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7 Attorneys for Plaintiff, ROQUE GARZON and
on behalf of himself and all others similarly situated and aggrieved

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

10 ROQUE GARZON, an individual and on behalf
11 of all others similarly situated and aggrieved,

12 Plaintiff,

13 v.

14 MOBILE HI-TECH WHEELS, LLC, a
15 Delaware limited liability company; MOBILE
HI-TECH WHEELS, LLC, a California limited
16 liability company; WHEEL PROS, INC., a
Delaware corporation; WHEEL PROS, LLC, a
17 Delaware limited liability company; WHEEL
PROS HOLDINGS, LLC, a Delaware limited
18 liability company; WHEEL PROS HOLDINGS,
LP, a Delaware limited partnership; WHEEL
19 PROS INTERMEDIATE, INC., a Delaware
corporation; WHEEL PROS INTERMEDIATE
20 HOLDINGS, INC., a Delaware corporation;
ACS STAFFING, INC., a California
21 corporation; CLEARLAKE CAPITAL GROUP,
L.P., a Delaware limited partnership; JODY
22 GROCE, an individual; RANDY WHITE, an
individual; MOBILE HI-TECH WHEELS, INC.,
23 a California corporation; and DOES 1 through
100, inclusive,

24 Defendants.
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FILED

Superior Court of California
County of Los Angeles

AUG 04 2021

Sherri R. Cornejo Executive Officer/Clerk of Court
By *Lori M'Greene*, Deputy
Lori M'Greene

CASE NO.: 21STCV15396

[Assigned to the Hon. Carolyn B. Kuhl in Dept.
12]

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY; and
9. UNFAIR COMPETITION
10. PENALTIES PER LABOR CODE § 210;
11. PENALTIES PER LABOR CODE § 226.3;
12. PENALTIES PER LABOR CODE § 558;
13. PENALTIES PER LABOR CODE § 1174.5;
14. PENALTIES PER LABOR CODE § 1197.1;
and
15. PENALTIES PER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff ROQUE GARZON ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against MOBILE HI-TECH WHEELS, LLC, a Delaware limited liability company and any of its respective subsidiaries or affiliated companies ("MHT DELAWARE"); MOBILE HI-TECH WHEELS, LLC, a California limited liability company and any of its respective subsidiaries or affiliated companies ("MHT CALIFORNIA"); WHEEL PROS, INC., a Delaware corporation and any of its respective subsidiaries or affiliated companies ("WHEEL PROS INC"); WHEEL PROS, LLC, a Delaware limited liability company and any of its respective subsidiaries or affiliated companies ("WHEEL PROS LLC"); WHEEL PROS HOLDINGS, LLC, a Delaware limited liability company and any of its respective subsidiaries or affiliated companies ("WP HOLDINGS LLC"); WHEEL PROS HOLDINGS, LP, a Delaware limited partnership and any of its respective subsidiaries or affiliated companies ("WP HOLDINGS LP"); WHEEL PROS INTERMEDIATE, INC., a Delaware corporation and any of its respective subsidiaries or affiliated companies ("WPI"); WHEEL PROS INTERMEDIATE HOLDINGS, INC., a Delaware corporation and any of its respective subsidiaries or affiliated companies ("WPI HOLDINGS"); ACS STAFFING, INC., a California corporation and any of its respective subsidiaries or affiliated companies ("ACS"); CLEARLAKE CAPITAL GROUP, L.P., a Delaware limited partnership and any of its respective subsidiaries or affiliated companies; California ("CLEARLAKE"); JODY GROCE, an individual ("GROCE"); RANDY WHITE, an individual ("WHITE"); and MOBILE HI-TECH WHEELS, INC. ("MOBILE CORP" and collectively with MHT DELAWARE, MHT CALIFORNIA, WHEEL PROS INC., WHEEL PROS LLC, WP HOLDINGS LLC, WP HOLDINGS LP, WPI, WPI HOLDINGS, ACS, CLEARLAKE, GROCE, WHITE and with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

