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8 Attorneys for Plaintiff CARRIE DAVIS, and
9 on behalf of herself and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 CARRIE DAVIS, an individual and on behalf
13 of all others similarly situated,

14 Plaintiff,

15 v.

16 BEELINE IMPORT AND SERVICES, LLC,
17 an Georgia limited liability company;
MYRNA DELGADO an individual;
18 CHRISTIAN AVILES an individual; and
DOES 1 through 100, inclusive,

19 Defendants.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 27 2021

BY *Jovanna Leandro*
JOVANNA LEANDRO, DEPUTY

CASE NO.: CIVSB2119287

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. MEAL PERIOD VIOLATIONS;
4. REST PERIOD VIOLATIONS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. UNFAIR COMPETITION.
9. FAILURE TO IDEMNIFY
10. VIOLATION OF LABOR CODE § 227.3;
11. CIVIL PENALTIES UNDER PAGA.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff CARRIE DAVIS (“Plaintiff”), on behalf of Plaintiff and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

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

PARTIES

A. Plaintiff

2. Plaintiff CARRIE DAVIS 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 CARRIE DAVIS as a non-exempt employee, with duties that included, but were not limited to, maintaining jewelry fixtures. Plaintiffs are informed and believe, and based thereon allege that Plaintiff CARRIE DAVIS worked for Defendants from approximately December of 2018 through approximately June of 2021.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant BEELINE is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of Georgia and doing business in the County of Ventura, State of California.

4. Plaintiff is informed and believes and based thereon alleges that Defendant MS. DELGADO is, and at all times relevant hereto was, an individual residing in California, as well as a Manager for BEELINE, and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that MS. DELGADO violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

5. Plaintiff is informed and believes and based thereon alleges that defendant MR. AVILES is, and at all times relevant hereto was, an individual residing in California, as well as a Manager for BEELINE, and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that MR. AVILES violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

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

JOINT LIABILITY ALLEGATIONS

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

8. All of the acts and conduct described herein of each and every corporate defendant was duly authorized, ordered, and directed by the respective and collective defendant corporate employers, and the officers and management-level employees of said corporate employers. In

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

7 9. Plaintiff is further informed and believes and based thereon alleges that DELGADO
8 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
9 provisions in violation of Labor Code section 558.1.

10 10. Plaintiff is further informed and believes and based thereon alleges that AVILES
11 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
12 provisions in violation of Labor Code section 558.1.

13 11. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
14 unity of interest and ownership between Defendants, and each of them, that their individuality and
15 separateness have ceased to exist.

16 12. Plaintiff is informed and believes, and based thereon alleges that despite the
17 formation of the purported corporate existence of BEELINE, and DOES 1 through 50, inclusive (the
18 “Alter Ego Defendants”), they, and each of them, are one and the same with DELGADO, AVILES
19 and DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
20 the following reasons:

21 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
22 Defendants who personally committed the wrongful and illegal acts and violated the
23 laws as set forth in this Complaint, and who has hidden and currently hide behind the
24 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
25 other wrongful or inequitable purpose;

26 B. The Individual Defendants derive actual and significant monetary benefits by and
27 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
28 Defendants as the funding source for the Individual Defendants’ own personal

1 expenditures;

2 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
3 and the Alter Ego Defendants, while really one and the same, were segregated to
4 appear as though separate and distinct for purposes of perpetrating a fraud,
5 circumventing a statute, or accomplishing some other wrongful or inequitable
6 purpose;

7 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
8 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
9 mentioned herein were, so mixed and intermingled that the same cannot reasonably
10 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
11 are, and at all relevant times mentioned herein were, used by the Individual
12 Defendants as mere shells and conduits for the conduct of certain of their, and each
13 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
14 herein were, the alter egos of the Individual Defendants;

15 E. The recognition of the separate existence of the Individual Defendants and the Alter
16 Ego Defendants would promote injustice insofar that it would permit defendants to
17 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
18 Code, and other statutory violations. The corporate existence of these defendants
19 should thus be disregarded in equity and for the ends of justice because such
20 disregard is necessary to avoid fraud and injustice to Plaintiff herein;

21 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
22 Defendants (and vice versa), and the fiction of their separate corporate existence
23 must be disregarded;

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

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28 **JURISDICTION**

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

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

FACTUAL BACKGROUND

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

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

18. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than

1 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
2 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
3 for such unprovided meal periods as required by California wage and hour laws.

