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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF SACRAMENTO**

14 REBECCA GIBSON, on behalf of herself and
15 all other similarly situated,

16 Plaintiff,

17 v.

18 SYBLON REID CONSTRUCTION,
19 INCORPORATED, a California Corporation;
20 and DOES 1-50, inclusive,

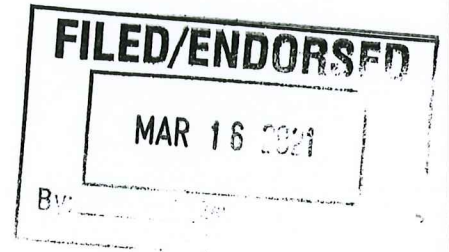
21 Defendants.

CASE NO.: 34-2020-00291534

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- (1) FAILURE TO PAY ALL OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194 AND 1198);
- (2) MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7 AND 512);
- (3) REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7 AND 516);
- (4) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
- (5) WAGE STATEMENT VIOLATIONS (LABOR CODE § 226a);
- (6) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq* ; and
- (7) PAGA PENALTIES

DEMAND FOR TRIAL BY JURY



BY FAX

1 Plaintiff Rebecca Gibson (“Plaintiff”) on behalf of herself, and all others similarly situated,
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. Defendant Syblon Reid Construction, Incorporated, a California corporation, and
5 DOES 1-50 (collectively “Defendants”) are a California-based contractor offering a full range of
6 commercial services including water treatment, bridge construction, lift stations/pumping,
7 underground, site work, environmental enhancements, recreational improvements, and other hydro
8 facilities in the Sacramento and Bay Area. Plaintiff brings this class action against Defendants for
9 alleged violations of the California Labor Code and Business and Professions Code. As set forth
10 below, Plaintiff alleges that Defendants’ timekeeping/payroll policies and practices failed to pay
11 him and all other similarly situated employees for all overtime hours worked at the appropriate
12 premium rate. Plaintiff further alleges that Defendants’ meal and rest period policies and practices
13 failed to provide her and all other similarly situated non-exempt employees with compliant meal
14 periods, or premium wages in lieu thereof. As a result of the foregoing, Plaintiff alleges that
15 Defendants failed to provide employees with accurate written itemized wage statements and failed
16 to timely pay all of their final wages following separation of employment. Based on these alleged
17 violations, Plaintiff now brings this class action to recover unpaid wages, restitution, and other
18 related relief on behalf of himself and all others similarly situated.

19 **JURISDICTION AND VENUE**

20 2. Plaintiff, on behalf of herself and all other similarly situated employees hereby
21 brings this class action for recovery of unpaid wages and penalties under California Labor Code
22 §§ 226(a), 226.3, 2802-2804, 2698 *et seq.*, and applicable Industrial Welfare Commission Wage
23 Orders (“Wage Orders”), in addition to seeking declaratory relief and restitution pursuant to
24 California Business and Professions Code § 17200, *et. seq.* This class action is brought pursuant to
25 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
26 of the California Labor Code and applicable Wage Orders because the amount in controversy
27 exceeds this Court’s jurisdictional minimum.

3. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the city of Sacramento, County of Sacramento. Defendants own, maintain offices, transact business, have an agent or agents within the County of Sacramento, and/or otherwise are found within the County of Sacramento, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

4. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a Roseville, California resident. Defendants employed Plaintiff as a non-exempt employee in the County of Sacramento.

5. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed to her by California Labor Code and California Business and Professions Code § 17200 *et seq.* (Unfair Competition), and Wage Order No. 16, which sets employment standards for the workers in the construction industry.

6. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Sacramento. Defendants are a general engineering contractor with a facility located at 1130 Sibely Street, Folsom, California 95630.

7. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the members of Classes to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

8. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

9. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

FACTUAL ALLEGATIONS

10. Defendant Syblon Reid Construction is California-based contractor offering a full range of commercial services including water treatment, bridge construction, lift stations/pumping, underground, site work, environmental enhancements and recreational improvements across Sacramento and Bay Area. Defendant touts itself to be “recognized as a leader in technical and difficult engineering construction projects requiring a high skill level in problem solving and risk management.”

