

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan, Esq. (SBN 287811)
2 *david@tomorrowlaw.com*
Jeffrey D. Klein (Cal. Bar No. 297296)
3 *jeff@tomorrowlaw.com*
Diego Aviles (SBN 315533)
4 *diego@tomorrowlaw.com*
Sara Ehsani-Nia (SBN 326501)
5 *sara@tomorrowlaw.com*
8484 Wilshire Blvd, Suite 500
6 Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

7 Attorneys for Plaintiff, ANTOLIN NAJERA, on
behalf of himself and all others similarly situated and aggrieved

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

11 ANTOLIN NAJERA, an individual and on
behalf of all others similarly situated,

12 Plaintiffs,

13 v.

14 SOCAL DINERS, LLC, a California limited
15 liability company; and DOES 1 through 100,
inclusive,

16 Defendants.

CASE NO.: 21STCV33104

[Assigned for all purposes to the Hon. Kenneth R.
Freeman in Dept. 14]

**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 INDEMNIFY;
8. UNFAIR COMPETITION; and
9. 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]

1 COME NOW plaintiff ANTOLIN NAJERA ("Plaintiff"), on behalf of himself and all
2 others similarly situated and aggrieved, and allege as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
6 on behalf of Plaintiff and all other current and formerly similarly situated employees employed by
7 or formerly employed by SOCAL DINERS, LLC, and any of its respective subsidiaries or
8 affiliated companies within the State of California ("SOCAL" and, with DOES 1 through 100, as
9 further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-
10 exempt California employees employed by or formerly employed by Defendants ("Class
11 Members").

12 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
13 General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against Defendants,
14 and any of their respective subsidiaries or affiliated companies within the State of California, as a
15 proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on
16 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
17 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
18 for violations of the Labor Code, including but not limited to, failure to comply with Labor Code
19 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*,
20 Labor Code section 2802, on behalf of all employees of Defendants working within the Civil
21 Penalty Period (collectively, "Aggrieved Employees").

22 **PARTIES**

23 **A. Plaintiff**

24 3. Plaintiff is a resident of the State of California. At all relevant times herein,
25 Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as
26 a non-exempt employee, with duties that included, but were not limited to, file management,
27 posting payments, answering phones, and taking payments. Plaintiff is informed and believes that

28 / / /

1 Plaintiff worked for Defendants from approximately June of 2018 through approximately June of
2 2020.

3 **B. Defendants**

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

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

21 **JOINT LIABILITY ALLEGATIONS**

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

27 7. All of the acts and conduct described herein of each and every corporate defendant
28 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.

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

JURISDICTION

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

10. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the causes of action complained of herein arose, where Defendants, or some of them, have their principal place of business. It is also 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, was actually performed, and was breached by Defendants. Finally, venue is proper in Los Angeles County as the unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within Los Angeles County and the State of California, and because Defendants employ numerous Class Members in Los Angeles County and the State of California.

11. 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.*

_____ / _____ / _____

1 (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current
2 and former employees of Defendants during the Civil Penalty Period.

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

7 13. During the period beginning one (1) year preceding the provision of notice to the
8 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
9 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
10 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194,
11 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

16 15. On or around September 20, 2021, Plaintiff provided written notice under Labor
17 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
18 violation of various, including the herein-described, provisions of the Labor Code, to the Labor
19 and Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
20 requested to Defendants, and each of them.

21 16. Plaintiff also provided Defendants, and each of them, with notice under Labor
22 Code section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other’s
23 wage and hour violations under Labor Code section 2810.3 on the same date by certified mail with
24 return receipt requested.

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

1 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

1 35. Defendants had and have a policy or practice of preventing Plaintiff and/or other
2 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
3 to their managers or outside to private attorneys or government officials, among others, in
4 violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code
5 section 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described
6 policies and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing
7 information about unsafe or discriminatory working conditions, or about wage and hour violations
8 in violation of Labor Code section 232 and 232.5.

9 36. Defendants had and have a policy or practice of preventing Plaintiff and/or other
10 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating
11 state statutes entitling employees to disclose wages, working conditions, and illegal conduct,
12 including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and
13 1197.5, subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the
14 exercise of Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of
15 speech and economic liberty.