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

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

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

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

25 23. For at least three (3) years prior to the filing of this action and continuing to the
26 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
27 costs incurred in using cellular phones for work-related purposes.

28 24. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action

1 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
2 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, *et al.*, and California Code of Regulations, Title 8,
3 section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
4 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
5 other such provisions of California law, and reasonable attorneys' fees and costs.

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

12 **CLASS ACTION ALLEGATIONS**

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

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

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

24 **A. Numerosity**

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

1 30. 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 31. 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 Labor Code section 227.3 by not providing Class Members
5 with compensation at their final rate of pay for vested paid vacation time.
- 6 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
7 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 8 N. Are Class Members entitled to restitution of wages under Business and Professions
9 Code section 17203?
- 10 O. Are Class Members entitled to costs and attorneys' fees?
- 11 P. Are Class Members entitled to interest?

12 **C. Typicality**

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

18 **D. Adequacy of Representation**

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

22 **E. Superiority of Class Action**

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

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

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

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

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

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

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

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

41. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays

1 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
2 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
3 applicable IWC Wage Orders, and California law.

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

8 **SECOND CAUSE OF ACTION**

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

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

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

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

17 46. For four (4) years prior to the filing of the Complaint in this Action through the
18 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
19 their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class
20 Members.

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

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

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

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

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

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

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

56. 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.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

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

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

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

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

62. By their failure, at times, to authorize and permit Plaintiff and Class Members to take

1 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
2 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
3 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

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

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

11 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

1 sections 201 or 202.

2 69. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
3 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
4 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
5 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
6 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
7 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
8 or resignation.

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

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

15 72. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
16 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
17 waiting time penalties, interest, and their costs of suit, as well.

18 **SIXTH CAUSE OF ACTION**

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

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

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

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

1 employer, among other things.

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

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

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

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

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

1 **SEVENTH CAUSE OF ACTION**

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

3 81. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
4 incorporate each by reference as though fully set forth hereat.

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

7 83. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
8 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
9 during which the labor was performed, and labor performed between the 16th and the last day,
10 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
11 month.”

12 84. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
13 independent and apart from, any other penalty provided in this article, every person who fails to pay
14 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
15 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
16 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
17 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
18 percent of the amount unlawfully withheld.”

19 85. Plaintiffs are informed and believe, and based thereon alleges, that in the one (1) year
20 before the filing of the Complaint in this Action through the present, Defendants employed policies
21 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
22 Labor Code section 204.

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

28 87. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and

1 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
2 penalties, interest, and their costs of suit, as well.

3 **EIGHTH CAUSE OF ACTION**

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

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

7 89. Plaintiff is informed and believes, and based thereon alleges that the unlawful
8 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
9 and Professions Code section 17200. Due to their unlawful business practices in violation of the
10 Labor Code, Defendants have gained a competitive advantage over other comparable companies
11 doing business in the State of California that comply with their obligations to compensate employees
12 in accordance with the Labor Code.

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

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

23 92. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
24 Procedure section 1032 and interest under Civil Code section 3287.

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28 **NINTH CAUSE OF ACTION**

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

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

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

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

96. For three (3) years prior to the filing of the 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: using cellular phones for work-related purposes.

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

98. As a result of Defendants’ occasional 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.

99. 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.

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TENTH CAUSE OF ACTION

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

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

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

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

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

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

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

24 **ELEVENTH CAUSE OF ACTION**

25 **(Violation of PAGA – Against All Defendants)**

26 106. Plaintiff realleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs of the First Amended Class Action Complaint as though fully set forth
28 hereat.