11. Plaintiff worked for Defendants as a non-exempt employee in the “Accounts Payable” department. Plaintiff worked out of Defendants’ Folsom location from in or about September 2015 until her termination on December 4, 2020. Plaintiff and other non-exempt employees were responsible for all aspects of Defendants’ business and construction operations.

12. At all relevant times, Plaintiff and other non-exempt employees often worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, they were not compensated at one and one-half times their regular rate of pay due to Defendants' failure to

1 include all compensation/renumeration, including but not limited to all non-discretionary bonuses,
2 when calculating the regular rate of pay used in overtime calculations and when paying overtime.

3 13. Additionally, during the relevant time, Defendants also systematically failed to pay
4 Plaintiff and other non-exempt employees at the premium overtime rate for hours worked in
5 excess of 8.0 hours in a workday or 40.0 hours in a workweek. For instance, Plaintiff worked 88.0
6 hours in a 2-workweek period but was not paid at the applicable overtime rate for hours above
7 40.0 hours per workweek.

8 14. Labor Code § 510 requires an employer to compensate an employee who works
9 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
10 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
11 rate of pay for an employee. In addition, Labor Code § 510 obligates employers to compensate
12 employees at no less than twice the regular rate of pay when an employee works more than twelve
13 (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. Pursuant
14 to Section 3 of Wage Order No. 16, employees shall not be employed more than eight (8) hours in
15 any workday or more than 40 hours in any workweek unless the employee receives one and one-
16 half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
17 workweek.

18 15. Under the California Labor Code (as well as the FLSA), courts have held that
19 regularly paid non-discretionary incentive pay/bonuses must be included in determining an
20 employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The*
21 *Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
22 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435
23 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under
24 California and federal law on the grounds, that defendant improperly calculated overtime by
25 excluding annual bonuses paid to employees from the "regular rate of compensation"].)

26 16. Here, although Defendants consistently and regularly paid employees a non-
27 discretionary bonus, Defendants omitted the bonuses when calculating the regular rate of pay used
28 in overtime calculations and when paying overtime to Plaintiff and the other non-exempt

1 employees. By its policy of requiring Plaintiff and the other non-exempt employees to work in
2 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
3 compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully
4 violated the provisions of Labor Code §§ 510 and Wage Order 16.

5 17. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
6 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
7 restitution of wages, and liquidated damages as follows: (1) for any initial violation that is
8 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
9 period for which the employee is underpaid. . . [and] (2) [f]or each subsequent violation for the
10 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
11 period for which the employee is underpaid regardless of whether the initial violation is
12 intentionally committed.

13 18. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt
14 employees for all overtime wages or at the proper rates. Accordingly, to the extent permitted by
15 law Plaintiff and other non-exempt employees are entitled to recover liquidated damages for
16 violations of Labor Code § 1197.1. Based upon these same factual allegations, Plaintiff and the
17 other non-exempt employees are entitled to penalties under Labor Code § 1199.

18 19. Moreover, at all relevant times, Defendants failed to provide Plaintiff and other
19 non-exempt employees with timely and legally complaint meal period of at least thirty (30)
20 minutes before the end of the fifth hour of work, and second meal period before the end of the
21 tenth hour of work due to Defendants' unlawful meal period policies and work requirements that
22 did not permit Plaintiff and other non-exempt employees from taking timely uninterrupted first
23 and second meal periods of at least thirty (30) minutes. On occasion when Plaintiff was unable to
24 take meal period due to her job requirements, Defendants' managers/supervisors required Plaintiff
25 to record that she took a lunch from 12:00pm-12:30pm but Plaintiff's supervisor knew that she
26 could not actually take a meal period. On longer shifts when aggrieved employees work in excess
27 of 10.0 hours, aggrieved employees are not provided a second meal period of thirty (30) minutes
28 commencing before the end of the tenth hour of work.

