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on behalf of himself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF IMPERIAL COUNTY

MARGARITO RAMIREZ ROJAS, an
individual and on behalf of all others similarly
situated,

Plaintiff,

v.

BARNARD CONSTRUCTION, a Montana
corporation; BARNARD CONSTRUCTION
COMPANY, INC, a Montana corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: ECU002117

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

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff MARGARITO RAMIREZ ROJAS, (“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 BARNARD CONSTRUCTION and any of its respective subsidiaries or affiliated companies within the State of California (“BARNARD”) and BARNARD CONSTRUCTION COMPANY, INC., a and any of its respective subsidiaries or affiliated companies within the State of California (“BARNARD COMPANY”) 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, and any of their respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for violations of the Labor Code, including but not limited to, failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

3. Plaintiff MARGARITO RAMIREZ ROJAS, is a resident of the State of Arizona. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff MARGARITO RAMIREZ ROJAS, as a non-exempt employee, with duties that included, but were not limited to, manipulation of gravel, dirt and other materials, as well

1 as removal and installation of construction and fencing equipment. Plaintiff is informed and
2 believes, and based thereon alleges that Plaintiff MARGARITO RAMIREZ ROJAS, worked for
3 Defendants from approximately November of 2020 through approximately November of 2021.

4 **B. Defendants**

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

9 5. Plaintiff is informed and believes, and based thereon alleges that defendant
10 BARNARD CONSTRUCTION COMPANY, INC. is, and at all times relevant hereto was, a
11 corporation organized and existing under and by virtue of the laws of the State of Montana and
12 doing business in the County of Imperial, State of California.

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

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1 **JOINT LIABILITY ALLEGATIONS**

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

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

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

18 **JURISDICTION**

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

21 11. Venue is proper in Imperial County, California pursuant to Code of Civil Procedure
22 sections 392, et seq. because, among other things, Imperial County is where the causes of action
23 complained of herein arose; the county in which performance of the employment contract, or part
24 of it, between Plaintiff and Defendants was due to be performed; and the county in which the
25 employment contract, or part of it, between Plaintiff and Defendants was actually performed.
26 Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in
27 Imperial County, and because Defendants employ numerous Class Members in Imperial County.

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

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

12 14. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
15 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
16 1197.1, 1197.5, 1198.5, 2699, and 2810.5, among others.

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

21 16. On or around October 29, 2021, Plaintiff provided written notice under Labor Code
22 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
23 of various, including the herein-described, provisions of the Labor Code, to the Labor and
24 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
25 requested to Defendants, and each of them.

26 17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
27 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)

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1 calendar days of the October 29, 2021 postmarked date of the herein-described notice sent by
2 Plaintiff to the LWDA and Defendants.

3 **FACTUAL BACKGROUND**

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

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

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

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

1 22. 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, the
3 full amount of their wages owed to them upon termination and/or resignation as required by Labor
4 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
5 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

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

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

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

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

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1 27. 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; the
6 name, address, and telephone number of the workers' compensation insurance carrier; information
7 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
8 under Labor Code section 2810.5.

9 28. 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 29. 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 30. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
22 and experience they obtained at Defendants for purposes of competing with Defendants, including,
23 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
24 a prospective employer, and from disclosing who else works at Defendants and under what
25 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
26 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
27 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
28 Code sections 232, 232.5, and 1197.5, subdivision (k).

1 31. 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 violation
4 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
5 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
6 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
7 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
8 of Labor Code section 232 and 232.5.

9 32. 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 state
11 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
12 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
13 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
14 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
15 economic liberty.

16 33. Plaintiff, on their 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, 204, 226, 226.7,
18 227.3, 510, 512, 1194, 1194.2, 1197, and California Code of Regulations, Title 8, section 11040,
19 seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest
20 periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failing to pay
21 vested vacation time at the proper rate of pay, other such provisions of California law, and
22 reasonable attorneys' fees and costs.

23 34. 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.

CLASS ACTION ALLEGATIONS

35. 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").

36. 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.

37. 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

38. 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.

39. 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

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

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

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- 1 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
- 2 for all other time worked at the employee’s regular rate of pay and a rate of pay that
- 3 is greater than the applicable minimum wage?
- 4 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
- 5 Class Members to take compliant meal periods?
- 6 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
- 7 with additional wages for missed or interrupted meal periods?
- 8 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
- 9 Class Members to take compliant rest periods?
- 10 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
- 11 with additional wages for missed rest periods?
- 12 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
- 13 Members upon termination or resignation all wages earned?
- 14 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
- 15 section 203?
- 16 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
- 17 Class Members with accurate wage statements?
- 18 J. Did Defendants fail to pay Class Members in a timely fashion as required under
- 19 Labor Code section 204?
- 20 K. Did Defendants violate Labor Code section 227.3 by not providing Class Members
- 21 with compensation at their final rate of pay for vested paid vacation time.
- 22 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
- 23 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 24 M. Are Class Members entitled to restitution of wages under Business and Professions
- 25 Code section 17203?
- 26 N. Are Class Members entitled to costs and attorneys’ fees?
- 27 O. Are Class Members entitled to interest?

