spent driving to and
26 from job locations), failing to pay for reporting time pay, detrimentally rounding time entries, and
27 by having employees work through their meal periods but still have that time deducted from his
28 hours worked even if they did not actually take a meal period.

1 8. Plaintiff is informed and believes, and based thereon alleges that throughout his
2 employment, Defendants failed to provide Plaintiff with timely thirty (30) minute timely and
3 uninterrupted meal periods for days on which he worked more than five (5) hours in a work day
4 and a second timely thirty (30) minute uninterrupted meal period for days on which he worked in
5 excess of ten (10) hours in a work day, and failed to provide compensation for such unprovided or
6 untimely meal periods as required by California wage and hour laws.

7 9. Plaintiff is informed and believes, and based thereon alleges that throughout his
8 employment, Defendants failed to provide Plaintiff with uninterrupted and timely paid rest periods
9 of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failed to
10 provide compensation for such un provided or untimely rest periods as required by California
11 wage and hour laws.

12 10. Plaintiff is informed and believes, and based thereon alleges that throughout his
13 employment, Defendants failed to furnish Plaintiff and other aggrieved employees with itemized
14 wage statements that accurately reflected, among other things: gross wages earned; total hours
15 worked by Plaintiff; all deductions; net wages earned; the name and address of the legal entity that
16 is the employer; and all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate, as required by California wage and
18 hour laws.

19 11. Plaintiff is informed and believes and based thereon alleges that at the time
20 Plaintiff's employment ended, Defendants failed to pay Plaintiff the full amount of his wages due
21 upon termination and/or resignation, as required by Labor Code sections 201 and 202.

22 12. Plaintiff is informed and believes, and based thereon alleges that throughout his
23 employment, Defendants failed to indemnify Plaintiff for the out-of-pocket expenses incurred in
24 furtherance of his work duties, including but not limited to, costs incurred in having to drive his
25 own personal vehicle without having the mileage reimbursement, to purchase their own work
26 tools, such as gloves, protective glasses, work boots, which were required to be used in
27 furtherance of his work duties, and costs incurred for utilizing his personal cellular phone for work
28 related purposes.

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

6 14. Plaintiff is informed and believes, and based thereon alleges that Defendants have
7 failed to comply with Labor Code section 1198.5 by failing to make the contents of Plaintiff's and
8 other aggrieved employees' personnel records that the employer maintains available for inspection
9 within 30 calendar days from the date of a written request, as required by Labor Code section
10 1198.5.

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

19 16. At all relevant times mentioned herein, Defendants have had a policy or practice of
20 failing to pay aggrieved employees their wages in accordance with Labor Code Section 204,
21 which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar
22 month shall be paid for between the 16th and 26th day of the month during which the labor was
23 performed, and labor performed between the 16th and the last day, inclusive of any calendar
24 month, shall be paid for between the 1st and 10th day of the following month."

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

1 all other Aggrieved Employees

2 18. Plaintiff brings this action pursuant to, including but not limited to, Labor Code
3 sections 200, 201, 202, 203, 226, 226.7, 227.3, 510, 512, 558, 558.1, 1194, 1194.2, 1197.1, 2699,
4 *et seq.*, 2802, and California Code of Regulations, Title 8, section 11160, and applicable wage
5 orders, seeking unpaid overtime wages, premium wages for missed meal periods, premium wages
6 for missed rest periods, not being paid all wages owed by termination, unpaid reimbursements,
7 interest thereon, and reasonable attorneys' fees and costs.

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

11 **JURISDICTION AND VENUE**

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

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

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

26 23. Specifically, Plaintiff seeks to recover PAGA civil penalties through a
27 representative action permitted by PAGA and the California Supreme Court in, among other
28

1 authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities,
2 class certification of the PAGA allegations described herein is not required.

3 24. During the period beginning one (1) year preceding the provision of notice to the
4 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
5 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3,
6 226.7, 246, *et seq.*, 510, 512, 558, 1102.5, 1174, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802,
7 and 2810.5, among others.

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

11 26. Plaintiff has complied with the procedures for bringing suit specified in Labor
12 Code section 2699.3. On or around October 20, 2020, Plaintiff gave written notice to the Labor
13 and Workforce Development Agency ("LWDA") and to Defendants of the specified provisions of
14 the Labor Code alleged to have been violated by it. The LWDA did not provide notice of its
15 intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the
16 October 20, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA
17 and Defendant.

18 27. The amount of damages sought by Plaintiff herein exceeds the minimum
19 jurisdictional limit of this Court: \$25,000.00.

20 **FIRST CAUSE OF ACTION**

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

22 28. 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 29. At all times relevant to this Complaint, Plaintiff was an employee of Defendants
25 covered by Labor Code section 510.