1 20. Labor Code § 512 requires employers to provide employees with a thirty (30)
2 minute uninterrupted and duty-free meal period within the first five hours of work. An employee
3 who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute
4 uninterrupted and duty-free meal period. *Brinker Rest. Corp. v. Superior Court*, (2012) 53 Cal. 4th
5 1004, 1042 (“Accordingly, first meal periods must start after no more than five hours.”); See also
6 *Munoz v. Giumarra Vineyards Corp.*, 2015 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding
7 that meal periods must be taken within the first five hours of work)

8 21. Further, Labor Code § 226.7 provides “an employer shall not require an employee
9 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”) See
11 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1016-1017 (“[T]he wage
12 order’s meal period requirement is satisfied if the employee (1) has at least 30 minutes
13 uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period. .
14 .The employer satisfies the [meal period] obligation if it relieves its employees of all duty,
15 relinquishes control over their activities and permits them a reasonable opportunity to take an
16 uninterrupted 30-minute break, and does not impede or discourage them from doing so”)(emphasis
17 added).

18 22. As such, the applicable Wage Order obligates Defendants to provide Plaintiff and
19 other non-exempt employees “one (1) hour of pay at the employee’s regular rate of compensation
20 for each workday that the meal period is not provided.” Accordingly, for each day that Plaintiff
21 and other non-exempt employees did not receive compliant meal periods, they are entitled to
22 receive meal period premiums pursuant to Labor Code § 226.7 and the applicable Wage Order. As
23 a result of Defendants’ unlawful meal period policy/practices, Plaintiff seeks to recover on behalf
24 of herself and all non-exempt employees’ meal period premiums and penalties under Labor Code
25 § 226.7 and § 512.

26 23. Furthermore, Plaintiff and other non-exempt employees were not also provided
27 with rest periods of at least ten (10) ten minutes for each four (4) hour work period, or major
28 fraction thereof due to Defendants’ invalid rest period policies and practices that failed to allow

1 and permit Plaintiff and other non-exempt employees to take ten (10) minute rest periods as
2 Plaintiff and other non-exempt employees were required to complete their work duties before the
3 end of the workday. This prevented Plaintiff and other non-exempt employees from taking
4 compliant and uninterrupted rest periods of ten (10) minutes for each four (4) hour work period.
5 This includes failing to permit other non-exempt employees from taking a third rest period for
6 shifts in excess of 10.0 hours in a workday.

7 24. Under Wage Order No. 16, an employer must authorize and permit all employees
8 to take ten (10) minute duty free rest periods for every major fraction of four hours worked. See
9 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest
10 periods employers must relieve employees of all duties and relinquish control over how employees
11 spend their time.”]. In *Augustus*, the court expressly rejected the employers assertion that it could
12 provide an on-duty rest period to employees who worked as security guards and further explained
13 “that employers [must] relinquish any control over how employees spend their break time, and
14 relieve their employees of all duties.” *Id.* at 273.

15 25. As a result, Plaintiff and other non-exempt employees were unable to take
16 compliant rest periods, and since they were required to remain working at the workplace, they
17 could not take their rest periods “relinquished from all duties” as required by Labor Code § 226.7.
18 Additionally, Defendants also failed to maintain any mechanism for the payment of rest period
19 premium payments as required by Labor Code § 226.7. As a result of Defendants’ unlawful rest
20 period policies and practices, Plaintiff seeks to recover on behalf of himself and other non-exempt
21 employees rest period premiums and penalties. Consequently, Defendants have violated Labor
22 Code §§ 226.7, 512 and applicable Wage Orders.

23 26. As a result of Defendants’ failure pay for all overtime hours worked at the
24 appropriate rate and failure to provide legally compliant meal and rest periods or compensation in
25 lieu thereof, Defendants also failed to pay Plaintiff and other non-exempt employees all wages
26 owed at their time of separation from employment in violation of Labor Code §§ 201-203.
27 Accordingly, Plaintiff and other non-exempt employees would be entitled to recover penalties
28 under Labor Code §§ 201-203.

1 27. As a further result of Defendants' failure to pay all non-exempt employees for all
2 overtime hours at the appropriate legal rate, and failure to provide legally compliant meal and rest
3 periods or compensation in lieu thereof, Defendants also intentionally failed to furnish Plaintiff
4 and other non-exempt employees with itemized wage statements that accurately reflect the correct
5 amount of gross wages earned, net wages earned and premium wages due for missed meal periods
6 as required by Labor Code § 226(a). Consequently, since Defendants failed to comply with Labor
7 Code § 226(a), Plaintiff and other non-exempt employees would be entitled to recover penalties
8 under Labor Code § 226(e).

