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Attorneys for Plaintiff, OLIVIA DURAN and
on behalf of herself and all others similarly situated and aggrieved
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

OLIVIA DURAN, an individual and on behalf
of all others similarly situated and aggrieved,

Plaintiff,

v.

PRESTIGIO JEWELERS, INC., a California
corporation; JOHN BUBICA, an individual,
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: STK-CV-UOE-2021-6039

[Assigned for all purposes to the Hon. Jayne Lee in
Dept. 10C]

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff OLIVIA DURAN ("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 PRESTIGIO JEWELERS, INC., a California corporation and any of its respective subsidiaries or affiliated companies within the State of California ("PRESTIGIO"); JOHN BUBICA, an individual ("BUBICA") and PRESTIGIO, 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 failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

PARTIES

A. Plaintiff

3. Plaintiff OLIVIA DURAN 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 OLIVIA DURAN as a non-exempt employee, with duties that included, but were not limited to, stocking merchandise, receiving, and picking up merchandise, performing opening procedures, performing sales, responding to business-related concerns telephonically and sending out merchandise for repair. Plaintiff is informed and believes, and based thereon alleges, that

1 Plaintiff OLIVIA DURAN worked for Defendants from approximately January of 2016 and through
2 approximately March of 2019.

3 **B. Defendants**

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

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

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

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

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

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

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

A. The Alter Ego Defendants are completely dominated and controlled by the Individual Defendants who personally committed the wrongful and illegal acts and violated the

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

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

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

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

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

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

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

6 **JURISDICTION**

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

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

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

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

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

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

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

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

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

FACTUAL BACKGROUND

22. 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

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 leave work late without being able to clock in for all that time, to
5 complete post-shift tasks after clocking out, to clock out for meal periods and continue working, to
6 make phone calls or drive off the clock, failing to include all forms of remuneration, including non-
7 discretionary bonuses, into the regular rate of pay for the pay periods where overtime was worked
8 and the additional compensation was earned for the purpose of calculating the overtime rate of pay,
9 and for paying straight pay instead of overtime pay, to the detriment of Plaintiff and Class Members.

10 23. For at least four (4) years prior to the filing of this Action and continuing to the
11 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
12 or some of them, in violation of California state wage and hour laws as a result of, among other
13 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
14 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
15 off the clock, including, without limitation, by requiring employees: to leave work late without being
16 able to clock in for all that time, to complete post-shift tasks after clocking out, to clock out for meal
17 periods and continue working, to make phone calls or drive off the clock, to the detriment of Plaintiff
18 and Class Members.

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

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

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

3 26. 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, and premium wages.

8 27. 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 28. 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 29. 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 mileage and/or gas costs incurred in driving personal vehicles for work-related
22 purposes and using cellular phones for work-related purposes.

23 30. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this action
24 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
25 510, 512, 558.1, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of Regulations, Title 8,
26 section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
27 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,

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1 failure to indemnify work-related expenses, other such provisions of California law, and reasonable
2 attorneys' fees and costs.

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

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

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

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

26 35. At all relevant times mentioned herein, Defendants have had a policy or practice of
27 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
28 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of

1 any calendar month shall be paid for between the 16th and 26th day of the month during which the
2 labor was performed, and labor performed between the 16th and the last day, inclusive of any
3 calendar month, shall be paid for between the 1st and 10th day of the following month.”

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

8 **CLASS ACTION ALLEGATIONS**

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

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

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

20 **A. Numerosity**

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

25 41. Accounting for employee turnover during the relevant periods necessarily increases
26 this number. Plaintiff alleges Defendants’ employment records would provide information as to the
27 number and location of all Class Members. Joinder of all members of the proposed Class is not
28 practicable.

1 **B. Commonality**

2 42. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
5 worked at a proper overtime rate of pay?
- 6 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
7 for all other time worked at the employee's regular rate of pay and a rate of pay that
8 is greater than the applicable minimum wage?
- 9 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
10 Class Members to take compliant meal periods?
- 11 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
12 with additional wages for missed or interrupted meal periods?
- 13 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
14 Class Members to take compliant rest periods?
- 15 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
16 with additional wages for missed rest periods?
- 17 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
18 Members upon termination or resignation all wages earned?
- 19 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
20 section 203?
- 21 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
22 Class Members with accurate wage statements?
- 23 J. Did Defendants fail to pay Class Members in a timely fashion as required under
24 Labor Code section 204?
- 25 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
26 losses incurred in direct consequence of the discharge of their duties or by obedience
27 to the directions of Defendants as required under Labor Code section 2802?