16 37. Plaintiff, on his own behalf and on behalf of Class Members, brings this action
17 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7,
18 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, and California Code of Regulations, Title 8, section
19 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal
20 and rest periods, waiting time penalties, wage statement penalties, failing to pay vested vacation
21 time at the proper rate of pay, other such provisions of California law, and reasonable attorneys'
22 fees and costs.

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

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

CLASS ACTION ALLEGATIONS

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

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

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

A. Numerosity

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

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

B. Commonality

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

- 1 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
2 hours worked at a proper overtime rate of pay?
- 3 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
4 for all other time worked at the employee's regular rate of pay and a rate of pay that
5 is greater than the applicable minimum wage?
- 6 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
7 Class Members to take compliant meal periods?
- 8 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
9 with additional wages for missed or interrupted meal periods?
- 10 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
11 Class Members to take compliant rest periods?
- 12 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
13 with additional wages for missed rest periods?
- 14 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
15 Members upon termination or resignation all wages earned?
- 16 H. Are Defendants liable to Class Members for waiting time penalties under Labor
17 Code section 203?
- 18 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
19 Class Members with accurate wage statements?
- 20 J. Did Defendants fail to indemnify Class Members for all necessary expenditures or
21 losses incurred in direct consequence of the discharge of their duties or by
22 obedience to the directions of Defendants as required under Labor Code section
23 2802?
- 24 K. Did Defendants violate the Unfair Competition Law, Business and Professions
25 Code section 17200, et seq., by their unlawful practices as alleged herein?
- 26 L. Are Class Members entitled to restitution of wages under Business and Professions
27 Code section 17203?
- 28 M. Are Class Members entitled to costs and attorneys' fees?

1 N. Are Class Members entitled to interest?

2 C. **Typicality**

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

8 D. **Adequacy of Representation**

9 47. Plaintiff will fairly and adequately represent and protect the interest of Class
10 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
11 hour class actions.

12 E. **Superiority of Class Action**

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

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

23 **FIRST CAUSE OF ACTION**

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

25 50. Plaintiff realleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

27 / / /

28 / / /

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

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

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

14 54. At all times mentioned, Plaintiff and the Non-Exempt Employee Class worked for
15 Defendants during shifts that consisted of more than eight (8) hours in a workday, twelve (12)
16 hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) consecutive
17 workdays in a workweek, without being paid overtime wages for all hours worked as a result of,
18 without limitation, Defendants failing to accurately track and/or pay for all hours actually worked;
19 engaging, suffering, or permitting employees to work off the clock; requiring that employees clock
20 out for rest periods; detrimentally rounding, shaving and/or manipulating time entries; and/or
21 failing to pay for all hours worked meriting overtime pay at the proper overtime rate of pay to the
22 detriment of Plaintiff and the Non-Exempt Employee Class.

23 55. Accordingly, by requiring Plaintiff and the Non-Exempt Employee Class to work
24 in excess of eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per
25 workweek, and/or seven (7) straight workdays per workweek without properly compensating for
26 overtime wages, as described above, Defendants willfully violated the provisions of the Labor
27 Code, among others, sections 510, 1194, and 1197, as well as applicable IWC Wage Orders and
28 California law.

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

58. At all relevant times, Plaintiff and the members of the Non-Exempt Employee Class were employees of Defendants covered by Labor Code section 1197 and applicable Wage Orders. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and the members of the Non-Exempt Employee Class were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

59. Defendants failed to pay Plaintiff and members of the Non-Exempt Class minimum wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock; requiring them to clock out for rest periods; and/or rounding, shaving and/or manipulating time entries, to the detriment of Plaintiff and the Non-Exempt Employee Class.

60. As a result of Defendants' unlawful conduct, Plaintiff and members of the Non-Exempt Employee Class have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked or otherwise under Defendants' control.

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

/ / /

1 **THIRD CAUSE OF ACTION**

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

3 62. Plaintiff realleges and incorporates by reference all of the allegation contained in
4 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

5 63. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer
6 shall employ an employee for a work period of more than five (5) hours without a timely meal
7 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
8 duties. Furthermore, no employer shall employ an employee for a work period of more than ten
9 (10) hours per day without providing the employee with a second timely meal period of not less
10 than thirty (30) minutes in which the employee is relieved of all of his or her duties. Plaintiff and
11 other members of the Meal Period Class were not provided with requisite uninterrupted meal
12 periods as contemplated under the law.