9 28. In addition, at all relevant times, Defendants failed (and continues to fail) to
10 provide Plaintiff and other non-exempt employees with accurate itemized wage statements in
11 accordance with Labor Code § 226(a)(6) and (8). Labor Code § 226(a) obligates employers, semi-
12 monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- 13 (1) gross wages earned;
14 (2) total hours worked by the employee;
15 (3) the number of piece-rate units earned and any applicable piece rate if the
16 employee is paid on a piece rate;
17 (4) all deductions, provided that all deductions made on written orders of the
18 employee may be aggregated and shown as one item;
19 (5) net wages earned;
20 **(6) the inclusive dates of the period for which the employee is paid;**
21 (7) the name of the employee and only the last four digits of his or her social
22 security number or an employee identification number other than a social security
23 number;
24 **(8) the name and address of the legal entity that is the employer...;**
25 (9) all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee.
27

28 29. First, at all relevant times, the wage statements provided to Plaintiff and other
employees failed and continue to fail to include "the inclusive dates of the period for which the
employee is paid" in violation of Labor Code Section 226(a)(6). For instance, as stated on
Plaintiff's wage statement dated 11/13/20 attached hereto as Exhibit A, the wage statement only
provides the "Period Ending" date and fails to include the Period Beginning date. There is no other
way to ascertain the beginning of the pay period by looking at the four corners of the wage
statement.

30. Second, the wage statement also fails to correctly state name and address of the legal entity that is the employer in violation of Labor Code Section 226(a)(8). For instance, Plaintiff's wage statement attached as **Exhibit A** states the improper name and address of the legal entity that is the employer. The wage statement states the name as "Syblon Reid" However, the California Secretary of State provides that the name of the legal entity that is the employer is "Syblon Reid Construction, Inc." Thus, the wage statement fails to include the name and address of the legal entity, with no way to otherwise ascertain by looking at Plaintiff's pay statements. As such, Defendants' failure to include the full the name and address of the legal entity is in violation of Labor Code § 226(a)(8).

31. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and other employees with accurate itemized wage statements.

CLASS ACTION ALLEGATIONS

32. Class Definition: Plaintiff brings this action on behalf of herself and the following
Classes pursuant to § 382 of the Code of Civil Procedure:

- (1) All non-exempt employees who are not subject to a valid Collective Bargaining Agreement with a clear and unmistakable waiver of the right to bring California Labor Code claims, and who worked for Defendants in California during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”);
- (2) All employees who work or worked for Defendants in California, during the one year prior to the filing of the Complaint, and who received a wage statement in violation of Labor Code Sections 226(a)(6)(8) (“Wage Statement Class”);
- (3) All non-exempt employees who are not subject to a valid Collective Bargaining Agreement with a clear and unmistakable waiver of the right to

bring California Labor Code claims, and who have left Defendants' employ during one year immediately preceding the filing of the Complaint through the date of trial. ("Waiting Time Penalty Class")
(collectively "Classes")

33. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Class is unknown to Plaintiff at this time; however, it is estimated that the Class number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

34. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants failed to pay all overtime hours at the legal premium rate in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

2. Whether Defendants provided legally compliant meal and rest periods or compensation in lieu thereof to members of the Classes;

3. Whether Defendants furnished legally compliant wage statements to members of the Classes pursuant to Labor Code § 226(a); and

4. Whether Defendants failed to pay members of the Classes all wages/reimbursements owed prior to their separation of employment in violation of Labor Code §§ 201-203.

35. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform method of failing to pay for all overtime hours at the appropriate premium rate, Defendants' uniform meal and rest period policies and practices, and Defendants' uniform failure to provide accurate itemized wage statements. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to

1 the amount of his or her damages.

