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Superior Court of California
County of Fresno
By: A. Hoffman, Deputy

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on behalf of herself and all others similarly situated and aggrieved

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

ANGEL SARMIENTO, RAFAEL
SANTIAGO-LUGO and TERESA
TATARAKIS, individually and on behalf of
all others similarly situated and aggrieved,

Plaintiffs,

v.

THE NEIL JONES FOOD COMPANY, a
Washington corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 21CECG03825

**SECOND AMENDED CLASS ACTION
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;
9. UNFAIR COMPETITION.
10. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (2004) FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, AND 2699, et seq.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

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COMES NOW plaintiffs ANGEL SARMIENTO, RAFAEL SANTIAGO-LUGO, and TERESA TATARAKIS (“Plaintiffs”), on behalf of Plaintiffs and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against THE NEIL JONES FOOD COMPANY, a Washington corporation and any of its respective subsidiaries or affiliated companies within the State of California (“NEIL JONES” and, with DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiffs and all persons currently or formerly employed by Defendants, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the period from April 16, 2017 through February 29, 2024 in the State of California. (“Class Members”).

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 NEIL JONES, and any of its respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiffs 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 violations of the Labor Code, including but not limited to, failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, on behalf of all persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees during the period of April 20, 2020 through February 29, 2024 in the State of California. (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiffs

3. Plaintiff ANGEL SARMIENTO is a resident of the State of California. At all relevant times herein, Plaintiffs are informed and believes, and based thereon allege, that Defendants

1 employed Plaintiff ANGEL SARMIENTO as a non-exempt employee, with duties that included,
2 but were not limited to, conducting produce quality assurance. Plaintiffs are informed and believe,
3 and based thereon allege that Plaintiff ANGEL SARMIENTO worked for Defendants from
4 approximately May of 2019 through approximately November of 2020.

5 4. Plaintiff RAFAEL SANTIAGO-LUGO is a resident of the State of California. At all
6 relevant times herein, Plaintiffs are informed and believe, and based thereon allege, that Defendants
7 employed Plaintiff RAFAEL SANTIAGO-LUGO as a non-exempt employee. Plaintiffs are
8 informed and believe, and based thereon allege that Plaintiff RAFAEL SANTIAGO-LUGO worked
9 for Defendants from approximately June of 2019 to December of 2019.

10 5. Plaintiff TERESA TATARAKIS is a resident of the State of California. At all relevant times
11 herein, Plaintiffs are informed and believe, and based thereon allege, that Defendants employed
12 Plaintiff TERESA TATARAKIS as a non-exempt employee. Plaintiffs are informed and believe,
13 and based thereon allege that Plaintiff TERESA TATARAKIS worked for Defendants from
14 approximately August of 2016 through approximately August of 2021.

15
16 **B. Defendants**

17 6. Plaintiffs are informed and believe and based thereon allege that defendant NEIL JONES is,
18 and at all times relevant hereto was, a corporation organized and existing under and by virtue
19 of the laws of the State of Washington and doing business in the County of Fresno, State of
20 California.

21 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
22 defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
23 Plaintiffs, who therefore sue defendants by such fictitious names under Code of Civil
24 Procedure section 474. Plaintiffs are informed and believe and based thereon allege that
25 each of the defendants designated herein as DOE is legally responsible in some manner for
26 the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this
27 Complaint to reflect the true names and capacities of the defendants designated hereinafter
28 as DOES when such identities become known. Plaintiffs are informed and believe, and

1 based thereon allege, that each defendant acted in all respects pertinent to this action, as the
2 agent of the other defendant(s), carried out a joint scheme, business plan or policy in all
3 respects pertinent hereto, and the acts of each defendant are legally attributable to the other
4 defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
5 include NEIL JONES, and any of their parent, subsidiary, or affiliated companies within the
6 State of California, as well as DOES 1 through 100 identified herein.

