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7 Attorneys for Plaintiff, GUILLERMO CRUZ and
on behalf of himself and all others similarly situated and aggrieved

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

10
11 GUILLERMO CRUZ, an individual and on
behalf of all others similarly situated and
12 aggrieved,

13 Plaintiff,

14 v.

15 ALMA FAMILY SERVICES, a California
corporation; and DOES 1 through 100,
16 inclusive,

17 Defendants.
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CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 28 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By: Tanya Herrera, Deputy

CASE NO.: 21STCV18156

**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 INDEMNIFY;
8. VIOLATION OF LABOR CODE § 227.3
9. UNFAIR COMPETITION.
10. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (2004) FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, AND 2699, et seq.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

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

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against ALMA FAMILY SERVICES, and any of its respective subsidiaries or affiliated companies within the State of California ("ALMA FAMILY SERVICES" and, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

PARTIES

A. Plaintiff

2. Plaintiff GUILLERMO CRUZ, is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff GUILLERMO CRUZ, as a non-exempt employee, with duties that included, but were not limited to, mental health case management. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff GUILLERMO CRUZ, worked for Defendants from approximately November of 2006 through the present.

B. Defendants

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

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

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

8 JOINT LIABILITY ALLEGATIONS

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

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

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

25 JURISDICTION

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

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

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

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

21 12. During the period beginning one (1) year preceding the provision of notice to the
22 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
23 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
24 226.3, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
25 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

1 specified in Labor Code section 2699.3.

2 14. On or around May 12, 2021, Plaintiff provided written notice pursuant to Labor Code
3 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
4 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
5 by certified mail, with return receipt requested to Defendants, and each of them.

6 15. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
7 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
8 calendar days of the May 12, 2021 postmarked date of the herein-described notice sent by Plaintiff
9 to the LWDA and Defendants.

10 **FACTUAL BACKGROUND**

11 16. 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 pay overtime wages to Plaintiff and Class Members, or
13 some of them, in violation of California state wage and hour laws as a result of, without limitation,
14 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
15 seven consecutive work days in a work week without being properly compensated for hours worked
16 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
17 worked on the seventh consecutive work day in a work week by, among other things, failing to
18 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay;
19 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
20 by requiring employees: to come early to work and leave work late without being able to clock in
21 for all that time; and to suffer under Employer's control due to having to complete pre-shift tasks
22 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
23 working, to make phone calls off the clock, to the detriment of Plaintiff and Class Members.

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

1 off the clock, including, without limitation, by requiring employees: to come early to work and leave
2 late work without being able to clock in for all that time; and to suffer under Employer's control due
3 to having to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
4 clock out for meal periods and continue working, to make phone calls off the clock, to the detriment
5 of Plaintiff and Class Members.

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

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

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

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

22. 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 office materials necessary to perform work duties.

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

24. Plaintiff, on Plaintiff's 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, 226, 226.7, 227.3, 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, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, failing to pay vested vacation time at the proper rate of pay, and other such provisions of California law, and reasonable attorneys' fees and costs.

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

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks 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 Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

27. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class

1 into subclasses, and to further specify or limit the issues for which certification is sought.

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

5 **A. Numerosity**

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

10 30. Accounting for employee turnover during the relevant periods necessarily increases
11 this number. Plaintiff alleges Defendants' employment records would provide information as to the
12 number and location of all Class Members. Joinder of all members of the proposed Class is not
13 practicable.

14 **B. Commonality**

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

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

1 with additional wages for missed rest periods?

2 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
3 Members upon termination or resignation all wages earned?

4 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
5 section 203?

6 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
7 Class Members with accurate wage statements?

8 J. Did Defendants fail to indemnify Class Members for all necessary expenditures or
9 losses incurred in direct consequence of the discharge of their duties or by obedience
10 to the directions of Defendants as required under Labor Code section 2802?

11 K. Did Defendants violate Labor Code section 227.3 by not providing Class Members
12 with compensation at their final rate of pay for vested paid vacation time.