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

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

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

6 O. Are Class Members entitled to interest?

7 **C. Typicality**

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

13 **D. Adequacy of Representation**

14 44. Plaintiff will fairly and adequately represent and protect the interest of Class
15 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
16 hour class actions.

17 **E. Superiority of Class Action**

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

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

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FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

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

48. 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.

49. 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.”

50. 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.”

51. 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 minutes actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to leave work late without being able to clock in for all that time, to complete post-shift tasks after clocking out, to clock out for meal periods and continue working, to make phone calls or drive off the clock, failing to include all forms of remuneration, including non-discretionary bonuses, into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was

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1 earned for the purpose of calculating the overtime rate of pay, and for paying straight pay instead of
2 overtime pay to the detriment of Plaintiff and Class Members.

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

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

12 **SECOND CAUSE OF ACTION**

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

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

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

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

21 57. For four (4) years prior to the filing of the Complaint in this Action through the
22 present, Defendants failed, at times, failed to pay minimum wages to Plaintiff and Class Members,
23 or some of them, in violation of California state wage and hour laws as a result of, among other
24 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
25 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
26 off the clock, including, without limitation, by requiring employees: to leave work late without being
27 able to clock in for all that time, to complete post-shift tasks after clocking out, to clock out for meal

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1 periods and continue working, to make phone calls or drive off the clock, to the detriment of Plaintiff
2 and Class Members.

3 58. 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 minimum wages
5 for all hours worked or otherwise due.

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

10 **THIRD CAUSE OF ACTION**

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

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

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

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

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

26 64. For four (4) years prior to the filing of the Complaint in this Action through the
27 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
28 free uninterrupted meal periods every five hours of work without waiving the right to take them, as

1 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
2 Class Member's regular rate of compensation on the occasions that Class Members were not
3 provided compliant meal periods.

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

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

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

15 **FOURTH CAUSE OF ACTION**

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

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

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

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

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71. 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.

72. 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.

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

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

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

FIFTH CAUSE OF ACTION

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

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

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

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

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

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

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

23 82. 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 for all wages earned
25 prior to termination or resignation.

26 83. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
27 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
28 waiting time penalties, interest, and their costs of suit, as well.

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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

1 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
2 about wages and amounts deducted from wages to state and federal governmental agencies, among
3 other things.

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

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

12 **SEVENTH CAUSE OF ACTION**

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

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

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

18 94. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
19 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
20 during which the labor was performed, and labor performed between the 16th and the last day,
21 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
22 month.”

23 95. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
24 independent and apart from, any other penalty provided in this article, every person who fails to pay
25 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
26 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
27 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
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1 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
2 percent of the amount unlawfully withheld.”

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

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

12 98. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
13 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
14 interest, and their costs of suit, as well.

15 **EIGHTH CAUSE OF ACTION**

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

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

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

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

24 102. For three (3) years prior to the filing of the Complaint in this Action through the
25 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
26 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
27 obedience to the directions of Defendants that included, without limitation: mileage and/or gas costs

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1 incurred in driving personal vehicles for work-related purposes and using cellular phones for work-
2 related purposes.

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

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

9 105. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
10 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
11 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
12 costs of suit.

13 NINTH CAUSE OF ACTION

14 (Unfair Competition – Against All Defendants)

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

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

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

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

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

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

7 **TENTH CAUSE OF ACTION**

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

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

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

- 12 A. At all relevant times herein, Labor Code section 204, requires and required that:
13 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month
14 shall be paid for between the 16th and 26th day of the month during which the labor
15 was performed, and labor performed between the 16th and the last day, inclusive, of
16 any calendar month, shall be paid for between the 1st and 10th day of the following
17 month.”
- 18 B. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
19 that “[i]n addition to, and entirely independent and apart from, any other penalty
20 provided in this article, every person who fails to pay the wages of each employee as
21 provided in Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject
22 to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100)
23 for each failure to pay each employee” and “(2) For each subsequent violation, or
24 any willful or intentional violation, two hundred dollars (\$200) for each failure to
25 pay each employee, plus 25 percent of the amount unlawfully withheld.”
- 26 C. At all relevant times herein, Defendants have had a consistent policy or practice of
27 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a
28 timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section

1 210, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties
2 for Defendants' violations of Labor Code section 204, in the amount of one hundred
3 dollars (\$100) for each Aggrieved Employee for each initial violation per employee,
4 and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent
5 violation in connection with each payment that was made in violation of Labor Code
6 section 204.

7 113. **Civil Penalties Under Labor Code § 226.3**

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

3 E. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
4 entitled to recover civil penalties for Defendants' violation of Labor Code section
5 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each
6 Aggrieved Employee per pay period for the initial violation, and one thousand dollars
7 (\$1,000) for each Aggrieved Employee per pay period for each subsequent violation.