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1 **C. Typicality**

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

7 **D. Adequacy of Representation**

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

11 **E. Superiority of Class Action**

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

21 **THIRD CAUSE OF ACTION**

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

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

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

27 60. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
28 employ an employee for a work period of more than five (5) hours without a timely meal break of

1 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
2 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
3 per day without providing the employee with a second timely meal period of not less than thirty (30)
4 minutes in which the employee is relieved of all of his or her duties.

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

9 62. 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 provided complete, timely 30-minute, duty-
11 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
12 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
13 Class Member's regular rate of compensation on the occasions that Class Members were not
14 provided compliant meal periods.

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

19 64. 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 missed, untimely, interrupted, incomplete and/or on-duty meal periods.

22 65. 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.

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1 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

28 / / /

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

8 **FIFTH CAUSE OF ACTION**
9 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

8 **FIFTH CAUSE OF ACTION**
9 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

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

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

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

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

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

78. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned prior to termination or resignation in accordance with Labor Code

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

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

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

12 81. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
13 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
14 waiting time penalties, interest, and their costs of suit, as well.

15 **SIXTH CAUSE OF ACTION**

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

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

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

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

27 85. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
28 before the filing of the Complaint in this Action through the present, Defendants failed to comply

1 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
2 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
3 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
4 all applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
6 other things.

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

28 / / /

1 96. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
2 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
3 interest, and their costs of suit, as well.

4 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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1 **NINTH CAUSE OF ACTION**

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

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

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

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

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

21 107. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
22 Procedure section 1032 and interest under Civil Code section 3287.

23 **TENTH CAUSE OF ACTION**

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

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

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Civil Penalties Under Labor Code § 210

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

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

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

Civil Penalties Under Labor Code § 226.3

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

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

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

19 Violation of Labor Code § 558

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

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

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

4 (3) Wages recovered pursuant to this section shall be paid to the affected
5 employee.

6 118. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
7 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
8 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
9 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
10 regular payday designated by Employer, the name of the employer, including any “doing business
11 as” names used, the name, address and telephone number of the workers’ compensation insurance
12 carrier, information regarding paid sick leave, and other pertinent information.

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

18 Violation of Labor Code § 1174.5

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

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

15 124. Plaintiff is informed and believes, and based thereon allege, that Defendants have
16 willfully failed keep adequate or accurate time records including wage statements and similar
17 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
18 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
19 under Labor Code section 1174.

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

25 126. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or
26 other person acting either individually or as an officer, agent, or employee of another person, who
27 pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable
28 state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of

1 wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant
2 to Section 203 as follows:

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

7 B. For each subsequent violation for the same specific offense, two hundred fifty
8 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
9 regardless of whether the initial violation is intentionally committed. This amount shall be in
10 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

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

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

25 Civil Penalties Under Labor Code § 2699

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

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

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

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

19 132. Moreover, Plaintiff and other Aggrieved Employees within the State of California
20 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
21 connection with their herein-described claims for civil penalties.

22 **DEMAND FOR JURY TRIAL**

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

24 **PRAYER**

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

- 27 A. An order certifying this case as a Class Action;
28 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s

- 1 counsel as class counsel;
- 2 C. Damages for all wages earned and owed, including minimum. overtime wages and
- 3 unpaid wages for vested vacation time, under Labor Code sections 510, 1194,
- 4 1197, 1199, and 227.3;
- 5 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 6 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 7 among other Labor Code sections, 512 and 226.7;
- 8 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 9 subdivision (e);
- 10 G. Waiting time penalties under Labor Code section 203;
- 11 H. Penalties for failure to timely permit inspection of documents under Labor Code
- 12 sections 226, subdivision (b) and 2810.3;
- 13 I. Penalties for failure to timely permit inspection of documents under Labor Code
- 14 sections 1198.5 and 2810.3;
- 15 J. Preliminary and permanent injunction(s) prohibiting Defendants from further
- 16 violating the Labor Code and requiring the establishment of appropriate and
- 17 effective means to prevent further violations;
- 18 K. Restitution under Business and Professions Code section 17203;
- 19 L. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- 20 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 21 1174.5, 1197.1, and 2699;
- 22 N. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 23 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 24 O. For costs of suit incurred herein;
- 25 P. For reasonable attorneys' fees; and
- 26 Q. For such other and further relief as the Court deems just and proper.

27
28 [Signature below]

1 Dated: January 3, 2022

BIBIYAN LAW GROUP, P.C.

2
3 BY: /s/Jeffrey Klein

4 JEFFREY KLEIN

5 Attorneys for Plaintiff MARGARITO RAMIREZ
6 ROJAS on behalf of himself and all others similarly
7 situated
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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 3, 2022, and pursuant to the California Code of Civil Procedure section 1010.6,
6 I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED**
7 **CLASS ACTION COMPLAINT** to be served by electronic transmission via Case Anywhere to
the below referenced recipients:

8 Janna I. Jamil
9 *jjamil@grsm.com*
Brandon Saxon
10 *bsaxon@grsm.com*
Kelly Butler
11 *kbutler@grsm.com*
Gordon Rees Scully Mansukhani, LLP
12 101 W. Broadway, Suite 2000
13 San Diego, CA 92101
14 Telephone: (619) 544-7258

15 **Counsel for Barnard Construction and Barnard Construction Company, Inc.**

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

18 Executed on January 3, 2022 at Beverly Hills, California.

19
20 /s/ Rosemary Martir

21 Rosemary Martir
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