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

17 65. By their failure to provide Plaintiff and members of the Meal Period Class with the
18 meal periods contemplated by Labor Code section 512, among other California authorities, and
19 failing to provide compensation for such unprovided meal periods, as alleged above, Defendants
20 willfully violated the provisions of Labor Code section 512 and applicable Wage Orders.

21 66. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
22 Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were
23 not paid additional pay owed for missed, untimely, interrupted and/or incomplete meal periods.

24 67. Plaintiff and the other members of the Meal Period Class are entitled to recover the
25 full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at
26 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
27 fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections
28 1021.5 and 1032, and Civil Code section 3287.

1 **FOURTH CAUSE OF ACTION**

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

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

5 69. California law and applicable Wage Orders require that employers “authorize and
6 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
7 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
8 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
9 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
10 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
11 provided thirty (30) minutes of paid rest period. Plaintiff and other members of the Rest Period
12 Class were not provided with requisite rest periods as contemplated under the law.

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

17 71. By their failure to provide Plaintiff and other members of the Rest Period Class
18 with the timely complete rest periods contemplated by California law, and failing to provide
19 compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the
20 provisions of Labor Code section 226.7 and applicable Wage Orders.

21 72. As a result of Defendants’ unlawful conduct, Plaintiff and the other members of the
22 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were
23 not paid additional pay owed for missed, untimely, interrupted and incomplete rest periods.

24 73. Pursuant to Labor Code section 226.7, Code of Civil Procedure sections 1021.5 and
25 1032, and Civil Code section 3287, Plaintiff and members of the Rest Period Class are entitled to
26 recover the full amount of their premium pay for unprovided rest periods, interest and penalties
27 thereon, and costs of suit.

28 / / /

1 **FIFTH CAUSE OF ACTION**

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

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

5 75. At all relevant times, Plaintiff and other members of the Late Pay Class were
6 employees of Defendants covered by Labor Code sections 201 and 202.

7 76. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the
8 Late Pay Class were entitled upon termination to timely payment of all wages earned and unpaid
9 prior to termination, including overtime and minimum wages. Discharged employees were
10 entitled to payment of all wages earned and unpaid, including without limitation, overtime and
11 minimum wages, prior to discharge immediately upon termination. Employees who resigned were
12 entitled to payment of all wages earned and unpaid, including, without limitation, overtime and
13 minimum wages, prior to resignation within 72 hours after giving notice of resignation or, if they
14 gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid,
15 including overtime wages, at the time of resignation.

16 77. Plaintiff is informed and believes, and based thereon allege, that Defendants, due to
17 a policy or practice of not paying all wages earned and owed, including overtime and minimum
18 wages, prior to resignation or termination, failed to pay Plaintiff and other members of the Late
19 Pay Class all wages earned and unpaid, including overtime wages and minimum wages prior to
20 resignation or termination in accordance with Labor Code sections 201 or 202.

21 78. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages
22 earned prior to termination or resignation in accordance with Labor Code sections 201 and 202
23 was willful. Defendants had the ability to pay all wages earned by Plaintiff and other members of
24 the Late Pay Class at the time of termination or resignation in accordance with Labor Code
25 sections 201 and 202, but intentionally adopted policies or practices incompatible with the
26 requirements of Labor Code sections 201 and 202.

27 / / /

28 / / /

79. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the Late Pay Class are entitled to all wages earned prior to termination or resignation that Defendants failed to pay them.

80. Pursuant to Labor Code section 203, Plaintiff and other members of the Late Pay Class are entitled to penalty wages from the date their earned and unpaid wages were due, upon termination or resignation, until paid, up to a maximum of thirty (30) days.

81. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination or resignation.

82. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid all waiting time penalties and penalty wages owed under Labor Code section 203.

83. Pursuant to Labor Code sections 203, 218, 218.5, 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and the other members of the Late Pay Class are entitled to recover the full amount of their unpaid wages and waiting time penalties under Labor Code section 203, reasonable attorneys' fees on their unpaid wages, interest, and costs of suit.