13 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
14 section 17200, *et seq.*, by their unlawful practices as alleged herein?

15 M. Are Class Members entitled to restitution of wages under Business and Professions
16 Code section 17203?

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

18 O. Are Class Members entitled to interest?

19 C. **Typicality**

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

25 D. **Adequacy of Representation**

26 33. Plaintiff will fairly and adequately represent and protect the interest of Class
27 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
28 hour class actions.

1 **E. Superiority of Class Action**

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

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

12 **FIRST CAUSE OF ACTION**

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

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

16 37. At all relevant times, Plaintiff and Class Members were employees or former
17 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
18 Wage Orders.

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

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

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

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

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

48. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff 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)

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

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

51. 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

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

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

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

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

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

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

24 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

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

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

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

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

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

69. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff 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

1 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
2 or resignation.

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

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

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

12 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

1 all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
3 other things.

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

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

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

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

23 **SEVENTH CAUSE OF ACTION**

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

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

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

83. 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 . . .”

84. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: purchasing office materials necessary to perform work duties.

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

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

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

EIGHTH CAUSE OF ACTION

(Violation of Labor Code § 227.3 – Against All Defendants

88. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereon.

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

///

90. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and that Plaintiff's employment contract with Defendants included paid vacations.

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

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

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

NINTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

95. Plaintiff is informed and believes, and based thereon alleges 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.

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

/ / /

97. Pursuant to Business and Professions Code section 17203, Plaintiff 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 Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

98. Plaintiff 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

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

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

100. **Civil Penalties Under Labor Code § 210**

A. At all relevant times herein, 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.”

B. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent

violation in connection with each payment that was made in violation of Labor Code section 204.

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

- A. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a).
- B. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”
- C. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in this section are in addition to any other penalty provided by law.”
- D. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of failing to furnish non-exempt employees, including, without limitation, Plaintiff, itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required by Labor Code section 226, subdivision (a).
- E. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are

1 entitled to recover civil penalties for Defendants' violation of Labor Code section
2 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each
3 Aggrieved Employee per pay period for the initial violation, and one thousand dollars
4 (\$1,000) for each Aggrieved Employee per pay period for each subsequent violation.

5 102. **Violation of Labor Code § 558**

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

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

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

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

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

26 C. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are
28 entitled to recover civil penalties for Defendants' herein-described Labor Code

1 violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay
2 period for the initial violation, and one hundred dollars (\$100) for each Aggrieved
3 Employee per pay period for each subsequent violation.

4 103. **Violation of Labor Code § 1174.5**

- 5 A. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
6 every person employing labor in California to “[a]llow any member of the
7 commission or the employees of the Division of Labor Standards Enforcement free
8 access to the place of business or employment of the person to secure any information
9 or make any investigation that they are authorized by this chapter to ascertain or
10 make. The commission may inspect or make excerpts, relating to the employment
11 of employees, from the books, reports, contracts, payrolls, documents, or papers of
12 the person.”
- 13 B. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
14 every person employing labor in California to “[k]eep a record showing the names
15 and addresses of all employees employed and the ages of all minors.”
- 16 C. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
17 every person employing labor in California to “[k]eep, at a central location in the
18 state or at the plants or establishments at which employees are employed, payroll
19 records showing the hours worked daily by and the wages paid to, and the number
20 of piece-rate units earned by and applicable piece rate paid to, employees employed
21 at the respective plants or establishments. These records shall be kept in accordance
22 with rules established for this purpose by the commission, but in any case, shall be
23 kept on file for not less than three years. An employer shall not prohibit an employee
24 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
25 piece-rate units earned.”
- 26 D. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
27 fails to maintain the records required by subdivision (c) of [Labor Code] Section
28 1174 or accurate and complete records required by subdivision (d) of [Labor Code]

1 Section 1174, or to allow any member of the commission or employees of the
2 division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174,
3 shall be subject to a civil penalty of five hundred dollars (\$500).

