

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

OCT 22 2021

BY

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 on behalf of himself and all others similarly situated
 and aggrieved

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

GABRIEL PASTRANA, an individual and on
 behalf of all others similarly situated and
 aggrieved,

Plaintiff,

v.

NATIONAL SIGN & MARKETING
 CORPORATION, a California corporation;
 JOHN J. KANE, an individual; and DOES 1
 through 100, inclusive,

Defendants.

CASE NO.: CIVSB2118749

[Assigned for all purposes to the Hon. David Cohn in
 Dept. S-26]

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL
 [Amount in Controversy Exceeds \$25,000.00]

By Fax

COMES NOW plaintiff GABRIEL PASTRANA ("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 NATIONAL SIGN & MARKETING CORPORATION, and any of its respective subsidiaries or affiliated companies within the State of California ("NSMC"); and JOHN J. KANE, an individual ("MR. KANE" and NSMC, 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 Defendants, and any of their 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 violations of the Labor Code, including but not limited to, failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

PARTIES

A. Plaintiff

3. Plaintiff GABRIEL PASTRANA 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 GABRIEL PASTRANA as a non-exempt employee, with duties that included, but were not limited to, sanding and assembling specialty signs. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff GABRIEL PASTRANA worked for Defendants from approximately January of 2015 through approximately February of 2021.

1 **B. Defendants**

2 4. Plaintiff is informed and believes, and based thereon alleges, that defendant NSMC
3 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
4 the laws of the State of California and doing business in the County of San Bernardino, State of
5 California.

6 5. Plaintiff is informed and believes and based thereon alleges that defendant MR.
7 KANE is, and at all times relevant hereto was, an individual residing in California, as well as Chief
8 Executive Officer and President of NSMC, and DOES 1 through 100, as further defined below.
9 Plaintiff is further informed and believes and based thereon alleges that MR. KANE violated, or
10 caused to be violated, the above-referenced and below-referenced Labor Code provisions in
11 violation of Labor Code section 558.1.

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

25 **JOINT LIABILITY ALLEGATIONS**

26 7. Plaintiff is informed and believes and based thereon alleges that all the times
27 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
28 representative, joint venture or co-conspirator of each of the other defendants, either actually or

1 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
2 employment, joint venture, and conspiracy.

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

12 9. Plaintiff is further informed and believes, and based thereon alleges, that MR. KANE
13 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
14 provisions in violation of Labor Code section 558.1.

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

18 11. Plaintiff is informed and believes, and based thereon alleges, that despite the
19 formation of the purported corporate existence of NSMC, and DOES 1 through 50, inclusive (the
20 "Alter Ego Defendants"), they, and each of them, are one and the same with MR. KANE and DOES
21 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following
22 reasons:

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

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- 1 B. The Individual Defendants derive actual and significant monetary benefits by and
2 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
3 Defendants as the funding source for the Individual Defendants' own personal
4 expenditures;
- 5 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
6 and the Alter Ego Defendants, while really one and the same, were segregated to
7 appear as though separate and distinct for purposes of perpetrating a fraud,
8 circumventing a statute, or accomplishing some other wrongful or inequitable
9 purpose;
- 10 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
11 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
12 mentioned herein were, so mixed and intermingled that the same cannot reasonably
13 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
14 are, and at all relevant times mentioned herein were, used by the Individual
15 Defendants as mere shells and conduits for the conduct of certain of their, and each
16 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
17 herein were, the alter egos of the Individual Defendants;
- 18 E. The recognition of the separate existence of the Individual Defendants and the Alter
19 Ego Defendants would promote injustice insofar that it would permit defendants to
20 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
21 Code, and other statutory violations. The corporate existence of these defendants
22 should thus be disregarded in equity and for the ends of justice because such
23 disregard is necessary to avoid fraud and injustice to Plaintiff herein;
- 24 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
25 Defendants (and vice versa), and the fiction of their separate corporate existence
26 must be disregarded;
- 27 12. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
28 thereon alleges that Defendants, and each of them, are joint employers.

JURISDICTION

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

14. Venue is proper in San Bernardino County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, San Bernardino 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 Plaintiff and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in San Bernardino County, and because Defendants employ numerous Class Members in San Bernardino County.

