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By _____, Deputy
Case Number:
34-2020-00287486

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

ANALISA LEONG-CALL and ERIC
INGALLS, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

MRB FOODS INC., a California
Corporation;
SANJAY LILLANEY, an individual;
CONNIE GAMMON, an individual;
and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00287486

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Wage Statement Violations
3. Waiting Time Penalties
4. Unfair Competition
5. Failure to Reimburse Expenses
6. Failure to Pay Accrued Vacation
7. Meal Period Violations
8. Rest Period Violations
9. Private Attorneys General Act
10. Failure to Pay Minimum Wages
11. Violation of Labor Code § 204

JURY TRIAL DEMANDED

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15 of himself and similarly situated employees
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1 Plaintiffs ANALISA LEONG-CALL and ERIC INGALLS ("Plaintiffs") hereby file this
2 Complaint against Defendants MRB FOODS, INC., a California Corporation; SANJAY LILLANEY, an
3 individual; CONNIE GAMMON, an individual; and DOES 1 to 100 (hereinafter collectively referred to
4 as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief,
5 allege as follows:

6 INTRODUCTION

7 1. This is a class action and Private Attorneys General Act action brought by Plaintiffs on
8 behalf of themselves and similarly situated employees seeking unpaid minimum wages, overtime wages,
9 unpaid meal and rest period premiums, unpaid sick leave, reimbursement expenses, unpaid accrued
10 vacation, and civil and statutory penalties for violations of California Labor Code.

11 PARTIES

12 2. Plaintiff ANALISA LEONG-CALL is an individual over the age of eighteen (18) and is
13 now and/or at all times mentioned in this Complaint was a resident of the State of California.

14 3. Plaintiff ERIC INGALLS is an individual over the age of eighteen (18) and is now and/or
15 at all times mentioned in this Complaint was a resident of the State of California.

16 4. Plaintiffs are informed and believe and thereupon alleges that MRB FOODS INC. is now
17 and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator
18 of an industry, business and/or facility licensed to do business and actually doing business in the State of
19 California.

20 5. On information and belief, Plaintiffs allege, that SANJAY LILLANEY is an individual
21 over the age of eighteen (18) and is a resident of the State of Nevada. Plaintiffs further allege that
22 SANJAY LILLANEY is an owner, director, officer, and/or managing agent of MRB FOODS, INC.
23 responsible for causing the violations outlined in the First through Third and Fifth through Eleventh
24 causes of action. As such SANJAY LILLANEY is individually liable pursuant to California Labor
25 Code section 558.1.

26 6. On information and belief, Plaintiffs allege, that CONNIE GAMMON is an individual
27 over the age of eighteen (18) and is a resident of the State of Nevada. Plaintiffs further allege that
28 CONNIE GAMMON is an owner, director, officer, and/or managing agent of MRB FOODS, INC.

1 responsible for causing the violations outlined in the First through Third and Fifth through Eleventh
2 causes of action. As such CONNIE GAMMON is individually liable pursuant to California Labor Code
3 section 558.1.

4 7. Defendants DOES 1 through 100 are persons or entities whose true names and identities
5 are presently unknown to Plaintiffs, and who therefore are sued by such fictitious names. Plaintiffs are
6 informed and believe and on that basis allege that each of the fictitiously named Defendants are
7 responsible in some manner for the matters alleged herein, and are jointly and severally liable to
8 Plaintiffs. Plaintiffs will seek leave of court to amend this complaint to state the true names and
9 capacities of such fictitiously named Defendants when ascertained.

10 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
11 other Defendants and was acting within the course and scope of such agency or employment. The
12 Defendants are jointly and severally liable to Plaintiffs.

13 9. Defendants, and each of them, are now and or at all times mentioned in this Complaint
14 were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting
15 within the course and scope of, and in pursuance of said joint venture, partnership and common
16 enterprise. Defendants are also "joint employers" as they controlled the terms and conditions of
17 Plaintiffs' employment.