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2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against MHT DELAWARE and any of its respective subsidiaries or affiliated companies within the State of California; MHT CALIFORNIA and any of its respective subsidiaries or affiliated companies within the State of California; WHEEL PROS INC. and any of its respective subsidiaries or affiliated companies within the State of California; WHEEL PROS LLC and any of its respective subsidiaries or affiliated companies within the State of California; WP HOLDINGS LLC and any of its respective subsidiaries or affiliated companies within the State of California; WP HOLDINGS LP and any of its respective subsidiaries or affiliated companies within the State of California; WPI and any of its respective subsidiaries or affiliated companies within the State of California; WPI HOLDINGS and any of its respective subsidiaries or affiliated companies within the State of California; ACS and any of its respective subsidiaries or affiliated companies within the State of California; CLEARLAKE and any of its respective subsidiaries or affiliated companies within the State of California; MOBILE CORP and any of its respective subsidiaries or affiliated companies within the State of California; MS. GROCE, an individual, MR. WHITE an individual, and DOES 1 through 100, as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

PARTIES

A. Plaintiff

26 3. Plaintiff ROQUE GARZON is a resident of the State of California. At all relevant
27 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 employed Plaintiff ROQUE GARZON as a non-exempt employee, with duties that included, but

1 were not limited to, cleaning and preparing automobile rims for painting. Plaintiff is informed and
2 believes, and based thereon alleges, that Plaintiff ROQUE GARZON worked for Defendants from
3 approximately May of 2015 through approximately April of 2020.

4 **B. Defendants**

5 4. Plaintiff is informed and believes, and based thereon alleges, that defendant MHT
6 DELAWARE is, and at all times relevant hereto was, a limited liability company organized and
7 existing under and by virtue of the laws of the State of Delaware and doing business in the County
8 of Los Angeles, State of California.

9 5. Plaintiff is informed and believes, and based thereon alleges, that defendant MHT
10 CALIFORNIA is, and at all times relevant hereto was, a limited liability company organized and
11 existing under and by virtue of the laws of the State of California and doing business in the County
12 of Los Angeles, State of California.

13 6. Plaintiff is informed and believes, and based thereon alleges, that defendant WHEEL
14 PROS INC is, and at all times relevant hereto was, a corporation organized and existing under and
15 by virtue of the laws of the State of Delaware and doing business in the County of Los Angeles,
16 State of California.

17 7. Plaintiff is informed and believes, and based thereon alleges, that defendant WHEEL
18 PROS LLC is, and at all times relevant hereto was, a limited liability company organized and
19 existing under and by virtue of the laws of the State of Delaware and doing business in the County
20 of Los Angeles, State of California.

21 8. Plaintiff is informed and believes, and based thereon alleges, that defendant WP
22 HOLDINGS LLC is, and at all times relevant hereto was, a limited liability company organized and
23 existing under and by virtue of the laws of the State of Delaware and doing business in the County
24 of Los Angeles, State of California.

25 9. Plaintiff is informed and believes, and based thereon alleges, that defendant WP
26 HOLDINGS LP is, and at all times relevant hereto was, a limited partnership organized and existing
27 under and by virtue of the laws of the State of Delaware and doing business in the County of Los
28 Angeles, State of California.

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

4 11. Plaintiff is informed and believes, and based thereon alleges, that defendant WPI
5 HOLDINGS is, and at all times relevant hereto was, a corporation organized and existing under and
6 by virtue of the laws of the State of Delaware and doing business in the County of Los Angeles,
7 State of California.

8 12. Plaintiff is informed and believes, and based thereon alleges, that defendant
9 CLEARLAKE is, and at all times relevant hereto was, a limited liability company organized and
10 existing under and by virtue of the laws of the State of Delaware and doing business in the County
11 of Los Angeles, State of California.

12 13. Plaintiff is informed and believes, and based thereon alleges, that defendant GROCE
13 is, and all times relevant hereto was, a person acting on behalf of Defendants, or some of them, who
14 violated, or caused to be violated, the Labor Code violations referenced herein, or some of them, in
15 violation of Labor Code section 558.1.