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

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

17. During the period beginning one (1) year preceding the filing of the Complaint in this Action (the "Civil Penalty Period"), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 232, 232.5, 246 et seq., 432, 510, 512, 1174, 1194, 1194.2, 1197, 1197.5, 1181.12, 1194, 1194.2, 1197.5, 1198.5, 2802, 2810.5, 6401, 6402, 6403, 6409.6, and the applicable Wage Order(s), among other things. In connection with the

1 violations of Labor Code sections 200, 201, 201.3, 202, 203, 204, 221, 223, 226, 226.7, 510, 512,
2 1174, 1194, 1194.2, 1197, 1181.12, 1194, and 1194.2, Plaintiff seeks to represent only non-exempt
3 current and former employees of Defendants working in California from one (1) year prior to filing
4 the PAGA Notice with the LWDA through the present. In connection with the violation of Labor
5 Code sections 96, 98.6, 227.3, 232, 232.5, 246 *et seq.*, 432, 1197.5, 1197.5, 1198.5, 2802, 2810.5,
6 6401, 6402, 6403, and 6409.6, Plaintiff seeks to represent all current and former employees of
7 Defendants working in California from one (1) year prior to filing the PAGA Notice with the LWDA
8 through the present. Collectively, the employees that Plaintiff plans to represent shall be referred
9 to as "Aggrieved Employees".

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

14 19. On or around July 1, 2021, Plaintiff provided written notice pursuant to Labor Code
15 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
16 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
17 by certified mail, with return receipt requested to Defendants, and each of them.

18 20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
19 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
20 calendar days of the July 1, 2021 postmarked date of the herein-described notice sent by Plaintiff to
21 the LWDA and Defendants.

22 **FACTUAL BACKGROUND**

23 21. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
25 some of them, in violation of California state wage and hour laws as a result of, without limitation,
26 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
27 seven consecutive work days in a work week without being properly compensated for hours worked
28 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours

1 worked on the seventh consecutive work day in a work week by, among other things, failing to
2 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay;
3 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
4 by requiring employees: to come early to work without being able to clock in for all that time; to
5 suffer under Employer's control due to long lines for clocking in and completing pre-shift tasks
6 before clocking in; failing to include all forms of remuneration, including non-discretionary
7 bonuses, and other forms of remuneration into the regular rate of pay for the pay periods where
8 overtime was worked and the additional compensation was earned for the purpose of calculating the
9 overtime rate of pay, and for paying straight pay instead of overtime pay, to the detriment of Plaintiff
10 and Class Members.

11 22. For at least four (4) years prior to the filing of this Action and continuing to the
12 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
13 or some of them, in violation of California state wage and hour laws as a result of, among other
14 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
15 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
16 off the clock, including, without limitation, by requiring employees: to come early to work without
17 being able to clock in for all that time; and to suffer under Employer's control due to long lines for
18 clocking in and completing pre-shift tasks before clocking in, to the detriment of Plaintiff and Class
19 Members.

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

26 24. For at least four (4) years prior to the filing of this action and continuing to the
27 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
28 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major

1 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
2 California wage and hour laws.

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

8 26. For at least one (1) year prior to the filing of this Action and continuing to the present,
9 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
10 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
11 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
12 hours worked at each hourly rate, and other such information as required by Labor Code section
13 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
14 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

15 27. For at least one (1) year prior to the filing of this action and continuing to the present,
16 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
17 amount of their wages for labor performed in a timely fashion as required under Labor Code section
18 204.

19 28. For at least three (3) years prior to the filing of this action and continuing to the
20 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
21 costs incurred in purchasing tools necessary to perform work duties.

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

26 30. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this
27 action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226,
28 226.7, 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of Regulations,

1 Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for
2 missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement
3 penalties, failure to indemnify work-related expenses, failing to pay vested vacation time at the
4 proper rate of pay, other such provisions of California law, and reasonable attorneys' fees and costs.

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

11 32. At all relevant times herein, Defendants had and have a policy or practice of failing
12 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
13 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
14 and applicable Wage Orders.