SIXTH CAUSE OF ACTION

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

84. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

85. At all relevant times, Plaintiff and the other members of the Wage Statement Class were employees of Defendants covered by Labor Code section 226.

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

1 well as the name and address of their legal employer and every assignment at which they were
2 placed to work.

3 87. Plaintiff is informed and believes, and based thereon allege, that at all relevant
4 times, Defendants have had a policy or practice of issuing wage statements that do not accurately
5 set out amounts due to, among other things, intentionally failing to furnish employees with
6 itemized wage statements that accurately reflect, among other things, gross wages earned; total
7 hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate; and the name and address of the legal
9 entity that is the employer and each direct employer at which they were placed to work.

10 88. Defendants failed to provide Plaintiff and the other members of the Wage
11 Statement Class accurate itemized wage statements in accordance with Labor Code section 226,
12 subdivision (a).

13 89. Defendants' practices resulted and continue to result in the issuance of wage
14 statements to Plaintiff and other members of the Late Pay Class that do not comply with Labor
15 Code section 226, subdivision (a).

16 90. Defendants' failure to provide Plaintiff and other members of the Wage Statement
17 Class with accurate wage statements was knowing, intentional, and willful. Defendants had the
18 ability to provide Plaintiff and the other members of the Wage Statement Class with accurate wage
19 statements, but willfully provided wage statements that Defendants knew were not accurate.

20 91. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
21 Wage Statement Class have suffered injury. The absence of accurate information on their wage
22 statements has delayed timely challenge to Defendants' unlawful pay practices; requires discovery
23 and mathematical computations to determine the amount of wages owed; causes difficulty and
24 expense in attempting to reconstruct time and pay records; led to submission of inaccurate
25 information about wages and amounts deducted from wages to state and federal governmental
26 agencies; and prevented Plaintiff from bringing action against all employers with which they
27 worked because of the failure to list them on wage statements.

28 / / /

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

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

SEVENTH CAUSE OF ACTION

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

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

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

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

97. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: in purchasing mandatory work shoes; laundering mandatory work uniforms; and using cellular phones for work-related purposes.

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

/ / /

///

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

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

EIGHTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

101. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

102. 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.

103. As a result of Defendants' unfair competition as alleged herein, Plaintiff and all other similarly situated Class Members have suffered injury in fact and lost money or property. Plaintiff and all other similarly situated Class Members have been deprived of, among other things, overtime and minimum wage compensation; provision of meal and rest breaks, or compensation in lieu thereof; provision of all wages upon termination or resignation; accurate wage statements; and inspection of complete sets of documents to which they are entitled under Labor Code sections 226 and 1198.5.

104. Pursuant to Business and Professions Code section 17203, Plaintiff and all other similarly situated Class Members are entitled to restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for herself. Restitution of the money owed to Plaintiff and all other similarly situated Class Members is

1 necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with
2 the Labor Code.

3 105. Plaintiff and all other similarly situated Class Members are entitled to costs of suit
4 under Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

5 **NINTH CAUSE OF ACTION**

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

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

9 **Civil Penalties Under Labor Code § 210**

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

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

22 109. At all relevant times herein, Defendants have had a consistent policy or practice of
23 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
24 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
25 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
26 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
27 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee

28 / / /

1 for each subsequent violation in connection with each payment that was made in violation of
2 Labor Code section 204.

3 Civil Penalties Under Labor Code § 226.3

4 110. Defendants had and have a policy or practice of failing to comply with Labor Code
5 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
6 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
7 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate; and other such information as required
9 by Labor Code section 226, subdivision (a).

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

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

17 113. Plaintiff is informed and believes, and based thereon allege, that Defendants had
18 and have a policy or practice of failing to furnish non-exempt employees, including, without
19 limitation, Plaintiff, itemized wage statements that accurately reflect: reflect gross wages earned;
20 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period
21 and the corresponding number of hours worked at each hourly rate; and other such information as
22 required by Labor Code section 226, subdivision (a).

23 114. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
24 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
25 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
26 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
27 period for each subsequent violation.

28 / / /

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8

8

Violation of Labor Code § 1174.5

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

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

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

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

122. Plaintiff is informed and believes, and based thereon allege, that Defendants have willfully failed keep adequate or accurate time records including wage statements and similar

1 payroll documents under Labor Code section 226, documents signed to obtain or hold
2 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,
3 and time records under Labor Code section 1174.