2 36. **Typicality:** The claims of Plaintiff are typical of the claims of the Class because
3 Plaintiff was employed by Defendants as a non-exempt non-union employee in California during
4 the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action.
5 As alleged herein, Plaintiff, like the members of the Classes, was not paid at the appropriate
6 overtime rate, was not provided with all legally complaint meal and rest periods and was not issued
7 all accurate itemized wage statements.

8 37. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
9 to represent fairly and adequately the interests of the members of the Classes. Moreover,
10 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
11 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted several wage-and-hour class actions
12 in state and federal courts in the past and are committed to vigorously prosecuting this action on
13 behalf of the members of the Classes.

14 38. **Superiority:** The California Labor Code is broadly remedial in nature and serves
15 an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who have the responsibility to follow the laws and who may seek to
18 take advantage of superior economic and bargaining power in setting onerous terms and
19 conditions of employment. The nature of this action and the format of laws available to Plaintiff
20 and members of the Classes make the class action format a particularly efficient and appropriate
21 procedure to redress the violations alleged herein. If each employee were required to file an
22 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
23 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
24 their vastly superior financial and legal resources. Moreover, requiring each member of the
25 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
26 employees who would be disinclined to file an action against their former and/or current employer
27 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
28 employment. Further, the prosecution of separate actions by the individual class members, even if

possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 32 are maintainable as Classes under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

41. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194. The applicable Wage Order § 3 requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

1 42. Defendants failed to conform their pay practices to the requirements of the law.
2 Plaintiff and members of the Classes were not compensated for all hours worked including, but not
3 limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to
4 work under the California Labor Code and applicable Wage Orders. Defendants' policies and
5 practices are unlawful and create entitlement to recovery by Plaintiff and the members of the
6 Classes in a civil action for the unpaid amount of overtime premiums owing, including interest
7 thereon, statutory penalties, attorney's fees, and costs of suit according to California Labor Code §§
8 204, 510, 558, 1194, and 1198, Wage Order No. 1, and Code of Civil Procedure § 1021.5.

9 **SECOND CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

12 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 44. Under California law, Defendant has an affirmative obligation to relieve Plaintiff
14 and the Class Members of all duty in order to take their first daily meal periods no later than the
15 start of the employees' sixth hour of work in a workday, and to take their second meal period no
16 later than the start of the employees' eleventh hour of work in the workday.

17 45. Labor Code § 226.7 provides "an employer shall not require an employee to work
18 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
19 regulation, standard, or order of the Industrial Welfare Commission ("IWC')." Labor Code § 512
20 and Section 11 of Wage Order No. 16 require employers to provide employees with thirty (30)
21 minute uninterrupted and duty-free meal period within the first five hours of work. Moreover, an
22 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
23 minute uninterrupted and duty-free meal period. *Brinker Rest. Corp. v. Superior Court* (2012) 53
24 Cal. 4th 1004, 1042 ("Accordingly, first meal periods must start after no more than five hours.").
25 *See also, Munoz v. Giumarra Vineyards Corp.*, 2015 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015)
26 (holding that a meal period must be taken within the first five hours of work).

27 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
28 in their affirmative obligation to provide all of their hourly non-exempt employees, including

1 Plaintiff and members of the Classes, with all required meal periods in accordance with the
2 mandates of the California Labor Code and Wage Order No. 16, for the reasons set forth in the
3 factual allegations and definitions sections of this Complaint.

4 47. As a result, Defendants are responsible for paying premium compensation for meal
5 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to Wage
6 Order No. 16, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

7 **THIRD CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

10 48. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

11 49. Wage Order No. 16, § 12 and California Labor Code §§ 226.7 and 516 establish the
12 right of employees to be provided with a rest period of at least ten (10) minutes for each four (4)
13 hour period worked, or major fraction thereof.

14 50. Due to their unlawful rest period policy and practices, Defendants failed to authorize
15 and permit Plaintiff and members of the Classes to take all rest periods to which they were legally
16 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to
17 Plaintiff and members of the Classes at their respective regular rates of pay for each violation, in
18 accordance with California Labor Code § 226.7.