1 107. Plaintiff is an "aggrieved employee" under the Labor Code Private Attorneys General
2 Act ("PAGA"), as Plaintiff is or was employed by Defendants during the applicable statutory period
3 and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks
4 to recover, on behalf of Plaintiff and all other aggrieved current and former employees of
5 Defendants, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

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

10 109. Labor Code section 2699, subdivisions (a) and (g), as well as Labor Code sections
11 210, 226.3, 558, 1174.5 and 1197.1 authorizes aggrieved employees such as Plaintiff, on behalf of
12 himself and other current and former employees within the statutory period, to bring a civil action
13 to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

14 110. Plaintiff complied with the procedures for bringing suit specified in Labor Code
15 section 2699.3. Specifically, on or about July 2, 2021, Plaintiff gave written notice to the LWDA and
16 to Defendants of the specified provisions of the Labor Code alleged to have been violated and those
17 included below ("PAGA Notice"). Plaintiff is informed and believes that, to date, the LWDA has
18 still not elected to investigate. Pursuant to *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th
19 1157.

20 111. During the period beginning one (1) year preceding the filing of the Complaint in
21 this Action (the "Civil Penalty Period"), Defendants violated, *inter alia*, Labor Code sections 96,
22 98.6, 200, 201, 201.3, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 232, 232.5, 246 *et seq.*, 432, 510,
23 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.5, 1198.5, 2802, 2810.5 and the applicable Wage
24 Order(s), among other things. In connection with the violations of Labor Code sections 200, 201,
25 201.3, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1181.12, 1194, and
26 1194.2, Plaintiff seeks to represent only non-exempt current and former employees of Defendants
27 working in California from one (1) year prior to filing the PAGA Notice with the LWDA through
28 the present. In connection with the violation of Labor Code sections 96, 98.6, 227.3, 232, 232.5, 246

1 *et seq.*, 432, 1197.5, 1197.5, 1198.5, 2802, and 2810.5, Plaintiff seeks to represent all current and
2 former employees of Defendants working in California from one (1) year prior to filing the PAGA
3 Notice with the LWDA through the present. Collectively, the employees that Plaintiff plans to
4 represent shall be referred to as "Aggrieved Employees".

5 112. Labor Code section 204, requires and required that: "[l]abor performed between the
6 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
7 the month during which the labor was performed, and labor performed between the 16th and the last
8 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
9 month."

10 113. Labor Code section 210, subdivision (a) states that "[i]n addition to, and entirely
11 independent and apart from, any other penalty provided in this article, every person who fails to pay
12 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
13 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
14 (\$100) for each failure to pay each employee" and "(2) For each subsequent violation, or any willful
15 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
16 percent of the amount unlawfully withheld."

17 114. At all relevant times herein, Plaintiff is informed and believes, and based thereon
18 alleges, that Defendants had and have a consistent policy or practice of failing to pay Plaintiff and
19 during their employment on a timely basis as per Labor Code section 204.

20 115. As a direct and proximate result of the herein-described Labor Code violations, and
21 pursuant to Labor Code section 210, Plaintiff and other Aggrieved Employees are entitled to recover
22 civil penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred
23 dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two
24 hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection
25 with each payment that was made in violation of Labor Code section 204.

26 116. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
27 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for

1 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

3 117. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
4 this section are in addition to any other penalty provided by law.

5 118. At all relevant times herein, Plaintiff is informed and believes, and based thereon
6 alleges, that Defendants, and each of them, had and have a policy or practice of failing to comply
7 with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and
8 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
9 total hours worked; net wages earned; the name and address of each employer with whom they have
10 been placed to work; all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate; the legal name of the employer and/or the name and
12 address of the legal entity securing the employer's services if the employer is a farm labor contractor;
13 and other such information as required by Labor Code section 226, subdivision (a).

