

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

AUG 23 2021

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By Martha Molinar Deputy

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12 on behalf of himself and all others similarly situated
13 and aggrieved

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 ANTHONY S. COOPER, an individual and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 LMS HEALTH PARTNERS, INC., a
21 California corporation; and DOES 1 through
22 100, inclusive,

23 Defendants.

CASE NO.: 21STCV22072

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

- 24 1. FAILURE TO PAY OVERTIME WAGES;
25 2. FAILURE TO PAY MINIMUM WAGES;
26 3. FAILURE TO PROVIDE MEAL
27 PERIODS;
28 4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION;
10. PENALTIES PER LABOR CODE § 210;
11. PENALTIES PER LABOR CODE § 226.3;
12. PENALTIES PER LABOR CODE § 558;
13. PENALTIES PER LABOR CODE § 1174.5;
14. PENALTIES PER LABOR CODE § 1197.1;
and
15. PENALTIES PER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

By Fax

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COMES NOW plaintiff ANTHONY S. COOPER ("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 LMS HEALTH PARTNERS, INC., and any of its respective subsidiaries or affiliated companies within the State of California ("LMS HEALTH" 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").

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against LMS HEALTH and any of its respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

PARTIES

A. Plaintiff

3. Plaintiff ANTHONY S. COOPER 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 ANTHONY S. COOPER as a non-exempt employee, with duties that included, but were not limited to, transporting elderly clients. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff ANTHONY S. COOPER worked for Defendants from approximately February of 2020 through approximately June of 2020.

1 **B. Defendants**

2 4. Plaintiff is informed and believes, and based thereon alleges, that defendant LMS
3 HEALTH is, and at all times relevant hereto was, a limited liability company organized and existing
4 under and by virtue of the laws of the State of California and doing business in the County of Los
5 Angeles, State of California.

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

19 **JOINT LIABILITY ALLEGATIONS**

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

25 7. All of the acts and conduct described herein of each and every corporate defendant
26 was duly authorized, ordered, and directed by the respective and collective defendant corporate
27 employers, and the officers and management-level employees of said corporate employers. In
28 addition thereto, said corporate employers participated in the aforementioned acts and conduct of

1 their said employees, agents, and representatives, and each of them; and upon completion of the
2 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
3 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
4 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
5 aforementioned corporate employees, agents and representatives.

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

8 JURISDICTION

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

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

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

27 12. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
28 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*

1 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
2 PAGA allegations described herein is not required.

3 13. During the period beginning one (1) year preceding the provision of notice to the
4 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
5 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
6 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
7 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

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

16 16. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
17 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
18 calendar days of the June 11, 2021 postmarked date of the herein-described notice sent by Plaintiff
19 to the LWDA and Defendants.

20 17. On April 6, 2020, the Judicial Council of California approved Appendix I –
21 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
22 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of
23 action were tolled from April 6, 2020 until October 1, 2020.

24 **FACTUAL BACKGROUND**

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

1 seven consecutive work days in a work week without being properly compensated for hours worked
2 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
3 worked on the seventh consecutive work day in a work week by, among other things, failing to
4 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay;
5 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
6 by requiring employees: to come early to work and leave late work without being able to clock in
7 for all that time, to suffer under Employer's control due to long lines for clocking in, to complete
8 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
9 and continue working, to clock out for rest periods, to don and doff uniforms and/or safety
10 equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off
11 the clock, and/or go through security screenings and/or temperature checks off the clock; failing to
12 include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal
13 allowances, and other forms of remuneration into the regular rate of pay for the pay periods where
14 overtime was worked and the additional compensation was earned for the purpose of calculating the
15 overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of
16 time entries to show less hours than actually worked, and for paying straight pay instead of overtime
17 pay, to the detriment of Plaintiff and Class Members.

18 19. For at least four (4) years prior to the filing of this Action and continuing to the
19 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
20 or some of them, in violation of California state wage and hour laws as a result of, among other
21 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
22 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
23 off the clock, including, without limitation, by requiring employees to suffer under Employer's
24 control due to clocking out for meal periods and continuing to work, to don and doff uniforms off
25 the clock, and to make phone calls or drive off the clock; and detrimental rounding of employee
26 time entries, editing and/or manipulation of time entries to show less hours than actually worked,
27 and failing to pay split shift premiums to the detriment of Plaintiff and Class Members.

28 / / /

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

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

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

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

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

1 25. For at least three (3) years prior to the filing of this action and continuing to the
2 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
3 costs incurred in purchasing mandatory work uniforms; laundering mandatory work uniforms;
4 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; and using
5 cellular phones for work-related purposes.

6 26. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this action
7 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
8 510, 512, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of Regulations, Title 8, section
9 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and
10 rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure
11 to indemnify work-related expenses, and other such provisions of California law, and reasonable
12 attorneys' fees and costs.

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

19 28. At all relevant times mentioned herein, Defendants have had a policy or practice of
20 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
21 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
22 Employees with the rates of pay and overtime rates of pay applicable to their employment;
23 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
24 name, address, and telephone number of the workers' compensation insurance carrier; information
25 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
26 under Labor Code section 2810.5.