16 14. Plaintiff is informed and believes, and based thereon alleges, that defendant WHITE
17 is, and all times relevant hereto was, a person acting on behalf of Defendants, or some of them, who
18 violated, or caused to be violated, the Labor Code violations referenced herein, or some of them, in
19 violation of Labor Code section 558.1.

20 15. Plaintiff is informed and believes and based thereon alleges that defendant ACS is,
21 and at all times relevant hereto was, a limited liability company organized and existing under and
22 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
23 State of California. Plaintiff is informed and believes, and based thereon alleges, that ACS is a labor
24 contractor within the meaning of Labor Code section 2810.3 that provides outplacement staffing
25 and payroll services for various industries and professions, including for MHT DELAWARE, MHT
26 CALIFORNIA, WHEEL PROS INC, WHEEL PROS LLC, WP HOLDINGS LLC, WP
27 HOLDINGS LP, WPI, WPI HOLDINGS, CLEARLAKE, GROCE and WHITE. At all relevant

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1 times herein, ACS employed Plaintiff and similarly situated employees within the State of
2 California.

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

7 17. The true names and capacities, whether individual, corporate, associate, or otherwise,
8 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
9 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
10 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
11 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
12 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
13 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
14 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
15 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
16 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
17 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
18 include MHT DELAWARE, MHT CALIFORNIA, WHEEL PROS INC, WHEEL PROS LLC, WP
19 HOLDINGS LLC, WP HOLDINGS LP, WPI, WPI HOLDINGS, ACS, CLEARLAKE, GROCE
20 and WHITE, and any of their parent, subsidiary, or affiliated companies within the State of
21 California, as well as DOES 1 through 100 identified herein.

22 **JOINT LIABILITY ALLEGATIONS**

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

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

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

JURISDICTION

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

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

23. Plaintiff also provided Defendants, and each of them, with notice under Labor Code section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage and hour violations under Labor Code section 2810.3 on April 21, 2021 by certified mail with return receipt requested.

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FACTUAL BACKGROUND

24. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay, to the detriment of Plaintiff and Class Members.

25. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other things, at times, failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage, to the detriment of Plaintiff and Class Members.

26. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day, and failing to provide compensation for such unprovided meal periods as required by California wage and hour laws.

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

28. For at least three (3) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the

1 full amount of their wages owed to them upon termination and/or resignation as required by Labor
2 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
3 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

4 29. For at least one (1) year prior to the filing of this Action and continuing to the present,
5 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
6 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
7 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
8 hours worked at each hourly rate; the name and address of the legal entity that is the employer; and
9 other such information as required by Labor Code section 226, subdivision (a). As a result thereof,
10 Defendants have further failed to furnish employees with an accurate calculation of gross and gross
11 wages earned, as well as gross and net wages paid.

12 30. For at least one (1) year prior to the filing of this action and continuing to the present,
13 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
14 amount of their wages for labor performed in a timely fashion as required under Labor Code section
15 204.

16 31. For at least three (3) years prior to the filing of this action and continuing to the
17 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
18 costs incurred in using cellular phones for work-related purposes and purchasing tools necessary to
19 perform work duties.

20 32. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this action
21 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 210, 226, 226.7,
22 227.3, 510, 512, 1194, 1194.2, 1197, 2802, 2810.3, *et al.*, and California Code of Regulations, Title
23 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
24 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
25 failure to indemnify work-related expenses, other such provisions of California law, and reasonable
26 attorneys' fees and costs.

27 33. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
28 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)

1 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
2 appropriate and effective means to prevent further violations, as well as all monies owed but
3 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
4 restitution of amounts owed.

5 **CLASS ACTION ALLEGATIONS**

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

11 35. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
12 to amend or modify the class description with greater specificity, further divide the defined class
13 into subclasses, and to further specify or limit the issues for which certification is sought.

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

17 **A. Numerosity**

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

22 38. Accounting for employee turnover during the relevant periods necessarily increases
23 this number. Plaintiff alleges Defendants' employment records would provide information as to the
24 number and location of all Class Members. Joinder of all members of the proposed Class is not
25 practicable.

