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7 Attorneys for Plaintiffs, PENNIES M. SHIVAIE
and LALA BASSAM, on behalf of themselves
8 and all others similarly situated and aggrieved,

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SANTA CLARA**

11 PENNIES M. SHIVAIE and LALA
12 BASSAM, as individuals and on behalf of all
others similarly situated and aggrieved,

13 Plaintiffs,

14 v.

15
16 ELWYN, a Pennsylvania corporation;
ELWYN CALIFORNIA, a California
17 corporation; THE ELWYN FOUNDATION, a
Pennsylvania corporation; and DOES 1
18 through 100, inclusive,

19 Defendants.
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CASE NO.: 21CV382581

[Assigned for all purposes to the Hon. Sunil R.
Kulkarni, in Dept. 1]

**SECOND AMENDED 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 TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION; and
10. CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 Plaintiffs PENNIES M. SHIVAIE and LALA BASSAM, on behalf of Plaintiffs and all
2 others similarly situated and aggrieved, allege as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
6 ELWYN, a Pennsylvania corporation and any of its respective subsidiaries or affiliated companies
7 within the State of California (“ELWYN”), ELWYN CALIFORNIA, a California corporation and
8 any of its respective subsidiaries or affiliated companies within the State of California (“ELWYN
9 CA”), THE ELWYN FOUNDATION, a Pennsylvania corporation and any of its respective
10 subsidiaries or affiliated companies within the State of California (“ELWYN FOUNDATION” and,
11 with DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiffs and all
12 other current and former non-exempt California employees employed by or formerly employed by
13 Defendants (“Class Members”).

14 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
15 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants,
16 and any of their respective subsidiaries or affiliated companies within the State of California, as a
17 proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
18 behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working
19 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
20 for violations of the Labor Code, including but not limited to, failure to comply with Labor Code
21 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor
22 Code section 245, *et seq.*, Labor Code section 2802, on behalf of all employees of Defendants
23 working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

24 **PARTIES**

25 **A. Plaintiffs**

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

1 were not limited to, caring for patients and assisting nurses. Plaintiff SHIVAIE is informed and
2 believes, and based thereon alleges, that Plaintiff SHIVAIE worked for Defendants from
3 approximately August of 2018 and through approximately October of 2020.

4 4. Plaintiff LALA BASSAM is a resident of the State of California. At all relevant
5 times herein, Plaintiff BASSAM is informed and believes, and based thereon alleges, that
6 Defendants employed Plaintiff BASSAM as a non-exempt employee, with duties that included, but
7 were not limited to, caring for patients. Plaintiff BASSAM is informed and believes, and based
8 thereon alleges, that Plaintiff BASSAM worked for Defendants from approximately June of 2020
9 and through approximately June of 2022.

10 **B. Defendants**

11 5. Plaintiffs are informed and believe, and based thereon allege, that defendant
12 ELWYN is, and at all times relevant hereto was, a corporation organized and existing under and by
13 virtue of the laws of the State of Pennsylvania and doing business in the County of Santa Clara,
14 State of California.

15 6. Plaintiffs are informed and believe, and based thereon allege, that defendant
16 ELWYN CA is, and at all times relevant hereto was, a corporation organized and existing under and
17 by virtue of the laws of the State of California and doing business in the County of Santa Clara,
18 State of California.

19 7. Plaintiffs are informed and believe, and based thereon allege, that defendant
20 ELWYN FOUNDATION is, and at all times relevant hereto was, a corporation organized and
21 existing under and by virtue of the laws of the State of Pennsylvania and doing business in the
22 County of Santa Clara, California.

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

1 names and capacities of the defendants designated hereinafter as DOES when such identities become
2 known. Plaintiffs are informed and believe, and based thereon allege, that each defendant acted in
3 all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme,
4 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
5 attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to
6 “Defendants,” it shall include ELWYN, ELWYN CA, ELWYN FOUNDATION, and any of their
7 parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through
8 100 identified herein.