18 10. Defendants, and each of them, are now and or at all times mentioned in this Complaint
19 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

20 11. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
21 wrongs, complaints, injuries and/or damages alleged in this Complaint.

22 **JURISDICTION AND VENUE**

23 12. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
24 violations of the California Business and Professions Code, the California Labor Code, Wage Orders,
25 and common law.

26 13. Venue is proper pursuant to Civil Procedure Code sections 395(a) and 395.5, in that the
27 wrongful acts and violations of law asserted herein occurred within Sacramento County.
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14. Plaintiffs sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of themselves and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff Leong-Call gave written notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on approximately October 5, 2020. Plaintiff Ingalls gave written notice via online submission to the LWDA on November 19, 2020. Plaintiffs provided facts and legal bases for their claims within the notices to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiffs each submitted the \$75.00 filing fee. The October 5, 2020 and November 19, 2020 notices were also sent via certified mail to Defendants on the same day. Plaintiffs are informed and believe, that to date, the LWDA has not provided any response to Plaintiffs’ notice correspondences. Accordingly, Plaintiffs are informed and believe that they have exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring this action on behalf of themselves and all similarly situated employees. *See* Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

CLASS ALLEGATIONS

15. Plaintiffs bring the First through Eleventh Causes of Action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

All current and former non-exempt employees of Defendants in California from October 5, 2019 to the present.

16. This action may be maintained as a class action because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

17. Numerosity: The Plaintiff Class is so numerous that the individual joinder of all members is impracticable. While the actual number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that more than approximately fifty (50) individuals were subjected to the practices outlined in this Complaint relating to the First through Eleventh Causes of Action.

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1 18. Common Questions Predominate: Common questions of law and fact exist as to all
2 members of the Plaintiff Class and predominate over questions that affect only individual class
3 members. These common questions of law and fact include, without limitation, the following:

- 4 (1) Whether Defendants had a policy and/or practice in place to calculate regular rates of
5 pay taking into account all non-discretionary remuneration;
- 6 (2) Whether Defendants had a policy and/or practice in place to calculate Plaintiffs' and
7 putative class members' premium rates of pay taking into account all non-
8 discretionary remuneration;
- 9 (3) Whether as a result of Defendants' payroll policies, or lack thereof, they failed to pay
10 all overtime wages owed;
- 11 (4) Whether Defendants had a policy and/or practice of failing to compensate Plaintiffs
12 and putative class members for all hours worked;
- 13 (5) Whether as a result of Defendants' payroll policies, or lack thereof, they failed to pay
14 all meal and rest period premiums owed;
- 15 (6) Whether Defendants had a policy and/or practice of failing to authorize and permit all
16 meal and rest periods;
- 17 (7) Whether as a result of Defendants' payroll policies, or lack thereof, Defendants'
18 employees were given paystubs that did not reflect total hours worked by the
19 employee as required by Labor Code 226;
- 20 (8) Whether as a result of Defendants' payroll policies, or lack thereof, Defendants'
21 employees were given paystubs that did not reflect all applicable hourly rates in effect
22 as required by Labor Code 226;
- 23 (9) Whether Defendants had a policy and/or practice in place to reimburse expenses;
- 24 (10) Whether Defendants had a policy and/or practice in place to pay Plaintiffs and
25 putative class members accrued and unused vacation at the time of their separation or
26 termination;
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1 (11) Whether Defendants had a policy and/or practice of failing to pay all wages owed to
2 Plaintiffs and putative class members twice monthly in accordance with the
3 requirements of Labor Code § 204; and

4 (12) Whether as a result of Defendants' payroll policies, or a lack thereof, Plaintiffs and
5 putative class members received all wages, due and owing, at the time of their
6 termination/separation.