15 33. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
17 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
18 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
19 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
20 specialty scissors to cut metal), for the purchase and maintenance of cellular phones and cellular
21 phone plans, in direct consequence of the discharge of their duties, or of their obedience to the
22 directions of Defendants, as required by Labor Code 2802.

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

1 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
2 under Labor Code section 2810.5.

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

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

14 37. Plaintiff, in Plaintiff’s representative capacity, seeks civil penalties under Labor
15 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
16 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
17 Employees pursuant to PAGA.

18 **CLASS ACTION ALLEGATIONS**

19 38. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
20 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
21 and former non-exempt employees of Defendants within the State of California at any time
22 commencing four (4) years preceding the filing of Plaintiff’s complaint up until the time that notice
23 of the class action is provided to the class (collectively referred to as “Class Members”).

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

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

4 **A. Numerosity**

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

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

13 **B. Commonality**

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

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

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

20 **C. Typicality**

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

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

6 52. Four (4) years prior to the filing of the Complaint in this Action through the present,
7 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
8 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
9 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
10 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
11 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
12 work off the clock, including, without limitation, by requiring employees: to come early to work
13 without being able to clock in for all that time; to suffer under Employer’s control due to long lines
14 for clocking in and completing pre-shift tasks before clocking in; failing to include all forms of
15 remuneration, including non-discretionary bonuses, and other forms of remuneration into the
16 regular rate of pay for the pay periods where overtime was worked and the additional compensation
17 was earned for the purpose of calculating the overtime rate of pay, and for paying straight pay instead
18 of overtime pay, to the detriment of Plaintiff and Class Members.

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

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

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1 **SECOND CAUSE OF ACTION**

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

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

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

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

10 58. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
12 their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting
13 employees to work off the clock, including, without limitation, by requiring employees: to come
14 early to work without being able to clock in for all that time; and to suffer under Employer's control
15 due to long lines for clocking in and completing pre-shift tasks before clocking in, to the detriment
16 of Plaintiff and Class Members.

17 59. 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 minimum wages
19 for all hours worked or otherwise due.

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

24 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

26 68. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
27 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus

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1 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
2 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

3 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

26 74. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
27 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's

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1 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
2 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

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

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

10 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

83. 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 for all wages earned prior to termination or resignation.

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

SIXTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

7 95. 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 96. 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 97. Plaintiff is informed and believes, 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 Plaintiff and Class Members in accordance with
22 Labor Code section 204.

23 98. Pursuant to Labor Code section 210, Plaintiff 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.

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

EIGHTH CAUSE OF ACTION

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

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

101. 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.

102. 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 . . .”

103. 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 tools necessary to perform work duties.

104. 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.

105. 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.

106. 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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1 114. Plaintiff is informed and believes, and based thereon alleges that the unlawful
2 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
3 and Professions Code section 17200. Due to their unlawful business practices in violation of the
4 Labor Code, Defendants have gained a competitive advantage over other comparable companies
5 doing business in the State of California that comply with their obligations to compensate employees
6 in accordance with the Labor Code.

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

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

17 117. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
18 Procedure section 1032 and interest under Civil Code section 3287.

19 **ELEVENTH CAUSE OF ACTION**

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

21 118. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat .

23 119. Labor Code section 204, requires and required that: “[l]abor performed between the
24 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
25 the month during which the labor was performed, and labor performed between the 16th and the last
26 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
27 month.”

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1 120. 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.

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

11 122. As a direct and proximate result of the herein-described Labor Code violations, and
12 pursuant to Labor Code section 210, Plaintiff and other Aggrieved Employees are entitled to recover
13 civil penalties for Defendants’ violations of Labor Code section 204, in the amount of one hundred
14 dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two
15 hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection
16 with each payment that was made in violation of Labor Code section 204.

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

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

24 125. At all relevant times herein, Plaintiff is informed and believes, and based thereon
25 alleges, that Defendants, and each of them, had and have a policy or practice of failing to comply
26 with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and
27 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
28 total hours worked; net wages earned; the name and address of each employer with whom they have

1 been placed to work; all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate; the legal name of the employer and/or the name and
3 address of the legal entity securing the employer's services if the employer is a farm labor contractor;
4 and other such information as required by Labor Code section 226, subdivision (a).

