

1 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (Cal. Bar No. 287811)

2 *david@tomorrowlaw.com*

Jeffrey D. Klein (Cal. Bar No. 297296)

3 *jeff@tomorrowlaw.com*

Diego Aviles (Cal. Bar No. 315533)

4 *diego@tomorrowlaw.com*

8484 Wilshire Boulevard, Suite 500

5 Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

6 Attorneys for Plaintiff, AMOLAK DHALIWAL and
7 on behalf of himself and all others similarly situated and aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF PLACER**

10
11 AMOLAK DHALIWAL, an individual and on
12 behalf of himself all others similarly situated,

13 Plaintiffs,

14 v.

15 ACE HARDWARE CORPORATION, a
16 Delaware corporation; DOUG
17 WOODMANSEE, an individual; and DOES 1
through 100, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

ELECTRONICALLY FILED

Superior Court of California,
County of Placer

12/03/2021 at 11:22:33 AM

By: Cristina Vallan-Brown, Deputy Clerk

CASE NO.: S-CV-0047279

[Assigned for all purposes to the Hon. Trisha
Hirashima in Dept. 40]

**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. VIOLATION OF LABOR CODE § 227.3
8. UNFAIR COMPETITION.
9. CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT OF 2004

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff AMOLAK DHALIWAL ("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 ACE HARDWARE CORPORATION, and any of its respective subsidiaries or affiliated companies within the State of California ("ACE") and DOUG WOODMANSEE, an individual ("WOODMANSEE" and, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against Defendants, 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 AMOLAK DHALIWAL 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 AMOLAK DHALIWAL as a non-exempt employee, with duties that included, but were not limited to, inventory and inspecting machinery. Plaintiff is informed and believes, and based thereon alleges that Plaintiff AMOLAK DHALIWAL worked for Defendants from approximately May of 2001 through approximately August of 2020.

///

1 **B. Defendants**

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

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

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

24 **JOINT LIABILITY ALLEGATIONS**

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

1 employment, joint venture, and conspiracy.

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

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

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

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

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

27 B. The Individual Defendants derive actual and significant monetary benefits by and
28 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego

1 Defendants as the funding source for the Individual Defendants' own personal
2 expenditures;

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

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

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

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

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

27 ///

28 ///

JURISDICTION

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

14. 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.

15. Venue is proper in Placer County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Placer 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, or some of them, and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff, or some of them, 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 Placer County, and because Defendants employ numerous Class Members in Placer County.

16. 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.

17. 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.*

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

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

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

12 20. On or around September 22, 2021, Plaintiff provided written notice pursuant to Labor
13 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
14 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
15 as well as by certified mail, with return receipt requested to Defendants, and each of them.

16 21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
17 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
18 calendar days of the September 22, 2021 postmarked date of the herein-described notice sent by
19 Plaintiff to the LWDA and Defendants.

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

24 **FACTUAL BACKGROUND**

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

1 seven consecutive work days in a work week without being properly compensated for hours worked
2 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
3 worked on the seventh consecutive work day in a work week by, among other things, failing to
4 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the
5 detriment of Plaintiff and Class Members.

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

11 25. 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 provide Plaintiff and Class Members, or some of them,
13 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
14 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
15 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
16 for such unprovided meal periods as required by California wage and hour laws.

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

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

27 28. For at least one (1) year prior to the filing of this Action and continuing to the present,
28 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with

1 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
2 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
3 hours worked at each hourly rate; and other such information as required by Labor Code section
4 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
5 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

6 29. At all relevant times mentioned herein, Defendants had and have a policy or practice
7 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
8 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
9 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
10 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
11 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
12 Aggrieved Employees.

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

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

25 32. At all relevant times mentioned herein, Defendants have had a policy or practice of
26 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
27 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
28 Employees with the rates of pay and overtime rates of pay applicable to their employment;

1 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
2 name, address, and telephone number of the workers' compensation insurance carrier; information
3 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
4 under Labor Code section 2810.5.

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

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

16 35. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
18 and experience they obtained at Defendants for purposes of competing with Defendants, including,
19 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
20 a prospective employer, and from disclosing who else works at Defendants and under what
21 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
22 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
23 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
24 Code sections 232, 232.5, and 1197.5, subdivision (k).

25 36. Defendants had and have a policy or practice of preventing Plaintiff and/or other
26 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
27 to their managers or outside to private attorneys or government officials, among others, in violation
28 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section

1 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
2 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
3 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
4 of Labor Code section 232 and 232.5.

5 37. Defendants had and have a policy or practice of preventing Plaintiff and/or other
6 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
7 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
8 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
9 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
10 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
11 economic liberty.

12 38. Plaintiff, on his own behalf and on behalf of Class Members, brings this action
13 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7, 227.3,
14 510, 512, 558.1, 1194, 1194.2, 1197, and California Code of Regulations, Title 8, section 11040,
15 seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest
16 periods, waiting time penalties, wage statement penalties, failing to pay vested vacation time at the
17 proper rate of pay, other such provisions of California law, and reasonable attorneys' fees and costs.