7 **JOINT LIABILITY ALLEGATIONS**

8 8. Plaintiffs are informed and believe and based thereon allege that all the times mentioned
9 herein, each of the Defendants was the agent, principal, employee, employer, representative,
10 joint venture or co-conspirator of each of the other defendants, either actually or ostensibly,
11 and in doing the things alleged herein acted within the course and scope of such agency,
12 employment, joint venture, and conspiracy.

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

23 10. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
24 thereon allege that Defendants, and each of them, are joint employers.

25 **JURISDICTION**

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

28 12. Venue is proper in Fresno County, California pursuant to Code of Civil Procedure sections

392, et seq. because, among other things, is the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs and Class Members in Fresno County, and Defendants employ numerous Class Members and aggrieved employees in Fresno County.

13. Plaintiffs are “aggrieved employee” under PAGA, as Plaintiffs were employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former employees of Defendants during the Civil Penalty Period.

14. Specifically, Plaintiffs seek to recover PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

15. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 2699, 2802, and 2810.5, California Code of Regulations Title 8 Section 11040, Subdivisions 5(A)-(B), California Code of Regulations Title 8 Section 1 1070(14), California Code of Regulations Title 8 Section 110404(5)(A), and all applicable Wage Orders.

16. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiffs, on behalf of Plaintiffs and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

17. On or around April 20, 2021, Plaintiff ANGEL SARMIENTO provided written notice

1 pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt
2 requested, of Defendants' violation of various, including the herein-described, provisions of
3 the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to
4 Defendants, and each of them.

5 18. On or around October 8, 2021, Plaintiff TERESA TATARAKIS provided written notice
6 pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt
7 requested, of Defendants' violation of various, including the herein-described, provisions of
8 the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to
9 Defendants, and each of them

10 19. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide
11 notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
12 calendar days of the postmarked dates of the herein-described notices sent by Plaintiffs to
13 the LWDA and Defendants.

14 **FACTUAL BACKGROUND**

15 20. For at least four (4) years prior to the filing of this action and continuing to the present,
16 Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members, or
17 some of them, in violation of California state wage and hour laws as a result of, without
18 limitation, Plaintiffs and Class Members working over eight (8) hours per day, forty (40)
19 hours per week, and seven consecutive work days in a work week without being properly
20 compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours
21 per week in a work week, and/or hours worked on the seventh consecutive work day in a
22 work week by, among other things, failing to accurately track and/or pay for all hours
23 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting
24 employees to work off the clock, including, without limitation, by requiring employees: to
25 come early to work without being able to clock in for all that time; to suffer under
26 Employer's control due to long lines for clocking in, to complete pre-shift tasks before
27 clocking in, to clock out for meal periods and continue working, to make phone calls off the
28 clock, and/or temperature checks off the clock; failing to include all forms of remuneration,

1 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
2 remuneration into the regular rate of pay for the pay periods where overtime was worked
3 and the additional compensation was earned for the purpose of calculating the overtime rate
4 of pay; editing and/or manipulation of time entries to show less hours than actually worked,
5 to the detriment of Plaintiffs and Class Members.

6 21. For at least four (4) years prior to the filing of this Action and continuing to the present,
7 Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
8 or some of them, in violation of California state wage and hour laws as a result of, among
9 other things, at times, failing to accurately track and/or pay for all hours actually worked at
10 their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting
11 employees to work off the clock, including, without limitation, by requiring employees: to
12 come early to work without being able to clock in for all that time; to suffer under
13 Employer's control due to long lines for clocking in, to complete pre-shift tasks before
14 clocking in, to clock out for meal periods and continue working, to make phone calls off the
15 clock; and editing and/or manipulation of time entries to show less hours than actually
16 worked, to the detriment of Plaintiffs and Class Members.