9 **JOINT LIABILITY ALLEGATIONS**

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

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

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

26 **JURISDICTION**

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

1 13. Venue is proper in Santa Clara County, California pursuant to Code of Civil
2 Procedure sections 392, et seq. because, among other things, Santa Clara County is the county in
3 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
4 effect on Plaintiffs and Class Members in Santa Clara County, and because Defendants employ
5 numerous Class Members in Santa Clara County.

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

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

17 16. During the period beginning one (1) year preceding the provision of notice to the
18 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
19 Defendants violated, inter alia, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3,
20 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1,
21 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

26 18. On or around May 28, 2021, Plaintiff SHIVAIE provided written notice pursuant to
27 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
28 Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to

1 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
2 them.

3 19. On or around January 24, 2023, Plaintiff BASSAM provided written notice pursuant
4 to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
5 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
6 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
7 them.

8 20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
9 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
10 calendar days of the May 28, 2021 or January 24, 2023 postmarked dates of the herein-described
11 notices sent by Plaintiffs to the LWDA and Defendants.

12 **FACTUAL BACKGROUND**

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

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

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

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

12 25. For at least three (3) years prior to the filing of this action and continuing to the
13 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
14 full amount of their wages owed to them upon termination and/or resignation as required by Labor
15 Code sections 201 and 202, including for, without limitation, at times, failing to pay overtime wages,
16 minimum wages, and premium wages.

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

25 27. For at least one (1) year prior to the filing of this action and continuing to the present,
26 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full
27 amount of their wages for labor performed in a timely fashion as required under Labor Code section
28 204.

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

29. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of Regulations, Title 8, section 11040, 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, failure to indemnify work-related expenses, and other such provisions of California law, and reasonable attorneys' fees and costs.

30. Plaintiffs, on their 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 withheld and retained by Defendants to which Plaintiffs and Class Members are entitled, as well as restitution of amounts owed.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action on behalf of Plaintiffs and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiffs' complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members"). Excluded from this Class are all employees who participated in the Garcia Class Action Settlement in the case of *Garcia, et al. v. Elwyn*, Case No. BC656112, Los Angeles County Superior Court ("Garcia Action"), up to the period of December 31, 2019. After December 31, 2019, these employees are alleged to be part of the defined Class.

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

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

7 **A. Numerosity**

8 34. The potential Class Members as defined are so numerous that joinder of all the
9 members of the Class is impracticable. While the precise number of Class Members has not been
10 determined yet, Plaintiffs are informed and believe that there are over seventy-five (75) Class
11 Members employed by Defendants within the State of California.

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

16 **B. Commonality**

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

- 19 i. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
20 worked at a proper overtime rate of pay?
- 21 ii. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
22 for all other time worked at the employee's regular rate of pay and a rate of pay that
23 is greater than the applicable minimum wage?
- 24 iii. Did Defendants violate Labor Code section 512 by not authorizing or permitting
25 Class Members to take compliant meal periods?
- 26 iv. Did Defendants violate Labor Code section 226.7 by not providing Class Members
27 with additional wages for missed or interrupted meal periods?

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- 1 v. Did Defendants violate applicable Wage Orders by not authorizing or permitting
2 Class Members to take compliant rest periods?
- 3 vi. Did Defendants violate Labor Code section 226.7 by not providing Class Members
4 with additional wages for missed rest periods?
- 5 vii. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
6 Members upon termination or resignation all wages earned?
- 7 viii. Are Defendants liable to Class Members for waiting time penalties under Labor Code
8 section 203?
- 9 ix. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
10 Class Members with accurate wage statements?
- 11 x. Did Defendants fail to pay Class Members in a timely fashion as required under
12 Labor Code section 204?
- 13 xi. Did Defendants fail to indemnify Class Members for all necessary expenditures or
14 losses incurred in direct consequence of the discharge of their duties or by obedience
15 to the directions of Defendants as required under Labor Code section 2802?
- 16 xii. Did Defendants violate the Unfair Competition Law, Business and Professions Code
17 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 18 xiii. Are Class Members entitled to restitution of wages under Business and Professions
19 Code section 17203?
- 20 xiv. Are Class Members entitled to costs and attorneys' fees?
- 21 xv. Are Class Members entitled to interest?