26 30. At all times relevant to this Complaint, Labor Code section 510 provided that
27 "[e]ight hours of labor constitutes a day's work." Moreover, at all times relevant to this
28 Complaint, Labor Code section 510 provided that, "[a]ny work in excess of eight hours in one

1 workday and any work in excess of forty hours in any one workweek and the first eight hours on
2 the seventh day of work in any one workweek shall be compensated at the rate of no less than one
3 and one-half times the regular rate of pay for an employee.”

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

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

27 33. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
28 wages, including overtime and/or double time wages, in amounts to be determined at trial, and is

1 entitled to recovery of such amounts, plus interest and penalties thereon, as well as attorneys' fees
2 and costs pursuant to Labor Code sections 1194 and 218.6, Code of Civil Procedure sections
3 1021.5 and 1032, and Civil Code section 3287.

4 **SECOND CAUSE OF ACTION**

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

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

8 35. At all relevant times, Plaintiff was an employee of Defendants covered by Labor
9 Code section 1197 and applicable Wage Orders.

10 36. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff was
11 entitled to receive minimum wages for all hours worked.

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

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

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

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1 **THIRD CAUSE OF ACTION**

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

3 40. 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 41. Pursuant to Labor Code section 512, no employer shall employ an employee for a
6 work period of more than five (5) hours without an uninterrupted meal break of not less than thirty
7 (30) minutes in which the employee is relieved of all of his or her duties. The “first meal periods
8 must start after no more than five hours.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53
9 Cal.4th 1004, 1042.)

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

16 43. Plaintiff was not provided with the requisite meal breaks as required under the law,
17 including without limitation, by Defendants failing to provide and preventing Plaintiff from taking
18 meal periods altogether, providing untimely meal periods, shortened meal periods, and
19 interrupting Plaintiff’s meal periods, without compensation in lieu thereof.

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

25 45. By failing to provide Plaintiff with the meal periods contemplated by California
26 law, and by failing to provide compensation for such unprovided meal periods, as alleged above,
27 Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage
28 Orders.

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

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

48. 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.

49. 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.)

50. 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.

51. 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 work day that the timely rest period is not provided.

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

53. As a result of Defendants' unlawful conduct, Plaintiff has been deprived of one additional hour of pay at Plaintiff's regular rate of compensation for each work day that an uninterrupted rest period was not provided, in amounts to be determined at trial, and is entitled to 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.

FIFTH CAUSE OF ACTION

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

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

55. At all relevant times, Plaintiff was an employee or former employee of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

56. Pursuant to Labor Code sections 201 and 202, Plaintiff was entitled upon termination to timely payment of all wages earned and unpaid prior to termination or resignation. Plaintiff would be entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Prior to resignation, Plaintiff would be entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if he gave 72 hours previous notice, he was entitled to payment of all wages earned and unpaid at the time of resignation.

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

58. Plaintiff is informed and believes Defendants' failure to pay Plaintiff all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202

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

5 59. Pursuant to Labor Code section 203, Plaintiff is entitled to waiting time penalties
6 from the date his earned and unpaid wages were due, upon termination or resignation, until paid,
7 up to a maximum of thirty (30) days.

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

11 61. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
12 1021.5 and 1032, and Civil Code section 3287, Plaintiff is entitled to recover waiting time
13 penalties, interest, and their costs of suit, as well.

14 **SIXTH CAUSE OF ACTION**

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

16 62. 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 63. Pursuant to Labor Code section 226, subdivision (a), Plaintiff was entitled to
19 receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement
20 showing gross wages earned, net wages earned, all applicable hourly rates in effect during the pay
21 period and the corresponding number of hours worked at each hourly rate by the employee.

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

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1 65. Defendants' failure to provide Plaintiff with accurate wage statements was
2 knowing and intentional. Defendants had the ability to provide Plaintiff with accurate wage
3 statements, but intentionally failed to do so.

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

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

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

18 **SEVENTH CAUSE OF ACTION**

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

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

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

25 71. At all relevant times, Defendants required Plaintiff to incur expenses to perform job
26 duties by requiring Plaintiff to incur charges for, including but not limited to, costs incurred in
27 having to purchase his own work tools, such as gloves, protective glasses, and work boots, which
28 were required to be used in furtherance of his work duties, and costs incurred for utilizing his

1 personal cellular phone and driving his personal vehicle for work related reasons without
2 reimbursement.

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

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

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

11 **EIGHTH CAUSE OF ACTION**

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

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

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

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

23 78. At all times relevant to this Complaint and continuing to the present, Defendants
24 have had a consistent policy of failing to provide Plaintiff with compensation at his final rate of
25 pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

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79. As a proximate result of Defendants' failure to pay vested vacation at the final rate of Plaintiff upon his resignation or termination, Defendants violated Labor Code section 227.3, entitling Plaintiff to all vested and unused vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and Defendants.