8 114. **Violation of Labor Code § 558**

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

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

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

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

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

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

7 115. **Violation of Labor Code § 1174.5**

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

- 1 D. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
2 fails to maintain the records required by subdivision (c) of [Labor Code] Section
3 1174 or accurate and complete records required by subdivision (d) of [Labor Code]
4 Section 1174, or to allow any member of the commission or employees of the
5 division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174,
6 shall be subject to a civil penalty of five hundred dollars (\$500).
- 7 E. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
8 willfully failed keep adequate or accurate time records including wage statements
9 and similar payroll documents under Labor Code section 226, documents signed to
10 obtain or hold employment under Labor Code section 432, personnel records under
11 Labor Code section 1198.5, and time records under Labor Code section 1174.
- 12 F. As a direct and proximate result of the herein-described Labor Code violations,
13 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are
14 entitled to recover civil penalties for Defendants’ herein-described Labor Code
15 violations in the amount of five hundred dollars (\$500) per violation per Aggrieved
16 Employee.

17 116. **Violation of Labor Code § 1197.1**

- 18 A. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
19 person acting either individually or as an officer, agent, or employee of another
20 person, who pays or causes to be paid to any employee a wage less than the minimum
21 fixed by an applicable state or local law, or by an order of the commission shall be
22 subject to a civil penalty, restitution of wages, liquidated damages payable to the
23 employee, and any applicable penalties imposed pursuant to Section 203 as follows:
- 24 (1) For any initial violation that is intentionally committed, one hundred dollars
25 (\$100) for each underpaid employee for each pay period for which the
26 employee is underpaid. This amount shall be in addition to an amount
27 sufficient to recover underpaid wages, liquidated damages pursuant to

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1 Section 1194.2, and any applicable penalties imposed pursuant to Section
2 203.

3 (2) For each subsequent violation for the same specific offense, two hundred
4 fifty dollars (\$250) for each underpaid employee for each pay period for
5 which the employee is underpaid regardless of whether the initial violation
6 is intentionally committed. This amount shall be in addition to an amount
7 sufficient to recover underpaid wages, liquidated damages pursuant to
8 Section 1194.2, and any applicable penalties imposed pursuant to Section
9 203.

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

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

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

24 117. **Civil Penalties Under Labor Code § 2699**

25 A. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
26 provision of law, any provision of the Labor Code that provides for a civil penalty to
27 be assessed and collected by the LWDA or any of its departments, divisions,
28 commissions, boards, agencies or employees for a violation of the Labor Code may,

1 as an alternative, be recovered through a civil action brought by an aggrieved
2 employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Labor Code section 2699.3.

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

11 C. Plaintiff is informed and believes and based thereon alleges that Defendants, and
12 each of them, violated the Labor Code sections described herein, including, without
13 limitation, for the failure to: pay the rates of pay and overtime rates of pay applicable
14 to their employment, allowances claimed as part of the minimum wage, the regular
15 payday designated by Defendants, the name of the employer, including any "doing
16 business as" names used, the name, address and telephone number of the workers'
17 compensation insurance carrier, information regarding paid sick leave, and other
18 pertinent information required to be disclosed by Employer under Labor Code
19 section 2810.5, failing to provide Employee and other aggrieved employees with the
20 amount of paid sick leave required to be provided pursuant to California and local
21 laws.

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

25 **DEMAND FOR JURY TRIAL**

26 118. 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 and Aggrieved Employees, 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 and overtime wages under Labor Code sections 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 2802 and 558.1;
- J. 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;
- K. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- M. For attorneys' fees in prosecuting this action;
- N. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- O. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;

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- P. For costs of suit incurred herein; and
- Q. For such other and further relief as the Court deems just and proper.

Dated: September 13, 2021

BIBIYAN LAW GROUP, P.C.

BY: Malalai Anbari
MALALAI ANBARI
DAVID D. BIBIYAN
Attorneys for Plaintiff OLIVIA DURAN, an individual
and on behalf of all others similarly situated and
aggrieved

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

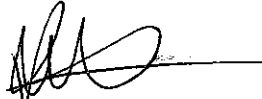
On September 14, 2021, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail address as follows:

Gordon, Rees, Scully, Mansukhani
Linda M. Moroney
lmoroney@grsm.com
275 Battery Street
Suite 2000
San Francisco, California 94111

Counsel for Defendant Prestigio Jewelers, Inc.

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

Executed on September 14, 2021 at Beverly Hills, California.



Rosemary Martir