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

24 40. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
25 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
26 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
27 Employees pursuant to PAGA.

28 ///

1 **CLASS ACTION ALLEGATIONS**

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

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

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

13 **A. Numerosity**

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

18 45. Accounting for employee turnover during the relevant periods necessarily increases
19 this number. Plaintiff alleges Defendants' employment records would provide information as to the
20 number and location of all Class Members. Joinder of all members of the proposed Class is not
21 practicable.

22 **B. Commonality**

23 46. There are questions of law and fact common to Class Members. These common
24 questions include, but are not limited to:

25 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
26 minutes worked at a proper overtime rate of pay?

27 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
28 for all other time worked at the employee's regular rate of pay and a rate of pay that

1 is greater than the applicable minimum wage?

2 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
3 Class Members to take compliant meal periods?

4 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
5 with additional wages for missed or interrupted meal periods?

6 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
7 Class Members to take compliant rest periods?

8 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
9 with additional wages for missed rest periods?

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

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

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

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

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

20 L. Are Class Members entitled to restitution of wages under Business and Professions
21 Code section 17203?

22 M. Are Class Members entitled to costs and attorneys' fees?

23 N. Are Class Members entitled to interest?

24 **C. Typicality**

25 47. The claims of Plaintiff herein alleged are typical of those claims which could be
26 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
27 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
28 damages arising out of and caused by Defendants' common course of conduct in violation of laws

1 and regulations that have the force and effect of law and statutes as alleged herein.

2 **D. Adequacy of Representation**

3 48. Plaintiff will fairly and adequately represent and protect the interest of Class
4 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
5 hour class actions.

6 **E. Superiority of Class Action**

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

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

17 **FIRST CAUSE OF ACTION**

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

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

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

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

28 ///

54. 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.”

55. 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 minutes 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 to the detriment of Plaintiff and Class Members.

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

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

11

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

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

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

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

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

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

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

67. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,

1 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
2 of compensation for each workday that the meal period is not provided.

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

26 74. California law and applicable Wage Orders require that employers "authorize and
27 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
28 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-

1 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
2 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
3 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
4 thirty (30) minutes of paid rest period.

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

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

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

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

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

26 ///

27 ///

28 ///

1 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

27 85. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
28 waiting time penalties from the date their earned and unpaid wages were due, upon termination or

1 resignation, until paid, up to a maximum of thirty (30) days.

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

5 87. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 waiting time penalties, interest, and their costs of suit, as well.

8 **SIXTH CAUSE OF ACTION**

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

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

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

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

19 91. 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 failed to comply
21 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
22 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
23 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
24 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
25 worked at each hourly rate, among other things.

26 92. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
27 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
28 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully

1 provided wage statements that Defendants knew were not accurate.

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

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

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

17 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

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

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

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

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.

5 106. 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 **NINTH CAUSE OF ACTION**

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

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

11 108. Labor Code section 204, requires and required that: “[l]abor performed between the
12 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
13 the month during which the labor was performed, and labor performed between the 16th and the last
14 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
15 month.”

16 109. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
17 independent and apart from, any other penalty provided in this article, every person who fails to pay
18 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
19 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
20 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
21 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
22 percent of the amount unlawfully withheld.”

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

26 111. As a direct and proximate result of the herein-described Labor Code violations, and
27 pursuant to Labor Code section 210, Plaintiff and other Aggrieved Employees are entitled to recover
28 civil penalties for Defendants’ violations of Labor Code section 204, in the amount of one hundred

1 dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two
2 hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection
3 with each payment that was made in violation of Labor Code section 204.

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

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

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

20 115. As a direct and proximate result of the herein-described Labor Code violations, and
21 pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are entitled to
22 recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision (a) in the
23 amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period for the
24 initial violation, and one thousand dollars (\$1000) for each Aggrieved Employee per pay period for
25 each subsequent violation.

26 116. Labor Code section 558, subdivision (a) states: “Any employer or other person acting
27 on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours
28 and days of work in any of the Industrial Welfare Commission” shall be subject to a civil penalty as

1 follows:

- 2 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
3 pay period for which the employee was underpaid in addition to an amount sufficient
4 to recover underpaid wages;
- 5 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
6 employee for each pay period for which the employee was underpaid in addition to
7 an amount sufficient to recover underpaid wages;
- 8 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

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

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

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

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

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

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

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

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

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

- 1 (1) For any initial violation that is intentionally committed, one hundred dollars
2 (\$100) for each underpaid employee for each pay period for which the
3 employee is underpaid. This amount shall be in addition to an amount
4 sufficient to recover underpaid wages, liquidated damages pursuant to Section
5 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 6 (2) For each subsequent violation for the same specific offense, two hundred fifty
7 dollars (\$250) for each underpaid employee for each pay period for which the
8 employee is underpaid regardless of whether the initial violation is
9 intentionally committed. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 12 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
13 Section 203, recovered pursuant to this section shall be paid to the affected
14 employee.”