26 **B. Commonality**

27 39. There are questions of law and fact common to Class Members. These common
28 questions include, but are not limited to:

- 1 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
2 worked at a proper overtime rate of pay?
- 3 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
4 for all other time worked at the employee's regular rate of pay and a rate of pay that
5 is greater than the applicable minimum wage?
- 6 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
7 Class Members to take compliant meal periods?
- 8 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
9 with additional wages for missed or interrupted meal periods?
- 10 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
11 Class Members to take compliant rest periods?
- 12 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
13 with additional wages for missed rest periods?
- 14 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
15 Members upon termination or resignation all wages earned?
- 16 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
17 section 203?
- 18 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
19 Class Members with accurate wage statements?
- 20 J. Did Defendants fail to pay Class Members in a timely fashion as required under
21 Labor Code section 204?
- 22 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
23 losses incurred in direct consequence of the discharge of their duties or by obedience
24 to the directions of Defendants as required under Labor Code section 2802?
- 25 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
26 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 27 M. Are Class Members entitled to restitution of wages under Business and Professions
28 Code section 17203?

1 N. Are Class Members entitled to costs and attorneys' fees?

2 O. Are Class Members entitled to interest?

3 C. **Typicality**

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

9 D. **Adequacy of Representation**

10 41. Plaintiff will fairly and adequately represent and protect the interest of Class
11 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
12 hour class actions.

13 E. **Superiority of Class Action**

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

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

24 **FIRST CAUSE OF ACTION**

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

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

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1 45. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
3 Wage Orders.

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

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

13 48. Four (4) years prior to the filing of the Complaint in this Action through the present,
14 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
15 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
16 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
17 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
18 actually worked at the proper overtime rate of pay, to the detriment of Plaintiff and Class Members.

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

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

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1 **SECOND CAUSE OF ACTION**

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

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

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

7 53. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
8 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
9 Defendants' control.

10 54. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
12 their regular rate of pay that is above the minimum wage, to the detriment of Plaintiff and Class
13 Members.

14 55. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
15 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
16 for all hours worked or otherwise due.

17 56. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
18 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
19 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
20 damages, reasonable attorneys' fees and costs of suit.

21 **THIRD CAUSE OF ACTION**

22 **(Failure to Provide Meal Periods – Against All Defendants)**

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

25 58. At all relevant times, Plaintiff and Class Members were employees or former
26 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

27 59. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
28 employ an employee for a work period of more than five (5) hours without a timely meal break of

1 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
2 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
3 per day without providing the employee with a second timely meal period of not less than thirty (30)
4 minutes in which the employee is relieved of all of his or her duties.

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

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

15 62. By their failure to provide Plaintiff and Class Members compliant meal periods as
16 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
17 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
18 violated the provisions of Labor Code section 512 and applicable Wage Orders.

19 63. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
20 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
21 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

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

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1 **FOURTH CAUSE OF ACTION**

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

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

5 66. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by applicable Wage Orders.

7 67. California law and applicable Wage Orders require that employers “authorize and
8 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
9 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
10 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
11 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
12 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
13 thirty (30) minutes of paid rest period.

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

18 69. For four (4) years prior to the filing of the Complaint in this Action through the
19 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
20 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
21 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
22 Member’s regular rate of compensation on the occasions that Class Members were not authorized
23 or permitted to take compliant rest periods.

24 70. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
25 rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s
26 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
27 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

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71. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for rest periods that they were not authorized or permitted to take.

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

FIFTH CAUSE OF ACTION

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

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

74. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

75. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

76. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

77. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned prior to termination or resignation in accordance with Labor Code

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

6 78. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
7 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
8 resignation, until paid, up to a maximum of thirty (30) days.

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

12 80. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
13 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
14 waiting time penalties, interest, and their costs of suit, as well.

15 **SIXTH CAUSE OF ACTION**

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

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

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

21 83. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
22 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
23 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
24 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
26 employer, among other things.

27 84. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
28 before the filing of the Complaint in this Action through the present, Defendants failed to comply

1 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
2 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
3 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
4 all applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
6 other things.