19 51. The foregoing violations create an entitlement to recovery by Plaintiff and members
20 of the Classes in a civil action for the unpaid amount of rest period premiums owing, including
21 interest thereon, statutory penalties, and costs of suit pursuant to Wage Order No. 16, California
22 Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

23 **FOURTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

26 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 53. The actionable period for this cause of action is three years prior to the filing of this
28 Complaint through the present, and on-going until the violation are corrected or the class is

1 written orders of the employee may be aggregated and shown as one item,
2 (5) net wages earned, (6) the inclusive dates of the period for which the
3 employee is paid, (7) the name of the employee and only the last four
4 digits of his or her social security number or an employee identification
5 number other than a social security number, (8) the name and address of
6 the legal entity that is the employer and, if the employer is a farm labor
7 contractor, as defined in subdivision (b) of Section 1682, the name and
8 address of the legal entity that secured the services of the employer, and
9 (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the
11 employee. . .”

12 60. As set forth above, during the Class Period, Defendants issued continues to issue
13 wage statements to its employees including Plaintiff and members of the Classes which are
14 inadequate under Labor Code Section 226(a). Here, by failing to pay Plaintiff and the Classes for all
15 overtime wages, and missed meal and rest period premiums, Defendants failed to include required
16 information on Plaintiff and the Classes’ wage statements, including, but not limited to, the gross
17 wages earned, the net wages earned in violation of Labor Code section 226a(1)(5)(9).

18 61. Additionally, as alleged herein above, the wage statements provided to Plaintiff and
19 the Wage Statement Class failed and continue to fail to include “the inclusive dates of the period
20 for which the employee is paid” in violation of Labor Code Section 226(a)(6) and also fails to
21 correctly state name and address of the legal entity that is the employer in violation of Labor Code
22 Section 226(a)(8).

23 62. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
24 and intentional.

25 63. As a result of Defendants’ issuance of inaccurate itemized wage statements to
26 Plaintiff and members of the Classes in violation of section 226(a) of the California Labor
27 Code, Plaintiff and members of the Classes are each entitled to recover an initial penalty of \$50,
28 and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000
per Plaintiff and per every member of the Classes from Defendants pursuant to section 226(e) of the
Labor Code, costs and reasonable attorneys’ fees.

1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION BUSINESS & PROFESSIONS CODE § 17200 *et seq.***

3 **(AGAINST ALL DEFENDANTS)**

4 64. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 65. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code §§ 17200
7 *et seq.*, by failing to pay all overtime wages, failure to pay meal and rest period premiums, failure
8 to provide accurate itemized wage statements, and failing to pay all final pay due upon separation
9 of employment.

10 66. Defendants' utilization of these unfair and/or unlawful business practices deprived
11 Plaintiff and continues to deprive members of the Classes of compensation to which they are
12 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
13 over Defendants' competitors who have been and/or are currently employing workers and
14 attempting to do so in honest compliance with applicable wage and hour laws.

15 67. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
16 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
17 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
18 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

19 68. The acts complained of herein occurred within the last four years immediately
20 preceding the filing of the Complaint in this action.

21 69. Plaintiff was compelled to retain the services of counsel to file this court action to
22 protect his interests and those of the Class, to obtain restitution and injunctive relief on behalf of
23 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
24 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
25 which she is entitled to recover under Code of Civil Procedure § 1021.5.

26 ///

27 ///

28 ///

SEVENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

70. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

71. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff Rebecca Gibson (“Plaintiff”), an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other similarly aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a. Failing to pay Plaintiff and other similarly aggrieved employees for all hours overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197, 1198;

b. Failing to provide Plaintiff and other similarly aggrieved employees with all of their statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

c. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7, and 516;

d. Failing to furnish Plaintiff and other similarly situated employees with complete, accurate, itemized wage statements in violations of Labor Code § 226;

e. Failing to timely compensate Plaintiff and similarly aggrieved employees with all earnings at their separation of employment in violation of Labor Code §§ 201-203; and

f. Failing to maintain accurate records on behalf of Plaintiff and similarly aggrieved employees in violation of Labor Code § 1174.

