

1 **BIBIYAN LAW GROUP, P.C.**
 David D. Bibiyan (Cal. Bar No. 287811)
 2 *david@tomorrowlaw.com*
 Sara Ehsani-Nia (Cal. Bar No. 326501)
 3 *sara@tomorrowlaw.com*
 Jeffrey D. Klein (Cal. Bar No. 297296)
 4 *jeff@tomorrowlaw.com*
 8484 Wilshire Boulevard, Suite 500
 5 Beverly Hills, California 90211
 Telephone: (310) 438-5555; Facsimile: (310) 300-1705

FILED
 Superior Court of California
 County of Los Angeles

12/27/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Molinar Deputy

6 Attorneys for Plaintiffs, RONALD GETAW and MANUEL ARCEO and
 7 on behalf of themselves and all others similarly situated and aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10
 11 RONALD GETAW, an individual and on
 12 behalf of all others similarly situated,

13
 14 Plaintiff,

15 v.

16 CONSOLIDATED DISPOSAL SERVICE,
 L.L.C.; a Delaware limited liability company;
 17 REPUBLIC SERVICES, INC.; a Delaware
 corporation; EVAN BOYD, an individual; and
 18 DOES 1 through 100, inclusive,

19
 20 Defendants.

CASE NO.: 21STCV22036

[Assigned for all purposes to the Hon. Elihu M.
 Berle in Dept. 6]

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3;
10. UNFAIR COMPETITION; and
11. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (2004) FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, AND 2699, et seq.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 COMES NOW plaintiff RONALD GETAW ("Plaintiff Getaw") and plaintiff MANUEL
2 ARCEO ("Plaintiff Arceo" and collectively with Plaintiff Getaw, "Plaintiffs") on behalf of Plaintiffs
3 and all others similarly situated, and alleges as follows:

4 **GENERAL ALLEGATIONS**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
7 CONSOLIDATED DISPOSAL SERVICE, L.L.C., a Delaware limited liability company and any
8 of its respective subsidiaries or affiliated companies within the State of California
9 ("CONSOLIDATED DISPOSAL"); REPUBLIC SERVICES, INC., a Delaware corporation and
10 any of its respective subsidiaries or affiliated companies within the State of California ("REPUBLIC
11 SERVICES"); EVAN BOYD, an individual ("MR. BOYD" and with CONSOLIDATED
12 DISPOSAL, REPUBLIC SERVICES, and DOES 1 through 100, as further defined below,
13 "Defendants") on behalf of Plaintiffs and all other current and former non-exempt California
14 employees employed by or formerly employed by Defendants ("Class Members").

15 **PARTIES**

16 **A. Plaintiff**

17 2. Plaintiff RONALD GETAW is a resident of the State of California. At all relevant
18 times herein, Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 employed Plaintiff RONALD GETAW as a non-exempt employee, with duties that included, but
20 were not limited to, driving and collecting waste. Plaintiffs are informed and believe, and based
21 thereon allege, that Plaintiff RONALD GETAW worked for Defendants from approximately
22 October of 2007 through approximately April of 2020.

23 3. Plaintiff MANUEL ARCEO is a resident of the State of California. At all relevant
24 times herein, Plaintiffs are informed and believe, and based thereon allege, that Defendants
25 employed Plaintiff MANUEL ARCEO as a non-exempt employee, with duties that included, but
26 were not limited to, driving and collecting waste. Plaintiffs are informed and believe, and based
27 thereon allege, that Plaintiff MANUEL ARCEO worked for Defendants from approximately
28 September of 1989 through approximately sometime in the past calendar year.

1 **B. Defendants**

2 4. Plaintiffs are informed and believe, and based thereon allege, that defendant
3 CONSOLIDATED DISPOSAL is, and at all times relevant hereto was, a limited liability company
4 organized and existing under and by virtue of the laws of the State of Delaware and doing business
5 in the County of Los Angeles, State of California.

6 5. Plaintiffs are informed and believe, and based thereon allege, that defendant
7 REPUBLIC SERVICES is, and at all times relevant hereto was, a corporation organized and existing
8 under and by virtue of the laws of the State of Delaware and doing business in the County of Los
9 Angeles, State of California.