27 / / /

28 / / /

1 29. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
2 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
3 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
4 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
5 all other Aggrieved Employees.

6 30. At all relevant times mentioned herein, Defendants have had a policy or practice of
7 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
8 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
9 any calendar month shall be paid for between the 16th and 26th day of the month during which the
10 labor was performed, and labor performed between the 16th and the last day, inclusive of any
11 calendar month, shall be paid for between the 1st and 10th day of the following month.”

12 31. At all relevant times mentioned herein, Defendants had and have a policy or practice
13 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
14 and experience they obtained at Defendants for purposes of competing with Defendants, including,
15 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
16 a prospective employer, and from disclosing who else works at Defendants and under what
17 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
18 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
19 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
20 Code sections 232, 232.5, and 1197.5, subdivision (k).

21 32. Defendants had and have a policy or practice of preventing Plaintiff and/or other
22 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
23 to their managers or outside to private attorneys or government officials, among others, in violation
24 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
25 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
26 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
27 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
28 of Labor Code section 232 and 232.5.

1 39. Accounting for employee turnover during the relevant periods necessarily increases
2 this number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of all Class Members. Joinder of all members of the proposed Class is not
4 practicable.

5 **B. Commonality**

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

- 8 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
9 worked at a proper overtime rate of pay?
- 10 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
11 for all other time worked at the employee's regular rate of pay and a rate of pay that
12 is greater than the applicable minimum wage?
- 13 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
14 Class Members to take compliant meal periods?
- 15 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
16 with additional wages for missed or interrupted meal periods?
- 17 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
18 Class Members to take compliant rest periods?
- 19 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
20 with additional wages for missed rest periods?
- 21 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
22 Members upon termination or resignation all wages earned?
- 23 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
24 section 203?
- 25 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
26 Class Members with accurate wage statements?
- 27 J. Did Defendants fail to pay Class Members in a timely fashion as required under
28 Labor Code section 204?

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

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

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

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

9 O. Are Class Members entitled to interest?

10 **C. Typicality**

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

16 **D. Adequacy of Representation**

17 42. Plaintiff will fairly and adequately represent and protect the interest of Class
18 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
19 hour class actions.

20 **E. Superiority of Class Action**

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

27 44. Class action treatment will allow Class Members to litigate their claims in a manner
28 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of

1 any difficulties that are likely to be encountered in the management of this action that would
2 preclude its maintenance as a class action.

3 **FIRST CAUSE OF ACTION**

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

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

7 46. At all relevant times, Plaintiff and Class Members were employees or former
8 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
9 Wage Orders.

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

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

19 49. Four (4) years prior to the filing of the Complaint in this Action through the present,
20 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
21 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
22 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
23 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
24 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
25 work off the clock, including, without limitation, by requiring employees: to suffer under
26 Employer’s control due to clocking out for meal periods and continuing to work, to don and doff
27 uniforms off the clock, to make phone calls or drive off the clock, and/or go through temperature
28 checks off the clock; failing to include all forms of remuneration, including non-discretionary

1 bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of
2 pay for the pay periods where overtime was worked and the additional compensation was earned
3 for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time
4 entries, editing and/or manipulation of time entries to show less hours than actually worked, and for
5 paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved
6 employees to the detriment of Plaintiff and Class Members.

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

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

16 **SECOND CAUSE OF ACTION**

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

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

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

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

25 55. For four (4) years prior to the filing of the Complaint in this Action through the
26 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
27 their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting
28 employees to work off the clock, including, without limitation, by requiring employees to suffer

1 under Employer's control due to clocking out for meal periods and continuing to work, to don and
2 doff uniforms off the clock, and to make phone calls or drive off the clock; and detrimental rounding
3 of employee time entries, editing and/or manipulation of time entries to show less hours than
4 actually worked, and failing to pay split shift premiums to the detriment of Plaintiff and Class
5 Members.

6 56. 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 minimum wages
8 for all hours worked or otherwise due.

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

13 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

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

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

22 67. At all relevant times, Plaintiff and Class Members were employees or former
23 employees of Defendants covered by applicable Wage Orders.

24 68. California law and applicable Wage Orders require that employers "authorize and
25 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
26 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
27 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
28 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes

1 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
2 thirty (30) minutes of paid rest period.

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

7 70. 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 authorized or permitted to take complete,
9 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
10 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
11 Member's regular rate of compensation on the occasions that Class Members were not authorized
12 or permitted to take compliant rest periods.

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

17 72. 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 rest periods that they were not authorized or permitted to take.

20 73. 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 **FIFTH CAUSE OF ACTION**

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

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

28 / / /

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

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

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

16 78. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
17 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
18 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
19 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
20 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
21 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
22 or resignation.

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

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

1 81. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
2 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
3 waiting time penalties, interest, and their costs of suit, as well.

4 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

24 86. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
25 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
26 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
27 provided wage statements that Defendants knew were not accurate.