4 E. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
5 willfully failed keep adequate or accurate time records including wage statements
6 and similar payroll documents under Labor Code section 226, documents signed to
7 obtain or hold employment under Labor Code section 432, personnel records under
8 Labor Code section 1198.5, and time records under Labor Code section 1174.

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

14 104. **Violation of Labor Code § 1197.1**

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

21 (1) For any initial violation that is intentionally committed, one hundred dollars
22 (\$100) for each underpaid employee for each pay period for which the
23 employee is underpaid. This amount shall be in addition to an amount
24 sufficient to recover underpaid wages, liquidated damages pursuant to
25 Section 1194.2, and any applicable penalties imposed pursuant to Section
26 203.

27 (2) For each subsequent violation for the same specific offense, two hundred
28 fifty dollars (\$250) for each underpaid employee for each pay period for

1 which the employee is underpaid regardless of whether the initial violation
2 is intentionally committed. This amount shall be in addition to an amount
3 sufficient to recover underpaid wages, liquidated damages pursuant to
4 Section 1194.2, and any applicable penalties imposed pursuant to Section
5 203.

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

9 B. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
10 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of
11 Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved
12 Employees’ to pay minimum wages for all hours worked, entitling Employee and
13 other aggrieved employees to actual and liquidated damages.

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

20 105. **Civil Penalties Under Labor Code § 2699**

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

28 B. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor

1 Code except those for which a civil penalty is specifically provided, the established
2 civil penalty for a violation of those provisions is as follows: if, at the time of the
3 alleged violation, the person employs one or more employees, the civil penalty is one
4 hundred dollars (\$100) for each aggrieved employee per pay period for the initial
5 violation and two hundred dollars (\$200) for each aggrieved employee per pay period
6 for each subsequent violation.

- 7 C. Plaintiff is informed and believes and based thereon alleges that Defendants, and
8 each of them, violated the Labor Code sections described herein, including, without
9 limitation, for the failure to: pay the rates of pay and overtime rates of pay applicable
10 to their employment, allowances claimed as part of the minimum wage, the regular
11 payday designated by Defendants, the name of the employer, including any "doing
12 business as" names used, the name, address and telephone number of the workers'
13 compensation insurance carrier, information regarding paid sick leave, and other
14 pertinent information required to be disclosed by Employer under Labor Code
15 section 2810.5, failing to provide Employee and other aggrieved employees with the
16 amount of paid sick leave required to be provided pursuant to California and local
17 laws.
- 18 D. Moreover, Plaintiff and other Aggrieved Employees within the State of California
19 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and
20 costs in connection with their herein-described claims for civil penalties.

21
22 **DEMAND FOR JURY TRIAL**

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

24 **PRAYER**

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

- 27 A. An order certifying this case as a Class Action;
28 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's

counsel as class counsel;

- C. Damages for all wages earned and owed, including minimum, overtime and unpaid wages for vested vacation time, under Labor Code sections 510, 1194, 1197, 1199, and 227.3;
- D. Liquidated damages pursuant to Labor Code sections 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. Damages under Labor Code sections 2802;
- I. 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;
- J. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- K. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- N. For attorneys' fees in prosecuting this action;
- O. For costs of suit incurred herein; and

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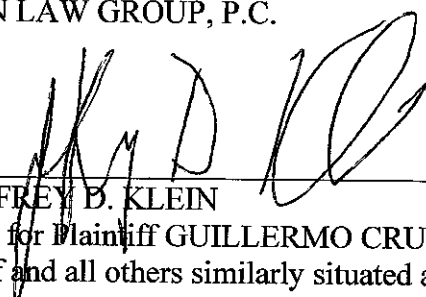
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P. For such other and further relief as the Court deems just and proper.

Dated: July 27, 2021

BIBIYAN LAW GROUP, P.C.

BY: 

JEFFREY D. KLEIN

Attorneys for Plaintiff GUILLERMO CRUZ on behalf
of himself and all others similarly situated and
aggrieved