10 6. Plaintiffs are informed and believe, and based thereon allege, that defendant MR.
11 BOYD is, and at all times relevant hereto was, an individual residing in California and doing
12 business in the County of Los Angeles, as well as Director of Operations of REPUBLIC SERVICES,
13 and DOES 1 through 100, as further defined below. Plaintiffs are further informed and believe, and
14 based thereon allege, that MR. BOYD violated, or caused to be violated, the above-referenced and
15 below-referenced Labor Code provisions in violation of Labor Code section 558.1.

16 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
18 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
19 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
20 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
21 Plaintiffs will seek leave of court to amend this First Amended Complaint to reflect the true names
22 and capacities of the defendants designated hereinafter as DOES when such identities become
23 known. Plaintiffs are informed and believe, and based thereon allege, that each defendant acted in
24 all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme,
25 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
26 attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to
27 "Defendants," it shall include CONSOLIDATED DISPOSAL, REPUBLIC SERVICES, MR.
28 BOYD, and any of their parent, subsidiary, or affiliated companies within the State of California, as

1 well as DOES 1 through 100 identified herein.

2 **JOINT LIABILITY ALLEGATIONS**

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

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

17 10. Plaintiffs are informed and believe, and based thereon allege, that MR. BOYD
18 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
19 provisions in violation of Labor Code section 558.1.

20 11. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
21 unity of interest and ownership between Defendants, and each of them, that their individuality and
22 separateness have ceased to exist.

23 12. Plaintiffs are informed and believe, and based thereon allege, that despite the
24 formation of the purported corporate existence of CONSOLIDATED DISPOSAL, REPUBLIC
25 SERVICES, and DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of
26 them, are one and the same with MR. BOYD and DOES 51 through 100 ("Individual Defendants"),
27 and each of them, due to, but not limited to, the following reasons:

28 A. The Alter Ego Defendants are completely dominated and controlled by the Individual

1 Defendants who personally committed the wrongful and illegal acts and violated the
2 laws as set forth in this First Amended Complaint, and who has hidden and currently
3 hide behind the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or
4 accomplish some other wrongful or inequitable purpose;

5 B. The Individual Defendants derive actual and significant monetary benefits by and
6 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
7 Defendants as the funding source for the Individual Defendants' own personal
8 expenditures;

9 C. Plaintiffs are informed and believe, and based thereon allege, that the Individual
10 Defendants and the Alter Ego Defendants, while really one and the same, were
11 segregated to appear as though separate and distinct for purposes of perpetrating a
12 fraud, circumventing a statute, or accomplishing some other wrongful or inequitable
13 purpose;

14 D. Plaintiffs are informed and believe, and based thereon allege, that the business affairs
15 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant
16 times mentioned herein were, so mixed and intermingled that the same cannot
17 reasonably be segregated, and the same are inextricable confusion. The Alter Ego
18 Defendants are, and at all relevant times mentioned herein were, used by the
19 Individual Defendants as mere shells and conduits for the conduct of certain of their,
20 and each of their affairs. The Alter Ego Defendants are, and at all relevant times
21 mentioned herein were, the alter egos of the Individual Defendants;

22 E. The recognition of the separate existence of the Individual Defendants and the Alter
23 Ego Defendants would promote injustice insofar that it would permit defendants to
24 insulate themselves from liability to Plaintiffs for violations of the Civil Code, Labor
25 Code, and other statutory violations. The corporate existence of these defendants
26 should thus be disregarded in equity and for the ends of justice because such
27 disregard is necessary to avoid fraud and injustice to Plaintiffs herein;

28 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual

1 Defendants (and vice versa), and the fiction of their separate corporate existence
2 must be disregarded;

3 13. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
4 thereon allege, that Defendants, and each of them, are joint employers.

5 **JURISDICTION**

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

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

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

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

28 18. During the period beginning one (1) year preceding the provision of notice to the

1 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
2 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 201, 202, 203, 204, 210, 226, 226.3,
3 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197,
4 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

9 20. On or around September 14, 2021, Plaintiffs provided written notice pursuant to
10 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
11 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
12 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
13 them.

14 21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
15 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
16 calendar days of the September 14, 2021 postmarked date of the herein-described notice sent by
17 Plaintiffs to the LWDA and Defendants.

18 **FACTUAL BACKGROUND**

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

28 23. For at least four (4) years prior to the filing of this Action and continuing to the

1 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
2 or some of them, in violation of California state wage and hour laws as a result of, among other
3 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
4 rate of pay that is above the minimum wage to the detriment of Plaintiffs and Class Members.