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

NINTH CAUSE OF ACTION

(Unfair Competition – Against all Defendants)

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

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

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

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

85. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiff is entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages and overtime which have been unlawfully withheld from Plaintiff as a result of the business acts and practices described herein and enjoining Defendants to cease and

1 desist from engaging in the practices described herein. Restitution of the money owed to Plaintiff
2 is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply
3 with the Labor Code.

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

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

15 **TENTH CAUSE OF ACTION**

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

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

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

24 90. At all relevant times herein, Labor Code section 210, subdivision (a) states and
25 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
26 this article, every person who fails to pay the wages of each employee as provided in Sections
27 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
28 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and

1 “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
2 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

11 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

14 **TWELFTH CAUSE OF ACTION**

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

16 104. 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.

18 105. Plaintiff believes and thereon alleges that during the period beginning one (1) year
19 preceding the filing of the Complaint in this action (the "Civil Penalty Period"), Defendants
20 violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 226, 226.2, 226.7, 246, 432, 510,
21 512, 1194, 1194.2, 1197, 1197.5, and 2802.

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

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

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

4 C. Wages recovered pursuant to this section shall be paid to the affected
5 employee.”

6 107. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
7 the decision that Plaintiff and other aggrieved employees would not be paid the wages as alleged
8 herein, including but not limited to wages owed for all hours worked, including overtime and
9 minimum wages, and premium wages for missed meal and rest periods. As a direct and proximate
10 result of Defendants’ conduct, Plaintiff and other aggrieved employees are entitled to recover
11 directly from Defendants civil penalties pursuant to Labor Code section 558.

12 108. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
13 aggrieved employees are entitled to recover directly from Defendants, all civil penalties in
14 amounts to be determined at trial, as proscribed under Labor Code section 558, subdivision (a).

15 **THIRTEENTH CAUSE OF ACTION**

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

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

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

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

1 203.

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

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

9 111. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
10 the decision that Plaintiff and others would not be paid their due minimum wages, as a result of,
11 *inter alia*, failing to accurately track and/or pay for all hours actually worked; engaging, suffering,
12 or permitting Plaintiff and others to work off-the-clock, including, without limitation, by requiring
13 employees: to come early to work and leave late work without being able to clock in for all that
14 time, failing to record hours all together (including time spent driving to and from job locations),
15 detrimentally rounding time entries, by having Plaintiff and others work through their meal
16 periods but still have that time deducted from his hours worked even if Plaintiff or others did not
17 actually take a meal period.

18 112. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
19 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
20 Labor Code section 1197.1.

21 **FOURTEENTH CAUSE OF ACTION**

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

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

25 114. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff is or was employed
26 by Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself, the civil
28 penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

115. Plaintiff seeks to recover the 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.

116. During the period beginning one (1) year preceding the filing of the original Complaint and PAGA Notice in this action (the "Civil Penalty Period"), Defendants violated, *inter alia*, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 246 *et seq.*, 432, 510, 512, 1174, 1194, 1194.2, 1197, 1197.5, 1198.5, 2802, and 2810.5, among others.

117. Labor Code section 2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of himself and other current and former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

118. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3.

119. On or around October 20, 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 and the LWDA did not elect to investigate.

120. Pursuant to Labor Code section 2699, subdivisions (a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of the specified Labor Code sections during the Civil Penalty Period in the amount of one hundred dollars (\$100) per pay period for the initial violation and two hundred dollars (\$200) per pay period for each subsequent violation.

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

REQUEST FOR A JURY TRIAL

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

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PRAYER

WHEREFORE, Plaintiff prays for Judgment against Defendants as follows:

A. For general and compensatory damages according to proof;

B. For all wages earned and owed, including unpaid overtime wages and minimum wages under, and unpaid wages for vested vacation time, among other authorities, Labor Code sections 203, 510, 1194, 1197, and 227.3;

C. For liquidated damages under Labor Code section 1194.2 and 1197.1;

D. Damages for missed meal periods under, among other authorities, Labor Code sections 512 and 226.7

E. Damages for missed rest periods under, among other authorities, Labor Code section 226.7;

F. Penalties for inaccurate wage statements under Labor Code section 226, subdivision (e);

G. Penalties for failing to pay all owed wages within 24 hours of termination or 72 hours of resignation under Labor Code section 203;

H. Damages in the form of reimbursement for costs Plaintiff incurred in to discharge duties for Defendants under Labor Code section 2802;

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 injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations;

L. Restitution under Business and Professions Code section 17203;

M. For prejudgment and post-judgment interest at the maximum rate allowed by law;

N. For reasonable attorneys' fees;

O. For costs of suit incurred herein; and

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

Dated: October 20, 2021

BIBIYAN LAW GROUP, P.C.

BY: 
DIEGO AVILES

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