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

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

- 1 24. For at least three (3) years prior to the filing of this action and continuing to the present,
2 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
3 full amount of their wages owed to them upon termination and/or resignation as required by
4 Labor Code sections 201 and 202, including for, without limitation, failing to pay overtime
5 wages, minimum wages, premium wages, and vacation pay pursuant to Labor Code section
6 227.3.
- 7 25. For at least one (1) year prior to the filing of this Action and continuing to the present,
8 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them,
9 with itemized wage statements that accurately reflect gross wages earned; total hours
10 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate, and other such information as
12 required by Labor Code section 226, subdivision (a). As a result thereof, Defendants have
13 further failed to furnish employees with an accurate calculation of gross and gross wages
14 earned, as well as gross and net wages paid.
- 15 26. For at least one (1) year prior to the filing of this action and continuing to the present,
16 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
17 full amount of their wages for labor performed in a timely fashion as required under Labor
18 Code section 204.
- 19 27. For at least three (3) years prior to the filing of this action and continuing to the present,
20 Defendants have, at times, failed to indemnify Class Members, or some of them, for the costs
21 incurred in using cellular phones for work-related purposes.
- 22 28. For at least four (4) years prior to the filing of this action and continuing to the present,
23 Defendants have had a consistent policy of failing to provide Plaintiffs and similarly situated
24 employees or former employees within the State of California with compensation at their
25 final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.
- 26 29. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action pursuant
27 to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226,
28 226.7, 227.3, 246, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, *et al.*, and

1 California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum
2 wages, payment of premium wages for missed meal and rest periods, failure to pay timely
3 wages, waiting time penalties, wage statement penalties, failure to indemnify work-related
4 expenses, failing to pay vested vacation time at the proper rate of pay, other such provisions
5 of California law, and reasonable attorneys' fees and costs.

- 6 30. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to Business
7 and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
8 prohibiting Defendants from further violating the Labor Code and requiring the
9 establishment of appropriate and effective means to prevent further violations, as well as all
10 monies owed but withheld and retained by Defendants to which Plaintiffs and Class
11 Members are entitled, as well as restitution of amounts owed.

12 **CLASS ACTION ALLEGATIONS**

- 13 31. Plaintiffs bring this action on behalf of Plaintiffs and Class Members as a class action
14 pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all
15 persons currently or formerly employed by Defendant, either directly or through any
16 subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-
17 paid employees during the period of April 16, 2017 through February 29, 2024 (collectively
18 referred to as "Class Members").

- 19 32. Plaintiffs reserve the right under California Rule of Court rule 3.765, subdivision (b) to
20 amend or modify the class description with greater specificity, further divide the defined
21 class into subclasses, and to further specify or limit the issues for which certification is
22 sought.

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

26 **A. Numerosity**

- 27 34. The potential Class Members as defined are so numerous that joinder of all the members of
28 the Class is impracticable. While the precise number of Class Members has not been

determined yet, Plaintiffs are informed and believe that there are over seventy-five (75) Class Members employed by Defendants within the State of California.

35. Accounting for employee turnover during the relevant periods necessarily increases this number. Plaintiffs allege Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

B. Commonality

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

- A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours worked at a proper overtime rate of pay?
- B. Did Defendants violate Labor Code sections 510, 1194, 1197 and 1197.1 by failing to pay for all other time worked at the employee's regular rate of pay and a rate of pay that is greater than the applicable minimum wage?
- C. Did Defendants violate Labor Code section 512 by not authorizing or permitting Class Members to take compliant meal periods?
- D. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed or interrupted meal periods?
- E. Did Defendants violate applicable Wage Orders by not authorizing or permitting Class Members to take compliant rest periods?
- F. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed rest periods?
- G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class Members upon termination or resignation all wages earned?
- H. Are Defendants liable to Class Members for waiting time penalties under Labor Code section 203?
- I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?

- 1 J. Did Defendants fail to pay Class Members in a timely fashion as required under
2 Labor Code section 204?
- 3 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
4 losses incurred in direct consequence of the discharge of their duties or by obedience
5 to the directions of Defendants as required under Labor Code section 2802?
- 6 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
7 with compensation at their final rate of pay for vested paid vacation time.
- 8 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
9 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 10 N. Are Class Members entitled to restitution of wages under Business and Professions
11 Code section 17203?
- 12 O. Are Class Members entitled to costs and attorneys' fees?
- 13 P. Are Class Members entitled to interest?

