

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (Cal. Bar No. 287811)
Diego Aviles (Cal. Bar No. 315533)
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

J. GILL LAW GROUP, P.C.

Jasmin K. Gill (Cal Bar No. 315090)
515 South Flower Street, Suite 1800
Los Angeles, California 90071
Tel: (310) 728-2137; Fax: (310) 728-2137

Attorneys for Plaintiff, ABRAHAM PERALTA,
on behalf of himself and all others similarly situated and/or aggrieved,
SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

JUN 30 2021

Sherri R. Carter, Executive Officer/Clerk of Court

By: Tanya Herrera, Deputy

ABRAHAM PERALTA, an individual and on
behalf of all others similarly situated and/or
aggrieved,

Plaintiff,

v.

JOHNSON DIVERSIFIED, INC., *d.b.a.*
Plumbing Solutions, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.:

21STCV24182

**CLASS AND REPRESENTATIVE
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 INDEMNIFY;
8. UNFAIR COMPETITION;
9. CIVIL PENALTIES UNDER LABOR CODE § 210;
10. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
11. CIVIL PENALTIES UNDER LABOR CODE § 558;
12. CIVIL PENALTIES UNDER LABOR CODE § 1174.5;
13. CIVIL PENALTIES UNDER LABOR CODE § 1197.1; and
14. CIVIL PENALTIES UNDER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff ABRAHAM PERALTA ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and/or aggrieved (collectively, "Plaintiffs"), and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against JOHNSON DIVERSIFIED, INC., *d.b.a.* Plumbing Solutions ("Johnson Diversified"), and any of its respective subsidiaries or affiliated companies within the State of California (Johnson Diversified, with DOES 1 through 100, as further defined below, are collectively hereinafter referred to as "Defendants") on behalf of Plaintiffs and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("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 Defendants, 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 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to pay overtime and minimum wages, to provide meal and rest breaks or compensation in lieu thereof, to provide employees the opportunity to inspect employment records, pay timely wages during employment and at the time of employment separation, comply with Labor Code section 2810.5, comply with Labor Code section 203, comply with Labor Code section 226, comply with Labor Code section 227.3, comply with Labor Code section 246, *et seq.*, and comply with Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

PARTIES

A. Plaintiff

3. Plaintiff ABRAHAM PERALTA is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff ABRAHAM PERALTA as a non-exempt employee, with duties that included, but were not limited to, installing and repairing plumbing systems. Plaintiff is informed and

believes, and based thereon alleges, that Plaintiff ABRAHAM PERALTA worked for Defendants from approximately October of 2017 through approximately December of 2020.

B. Defendants

4. Plaintiff is informed and believes and based thereon alleges that defendant Johnson Diversified is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California. At all relevant times herein, defendant Johnson Diversified employed Plaintiff and similarly situated and/or aggrieved employees within the State of California.

5. Plaintiff is informed and believes and based thereon alleges that defendant Johnston Diversified is, and at all times relevant hereto was, a "person" as defined in Labor Code section 17 and Cal. Bus. & Prof. Code § 17201.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include Johnson Diversified and any of its parents, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

7. Plaintiff is informed and believes and based thereon alleges that all the times mentioned herein, each of the Defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or

1 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
2 employment, joint venture, and conspiracy.

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

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

14 JURISDICTION

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

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

25 12. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term "civil
28 penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code

1 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") plus
2 reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current and former
3 employees of Defendants during the Civil Penalty Period.

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

8 14. During the period beginning one (1) year preceding the provision of notice to the
9 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
10 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 221, 223, 226,
11 226.3, 226.7, 227.3, 246, *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
12 1197.1, 1198.5, 1775, 1776, 1777.1, 2699, 2802, and 2810.5, among others.

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

17 16. On or around April 19, 2021, Plaintiff provided written notice pursuant to Labor
18 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
19 violations of various, including the herein-described, provisions of the Labor Code, to the LWDA,
20 as well as by certified mail, with return receipt requested to Defendants, and each of them.

21 17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
22 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
23 calendar days of the herein-described written notice sent by Plaintiff to the LWDA and Defendants.