7 19. Typicality: Plaintiffs' claims are typical of the claims for the members of the Plaintiff
8 Class. Plaintiffs and similarly situated employees were hourly employees who actually were not
9 compensated for all hours worked or premium wages owed to them based on Defendants'
10 miscalculation of the regular rate of pay and requirement that employees perform off the clock work.
11 Similarly, Defendants did not pay Plaintiff and similarly situated employees all wages they were
12 owed. Plaintiffs and similarly situated employees did not receive all meal and rest period owed to
13 them or all missed meal and rest period premiums they were owed twice monthly in accordance with
14 the requirements of Labor Code § 204. Plaintiffs and similarly situated employees were also not
15 reimbursed for the use of their personal vehicles or cellphones. Plaintiffs and similarly situated
16 employees were not paid all accrued and unused vacation at their separation or termination.
17 Additionally, as a result of Defendants' inaccurate calculations and compensation, Plaintiffs and
18 similarly situated employees were not provided legally compliant paystubs and did not receive all
19 wages due to them upon their separation or termination.

20 20. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of
21 the Plaintiff Class. Plaintiffs have no interests which are adverse to those of absent class members.
22 Additionally, Plaintiffs have retained counsel who has substantial experience in complex civil
23 litigation and employment law matters.

24 21. Superiority: A class action is superior to other available means for the fair and
25 efficient adjudication of the controversy as there is no plain, speedy, or adequate remedy other than
26 by maintenance of this class action. The critical issues in the First through Eleventh Causes of
27 Action revolve around the legal requirement to pay employees for minimum wages, overtime,
28 missed meal and rest period premiums, accrued vacation and paid sick time, and necessary expenses.

1 All other issues in the First through Eleventh Causes of Action in this case, *e.g.*, wage statement
2 violations, untimely payment of wages, waiting time penalties, and unfair competition derive from
3 these requirements. Failure to maintain this suit as a class action would result in multiple suits
4 involving the same legal analysis and factual scenarios. Furthermore, the damages suffered by each
5 individual member of the class may be relatively small, the expenses and burden of individual
6 litigation relatively high, and such costs may make it difficult or impossible for individual members
7 of the class to redress the wrongs done to them.

8 22. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
9 management of this action that would preclude its maintenance as a class action.

10 **FACTUAL ALLEGATIONS**

11 23. Plaintiffs incorporates by reference and re-alleges paragraphs 1 through 22 as though
12 fully set forth herein.

13 24. Plaintiff Leong-Call worked for Defendants as an hourly, non-exempt employee from
14 about September 2014 to July 2020. Plaintiff Leong-Call's job title was general manager. Plaintiff
15 Ingalls worked for Defendants as an hourly, non-exempt employee. Plaintiff Ingalls' job title was crew
16 member. Defendants own and operate fast food restaurants, such as Burger King. Plaintiffs and
17 similarly situated employees regularly worked five (5) to seven (7) days per week working shifts over
18 eight (8) hours in a day and/or forty (40) hours in a week. Plaintiff Leong-Call and similarly situated
19 employees frequently received non-discretionary remuneration, including bonuses and other types of
20 incentive based pay, that were based on the store's profitability, speed of service, inventory, labor, guest
21 comments, and other measures, as part of their pay in addition to their basic hourly rates. Similarly
22 situated employees also earned overtime, meal and rest period premiums, and sick leave wages during
23 the same periods of time covered by the bonuses and incentive-based pay. However, Defendants did not
24 properly incorporate the value of the non-discretionary remuneration such as monthly bonuses and
25 incentive pay, etc., into Plaintiff Leong-Call's and similarly situated employees' regular rates of pay for
26 the purpose of paying overtime wages, meal and rest period premiums, and/or paid sick time. This
27 caused Plaintiff Leong-Call and similarly situated employees to be deprived of all wages due and owing
28

1 as they were not paid the additional amounts that would have resulted by incorporating the value of the
2 non-discretionary remuneration into their regular rate of pay.