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

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

- 15 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
16 pay period for which the employee was underpaid in addition to an amount sufficient
17 to recover underpaid wages;
- 18 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid in addition to
20 an amount sufficient to recover underpaid wages;
- 21 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

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

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

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

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

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

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

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1 134. At all relevant times herein, Plaintiff is informed and believes, and based thereon
2 alleges, that Defendants, and each of them, have willfully failed to maintain the records required by
3 Labor Code subdivision (c), failed to maintain accurate and complete records required by Labor
4 Code subdivision (d), and/or failed to allow inspection of records as required by Labor Code
5 subdivision (b).

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

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

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

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

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

4 137. At all relevant times herein, Plaintiff is informed and believes, and based thereon
5 alleges, that Defendants, and each of them, caused Plaintiff and Aggrieved Employees not to be paid
6 minimum wages as a result of Defendants, without limitation, for the reasons set forth herein,
7 including, without limitation, for routinely failing to pay Plaintiff or other Aggrieved Employees’
8 wages for all hours worked or otherwise under Defendants’ control due to, without limitation, failing
9 to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
10 employees to work off the clock, including, without limitation, by requiring employees: to come
11 early to work and leave late work without being able to clock in for all that time, to suffer under
12 Employer’s control due to long lines for clocking in, to complete pre-shift tasks before clocking in
13 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
14 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
15 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
16 of employee time entries; editing and/or manipulation of time entries to show less hours than
17 actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved
18 employees were required to report to work, and did report, but were not put to work and/or were
19 furnished less than half their usual or scheduled day’s work without being paid for half the usual or
20 scheduled work at their regular rate of pay.

21 138. As a direct and proximate result of the herein-described Labor Code violations, and
22 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
23 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
24 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
25 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
26 subsequent violation.

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Penalties for Violation of California Labor Code Section 2698, et seq.

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

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

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

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1 142. As a direct and proximate result of the herein-described Labor Code violations, and
2 pursuant to Labor Code section 2699, subdivision (g), among other authorities, Plaintiff and
3 similarly Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of
4 the herein and therein described Labor Code violations during the Civil Penalty Period in the amount
5 of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation,
6 and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent
7 violation.

8 143. Moreover, Plaintiff and Aggrieved Employees are also entitled to an award of
9 reasonable attorneys' fees and costs in connection with their herein-described claims for civil
10 penalties.

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

14 **DEMAND FOR JURY TRIAL**

15 145. Plaintiff demands a trial by jury on all causes of action contained herein.

16 **PRAYER**

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

- 19 A. An order certifying this case as a Class Action;
- 20 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
21 counsel as class counsel;
- 22 C. Damages for all wages earned and owed, including minimum, overtime, and unpaid
23 wages for vested vacation time, under Labor Code sections 510, 558.1, 1194, 1197
24 and 1199 and 227.3;
- 25 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 26 E. Damages for unpaid premium wages from missed meal and rest periods under,
27 among other Labor Code sections, 512, 558.1 and 226.7;

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- 1 F. Penalties for inaccurate wage statements under Labor Code sections 226,
2 subdivision (e) and 558.1;
3 G. Waiting time penalties under Labor Code sections 203 and 558.1;
4 H. Penalties to timely pay wages under Labor Code section 210;
5 I. Damages under Labor Code sections 2802 and 558.1;
6 J. Preliminary and permanent injunctions prohibiting Defendants from further
7 violating the California Labor Code and requiring the establishment of appropriate
8 and effective means to prevent future violations;
9 K. Restitution of wages and benefits due which were acquired by means of any unfair
10 business practice, according to proof;
11 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
12 1174.5, 1197.1, and 2699;
13 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
14 210, 226.3, 558, 1174.5, 1197.1, and 2699;
15 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
16 O. For attorneys' fees in prosecuting this action;
17 P. For costs of suit incurred herein; and
18 Q. For such other and further relief as the Court deems just and proper.
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20 Dated: October 22, 2021

BIBIYAN LAW GROUP, P.C.

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22 BY: 
23 MALALAI ANBARI
24 DAVID BIBIYAN
25 Attorneys for Plaintiff GABRIEL PASTRANA on
26 behalf of himself and all others similarly situated and
27 aggrieved
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