28 / / /

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

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

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

SEVENTH CAUSE OF ACTION

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

90. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and incorporate each by reference as though fully set forth hereat.

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

92. Labor Code section 204 provides 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.”

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

8 94. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
9 before the filing of the Complaint in this Action through the present, Defendants employed policies
10 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
11 Labor Code section 204.

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

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

20 **EIGHTH CAUSE OF ACTION**

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

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

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

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

100. 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 mandatory work uniforms; laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; and using cellular phones for work-related purposes.

101. 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.

102. 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.

103. 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.

NINTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

105. 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.

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

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

9 **ELEVENTH CAUSE OF ACTION**

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

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

13 114. Defendants had and have a policy or practice of failing to comply with Labor Code
14 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
15 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
16 wages earned; the name and address of each employer with whom they have been placed to work;
17 all applicable hourly rates in effect during the pay period and the corresponding number of hours
18 worked at each hourly rate; the legal name of the employer; and other such information as required
19 by Labor Code section 226, subdivision (a).

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

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

27 117. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
28 and have a policy or practice of failing to furnish non-exempt employees, including, without

1 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
2 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
3 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
4 name of the employer and/or the name and address of the legal entity securing the employer's services
5 if the employer is a farm labor contractor; and other such information as required by Labor Code
6 section 226, subdivision (a).

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

12 **TWELFTH CAUSE OF ACTION**

13 **(Violation of Labor Code § 558 – Against All Defendants)**

14 119. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
15 and incorporates each by reference as though fully set forth hereat.

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

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

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

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

27 121. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
28 each of them, violated, or caused to be violated, the Labor Code sections described herein, including

1 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
2 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
3 their employment and after their employment separation; receive accurate, itemized wage
4 statements; be provided with the opportunity to inspect employment records; be provided with
5 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
6 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
7 of pay.

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

13 **THIRTEENTH CAUSE OF ACTION**

14 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

15 123. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
16 and incorporates each by reference as though fully set forth hereat.

17 124. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
18 every person employing labor in California to “[a]llow any member of the commission or the
19 employees of the Division of Labor Standards Enforcement free access to the place of business or
20 employment of the person to secure any information or make any investigation that they are
21 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
22 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
23 or papers of the person.”

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

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

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

15 128. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
16 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
17 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
18 inspection of records as required by Labor Code subdivision (b).

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

FOURTEENTH CAUSE OF ACTION

(Violation of Labor Code § 1197.1 – Against All Defendants)

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

27 131. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
28 person acting either individually or as an officer, agent, or employee of another person, who pays

1 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
2 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
3 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
4 Section 203 as follows:

5 (1) For any initial violation that is intentionally committed, one hundred dollars
6 (\$100) for each underpaid employee for each pay period for which the
7 employee is underpaid. This amount shall be in addition to an amount
8 sufficient to recover underpaid wages, liquidated damages pursuant to Section
9 1194.2, and any applicable penalties imposed pursuant to Section 203.

10 (2) For each subsequent violation for the same specific offense, two hundred fifty
11 dollars (\$250) for each underpaid employee for each pay period for which the
12 employee is underpaid regardless of whether the initial violation is
13 intentionally committed. This amount shall be in addition to an amount
14 sufficient to recover underpaid wages, liquidated damages pursuant to Section
15 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

19 132. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
20 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
21 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours
22 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
23 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
24 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
25 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

26 133. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
28 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one

1 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
2 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
3 subsequent violation.

4 **FIFTEENTH CAUSE OF ACTION**

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

6 134. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
7 and incorporates each by reference as though fully set forth hereat.

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

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

20 137. Plaintiff is informed and believes and based thereon alleges that Defendants, and
21 each of them, violated the Labor Code sections described herein, including, without limitation, for
22 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
23 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
24 employment and after employment separation; provide employees the opportunity to inspect
25 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
26 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
27 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
28 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and

1 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
2 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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

6 **DEMAND FOR JURY TRIAL**

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

8 **PRAYER**

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

- 11 A. An order certifying this case as a Class Action;
- 12 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
13 counsel as class counsel;
- 14 C. Damages for all wages earned and owed, including minimum. overtime wages,
15 under Labor Code sections 510, 1194, 1197 and 1199;
- 16 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 17 E. Damages for unpaid premium wages from missed meal and rest periods under,
18 among other Labor Code sections 512 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 section 203;
- 22 H. Penalties to timely pay wages under Labor Code section 210;
- 23 I. Damages under Labor Code sections 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. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,
2 1174.5, 1197.1, and 2699;
3 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
4 N. For attorneys' fees in prosecuting this action;
5 O. For costs of suit incurred herein; and
6 P. For such other and further relief as the Court deems just and proper.
7

8 Dated: August 20, 2021

BIBIYAN LAW GROUP, P.C.

9
10 BY: 

11 DIEGO AVILES

12 Attorneys for Plaintiff ANTHONY S. COOPER on
13 behalf of himself and all others similarly situated and
14 aggrieved
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