3 25. Plaintiffs and similarly situated employees regularly were unable to take meal periods or
4 were not able to begin their meal periods until after their fifth hour of work due to how busy the
5 restaurants were and understaffing. Upper management would also regularly contact putative class
6 members during shifts (often on their personal cellphones) and require them to clock out for meal
7 periods, whether they were able to take a meal period at that time or not. Plaintiffs estimate putative
8 class members were forced to clock out for meal periods approximately three to five times each week.
9 Additionally, when putative class members worked shifts longer than ten (10) hours they did not get a
10 second meal period.

11 26. Similarly, putative class members did not receive all rest periods they were entitled to
12 due to how busy the restaurant was and understaffing. Defendants did not schedule any rest periods for
13 employees. Defendants also did not provide a third rest period when putative class members worked
14 shifts longer than ten (10) hours. To the extent Plaintiffs and similarly situated employees were able to
15 take breaks, they were often less than ten (10) minutes. When Plaintiff Ingalls raised the issue of
16 missing lunches and breaks with his manager he was told, "sometimes you get a lunch, sometimes you
17 don't, its Burger King dude."

18 27. Plaintiffs and similarly situated employees were required by Defendants to work
19 substantial hours off work off the clock without compensation pre shift, during their shifts (clocking out
20 for meal periods not taken), and post shift. Plaintiffs and similarly situated employees were required to
21 work however many hours it took to complete the required work in response to customer demands;
22 however, they were instructed not to record hours worked outside of their scheduled hours. For
23 example, Plaintiff Ingalls was instructed by his manager that if his tasks were not finished by the end of
24 his shift that he was to clock out but keep working to finish them. Plaintiffs estimate off the clock work
25 occurred an average of two (2) times per week and ranged from about fifteen (15) minutes up to two (2)
26 or three (3) hours. In most instances, Plaintiffs and similarly situated employees endured off the clock
27 work at a point in time past eight (8) hours into a work shift, thus these off the clock hours should have
28 been paid at overtime rates.

1 28. Plaintiffs and similarly situated employees would regularly make bank deposits for
2 Defendants using their personal vehicles to drive from the restaurant location to the bank. Plaintiffs and
3 similarly situated employees would also travel using their personal vehicles to other restaurant locations
4 during the day to pick up or drop of checks or inventory or to fill in when needed (sometimes for just a
5 few hours before returning to the restaurant they started at in the morning). Defendants did not
6 reimburse Plaintiffs and similarly situated employees for the use of their personal vehicles.

7 29. Plaintiffs and similarly situated employees regularly received calls from upper
8 management on their personal cellphones during their shift. These calls were usually about clocking out
9 for meal periods or scheduling. Defendants did not reimburse Plaintiffs and similarly situated
10 employees for the use of their personal cellphones for work.

11 30. Plaintiff Leong-Call and other general managers accrued one (1) week of vacation by the
12 time they reached one (1) year of employment and two (2) weeks of vacation upon reaching a third year
13 of employment. However, upon Plaintiff Leong-Call's and similarly situated employees' termination or
14 separation Defendants failed to pay accrued but unused vacation hours.

15 31. Defendants failed to provide Plaintiffs and similarly situated employees with legally
16 compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, all
17 applicable rates in effect during the pay period and the corresponding number of hours worked at each
18 hourly rate, and the accurate amount of gross and net wages earned. As a result, Plaintiffs and similarly
19 situated employees were not able to determine the total wages owed to them from their paystubs alone.

20 32. As a result of Defendants' policies, at the time of their termination or separation,
21 Plaintiffs and similarly situated employees had minimum wages, overtime wages, meal and rest period
22 premiums, paid sick time and vacation wages still owing to them. To date, Defendants still have not
23 paid these wages to Plaintiffs and similarly situated employees.

24 33. Sanjay Lillaney and Connie Gammon are and/or were owners, officers, directors, and
25 shareholders of MRB Foods Inc. during the claim period. They developed, maintained, implemented,
26 and caused the unlawful wage and hour practices described herein to occur.

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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY OVERTIME WAGES**
4 **(As to all Defendants)**

5 34. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 33 as though fully
6 set forth herein.