14 **C. Typicality**

- 15 37. The claims of Plaintiffs herein alleged are typical of those claims which could be alleged by
16 any Class Members, and the relief sought is typical of the relief which would be sought by
17 each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and
18 damages arising out of and caused by Defendants' common course of conduct in violation
19 of laws and regulations that have the force and effect of law and statutes as alleged herein.

20 **D. Adequacy of Representation**

- 21 38. Plaintiffs will fairly and adequately represent and protect the interest of Class Members.
22 Counsel who represent Plaintiffs are competent and experienced in litigating wage and hour
23 class actions.

24 **E. Superiority of Class Action**

- 25 39. A class action is superior to other available means for the fair and efficient adjudication of
26 this controversy. Individual joinder of all Class Members is not practicable, and questions
27 of law and fact common to Class Members predominate over any questions affecting only
28 individual Class Members. Class Members, as further described therein, have been damaged

1 and are entitled to recovery by reason of Defendants' policies and/or practices that have
2 resulted in the violation of the Labor Code at times, as set out herein.

3 40. Class action treatment will allow Class Members to litigate their claims in a manner that is
4 most efficient and economical for the parties and the judicial system. Plaintiffs are unaware
5 of any difficulties that are likely to be encountered in the management of this action that
6 would preclude its maintenance as a class action.

7 **FIRST CAUSE OF ACTION**

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

9 41. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
10 preceding paragraphs as though fully set forth hereat.

11 42. At all relevant times, Plaintiffs and Class Members were employees or former employees of
12 Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable Wage
13 Orders.

14 43. At all times relevant to this Complaint, Labor Code section 510 was in effect and provided:
15 “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one
16 workday and any work in excess of forty hours in any one workweek . . . shall be
17 compensated at the rate of no less than one and one-half times the regular rate of pay for an
18 employee.”

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

24 45. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff
25 and Class Members, at times, worked for Defendants during shifts that consisted of more
26 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven
27 (7) consecutive workdays in a workweek, without being paid overtime wages for all hours
28 worked as a result of, including but not limited to, Defendants failing to accurately track

1 and/or pay for all hours actually worked at the proper overtime rate of pay; engaging,
2 suffering, or permitting employees to work off the clock, including, without limitation, by
3 requiring employees: to come early to work without being able to clock in for all that time;
4 to suffer under Employer's control due to long lines for clocking in, to complete pre-shift
5 tasks before clocking in, to clock out for meal periods and continue working, to make phone
6 calls off the clock, and/or temperature checks off the clock; failing to include all forms of
7 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and
8 other forms of remuneration into the regular rate of pay for the pay periods where overtime
9 was worked and the additional compensation was earned for the purpose of calculating the
10 overtime rate of pay; editing and/or manipulation of time entries to show less hours than
11 actually worked, to the detriment of Plaintiff and Class Members.

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

17 47. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been
18 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
19 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section
20 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section
21 3287.

22 **SECOND CAUSE OF ACTION**

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

24 48. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
25 preceding paragraphs as though fully set forth hereat.

26 49. At all relevant times, Plaintiffs and Class Members were employees or former employees of
27 Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

28 50. Pursuant to Labor Code sections 1197 and 1197.1 and applicable Wage Orders, Plaintiffs

and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

51. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work without being able to clock in for all that time; to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in, to clock out for meal periods and continue working, to make phone calls off the clock; and editing and/or manipulation of time entries to show less hours than actually worked, to the detriment of Plaintiffs and Class Members.

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

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

54. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

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

56. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall employ an employee for a work period of more than five (5) hours without a timely meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work period of more than ten (10)