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

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

16 26. For at least three (3) years prior to the filing of this action and continuing to the
17 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
18 full amount of their wages owed to them upon termination and/or resignation as required by Labor
19 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
20 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

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

28 28. For at least one (1) year prior to the filing of this action and continuing to the present,

1 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full
2 amount of their wages for labor performed in a timely fashion as required under Labor Code section
3 204.

4 29. For at least three (3) years prior to the filing of this action and continuing to the
5 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
6 costs incurred in using cellular phones for work-related purposes and separate laundering of
7 mandatory uniforms.

8 30. For at least four (4) years prior to the filing of this action and continuing to the
9 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
10 situated employees or former employees within the State of California with compensation at their
11 final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

12 31. Plaintiffs, on Plaintiffs' own behalf and on behalf of Class Members, brings this
13 action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210,
14 226, 226.7, 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of
15 Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium
16 wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage
17 statement penalties, failure to indemnify work-related expenses, failing to pay vested vacation time
18 at the proper rate of pay, other such provisions of California law, and reasonable attorneys' fees and
19 costs.

20 32. Plaintiffs, on Plaintiffs' own behalf and on behalf of Class Members, pursuant to
21 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
22 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
23 appropriate and effective means to prevent further violations, as well as all monies owed but
24 withheld and retained by Defendants to which Plaintiffs and Class Members are entitled, as well as
25 restitution of amounts owed.

26 **CLASS ACTION ALLEGATIONS**

27 33. Plaintiffs bring this action on behalf of Plaintiffs and Class Members as a class action
28 pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all current

1 and former non-exempt employees of Defendants within the State of California at any time
2 commencing four (4) years preceding the filing of Plaintiffs' complaint up until the time that notice
3 of the class action is provided to the class (collectively referred to as "Class Members").

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

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

10 **A. Numerosity**

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

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

19 **B. Commonality**

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

- 22 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
23 worked at a proper overtime rate of pay?
- 24 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
25 for all other time worked at the employee's regular rate of pay and a rate of pay that
26 is greater than the applicable minimum wage?
- 27 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
28 Class Members to take compliant meal periods?

- 1 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
2 with additional wages for missed or interrupted meal periods?
- 3 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
4 Class Members to take compliant rest periods?
- 5 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
6 with additional wages for missed rest periods?
- 7 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
8 Members upon termination or resignation all wages earned?
- 9 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
10 section 203?
- 11 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
12 Class Members with accurate wage statements?
- 13 J. Did Defendants fail to pay Class Members in a timely fashion as required under
14 Labor Code section 204?
- 15 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
16 losses incurred in direct consequence of the discharge of their duties or by obedience
17 to the directions of Defendants as required under Labor Code section 2802?
- 18 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
19 with compensation at their final rate of pay for vested paid vacation time.
- 20 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
21 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 22 N. Are Class Members entitled to restitution of wages under Business and Professions
23 Code section 17203?
- 24 O. Are Class Members entitled to costs and attorneys' fees?
- 25 P. Are Class Members entitled to interest?

26 C. **Typicality**

27 39. The claims of Plaintiffs herein alleged are typical of those claims which could be
28 alleged by any Class Members, and the relief sought is typical of the relief which would be sought

1 by each Class Member in separate actions. Plaintiffs and Class Members sustained injuries and
2 damages arising out of and caused by Defendants' common course of conduct in violation of laws
3 and regulations that have the force and effect of law and statutes as alleged herein.

4 **D. Adequacy of Representation**

5 40. Plaintiffs will fairly and adequately represent and protect the interest of Class
6 Members. Counsel who represents Plaintiffs is competent and experienced in litigating wage and
7 hour class actions.

8 **E. Superiority of Class Action**

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

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

19 **FIRST CAUSE OF ACTION**

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

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

23 44. At all relevant times, Plaintiffs and Class Members were employees or former
24 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
25 Wage Orders.

26 45. At all times relevant to this First Amended Complaint, Labor Code section 510 was
27 in effect and provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of
28 eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be

1 compensated at the rate of no less than one and one-half times the regular rate of pay for an
2 employee.”

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

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

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

20 49. As a result of the occasional unlawful acts of Defendants, Plaintiffs and Class
21 Members have been deprived of overtime wages in amounts to be determined at trial, and are entitled
22 to recovery, plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code
23 section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section
24 3287.