7 85. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
8 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
9 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
10 provided wage statements that Defendants knew were not accurate.

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

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

22 88. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
23 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
24 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
25 attorneys' fees, and costs of suit.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

3 89. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
4 incorporate each by reference as though fully set forth hereat.

5 90. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

7 91. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
8 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
9 during which the labor was performed, and labor performed between the 16th and the last day,
10 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
11 month.”

12 92. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
13 independent and apart from, any other penalty provided in this article, every person who fails to pay
14 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
15 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
16 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
17 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
18 percent of the amount unlawfully withheld.”

19 93. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
20 before the filing of the Complaint in this Action through the present, Defendants employed policies
21 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
22 Labor Code section 204.

23 94. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to
24 recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one
25 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
26 for each subsequent violation in connection with each payment that was made in violation of Labor
27 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

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95. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties, interest, and their costs of suit, as well.

EIGHTH CAUSE OF ACTION

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

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

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

98. Labor Code section 2802, subdivision (a) provides 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 . . .”

99. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: using cellular phones for work-related purposes, unpaid mileage/gasoline, and purchasing tools necessary to perform work duties.

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

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

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

1 **NINTH CAUSE OF ACTION**

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

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

5 104. Plaintiff is informed and believes, and based thereon alleges that the unlawful
6 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
7 and Professions Code section 17200. Due to their unlawful business practices in violation of the
8 Labor Code, Defendants have gained a competitive advantage over other comparable companies
9 doing business in the State of California that comply with their obligations to compensate employees
10 in accordance with the Labor Code.

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

13 106. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
14 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
15 Code and requiring the establishment of appropriate and effective means to prevent further
16 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
17 including interest thereon, in which they had a property interest and which Defendants nevertheless
18 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
19 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
20 by their failure to comply with the Labor Code.

21 107. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
22 Procedure section 1032 and interest under Civil Code section 3287.

23 **TENTH CAUSE OF ACTION**

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

25 108. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
26 and incorporates each by reference as though fully set forth hereat.

27 109. At all relevant times herein, Labor Code section 204, requires and required that:
28 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for

1 between the 16th and 26th day of the month during which the labor was performed, and labor
2 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
3 between the 1st and 10th day of the following month.”

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

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

19 **ELEVENTH CAUSE OF ACTION**

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

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

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

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1 worked at each hourly rate; the legal name of the employer; and other such information as required
2 by Labor Code section 226, subdivision (a).

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

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

10 116. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
11 and have a policy or practice of failing to furnish non-exempt employees, including, without
12 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
13 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
14 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
15 name of the employer and/or the name and address of the legal entity securing the employer’s services
16 if the employer is a farm labor contractor; and other such information as required by Labor Code
17 section 226, subdivision (a).

18 117. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
19 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
20 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
21 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
22 period for each subsequent violation.

23 **TWELFTH CAUSE OF ACTION**

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

25 118. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
26 and incorporates each by reference as though fully set forth hereat.

27 119. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
28 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating

1 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
2 penalty as follows:

- 3 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
4 pay period for which the employee was underpaid in addition to an amount sufficient
5 to recover underpaid wages;
- 6 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
7 employee for each pay period for which the employee was underpaid in addition to
8 an amount sufficient to recover underpaid wages;
- 9 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

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

19 121. As a direct and proximate result of the herein-described Labor Code violations,
20 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
21 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
22 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
23 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

24 **THIRTEENTH CAUSE OF ACTION**

25 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

26 122. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
27 and incorporates each by reference as though fully set forth hereat.

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1 123. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
2 every person employing labor in California to “[a]llow any member of the commission or the
3 employees of the Division of Labor Standards Enforcement free access to the place of business or
4 employment of the person to secure any information or make any investigation that they are
5 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
6 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
7 or papers of the person.”

8 124. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
9 every person employing labor in California to “[k]eep a record showing the names and addresses of
10 all employees employed and the ages of all minors.”