7 35. During the period Plaintiffs and similarly situated employees were employed by
8 Defendants, Defendants were required to compensate them one and one-half (1½) times the regular rate
9 of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two
10 (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g., Cal.*
11 *Labor Code §§ 510, 1194.*

12 36. Plaintiffs and similarly situated employees frequently worked in excess of eight (8) hours
13 per day and/or forty (40) hours per week while employed by Defendants; however, Defendants required
14 them to work off the clock without pay and incorrectly calculated Plaintiff Leong-Call's and similarly
15 situated employees' overtime pay, wholly failing to pay the value of overtime wages attributable to the
16 additional non-discretionary remuneration paid to them, such as bonuses. This resulted in Defendants
17 not compensating Plaintiffs and similarly situated employees for all overtime hours worked.

18 37. Plaintiffs and similarly situated employees were non-exempt employees under the
19 administrative, executive, or professional exemptions, Wage Order 5, and California Labor Code section
20 510.

21 38. Defendants' conduct described herein violates California Labor Code sections 510, 1194,
22 and Wage Order 5. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
23 employees have been damaged and deprived of overtime wages. Plaintiffs and similarly situated
24 employees now seek these wages, as well as attorney's fees and costs and interest pursuant to California
25 Labor Code section 1194.

26 **SECOND CAUSE OF ACTION**
27 **WAGE STATEMENT VIOLATIONS**
28 **(As to all Defendants)**

39. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 38 as though fully
set forth herein.

1 40. According to Labor Code section 226(a), an employer must provide an itemized
2 statement to an employee, semi-monthly or at the time of each payment of wages, showing:

3 *(1) gross wages earned, (2) total hours worked by the employee, except for*
4 *any employee whose compensation is solely based on a salary and who is*
5 *exempt from payment of overtime under subdivision (a) of Section 515 or*
6 *any applicable order of the Industrial Welfare Commission, (3) the number*
7 *of piece-rate units earned and any applicable piece rate if the employee is*
8 *paid on a piece-rate basis, (4) all deductions, provided that all deductions*
9 *made on written orders of the employee may be aggregated and shown as*
10 *one item, (5) net wages earned, (6) the inclusive dates of the period for*
11 *which the employee is paid, (7) the name of the employee and the last four*
12 *digits of his or her social security number or an employee identification*
13 *number other than a social security number, (8) the name and address of*
14 *the legal entity that is the employer and, if the employer is a farm labor*
15 *contractor, as defined in subdivision (b) of Section 1682, the name and*
16 *address of the legal entity that secured the services of the employer, and (9)*
17 *all applicable hourly rates in effect during the pay period and the*
18 *corresponding number of hours worked at each hourly rate by the*
19 *employee. The deductions made from payment of wages shall be recorded*
20 *in ink or other indelible form, properly dated, showing the month, day, and*
21 *year, and a copy of the statement and the record of the deductions shall be*
22 *kept on file by the employer for at least three years at the place of*
23 *employment or at a central location within the State of California*

24 41. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an
25 accurate and complete itemized statement showing the requirements set forth in Labor Code section
26 226(a). Defendants did not accurately itemize total hours worked, all applicable hourly rates, sick leave
27 pay rates or the corresponding number of hours worked at each hourly rate. As a result, Plaintiffs and
28 similarly situated employees were unable to determine the amount of unpaid wages owed to them.

 42. As a proximate cause of Defendants' acts, Plaintiffs and similarly situated employees
were damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the
extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

 43. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 42 as though fully
set forth herein.

 44. An employer must pay an employee who is terminated all unpaid wages immediately
upon termination. Labor Code § 201.

45. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of resignation. Labor Code § 202.

46. Plaintiffs and similarly situated employees did not receive all wages, premiums wages, used sick pay, and vacation wages owed to them at their separation or termination.

47. An employer who willfully fails to pay an employee wages in accordance with Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. Labor Code § 203.