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

8 Violation of Labor Code § 1197.1

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

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

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

25 C. Wages, liquidated damages, and any applicable penalties imposed pursuant to
26 Section 203, recovered pursuant to this section shall be paid to the affected employee."

27 125. Plaintiff is informed and believes, and based thereon allege, that Defendants caused
28 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants,

1 without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' to pay
2 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
3 and liquidated damages.

4 126. As a direct and proximate result of the herein-described Labor Code violations,
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 Civil Penalties Under Labor Code § 2699

11 127. Pursuant to Labor Code section 2699, subdivision (a), 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
16 former employees pursuant to the procedures specified in Labor Code section 2699.3.

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

23 129. Plaintiff is informed and believes, and based thereon allege that Defendants, and
24 each of them, violated the Labor Code sections described herein, including, without limitation, for
25 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
26 allowances claimed as part of the minimum wage, the regular payday designated by Defendants,
27 the name of the employer, including any "doing business as" names used, the name, address and
28 telephone number of the workers' compensation insurance carrier, information regarding paid sick

1 leave, and other pertinent information required to be disclosed by Employer under Labor Code
2 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of
3 paid sick leave required to be provided pursuant to California and local laws.

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

7 **DEMAND FOR A JURY TRIAL**

8 A. Plaintiff demands a trial by jury on all causes of action contained herein.

9 **PRAYER**

10 **WHEREFORE**, on behalf of herself and all others similarly situated, Plaintiff prays for
11 judgment against Defendants as follows:

- 12 A. An Order certifying this case as a Class Action;
- 13 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
14 counsel as class counsel;
- 15 C. Damages for all wages earned and owed, including minimum and overtime wages
16 under Labor Code sections 203, 510, 1194, 1197, 1199 and 2810.3;
- 17 D. Liquidated damages pursuant to Labor Code section 1194.2 and 2810.3;
- 18 E. Damages for unpaid premium wages from missed meal and rest periods under,
19 among other Labor Code sections, 512, 226.7 and 2810.3;
- 20 F. Penalties for inaccurate wage statements under Labor Code sections 226,
21 subdivision (e) and 2810.3;
- 22 G. Damages for unpaid penalty wages under Labor Code sections 203 and 2810.3;
- 23 H. Waiting time penalties under Labor Code sections 203 and 2810.3;
- 24 I. Damages under Labor Code sections 2802;
- 25 J. Penalties for failure to timely permit inspection of documents under Labor Code
26 sections 226, subdivision (b) and 2810.3;
- 27 K. Penalties for failure to timely permit inspection of documents under Labor Code
28 sections 1198.5 and 2810.3;

- 1 L. Preliminary and permanent injunction(s) prohibiting Defendants from further
2 violating the Labor Code and requiring the establishment of appropriate and
3 effective means to prevent further violations;
4 M. Restitution under Business and Professions Code section 17203;
5 N. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
6 O. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
7 1174.5, 1197.1, and 2699;
8 P. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
9 210, 226.3, 558, 1174.5, 1197.1, and 2699;
10 Q. For costs of suit incurred herein;
11 R. For reasonable attorneys' fees; and
12 S. For such other and further relief as the Court deems just and proper.

13
14 Dated: January 14, 2022

BIBIYAN LAW GROUP, P.C.

15
16 BY:

JEFFREY D. KLEIN

DAVID D. BIBIYAN

17 Attorneys for Plaintiff ANTOLIN NAJERA L, on
18 behalf of himself and all others similarly situated and
19 aggrieved
20
21
22
23
24
25
26
27
28

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 January 14, 2022, 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 JAGDEEP HANSRA (SBN 280689)
8 jh@ej-law.com
9 ENEDINA CARDENAS (SBN 276856)
ec@ej-law.com
10 HANSRA CARDENAS LLP
11 19925 Stevens Creek Blvd. Suite 100
Cupertino, CA 95014-2358
12 Telephone: (408) 475-7454
Facsimile: (408) 332-5886

13 **Counsel for Defendant SOCAL DINERS, LLC**

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

16 Executed on January 14, 2022, at Beverly Hills, California.

17
18 

19 _____
Emanuel Munguia