- 1 hours per day without providing the employee with a second timely meal period of not less
2 than thirty (30) minutes in which the employee is relieved of all of his or her duties.
- 3 57. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a
4 meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
5 the employer shall pay the employee one (1) additional hour of pay at the employee's regular
6 rate of compensation for each workday that the meal period is not provided.
- 7 58. For four (4) years prior to the filing of the Complaint in this Action through the present,
8 Plaintiffs and Class Members were, at times, not provided complete, timely 30-minute, duty-
9 free uninterrupted meal periods every five hours of work without waiving the right to take
10 them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour
11 of pay at the Class Member's regular rate of compensation on the occasions that Class
12 Members were not provided compliant meal periods.
- 13 59. By their failure to provide Plaintiffs and Class Members compliant meal periods as
14 contemplated by Labor Code section 512, among other California authorities, and failing, at
15 times, to provide compensation for such unprovided meal periods, as alleged above,
16 Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage
17 Orders.
- 18 60. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered
19 damages in an amount, subject to proof, to the extent they were not paid additional pay owed
20 for missed, untimely, interrupted, incomplete and/or on-duty meal periods.
- 21 61. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
22 additional pay for unprovided compliant meal periods, in amounts to be determined at trial,
23 plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226
24 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

25 **FOURTH CAUSE OF ACTION**

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

- 27 62. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
28 preceding paragraphs as though fully set forth hereat.

- 1 63. At all relevant times, Plaintiffs and Class Members were employees or former employees of
2 Defendants covered by applicable Wage Orders.
- 3 64. California law and applicable Wage Orders require that employers “authorize and permit”
4 employees to take ten (10) minute rest periods in about the middle of each four (4) hour
5 work period “or major fraction thereof.” Accordingly, employees who work shifts of three
6 and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period,
7 employees who work shifts of more than six (6) and up to ten (10) hours must be provided
8 with twenty (20) minutes of paid rest period, and employees who work shifts of more than
9 ten (10) hours must be provided thirty (30) minutes of paid rest period.
- 10 65. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a
11 meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
12 Commission, the employer shall pay the employee one (1) additional hour of pay at the
13 employee’s regular rate of compensation for each work day that the rest period is not
14 provided.
- 15 66. For four (4) years prior to the filing of the Complaint in this Action through the present,
16 Plaintiffs and Class Members were, at times, not authorized or permitted to take complete,
17 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major
18 fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour
19 of pay at the Class Member’s regular rate of compensation on the occasions that Class
20 Members were not authorized or permitted to take compliant rest periods.
- 21 67. By their failure, at times, to authorize and permit Plaintiffs and Class Members to take rest
22 periods contemplated by California law, and one (1) additional hour of pay at the employee’s
23 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
24 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.
- 25 68. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have suffered
26 damages in an amount, subject to proof, to the extent they were not paid additional pay owed
27 for rest periods that they were not authorized or permitted to take.
- 28 69. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid

1 additional pay for unprovided compliant meal periods, in amounts to be determined at trial,
2 plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226
3 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

4 **FIFTH CAUSE OF ACTION**

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

6 70. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
7 preceding paragraphs as though fully set forth hereat.

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

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

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

23 74. Plaintiffs are informed and believes Defendants' failure, at times, to pay Plaintiffs and Class
24 Members all wages earned prior to termination or resignation in accordance with Labor Code
25 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by
26 Plaintiffs and Class Members at the time of termination in accordance with Labor Code
27 sections 201 and 202, but intentionally adopted policies or practices incompatible with the
28 requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay all

wages earned prior to termination or resignation.

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

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

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

SIXTH CAUSE OF ACTION

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

78. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

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

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

81. Plaintiffs are informed and believe, and based thereon alleges, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendants failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate; and the name and address of the
2 legal entity that is the employer, among other things.

3 82. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate wage
4 statements was knowing, intentional, and willful. Defendants had the ability to provide
5 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
6 provided wage statements that Defendants knew were not accurate.

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

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

18 85. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil Procedure
19 section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
20 the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
21 attorneys' fees, and costs of suit.

22 **SEVENTH CAUSE OF ACTION**

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

24 86. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
25 incorporate each by reference as though fully set forth hereat.

26 87. At all relevant times, Plaintiffs and Class Members were employees or former employees of
27 Defendants covered by Labor Code section 204 and applicable Wage Orders.

28 88. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th days,

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

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

12 90. Plaintiffs are informed and believe, and based thereon alleges, that in the one (1) year before
13 the filing of the Complaint in this Action through the present, Defendants employed policies
14 and practices that resulted in, at times, not paying Plaintiffs and Class Members in
15 accordance with Labor Code section 204.