25 **SECOND CAUSE OF ACTION**

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

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

51. 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.

52. 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.

53. 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.

54. As a result of Defendants' occasional 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.

55. 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)

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

57. 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.

58. 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.

59. 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.

60. 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, at times, 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.

61. By their occasional 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.

62. As a result of Defendants' occasional 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.

63. 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)

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

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

66. California law and applicable Wage Orders require that employers “authorize and

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

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

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

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

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

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

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

77. 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

1 resignation, until paid, up to a maximum of thirty (30) days.

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

5 79. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
7 waiting time penalties, interest, and their costs of suit, as well.

8 **SIXTH CAUSE OF ACTION**

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

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

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

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

20 83. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
21 before the filing of the First Amended Complaint in this Action through the present, Defendants
22 failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices
23 that resulted in their failure, at times, to furnish Plaintiffs and Class Members with accurate itemized
24 statements that accurately reflect, among other things, gross wages earned; total hours worked; net
25 wages earned; and all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
27 employer, among other things.

28 84. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate

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

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

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

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

19 **SEVENTH CAUSE OF ACTION**

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

21 88. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
22 incorporate each by reference as though fully set forth hereat.

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

25 90. Labor Code section 204 provides that "[l]abor performed between the 1st and 15th
26 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
27 during which the labor was performed, and labor performed between the 16th and the last day,
28 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following

1 month.”

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

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

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

18 94. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
19 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
20 penalties, interest, and their costs of suit, as well.

21 **EIGHTH CAUSE OF ACTION**

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

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

25 96. 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 97. 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 98. For three (3) years prior to the filing of the First Amended Complaint in this Action
3 through the present, Defendants required Plaintiffs and Class Members, or some of them, to incur,
4 at times, necessary expenditures or losses in direct consequence of the discharge of their duties or
5 at the obedience to the directions of Defendants that included, without limitation: using cellular
6 phones for work-related purposes and separate laundering of mandatory uniforms.

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

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

13 101. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
14 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
15 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
16 costs of suit.

17 **NINTH CAUSE OF ACTION**

18 **(Violation of Labor Code § 227.3 – Against All Defendants**

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

21 103. According to Labor Code section 227.3, whenever a contract of employment or
22 employer policy provides for paid vacations, and an employee is terminated without having taken
23 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
24 accordance with such contract of employment or employer policy respecting eligibility or time
25 served.

26 104. Plaintiffs are informed and believe, and based thereon allege, that, at all times
27 relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid
28 vacations, and that Plaintiffs’ employment contract with Defendants included paid vacations.

1 105. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendants have occasionally failed to provide Plaintiffs and similarly situated employees
3 or former employees within the State of California with compensation at their final rate of pay for
4 unused vested paid vacation days pursuant to Labor Code section 227.3.

5 106. As a proximate result of Defendants' occasional failure to pay vested vacation at the
6 final rate of Plaintiffs and Class Members upon their resignation or termination, Defendants violated
7 Labor Code section 227.3, entitling Plaintiffs and Class Members to all vested and unused vacation
8 pay at their final rate of pay, as set out in Defendants' policy or the contract of employment between
9 Plaintiffs and Class Members, on the one hand, and Defendants, on the other hand.

10 107. As a further proximate result of Defendants' above-described acts and/or omissions,
11 Plaintiffs and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and
12 prejudgment interest.

13 **TENTH CAUSE OF ACTION**

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

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

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

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

25 111. Pursuant to Business and Professions Code section 17203, Plaintiffs and Class
26 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
27 Code and requiring the establishment of appropriate and effective means to prevent further
28 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,

1 including interest thereon, in which they had a property interest and which Defendants nevertheless
2 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
3 to Plaintiffs and Class Members is necessary to prevent Defendants from becoming unjustly
4 enriched by their failure to comply with the Labor Code.

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

7 **ELEVENTH CAUSE OF ACTION**

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

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

11 **Civil Penalties Under Labor Code § 210**

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

17 115. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
18 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
19 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
20 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
21 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
22 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
23 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

24 116. At all relevant times herein, Defendants have had a consistent policy or practice of
25 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
26 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiffs and other
27 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
28 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for

1 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
2 for each subsequent violation in connection with each payment that was made in violation of Labor
3 Code section 204.