22 **C. Typicality**

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

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E. Superiority of Class Action

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

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50. Pursuant to Labor Code section 1197 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 First Amended 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 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) hours per day without providing the employee with a second timely meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.

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

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

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

60. 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 additional pay owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

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

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

63. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by applicable Wage Orders.

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

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

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

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

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

26 69. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
27 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
28 interest and penalties thereon, attorneys’ fees, and costs, under Labor Code sections 226 and 226.7,

1 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

2 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

28 ///

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), Plaintiffs 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 allege, that in the one (1) year before the filing of the First Amended 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 corresponding number of hours worked at each hourly rate; and the name and address of the legal entity that is the

1 employer, among other things.

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

6 83. As a result of Defendants' unlawful conduct, Plaintiffs 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 84. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs 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 85. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
18 Procedure section 1032, Civil Code section 3287, Plaintiffs 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 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

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

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

27 88. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
28 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month

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

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

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

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

20 92. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
21 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
22 penalties, interest, and their costs of suit, as well.

23 **EIGHTH CAUSE OF ACTION**

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

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

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

95. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . .”

96. For three (3) years prior to the filing of the First Amended Complaint in this Action through the present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: purchasing and laundering mandatory work uniforms and using cellular phones for work-related purposes.

97. During that time period, Plaintiffs are informed and believe, and based thereon allege, that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiffs and Class Members for those losses and/or expenditures.

98. 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 reimbursed for the herein-described losses and/or expenditures.

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

NINTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

101. Plaintiffs are informed and believe, and based thereon allege that the unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

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

103. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class Members are entitled to (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 restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiffs and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

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

TENTH CAUSE OF ACTION

(Violation of PAGA – Against All Defendants)

105. Plaintiffs re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

A. Civil Penalties Under Labor Code § 210

i. Labor Code section 204, requires and required that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be 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.”

ii. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this 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

1 percent of the amount unlawfully withheld.”

2 iii. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
3 allege, that Defendants had and have a consistent policy or practice of failing to pay Plaintiffs and
4 during their employment on a timely basis as per Labor Code section 204.

5 iv. As a direct and proximate result of the herein-described Labor Code violations, and
6 pursuant to Labor Code section 210, Plaintiffs and other Aggrieved Employees are entitled to
7 recover civil penalties for Defendants’ violations of Labor Code section 204, in the amount of one
8 hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and
9 two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in
10 connection with each payment that was made in violation of Labor Code section 204.

11 **B. Civil Penalties Under Labor Code § 226.3**

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

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

19 vii. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
20 allege, that Defendants, and each of them, had and have a policy or practice of failing to comply
21 with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and
22 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
23 total hours worked; net wages earned; the name and address of each employer with whom they have
24 been placed to work; all applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate; the legal name of the employer and/or the name and
26 address of the legal entity securing the employer’s services if the employer is a farm labor contractor;
27 and other such information as required by Labor Code section 226, subdivision (a).

28 viii. As a direct and proximate result of the herein-described Labor Code violations, and

1 pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are entitled to
2 recover civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the
3 amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the
4 initial violation, and one thousand dollars (\$1000) for each Aggrieved Employee per pay period for
5 each subsequent violation.

6 **C. Violation of Labor Code § 558**

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

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

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

17 c. Wages recovered pursuant to this section shall be paid to the affected employee."

18 ii. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
19 allege, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections
20 described herein, including causing Plaintiffs and other Aggrieved Employees not to: be paid
21 overtime wages and minimum wages; receive meal and rest periods or compensation in lieu thereof;
22 be paid timely wages during their employment and after their employment separation; receive
23 accurate, itemized wage statements; be indemnified for work expenses incurred.

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

D. Violation of Labor Code § 1174.5

ix. Labor Code section 1174, subdivision (b) states that every person employing labor in California is required to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

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

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

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

xiii. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, have willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain accurate and complete records required by Labor Code subdivision (d), and/or failed to allow inspection of records as required by Labor Code subdivision (b).