48. Defendants knew of their obligation to pay Plaintiffs and similarly situated individuals for premium wages and sick leave pay because their time and pay records showed that these wages were being earned but were not being compensated correctly due to the failure to correctly calculate the regular rate of pay. Additionally, Defendants were aware that Plaintiffs and similarly situated employees were being required to work off the clock and had accrued and unused vacation. Thus, Defendants' failure to pay all wages at the time of separation or termination was in complete disregard of their obligations. Such conduct shows Defendants' knowledge of its obligation to pay all wages owed upon termination and willful refusal.

49. As a proximate result of Defendants' conduct, Plaintiffs have been damaged and deprived of her wages and thereby seek her and putative class members' waiting time penalties due at their daily rate of pay multiplied by up to thirty (30) days.

FOURTH CAUSE OF ACTION UNFAIR COMPETITION

(As to all Defendants MRB Foods, Inc. and DOES 1 to 100)

50. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 49 as though fully set forth herein.

51. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with section 17500) of Part 3 of Division 7 of the Business and Professions Code.

Business and Professions Code § 17200.

52. Plaintiffs are informed and believe and thereon allege that Defendants did not pay Plaintiffs and similarly situated employees all minimum wages, premium wages owed, accrued and unused vacation, and paid sick leave in violation of the California Labor Code.

53. Plaintiffs are also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

54. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code § 17203), Plaintiffs and similarly situated employees are entitled to restitution as a result of Defendants' unfair business practices, including, but not limited to, interest and penalties pursuant to B&P §§ 17203, 17208, for the violations of Labor Code and applicable Wage Orders in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
FAILURE TO PAY REIMBURSEMENT EXPENSES
(As to all Defendants)

55. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 54 as though fully set forth herein.

56. Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

57. Defendants required Plaintiffs and similarly situated employees to use their personal vehicles and personal cellphones for work purposes. Defendants did not reimburse Plaintiff and similarly situated employees for these expenses.

58. Defendants' conduct described herein violated California Labor Code section 2802. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below titled "DAMAGES."

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**SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 227.3
(As to all Defendants)**

59. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 58 as though fully set forth herein.

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

61. At the time of termination, Defendants failed to pay Plaintiff Leong-Call and similarly situated employees their accrued vacation.

62. As a proximate cause of Defendants’ conduct, Plaintiff Leong-Call and similarly situated employees were damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to the extent pertinent as if set forth here in full.

**SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS OR PAYMENT IN LIEU THEREOF
(As to all Defendants)**

63. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 62 as though fully set forth herein.

64. An employer must provide an employee meal and rest periods in accordance with the applicable Wage Order, and Labor Code sections 226.7 and 512.

65. Labor Code section 226.7, 512 and Wage Order 5, section 11(A) require an employer to provide a duty-free meal period of not less than 30 minutes for each work period of more than five (5) hours. If an employee works longer than 10 hours in a workday, the employer must provide a second meal period.

66. An employer must pay an employee an additional one hour of pay at their regular rate of pay if the employee is not provided the legally required meal period.

67. Plaintiffs allege that Defendants did not authorize and permit Plaintiffs and similarly situated employees to take all meal periods they were entitled to. Additionally, Defendants did not pay Plaintiffs and similarly situated employees all meal period premiums due to them. To the extent any

1 meal period premiums were paid, they did not incorporate the value of bonus and incentive payments for
2 determining the employee's regular rate. Thus, amounts remain owed to Plaintiffs and similarly situated
3 employees for earned meal period premiums.

4 68. As a proximate cause of Defendants' actions, Plaintiffs and similarly situated employees
5 are entitled to the full value of the meal period premiums that have not yet been paid. Labor Code
6 §226.7 and Wage Order 5-2001, §§11(B) and 12(B).

7 **EIGHTH CAUSE OF ACTION**
8 **FAILURE TO PROVIDE REST PERIODS OR PAYMENT IN LIEU THEREOF**
9 **(As to all Defendants)**

10 69. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 68 as though fully
11 set forth herein.

12 70. An employer must provide an employee rest periods in accordance with the applicable
13 Wage Order and Labor Code section 226.7.