4 Civil Penalties Under Labor Code § 226.3

5 117. Defendants had and have a policy or practice of failing to comply with Labor Code
6 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
7 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
8 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate; and other such information as required
10 by Labor Code section 226, subdivision (a).

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

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

18 120. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
19 and have a policy or practice of failing to furnish non-exempt employees, including, without
20 limitation, Plaintiffs, itemized wage statements that accurately reflect: reflect gross wages earned;
21 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate; and other such information as
23 required by Labor Code section 226, subdivision (a).

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

1 Violation of Labor Code § 558

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

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

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

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

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

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

26 Violation of Labor Code § 1174.5

27 125. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
28 every person employing labor in California to "[a]llow any member of the commission or the

1 employees of the Division of Labor Standards Enforcement free access to the place of business or
2 employment of the person to secure any information or make any investigation that they are
3 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
4 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
5 or papers of the person.”

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

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

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

23 129. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
24 willfully failed keep adequate or accurate time records including wage statements and similar
25 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
26 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
27 under Labor Code section 1174.

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

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

4 Violation of Labor Code § 1197.1

5 131. 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 A. 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 B. 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 C. 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."

25 132. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
26 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
27 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees' to pay
28 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual

1 and liquidated damages.

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

8 Civil Penalties Under Labor Code § 2699

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

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

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

1 sick leave required to be provided pursuant to California and local laws.

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

5 **DEMAND FOR JURY TRIAL**

6 138. Plaintiffs demand a trial by jury on all causes of action contained herein.

7 **PRAYER**

8 WHEREFORE, on behalf of Plaintiffs and Class Members, Plaintiffs prays for judgment
9 against Defendants as follows:

- 10 A. An order certifying this case as a Class Action;
- 11 B. An Order appointing Plaintiffs as Class representative and appointing Plaintiffs'
- 12 counsel as class counsel;
- 13 C. Damages for all wages earned and owed, including minimum, overtime wages and
- 14 unpaid wages for vested vacation time, under Labor Code sections 227.3, 510,
- 15 558.1, 1194, 1197 and 1199;
- 16 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 17 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 18 among other Labor Code sections, 512, 558.1 and 226.7;
- 19 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 20 subdivision (e) and 558.1;
- 21 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 22 H. Penalties to timely pay wages under Labor Code section 210;
- 23 I. Damages under Labor Code sections 558.1 and 2802;
- 24 J. Preliminary and permanent injunctions prohibiting Defendants from further
- 25 violating the California Labor Code and requiring the establishment of appropriate
- 26 and effective means to prevent future violations;
- 27 K. Restitution of wages and benefits due which were acquired by means of any unfair
- 28 business practice, according to proof;

- 1 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
2 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
3 1174.5, 1197.1, and 2699;
4 N. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
5 210, 226.3, 558, 1174.5, 1197.1, and 2699;
6 O. For attorneys' fees in prosecuting this action;
7 P. For costs of suit incurred herein; and
8 Q. For such other and further relief as the Court deems just and proper.
9

10 Dated: December 27, 2021

BIBIYAN LAW GROUP, P.C.

11
12 BY: 

13 SARA EHSANI-NIA

14 DAVID D. BIBIYAN

15 Attorneys for Plaintiffs RONALD GETAW and
16 MANUEL ARCEO on behalf of themselves and all
17 others similarly situated and aggrieved
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

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

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

5 On December 27, 2021, and pursuant to the California Code of Civil Procedure section
6 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST**
7 **AMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission to the
below referenced electronic e-mail addresses as follows:

8 Miranda A. Mossavar
9 Mmossavar@littler.com
10 Krystal Saleh
11 ksaleh@littler.com
12 LITTLER MENDELSON P.C.
13 2049 Century Park East, 5th Floor
14 Los Angeles, California 90067.3107

15 Gregory G. Iskander
16 giskander@littler.com
17 William Kim
18 WKim@littler.com
19 LITTLER MENDELSON P.C.
20 Treat Towers
21 1255 Treat Boulevard, Suite 600
22 Walnut Creek, California 94597

23 **Attorneys for Defendants Consolidated Disposal Service, L.L.C.; Republic Services,**
24 **Inc.; and Evan Boyd**

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

27 Executed on December 27, 2021 at Beverly Hills, California.

28 

Emanuel Munguia