24 **FACTUAL BACKGROUND**

25 18. For at least four (4) years prior to the filing of this action and continuing to the
26 present, Defendants have failed to pay overtime wages to Plaintiff and Class Members, or some of
27 them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff
28 and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven

1 consecutive work days in a work week without being properly compensated for hours worked in
2 excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
3 worked on the seventh consecutive work day in a work week by, among other things, failing to
4 accurately track and/or pay for all minutes actually worked (including, without limitation, failing to
5 accurately track and/or pay for all *prevailing* wage minutes and hours worked or otherwise under
6 Defendants' control) at the proper overtime rate(s) of pay; failing to pay the prevailing rate of per
7 diem wages for all work performed on public works projects or in connection with any contracts for
8 prevailing rates of per diem wages, including overtime and employee benefits or the value of the
9 employee benefits included in per diem wages; failing to accurately track minutes and hours worked
10 by employees in two or more classifications during a work day and/or work week; engaging,
11 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
12 employees: to come early to work and/or leave work late without being able to clock in for all that
13 time, to suffer under Defendants' control due to having to complete pre-shift tasks before clocking
14 in and post-shift tasks after clocking out, to load and unload materials from trucks off-the-clock, to
15 make phone calls, text, or drive off the clock, and/or go through temperature checks off the clock;
16 failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay,
17 meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods
18 where overtime was worked and the additional compensation was earned for the purpose of
19 calculating the overtime rate of pay; failing to pay reporting time pay; detrimental rounding of
20 employee time entries, editing and/or manipulation of time entries to show less hours than actually
21 worked, paying *prevailing* wage overtime hours at the improper rate(s) of pay, and for paying
22 straight pay instead of overtime pay to the detriment of Plaintiff and Class Members.

23 19. For at least four (4) years prior to the filing of this Action and continuing to the
24 present, Defendants have failed to pay minimum wages to Plaintiff and Class Members, or some of
25 them, in violation of California state wage and hour laws as a result of, among other things, failing
26 to accurately track and/or pay for all minutes actually worked at their regular rate of pay that is
27 above the minimum wage (including, without limitation, failing to accurately track and/or pay for
28 all *prevailing* wage minutes and hours worked or otherwise under Defendants' control); failing to

1 pay the prevailing rate of per diem wages for all work performed on public works projects or in
2 connection with any contracts for prevailing rates of per diem wages, including employee benefits
3 or the value of the employee benefits included in per diem wages; failing to accurately track minutes
4 and hours worked by employees in two or more classifications during a work day and/or work week;
5 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
6 by requiring employees: to come early to work and/or leave work late without being able to clock
7 in for all that time; to suffer under Defendants' control due to having to complete pre-shift tasks
8 before clocking in and post-shift tasks after clocking out, to load and unload materials from trucks
9 off-the-clock, and to make phone calls, text, or drive off the clock, and/or go through temperature
10 checks off the clock; failing to pay reporting time pay; and detrimental rounding of employee time
11 entries, editing and/or manipulation of time entries to show less hours than actually worked, paying
12 *prevailing* wage hours at the regular rate or otherwise improper rate(s) of pay; and failing to pay
13 split shift premiums to the detriment of Plaintiff and Class Members.

14 20. For at least four (4) years prior to the filing of this Action and continuing to the
15 present, Defendants have failed to provide Plaintiff and Class Members, or some of them, full,
16 timely thirty (30) minute uninterrupted meal period for days on which they worked more than five
17 (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which
18 they worked in excess of ten (10) hours in a work day, including, without limitation: by interrupting
19 meal periods; providing short meal periods; requiring that employees carry cellular telephones
20 during meal periods; not providing them in a timely fashion; otherwise requiring on-duty/on-call
21 meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during
22 which employees worked, and failing to provide compensation for such unprovided meal periods as
23 required by California wage and hour laws.

24 21. For at least four (4) years prior to the filing of this action and continuing to the
25 present, Defendants have failed to authorize and permit Plaintiff and Class Members, or some of
26 them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
27 thereof in which they are completely relieved of all of their duties, including, without limitation: by
28 failing to provide rest periods all together; requiring that they be bundled together and/or with meal

1 periods; interrupting them; requiring that employees carry cellular telephones during rest periods;
2 not providing them in a timely fashion; and otherwise requiring on-duty/on-call rest periods, and
3 failed to provide compensation for such unprovided rest periods as required by California wage and
4 hour laws.

5 22. For at least three (3) years prior to the filing of this action and continuing to the
6 present, Defendants have failed to pay Plaintiff and Class Members, or some of them, the full
7 amount of their wages owed to them upon termination and/or resignation as required by Labor Code
8 sections 201 and 202, including for, without limitation, failing to pay overtime wages, minimum
9 wages, premium wages, and paid time off as well as vacation pay pursuant to Labor Code section
10 227.3.