72. On or about December 328, 2020 as well as March 15, 2021, Plaintiff Rebecca Gibson (“Plaintiff”) notified Defendant Syblon Reid (“Defendant”), and the California Labor and Workforce Development Agency (“LWDA”) via email of Defendant’s violations of the California

1 Labor Code § 2698 *et seq.*, with respect to violations of the California Labor Code identified in
2 Paragraph 71 (a)-(f). After sixty-five days have passed from Plaintiff notifying Defendant of these
3 violations, Plaintiff will have exhausted his administrative requirements for bringing a claim under
4 the Private Attorneys General Act with respect to these violations.

5 73. Plaintiff was compelled to retain the services of counsel to file this court action to
6 protect his interests and the interests of similarly aggrieved employees, and to assess and collect
7 the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs,
8 which he is entitled to receive under California Labor Code § 2699.

9 **DEMAND FOR JURY BY TRIAL**

10 Plaintiff Rebecca Gibson demands a jury by trial in the above captioned matter.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff prays for judgment for herself and for all others on whose behalf
13 this suit is brought against Defendants, as follows:

- 14 1. For an order certifying the proposed Classes;
- 15 2. For an order appointing Plaintiff as representative of the Classes;
- 16 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 17 4. Upon the First Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 19 5. Upon the Second Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 21 6. Upon the Third Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 23 7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to
24 Labor Code §§ 201-203.
- 25 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
26 reasonable costs and attorneys' fees;
- 27 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
28 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or

1 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

2 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other similarly
3 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
4 (a) and (f), including, but not limited to (1) \$100.00 for each initial violation and (2) \$200 for each
5 subsequent violation per employee per pay period for those violations of the Labor Code for which
6 no civil penalty is specifically provided;

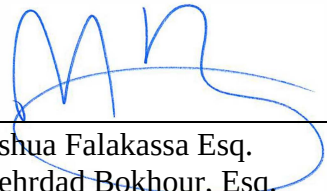
7 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
8 § 218.6 and Civil Code §§ 3287 and 3289;

9 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
10 218.5, 226, and Code of Civil Procedure § 1021.5; and

11 13. For such other and further relief, the Court may deem just and proper.

12 Dated: March 15, 2021

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

13
14
15 By: 

Joshua Falakassa Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes

EXHIBIT “A”

SYBLON REID
P.O. BOX 100
FOLSOM, CA 95763

Emp No. 1997
Name / Address
Rebecca L. Gibson
105 Earl Avenue
Roseville, CA 95678

SSN

Filing Status
S 10

Ref Number: 111520.02
Deposit Date: 11/13/20
Period Ending: 11/15/20
Pay Frequency: Semimonthly

Earnings				
This Pay Period			Year To Date	
Description	Rate	Hrs/Units	Amount	Amount
REG HRLY	25.4400	73.50	1,869.84	42,068.59
OT HRLY	0.0000	0.00	0.00	27.79
VACATION--	25.4400	4.00	101.76	1,682.56
SICK LEAVE	25.4400	2.50	63.60	1,621.35
401(K) FIXE	0.0000	0.00	-100.00	-2,100.00
EMPLOYEE	0.0000	0.00	-41.00	-861.00
EMPLOYEE	0.0000	0.00	-14.00	-294.00
EMPLOYEE	0.0000	0.00	-5.56	-116.76

Leave Codes	Period Usage	YTD Usage	Balance
Vacation Hours	4.00	68.00	16.00
Sick Leave Hours	2.50	64.75	10.25

Deductions		
This Pay Period		Year To Date
Description	Amount	Amount
FWT	0.00	460.00
FICA - EE	122.43	2,797.97
MED - EE	28.63	654.36
CA-SWT	5.75	378.67
SDI	20.35	464.00
EMPLOYEE MIS	50.00	850.00
G1-FIXED RATE	50.00	350.00

Important Messages:

This Pay Period			
Earnings	Deductions	Net Pay	
1,874.64	277.16	1,597.48	

Year To Date		
Earnings	Deductions	Net Pay
43,028.53	5,955.00	37,073.53

001997

Your check has been deposited in your bank account

Routing ID	Bank Account	Dep Type	Amount
		C	1,597.48
Total Current Net:			1,597.48

Date	Ref No.	Amount
11/13/20	111520.02	1,597.48

Rebecca L. Gibson
105 Earl Avenue
Roseville, CA 95678