14 71. Wage Order 5-2001, section 12(A) requires every employer to authorize and permit
15 employees to take rest periods. For each four (4) hours or fraction thereof worked by the employee, the
16 employee shall receive ten (10) minutes net rest time. *See* Wage Order 5-2001 § 12(A).

17 72. Plaintiffs allege that Defendants did not authorize and permit Plaintiffs and similarly
18 situated employees to take all rest periods owed to them. Defendants did not pay Plaintiffs and similarly
19 situated employees all rest period premiums due to them. To the extent any rest period premiums were
20 paid, they did not incorporate the value of bonus and incentive payments for determining the employee's
21 regular rate. Thus, amounts remain owed to Plaintiffs and similarly situated employees for earned rest
22 period premiums.

23 73. As a proximate cause of Defendants' failure to "authorize and permit" rest periods,
24 Plaintiffs and similarly situated employees are entitled to one (1) hour of pay at the employees' regular
25 rate of compensation for each rest period not provided, as a wage, from three (3) years of the filing of
26 this Complaint. *See* Cal. Lab. Code § 226.7; IWC Wage Order 5-2001 § 12(B)

27 **NINTH CAUSE OF ACTION**
28 **PRIVATE ATTORNEYS GENERAL ACT**
(As to all Defendants)

1 74. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 73 as though fully
2 set forth herein.

3 75. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the
4 following provisions of the Labor Code in their dealings with him and other similarly situated current
5 and former employees:

- 6 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay
7 Overtime Wages)
- 8 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 9 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
10 Statements)
- 11 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 12 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
13 Work in Any Industrial Welfare Commission Order)
- 14 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- 15 • Violation of Labor Code § 227.3 (Failure to Pay Accrued and Unused Vacation)
- 16 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 5, §§ 11(A) and 11(B)
17 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 18 • Violation of Labor Code § 226.7; IWC Wage Order 5, § 12(A) (Failure to Provide
19 Rest Periods or Pay Premiums in Lieu Thereof)
- 20 • Violation of Labor Code §§ 1194, 1197 (Failure to Pay Minimum Wages)
- 21 • Violation of Labor Code § 204 (Untimely Payment of Wages)
- 22 • Violation of Labor Code §§ 1174, 1198.5 (Failure to Keep Accurate Records)
- 23 • Violation of Labor Code § 221 (Unlawfully Collecting or Receiving Wages)

24 76. Plaintiffs seek civil penalties against Defendants as provided in the Labor Code, or, if no
25 civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

26 77. Plaintiffs seek these civil penalties from Defendants pursuant to Labor Code sections
27 2699(a) and 2699.3.

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TENTH CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

78. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 77 as though fully set forth herein.

79. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiffs and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194. Defendants failed to pay Plaintiffs and similarly situated employees for all time they spent working for Defendants.

80. Plaintiffs were not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

81. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

ELEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(As to all Defendants)

82. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 81 as though fully set forth herein.

83. Labor Code section 204 instructs that: "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." As described above, Defendants failed to pay Plaintiffs and similarly situated employees all wages owed to them, including minimum wages, overtime wages, meal and rest premiums, and paid sick time at the time they were due, twice during each calendar month.

84. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

//

DAMAGES

WHEREFORE, Plaintiffs request relief as follows:

1. A Jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount proven at trial;
 - b. Interest for the wages due pursuant to Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Penalties as provided for in Labor Code section 226;
 - b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);
4. As to the Fifth Cause of Action:
 - a. All reimbursement expenses earned and owing in an amount to be proven at trial;
 - b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
5. As to the Sixth Cause of Action:
 - a. For all unpaid vacation wages due and owing;
 - b. For attorneys' fees, costs, and interest pursuant to Labor Code §§ 218.5 and 218.6;
6. As to the Seventh and Eighth Causes of Action:
 - a. For wages in an amount proven at trial;
 - b. For attorney's fees and costs and interest pursuant to California Code of Civil Procedure sections 1021.5 and Civil Code 3287.
7. As to the Ninth Cause of Action:
 - a. For civil penalties as provided for in the Labor Code for each enumerated violation;