11 23. For at least one (1) year prior to the filing of this Action and continuing to the present,
12 Defendants have failed to furnish Plaintiff and Class Members, or some of them, with itemized wage
13 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all
14 deductions; all applicable hourly rates in effect during the pay period and the corresponding number
15 of hours worked at each hourly rate; the name(s) and address(es) of the legal entity(ies) that is/are
16 the employer(s); and other such information as required by Labor Code section 226, subdivision (a).
17 As a result thereof, Defendants have further failed to furnish employees with an accurate calculation
18 of gross and gross wages earned, as well as gross and net wages paid.

19 24. For at least three (3) years prior to the filing of this action and continuing to the
20 present, Defendants have failed to indemnify Class Members, or some of them, for the costs incurred
21 in purchasing mandatory work-related boots, safety vests, safety glasses, hard hats and other safety
22 gear; laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal
23 vehicles for work-related purposes; purchase and maintenance of personal cellular phones for work-
24 related purposes; and purchasing tools necessary to perform work duties.

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

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

26. At all relevant times mentioned herein, Defendants have had a policy or practice of failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Plaintiff and Aggrieved Employees 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 Defendants; 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 Defendants under Labor Code section 2810.5.

27. At all relevant times mentioned herein, Defendants occasionally failed to provide Plaintiff and Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to California law and also did not permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and Aggrieved Employees.

28. Plaintiff, on Plaintiff’s own behalf and on behalf of Class Members and Aggrieved Employees, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 246, *et seq.*, 432, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198.5, 2699, 2802, 2810.5, *et al.*, and the applicable rules and regulations of the IWC California Wage Orders, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, reimbursements for expenses incurred in furtherance of work duties, compensation for Defendants’ failure to pay vested vacation time at the proper rate of pay, penalties, other such provisions of California law, and reasonable attorneys’ fees and costs.

29. Plaintiff, on Plaintiff’s own behalf and on behalf of Class Members, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but

1 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
2 restitution of amounts owed.

3 **CLASS ACTION ALLEGATIONS**

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

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

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

15 **A. Numerosity**

16 33. The potential Class Members as defined are so numerous that joinder of all the
17 members of the Class is impracticable. While the precise number of Class Members has not been
18 determined yet, Plaintiff is informed and believes that there are at least fifty (50) Class Members
19 employed by Defendants within the State of California.

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

24 **B. Commonality**

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

27 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
28 worked at a proper overtime rate of pay?

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

1 **C. Typicality**

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

7 **D. Adequacy of Representation**

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

11 **E. Superiority of Class Action**

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

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

22 **FIRST CAUSE OF ACTION**

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

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

26 41. At all relevant times, Plaintiff and Class Members were employees or former
27 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
28 Wage Orders.

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

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

10 44. Four (4) years prior to the filing of the Complaint in this Action through the present,
11 Plaintiff and Class Members worked for Defendants during shifts that consisted of more than eight
12 (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive
13 workdays in a workweek, without being paid overtime wages for all hours worked as a result of,
14 including but not limited to, Defendants failing to accurately track and/or pay for all minutes actually
15 worked (including, without limitation, failing to accurately track and/or pay for all *prevailing* wage
16 minutes and hours worked or otherwise under Defendants' control) at the proper overtime rate(s) of
17 pay; failing to pay the prevailing rate of per diem wages for all work performed on public works
18 projects or in connection with any contracts for prevailing rates of per diem wages, including
19 overtime and employee benefits or the value of the employee benefits included in per diem wages;
20 failing to accurately track minutes and hours worked by employees in two or more classifications
21 during a work day and/or work week; engaging, suffering, or permitting employees to work off the
22 clock, including, without limitation, by requiring employees: to come early to work and/or leave
23 work late without being able to clock in for all that time, to suffer under Defendants' control due to
24 having to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to make
25 phone calls, text, or drive off the clock, and/or go through temperature checks off the clock; failing
26 to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal
27 allowances, and other forms of remuneration into the regular rate of pay for the pay periods where
28 overtime was worked and the additional compensation was earned for the purpose of calculating the

1 overtime rate of pay; failing to pay reporting time pay; detrimental rounding of employee time
2 entries, editing and/or manipulation of time entries to show less hours than actually worked, paying
3 *prevailing* wage overtime hours at the improper rate(s) of pay, and for paying straight pay instead
4 of overtime pay to the detriment of Plaintiff and Class Members.

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

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

14 **SECOND CAUSE OF ACTION**

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

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

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

20 49. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
21 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
22 Defendants' control.