16 91. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to recover
17 penalties for Defendants’ violations of Labor Code section 204, in the amount of one
18 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars
19 (\$200) for each subsequent violation in connection with each payment that was made in
20 violation of Labor Code section 204 per Class Member, plus 25 percent of the amount
21 unlawfully withheld.

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

25 **EIGHTH CAUSE OF ACTION**

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

27 93. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
28 preceding paragraphs as though fully set forth hereat.

- 1 94. At all relevant times, Plaintiffs and Class Members were employees or former employees of
2 Defendants covered by Labor Code section 2802 and applicable Wage Orders.
- 3 95. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify his or
4 her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties . . .”
- 6 96. For three (3) years prior to the filing of the Complaint in this Action through the present,
7 Defendants required Plaintiffs and Class Members, or some of them, to incur, at times,
8 necessary expenditures or losses in direct consequence of the discharge of their duties or at
9 the obedience to the directions of Defendants that included, without limitation: using cellular
10 phones for work-related purposes.
- 11 97. During that time period, Plaintiffs are informed and believe, and based thereon allege that
12 Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand
13 Class Members for those losses and/or expenditures.
- 14 98. As a result of Defendants’ unlawful conduct, Plaintiffs and Class Members have suffered
15 damages in an amount subject to proof, to the extent they were not reimbursed for the herein-
16 described losses and/or expenditures.
- 17 99. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and 1032,
18 and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
19 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’
20 fees and costs of suit.

21 **NINTH CAUSE OF ACTION**

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

- 23 100. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
24 preceding paragraphs as though fully set forth hereat.
- 25 101. Plaintiffs are informed and believe, and based thereon allege that the unlawful conduct of
26 Defendants alleged herein constitutes unfair competition within the meaning of Business and
27 Professions Code section 17200. Due to their unlawful business practices in violation of the
28 Labor Code, Defendants have gained a competitive advantage over other comparable

1 companies doing business in the State of California that comply with their obligations to
2 compensate employees in accordance with the Labor Code.

3 102. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class
4 Members have suffered injury in fact and lost money or property.

5 103. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class Members are
6 entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code
7 and requiring the establishment of appropriate and effective means to prevent further
8 violations, as well as restitution of all wages and other monies owed to them under the Labor
9 Code, including interest thereon, in which they had a property interest and which Defendants
10 nevertheless failed to pay them and instead withheld and retained for themselves. Restitution
11 of the money owed to Plaintiffs and Class Members is necessary to prevent Defendants from
12 becoming unjustly enriched by their failure to comply with the Labor Code.

13 104. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil Procedure
14 section 1032 and interest under Civil Code section 3287.

15 **TENTH CAUSE OF ACTION**

16 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

17 105. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
18 preceding paragraphs as though fully set forth hereat.

19 106. **Civil Penalties Under Labor Code § 210**

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

26 R. At all relevant times herein, Defendants have had a consistent policy or practice of
27 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a
28 timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section

210, Plaintiffs and other Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204.

107. **Civil Penalties Under Labor Code § 226.3**

- S. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a).
- T. Labor Code section 226.3 states 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 citation 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 records required in subdivision (a) of Section 226."
- U. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in this section are in addition to any other penalty provided by law."
- V. Plaintiffs are informed and believe, and based thereon allege, that Defendants had and have a policy or practice of failing to furnish non-exempt employees, including, without limitation, Plaintiff, itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a).

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

108. **Violation of Labor Code § 558**

X. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil penalty as follows:

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

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

(3) Wages recovered pursuant to this section shall be paid to the affected employee."

Y. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance

1 carrier, information regarding paid sick leave, and other pertinent information.

2 Z. As a direct and proximate result of the herein-described Labor Code violations,
3 pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are
4 entitled to recover civil penalties for Defendants' herein-described Labor Code
5 violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay
6 period for the initial violation, and one hundred dollars (\$100) for each Aggrieved
7 Employee per pay period for each subsequent violation.