11 125. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
12 every person employing labor in California to “[k]eep, at a central location in the state or at the
13 plants or establishments at which employees are employed, payroll records showing the hours
14 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
15 piece rate paid to, employees employed at the respective plants or establishments. These records
16 shall be kept in accordance with rules established for this purpose by the commission, but in any
17 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
18 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
19 earned.”

20 126. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
21 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
22 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
23 member of the commission or employees of the division to inspect records pursuant to subdivision
24 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

25 127. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
26 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
27 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
28 inspection of records as required by Labor Code subdivision (b).

1 128. As a direct and proximate result of the herein-described Labor Code violations,
2 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
3 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
4 hundred dollars (\$500) per violation per Aggrieved Employee.

5 **FOURTEENTH CAUSE OF ACTION**

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

7 129. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
8 and incorporates each by reference as though fully set forth hereat.

9 130. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
10 person acting either individually or as an officer, agent, or employee of another person, who pays
11 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
12 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
13 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
14 Section 203 as follows:

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

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

26 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
27 Section 203, recovered pursuant to this section shall be paid to the affected
28 employee."

1 131. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
2 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
3 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' wages for all hours
4 worked or otherwise under Defendants' control due to, without limitation, routinely failing to
5 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
6 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
7 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

8 132. As a direct and proximate result of the herein-described Labor Code violations,
9 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
10 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
11 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
12 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
13 subsequent violation.

14 **FIFTEENTH CAUSE OF ACTION**

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

16 133. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
17 and incorporates each by reference as though fully set forth hereat.

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

24 135. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
25 Code except those for which a civil penalty is specifically provided, the established civil penalty for
26 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
27 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved

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1 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
2 employee per pay period for each subsequent violation.

3 136. Plaintiff is informed and believes and based thereon alleges that Defendants, and
4 each of them, violated the Labor Code sections described herein, including, without limitation, for
5 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
6 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
7 employment and after employment separation; provide employees the opportunity to inspect
8 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
9 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
10 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
11 separation at the proper rate of pay; entitling Plaintiff and other Aggrieved Employees to civil
12 penalties for each of these Labor Code violations in the amounts set forth in Labor Code section
13 2699, subdivision (f).

14 137. Moreover, Plaintiff and other Aggrieved Employees within the State of California
15 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
16 connection with their herein-described claims for civil penalties.

17 **DEMAND FOR JURY TRIAL**

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

19 **PRAYER**

20 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
21 against Defendants as follows:

- 22 A. An order certifying this case as a Class Action;
- 23 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
24 counsel as class counsel;
- 25 C. Damages for all wages earned and owed, including minimum and overtime wages,
26 and unpaid wages for vested vacation time, under Labor Code sections 510, 1194,
27 1197, 1199, 227.3 and 558.1;
- 28 D. Liquidated damages pursuant to Labor Code section 1194.2 and 558.1;

- 1 E. Damages for unpaid premium wages from missed meal and rest periods under,
2 among other Labor Code sections 512, 226.7 and 558.1;
3 F. Penalties for inaccurate wage statements under Labor Code sections 226,
4 subdivision (e) and 558.1;
5 G. Waiting time penalties under Labor Code section 203 and 558.1;
6 H. Penalties to timely pay wages under Labor Code section 210 and 558.1;
7 I. Damages under Labor Code sections 2802 and 558.1;
8 J. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
9 1197.1, and 2699;
10 K. Preliminary and permanent injunctions prohibiting Defendants from further
11 violating the California Labor Code and requiring the establishment of appropriate
12 and effective means to prevent future violations;
13 L. Restitution of wages and benefits due which were acquired by means of any unfair
14 business practice, according to proof;
15 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
16 N. For attorneys' fees in prosecuting this action;
17 O. For costs of suit incurred herein; and
18 P. For such other and further relief as the Court deems just and proper.
19

20 Dated: August 2, 2021

BIBIYAN LAW GROUP, P.C.

21
22 BY: 

23 MALALAI ANBARI

24 DAVID D. BIBIYAN

25 Attorneys for Plaintiff ROQUE GARZON on behalf of
26 himself and all others similarly situated and aggrieved
27
28