23 50. For four (4) years prior to the filing of the Complaint in this Action through the
24 present, Defendants failed to accurately track and/or pay for all minutes actually worked at their
25 regular rate of pay that is above the minimum wage (including, without limitation, failing to
26 accurately track and/or pay for all *prevailing* wage minutes and hours worked or otherwise under
27 Defendants' control); failing to pay the prevailing rate of per diem wages for all work performed on
28 public works projects or in connection with any contracts for prevailing rates of per diem wages,

1 including employee benefits or the value of the employee benefits included in per diem wages;
2 failing to accurately track minutes and hours worked by employees in two or more classifications
3 during a work day and/or work week; engaging, suffering, or permitting employees to work off the
4 clock, including, without limitation, by requiring employees: to come early to work and/or leave
5 work late without being able to clock in for all that time; to suffer under Defendants' control due to
6 having to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to load
7 and unload materials from trucks off-the-clock, and to make phone calls, text, or drive off the clock,
8 and/or go through temperature checks off the clock; failing to pay reporting time pay; detrimental
9 rounding of employee time entries; editing and/or manipulation of time entries to show less hours
10 than actually worked; paying *prevailing* wage hours at the regular rate or otherwise improper rate(s)
11 of pay; and failing to pay split shift premiums.

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

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

19 **THIRD CAUSE OF ACTION**

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

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

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

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

1 per day without providing the employee with a second timely meal period of not less than thirty (30)
2 minutes in which the employee is relieved of all of his or her duties.

3 56. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
4 with a 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 rate
6 of compensation for each workday that the meal period is not provided.

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

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

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

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

24 **FOURTH CAUSE OF ACTION**

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

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

28 / / /

1 62. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by applicable Wage Orders.

3 63. California law and applicable Wage Orders require that employers “authorize and
4 permit” 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 and-a-
6 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
7 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
8 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
9 thirty (30) minutes of paid rest period.

10 64. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
11 with a 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 employee’s
13 regular rate of compensation for each work day that the rest period is not provided.

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

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

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

27 68. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
28 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus

1 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
2 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

3 **FIFTH CAUSE OF ACTION**

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

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

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

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

17 72. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
18 years before the filing of the Complaint in this Action through the present, Defendants, due to the
19 failure to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all
20 wages earned prior to resignation or termination in accordance with Labor Code sections 201 or
21 202, including by failing to pay for all accrued vacation and/or paid time off as required by Labor
22 Code section 227.3.

23 73. Plaintiff is informed and believes Defendants' failure to pay Plaintiff 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 Plaintiff
26 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
27 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
28 sections 201 and 202 resulting in the failure to pay all wages earned prior to termination or

1 resignation.

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

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

8 76. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
9 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
10 waiting time penalties, interest, and their costs of suit, as well.

11 **SIXTH CAUSE OF ACTION**

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

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

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

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

23 80. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
24 before the filing of the Complaint in this Action through the present, Defendants failed to comply
25 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
26 failure to furnish Plaintiff and Class Members with accurate itemized statements that accurately
27 reflect, among other things, gross wages earned; total hours worked; net wages earned; all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each

1 hourly rate; and the name and address of the legal entity that is the employer, among other things.

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

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

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

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

21 **SEVENTH CAUSE OF ACTION**

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

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

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

27 87. Labor Code section 2802, subdivision (a) provides that "an employer shall indemnify
28 his or her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties . . .”

2 88. For three (3) years prior to the filing of the Complaint in this Action through the
3 present, Defendants required Plaintiffs and Class Members, or some of them, to incur necessary
4 expenditures or losses in direct consequence of the discharge of their duties or at the obedience to
5 the directions of Defendants that included, without limitation: purchasing mandatory work-related
6 boots, safety vests, safety glasses, hard hats and other safety gear; laundering mandatory work
7 uniforms; mileage and/or gas costs incurred in driving personal vehicles for work-related purposes;
8 purchase and maintenance of personal cellular phones for work-related purposes; and purchasing
9 tools necessary to perform work duties.

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

13 90. As a result of Defendants’ unlawful conduct, Plaintiffs and Class Members have
14 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
15 herein-described losses and/or expenditures.

16 91. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
17 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
18 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
19 costs of suit.

20 **EIGHTH CAUSE OF ACTION**

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

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

24 93. Plaintiff is informed and believes, and based thereon alleges that the unlawful
25 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
26 and Professions Code section 17200. Due to their unlawful business practices in violation of the
27 Labor Code, Defendants have gained a competitive advantage over other comparable companies
28 doing business in the State of California that comply with their obligations to compensate employees

1 in accordance with the Labor Code.

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

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

12 96. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
13 Procedure section 1032 and interest under Civil Code section 3287.