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

E. Violation of Labor Code § 1197.1

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

ii. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. 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.

iii. 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.

iv. Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee."

v. At all relevant times herein, Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, caused Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, for the reasons set forth herein, including, without limitation, for routinely failing to pay Plaintiffs or other Aggrieved Employees' wages for all hours worked or otherwise under Defendants' control due to, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting

1 employees to work off the clock, including, without limitation, by requiring employees: to come
2 early to work and leave late work without being able to clock in for all that time, to suffer under
3 Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in
4 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
5 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
6 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
7 of employee time entries; editing and/or manipulation of time entries to show less hours than
8 actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved
9 employees were required to report to work, and did report, but were not put to work and/or were
10 furnished less than half their usual or scheduled day's work without being paid for half the usual or
11 scheduled work at their regular rate of pay

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

18 **F. Civil Penalties Under Labor Code § 2699**

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

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

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

3 108. At all relevant times herein, Plaintiffs are informed and believe, and based thereon
4 allege, that Defendants, and each of them, violated the Labor Code sections described herein,
5 including, without limitation, for the failure to: pay overtime wages and minimum wages; provide
6 meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements;
7 keep and produce complete and accurate payroll and personnel records; pay timely wages during
8 employment and after the cessation of the employment relationship; provide employees the
9 opportunity to inspect employment records; reimburse Aggrieved Employees for costs incurred in
10 furtherance of their work duties as required under Labor Code section 2802; provide notice as
11 required under Labor Code section 2810.5; provide the proper accrual and use of paid sick leave;
12 paying employees all owed paid time off and vacation time owed by separation at the proper rate of
13 pay; placing restraints on competition, whistleblowing and freedom of speech; and failing to comply
14 with Covid-19 safety protocols set forth in Labor Code sections 6401, 6402, 6403 and 6409.6,
15 entitling Plaintiffs and other Aggrieved Employees to civil penalties for each of these Labor Code
16 violations in the amounts set forth in Labor Code section 2699, subdivision (f).

17 109. As a direct and proximate result of the herein-described Labor Code violations, and
18 pursuant to Labor Code section 2699, subdivision (g), among other authorities, Plaintiffs and
19 similarly Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of
20 the herein and therein described Labor Code violations during the Civil Penalty Period in the amount
21 of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
22 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent
23 violation.

24 110. Moreover, Plaintiffs and Aggrieved Employees are also entitled to an award of
25 reasonable attorneys' fees and costs in connection with their herein-described claims for civil
26 penalties.

27 **DEMAND FOR JURY TRIAL**

28 111. Plaintiffs demand a trial by jury on all causes of action contained herein.

PRAYER

WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiffs pray for judgment against Defendants as follows:

- A. An order certifying this case as a Class Action;
- B. An Order appointing Plaintiffs as Class representatives and appointing Plaintiffs' counsel as class counsel;
- C. Damages for all wages earned and owed, including minimum and overtime wages under Labor Code sections 510, 1194, 1197 and 1199;
- D. Liquidated damages pursuant to Labor Code section 1194.2;
- E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections 512 and 226.7;
- F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision (e) and 558.1;
- G. Waiting time penalties under Labor Code section 203;
- H. Penalties to timely pay wages under Labor Code section 210;
- I. Damages under Labor Code sections 2802;
- J. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;
- K. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- M. For attorneys' fees in prosecuting this action;
- N. For costs of suit incurred herein;

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- O. For such other and further relief as the Court deems just and proper;
- P. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699; and
- Q. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699.

Dated: April 3, 2023 BIBIYAN LAW GROUP, P.C.

BY: _____
DAVID D. BIBIYAN
JEFFREY D. KLEIN
JOSHUA SHIRIAN
Attorneys for Plaintiffs PENNIES M. SHIVAIE and
LALA BASSAM, on behalf of themselves and all
others similarly situated and aggrieved

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On April 3, 2023, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **SECOND AMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail addresses as follows:

Dean A. Rocco
Trevor Wong
Wilson Elser Moskowitz Edelman & Dicker LLP
555 S. Flower Street - Suite 2900
Los Angeles, CA 90071-2407
Dean.Rocco@wilsonelser.com
Trevor.Wong@wilsonelser.com

Counsel for Defendants Elwyn, Elwyn California and The Elwyn Foundation

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

Executed on April 3, 2023 at Beverly Hills, California.

Aaron Quirarte

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