14 119. As a direct and proximate result of the herein-described Labor Code violations, and
15 pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are entitled to
16 recover civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the
17 amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the
18 initial violation, and one thousand dollars (\$1000) for each Aggrieved Employee per pay period for
19 each subsequent violation.

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

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

- 27 i. For any initial violation, fifty dollars (\$50) for each underpaid employee
28 and for each pay period for which the employee was underpaid in addition

1 to an amount sufficient to recover underpaid wages;

- 2 ii. For each subsequent violation, one hundred dollars (\$100) for each
3 underpaid employee for each pay period for which the employee was
4 underpaid in addition to an amount sufficient to recover underpaid wages;
5 iii. Wages recovered pursuant to this section shall be paid to the affected
6 employee.

7 122. At all relevant times herein, Plaintiff is informed and believes, and based thereon
8 alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code
9 sections described herein, including causing Plaintiff and other Aggrieved Employees not to: be
10 paid overtime wages and minimum wages; receive meal and rest periods or compensation in lieu
11 thereof; be paid timely wages during their employment and after their employment separation;
12 receive accurate, itemized wage statements; be indemnified for work expenses incurred.

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

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

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

27 126. Labor Code section 1174, subdivision (d) has required every person employing labor
28 in California to "[k]eep, at a central location in the state or at the plants or establishments at which

1 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
2 and the number of piece-rate units earned by and applicable piece rate paid to, employees employed
3 at the respective plants or establishments. These records shall be kept in accordance with rules
4 established for this purpose by the commission, but in any case, shall be kept on file for not less
5 than three years. An employer shall not prohibit an employee from maintaining a personal record of
6 hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

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

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

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

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

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- i. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- ii. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- iii. Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee."

131. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants conduct, without limitation, for the reasons set forth herein, including, without limitation, for routinely failing to pay Plaintiff or other Aggrieved Employees' wages for all hours worked or otherwise under Defendants' control due to, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting 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 due to, among other things, completing maintenance on various jewelry fixtures, 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 clock out for rest periods and continue working, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security

1 screenings and/or temperature checks off the clock; failing to include all forms of remuneration,
2 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
3 remuneration into the regular rate of pay for the pay periods where overtime was worked and
4 additional compensation was earned for the purpose of calculating the overtime rate of pay;
5 detrimental rounding of employee time entries; editing and/or manipulation of time entries to show
6 less hours than actually worked; and failing to pay split shift premiums. In addition, Employee and
7 other aggrieved employees were required to report to work, and did report, but were not put to work
8 and/or were furnished less than half their usual or scheduled day's work without being paid for half
9 the usual or scheduled work at their regular rate of pay.

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

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

22 134. Labor Code section 2699, subdivision (f), provides that for all provisions of the Labor
23 Code except those for which a civil penalty is specifically provided, the established civil penalty for
24 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
25 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
26 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
27 employee per pay period for each subsequent violation.

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

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

22 137. Moreover, Plaintiff and Aggrieved Employees are also entitled to an award of
23 reasonable attorneys' fees and costs in connection with their herein-described claims for civil
24 penalties.

25 **DEMAND FOR JURY TRIAL**

26 138. Plaintiff demands a trial by jury on all causes of action contained herein

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PRAYER

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

- A. An order certifying this case as a Class Action;
- 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 wages under Labor Code sections 227.3, 510, 558.1, 1194, 1197 and 1199;
- D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512, 558.1 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 sections 203 and 558.1;
- H. Unpaid wages, penalties, and interest for failure to timely pay wages under Labor Code section 210;
- I. Damages under Labor Code sections 558.1 and 2802;
- J. For civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174, 1197.1 and 2699;
- K. 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;
- L. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- N. For attorneys' fees in prosecuting this action;
- O. For costs of suit incurred herein; and
- P. For such other and further relief as the Court deems just and proper.

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Dated: October 28, 2021

BIBIYAN LAW GROUP, P.C.
MIRACLE MILE LAW GROUP, LLP

BY: David D. Bibiyan
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on behalf of herself and all others similarly situated