14 **NINTH CAUSE OF ACTION**

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

16 97. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
17 incorporates each by reference as though fully set forth hereat.

18 98. At all relevant times, Plaintiff, Class Members, and Aggrieved Employees were
19 employees or former employees of Defendants covered by Labor Code section 204 and applicable
20 Wage Orders.

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

26 100. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
27 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
28 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,

204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

101. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiff, Class Members, and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff, Class Members, 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 Class Member and Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for each Class Member and Aggrieved Employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204, plus 25 percent of the amount unlawfully withheld.

102. 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.

TENTH CAUSE OF ACTION

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

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

104. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff with itemized wage statements that accurately reflect gross wages earned; total hours worked; 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; the legal name(s) and address(es) of the legal entity(ies) that is/are the employer(s); and other such information as required by Labor Code section 226, subdivision (a).

///

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

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

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

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

20 **ELEVENTH CAUSE OF ACTION**

21 **(Civil Penalties Under Labor Code § 558 – Against All Defendants)**

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

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

28 / / /

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

8 111. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
9 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
10 causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum
11 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
12 their employment and after their employment separation; receive accurate, itemized wage
13 statements; to be reimbursed for work expenses; be provided with the proper accrual and use of paid
14 sick leave; and be paid out all paid time off and/or vacation wages owed at the proper rate of pay.

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

20 **TWELFTH CAUSE OF ACTION**

21 **(Civil Penalties Under Labor Code § 1174.5 – Against All Defendants)**

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

24 114. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
25 every person employing labor in California to “[a]llow any member of the commission or the
26 employees of the Division of Labor Standards Enforcement free access to the place of business or
27 employment of the person to secure any information or make any investigation that they are
28 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,

1 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
2 or papers of the person.”

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

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

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

20 118. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
21 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
22 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
23 inspection of records as required by Labor Code subdivision (b).

24 119. As a direct and proximate result of the herein-described Labor Code violations,
25 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
26 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
27 hundred dollars (\$500) per violation per Aggrieved Employee.

28 / / /

1 **THIRTEENTH CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 1197.1 – Against All Defendants)**

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

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

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

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

22 iii. Wages, liquidated damages, and any applicable penalties imposed pursuant to
23 Section 203, recovered pursuant to this section shall be paid to the affected
24 employee.”

25 122. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
26 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
27 limitation, routinely failing to accurately track and/or pay Plaintiff and/or other Aggrieved
28 Employees’ wages for all minutes actually worked at their regular rate of pay that is above the

1 minimum wage (including, without limitation, failing to accurately track and/or pay for all
2 *prevailing* wage minutes and hours worked or otherwise under Defendants' control); failing to pay
3 the prevailing rate of per diem wages for all work performed on public works projects or in
4 connection with any contracts for prevailing rates of per diem wages, including employee benefits
5 or the value of the employee benefits included in per diem wages; failing to accurately track minutes
6 and hours worked by employees in two or more classifications during a work day and/or work week;
7 engaging suffering, or permitting employees to work off the clock, including, without limitation, by
8 requiring employees: to come early to work and/or leave work late without being able to clock in
9 for all that time; to suffer under Defendants' control due to having to complete pre-shift tasks before
10 clocking in and post-shift tasks after clocking out, to load and unload materials from truck off-the-
11 clock, and to make phone calls, text, or drive off the clock, and/or go through temperature checks
12 off the clock; failing to pay reporting time pay; and detrimental rounding of employee time entries,
13 editing and/or manipulation of time entries to show less hours than actually worked, paying
14 *prevailing* wage hours at the regular rate or otherwise improper rate(s) of pay; and failing to pay
15 split shift premiums.

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

22 **FOURTEENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

24 **DEMAND FOR JURY TRIAL**

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

26 **PRAYER**

27 WHEREFORE, on behalf of Plaintiff, Class Members, and Aggrieved Employees, Plaintiff
28 prays for judgment against Defendants as follows:

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

26 / / /

27 / / /

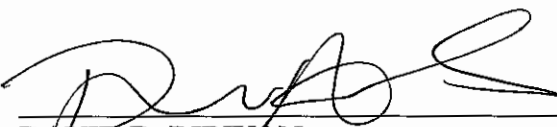
28 / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: June 30, 2021

BIBIYAN LAW GROUP, P.C.

BY: 

DAVID D. BIBIYAN
DIEGO AVILES

Attorneys for Plaintiff ABRAHAM PERALTA, on
behalf of himself and all others similarly situated
and/or aggrieved