- 1 b. For those Labor Code sections, the violation of which there is no civil
2 penalty provided, the default penalty provided in Labor Code section
3 2699(f): for any initial violation, one hundred dollars (\$100) for each
4 aggrieved employee per pay period; For any subsequent violation, two
5 hundred dollars (\$200) for each aggrieved employee per pay period;
6 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
7 d. For any other remedies as allowed by law and/or deemed appropriate by
8 the Court;

9 8. As to the Tenth Cause of Action:

- 10 a. For wages in an amount proven at trial;
11 b. Interest for the wages due pursuant to California Labor Code section
12 1194;
13 c. For reasonable attorney's fees and costs incurred pursuant to California
14 Labor Code section 1194;
15 d. Liquidated damages pursuant to California Labor Code section 1194.2;

16 9. As to the Eleventh Cause of Action:

- 17 a. For wages in an amount proven at trial;
18 b. Interest for the wages due pursuant to California Labor Code section
19 1194;
20 c. For reasonable attorney's fees and costs incurred pursuant to California
21 Labor Code sections 1194 and 218.5;

22 10. As to All Causes of Action:

- 23 a. For other such relief as this Court may deem just and proper;
24 b. Attorney's fees as provided by law; and
25 c. Interest as provided by law.

1 Dated: November 5, 2021

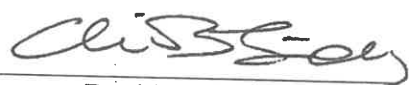
Shimoda Law Corp.

2
3 By: 

4 Galen T. Shimoda
5 Justin P. Rodriguez
6 Brittany V. Berzin
7 Attorneys for Plaintiff Leong-Call

8
9 **DAVID YEREMIAN AND ASSOCIATES, INC.**

10 Dated: November 5, 2021

11 By: 

12 David Yeremian
13 Alvin B. Lindsay
14 Attorneys for Plaintiff Ingalls
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3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On November 8, 2021, I served the following documents on the party below:

- 9 • Second Amended Complaint for Damages

10 Laura A. Wolfe (SBN: 266751) 11 McCormick Barstow LLP 12 7647 North Fresno Street 13 Fresno, CA 93720 14 Telephone: (559) 433-2160 15 Facsimile: (559) 433-2300 16 Email: Laura.Wolfe@mccormickbarstow.com	17 Alvin Lindsay (SBN: 220236) 18 David Yermian (SBN: 226337) 19 David Yermian & Associates, Inc. 20 535 N. Brand Blvd., Ste. 705 21 Glendale, CA 91203-1989 22 Telephone: (818) 230-8380 23 Facsimile: (818) 230-0308 24 Email: alvin@yermianlaw.com 25 david@yermianlaw.com
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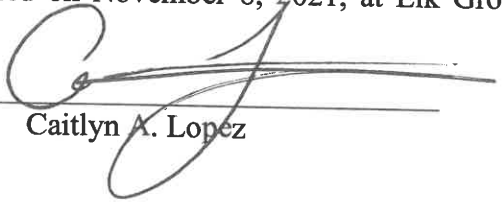
26 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
27 processing of correspondence for mailing with the United States Postal
28 Service and that each day's mail is deposited with the United States Postal
Service that same day in the ordinary course of business. On the date set
forth above, I served the aforementioned document(s) on the parties in
said action by placing a true copy thereof enclosed in a sealed envelope
with postage thereon fully prepaid, for collection and mailing on this date,
following ordinary business practices, at Elk Grove, California, addressed
as set forth above.

29 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

30 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

31 [] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

32 I declare under penalty of perjury under the laws of the State of California that the foregoing
33 is true and correct, and that this declaration was executed on November 8, 2021, at Elk Grove,
34 California

35 
36 Caitlyn A. Lopez