15 126. At all relevant times herein, Plaintiff is informed and believes, and based thereon
16 alleges, that Defendants, and each of them, caused Plaintiff and Aggrieved Employees not to be paid
17 minimum wages as a result of Defendants, without limitation, for the reasons set forth herein,
18 including, without limitation, for routinely failing to pay Plaintiff or other Aggrieved Employees’
19 wages for all hours worked or otherwise under Defendants’ control due to, without limitation, failing
20 to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
21 employees to work off the clock, including, without limitation, by requiring employees: to come
22 early to work and leave late work without being able to clock in for all that time, to suffer under
23 Employer’s control due to long lines for clocking in, to complete pre-shift tasks before clocking in
24 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
25 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
26 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
27 of employee time entries; editing and/or manipulation of time entries to show less hours than
28 actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved

1 employees were required to report to work, and did report, but were not put to work and/or were
2 furnished less than half their usual or scheduled day's work without being paid for half the usual or
3 scheduled work at their regular rate of pay

4 127. As a direct and proximate result of the herein-described Labor Code violations, and
5 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
6 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
7 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
8 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
9 subsequent violation.

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

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

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

23 130. At all relevant times herein, Plaintiff is informed and believes, and based thereon
24 alleges, that Defendants, and each of them, violated the Labor Code sections described herein,
25 including, without limitation, for the failure to: pay overtime wages and minimum wages; provide
26 meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements;
27 keep and produce complete and accurate payroll and personnel records; pay timely wages during
28 employment and after the cessation of the employment relationship; provide employees the

1 opportunity to inspect employment records; reimburse Aggrieved Employees for costs incurred in
2 furtherance of their work duties as required under Labor Code section 2802; provide notice as
3 required under Labor Code section 2810.5; provide the proper accrual and use of paid sick leave;
4 paying employees all owed paid time off and vacation time owed by separation at the proper rate of
5 pay; placing restraints on competition, whistleblowing and freedom of speech; and failing to comply
6 with Covid-19 safety protocols set forth in Labor Code sections 6401, 6402, 6403 and 6409.6,
7 entitling Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor Code
8 violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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

16 132. Moreover, Plaintiff and Aggrieved Employees are also entitled to an award of
17 reasonable attorneys' fees and costs in connection with their herein-described claims for civil
18 penalties

19 **DEMAND FOR JURY TRIAL**

20 133. Plaintiff demands a trial by jury on all causes of action contained herein.

21 **PRAYER**

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

- 24 A. An order certifying this case as a Class Action;
25 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
26 counsel as class counsel;
27 C. Damages for all wages earned and owed, including minimum, overtime wages and
28 unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,

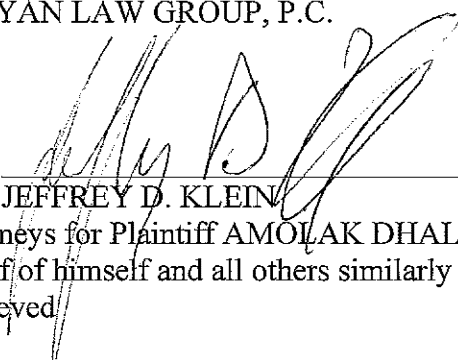
- 1 1194, 1197 and 1199 and 227.3;
- 2 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 3 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 4 among other Labor Code sections, 512, 558.1 and 226.7;
- 5 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 6 subdivision (e) and 558.1;
- 7 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 8 H. Preliminary and permanent injunctions prohibiting Defendants from further
- 9 violating the California Labor Code and requiring the establishment of appropriate
- 10 and effective means to prevent future violations;
- 11 I. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 12 1174.5, 1197.1, and 2699;
- 13 J. 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 K. Restitution of wages and benefits due which were acquired by means of any unfair
- 16 business practice, according to proof;
- 17 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 18 M. For attorneys' fees in prosecuting this action;
- 19 N. For costs of suit incurred herein; and
- 20 O. For such other and further relief as the Court deems just and proper.

21

22 Dated: December 1, 2021

BIBIYAN LAW GROUP, P.C.

23

24 BY: 

25 JEFFREY D. KLEIN

26 Attorneys for Plaintiff AMOLAK DHALIWAL on
27 behalf of himself and all others similarly situated and
28 aggrieved

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

5 On December 2, 2021, and pursuant to the California Code of Civil Procedure section
6 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:

7
8 Brooke Sikora Purcell
Luis Arias
9 Sheppard, Mullin, Richter & Hampton LLP
A Limited Liability Partnership
Including Professional Corporations
10 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
11 Telephone: 415.434.9100
Facsimile: 415.434.3947
12 bpurcell@sheppardmullin.com
larias@sheppardmullin.com

13 **Counsel for Defendant Ace Hardware Corporation**

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

16 Executed on December 2, 2021, at Beverly Hills, California.

17
18 

19 _____
Emanuel Munguia