8 109. **Violation of Labor Code § 1174.5**

9 AA. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
10 every person employing labor in California to "[a]llow any member of the
11 commission or the employees of the Division of Labor Standards Enforcement free
12 access to the place of business or employment of the person to secure any information
13 or make any investigation that they are authorized by this chapter to ascertain or
14 make. The commission may inspect or make excerpts, relating to the employment
15 of employees, from the books, reports, contracts, payrolls, documents, or papers of
16 the person."

17 BB. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
18 every person employing labor in California to "[k]eep a record showing the names
19 and addresses of all employees employed and the ages of all minors."

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

1 piece-rate units earned.”

2 DD. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
3 fails to maintain the records required by subdivision (c) of [Labor Code] Section
4 1174 or accurate and complete records required by subdivision (d) of [Labor Code]
5 Section 1174, or to allow any member of the commission or employees of the
6 division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174,
7 shall be subject to a civil penalty of five hundred dollars (\$500).

8 EE. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
9 willfully failed keep adequate or accurate time records including wage statements
10 and similar payroll documents under Labor Code section 226, documents signed to
11 obtain or hold employment under Labor Code section 432, personnel records under
12 Labor Code section 1198.5, and time records under Labor Code section 1174.

13 FF. As a direct and proximate result of the herein-described Labor Code violations,
14 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees
15 are entitled to recover civil penalties for Defendants’ herein-described Labor Code
16 violations in the amount of five hundred dollars (\$500) per violation per Aggrieved
17 Employee.

18 110. **Violation of Labor Code § 1197.1**

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

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

Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

HH. Plaintiffs are informed and believe, and based thereon alleges, that Defendants caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages.

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

111. Civil Penalties Under Labor Code § 2699

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

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

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

LL. Plaintiffs are informed and believe and based thereon allege that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws.

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

DEMAND FOR JURY TRIAL

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

PRAYER

WHEREFORE, on behalf of Plaintiffs and Class Members, Plaintiffs pray for judgment

1 against Defendants as follows:

- 2 A. An order certifying this case as a Class Action;
- 3 B. An Order appointing Plaintiffs as Class representatives and appointing Plaintiffs'
- 4 counsel as class counsel;
- 5 C. Damages for all wages earned and owed, including minimum. overtime wages and
- 6 unpaid wages for vested vacation time, under Labor Code sections 510, 1194, 1197
- 7 and 1199 and 227.3;
- 8 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 9 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 10 among other Labor Code sections, 512 and 226.7;
- 11 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 12 subdivision (e) and 558.1;
- 13 G. Waiting time penalties under Labor Code section 203;
- 14 H. Penalties to timely pay wages under Labor Code section 210;
- 15 I. Damages under Labor Code section 2802;
- 16 J. Preliminary and permanent injunctions prohibiting Defendants from further
- 17 violating the California Labor Code and requiring the establishment of appropriate
- 18 and effective means to prevent future violations;
- 19 K. Restitution of wages and benefits due which were acquired by means of any unfair
- 20 business practice, according to proof;
- 21 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 22 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 23 1174.5, 1197.1, and 2699;
- 24 N. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 25 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 26 O. For attorneys' fees in prosecuting this action;
- 27 P. For costs of suit incurred herein; and
- 28 Q. For such other and further relief as the Court deems just and proper.

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Dated: June 20, 2024

BIBIYAN LAW GROUP, P.C.
BY: Vedang J. Patel
VEDANG J. PATEL
Attorneys for Plaintiff ANGEL SARMIENTO on
behalf of herself and all others similarly situated and
aggrieved

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my mailing address is 1460 Westwood
Boulevard, Los Angeles, CA 90024.

5 On June 25, 2024, I caused a true and correct copy of the foregoing document(s) described
6 as **SECOND AMENDED COMPLAINT** to be served by electronic transmission via email and set
forth in the below service list:

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18 **and on behalf of all similarly situated**

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27 **Attorneys for Plaintiffs, TERESA TATARAKIS,**
28 **on behalf of herself and all others similarly situated and aggrieved**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 25, 2024, at Los Angeles, California.

/s/ Jennifer Echeverria
Jennifer Echeverria