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herself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ARACELI MUNOZ on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

CARL KARCHER ENTERPRISES, LLC., a
California limited liability company; AKASH
MANAGEMENT, LLC, a California limited
liability company; OC BURGER BOYS, LLC,
a California limited liability company; and
DOES 3 through 100, inclusive,

Defendants.

CASE NO.: 30-2021-01227199-CU-OE-CXC

[Assigned for all purposes to the Hon. Glenda
Sanders in Dept. CX 101]

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

1. FAILURE TO PAY OVERTIME
WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL
PERIODS;
4. FAILURE TO PROVIDE REST
PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION; and
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]

COME NOW plaintiff ARACELI MUNOZ (“Plaintiff”), on behalf of herself and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and all other current and formerly similarly situated employees employed by or formerly employed by CARL KARCHER ENTERPRISES. LLC (“ENTERPRISES”); AKASH MANAGEMENT, LLC (“MANAGEMENT”); OC BURGER BOYS, LLC (“BURGER BOYS”) and any of their subsidiaries or affiliated companies within the State of California (collectively with DOE defendants as further defined below, “Defendants”).

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 Plaintiffs and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for violations of the Labor Code, including but not limited to, failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

3. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have had a consistent policy or practice of failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and all other similarly situated employees working more than eight (8) hours in a workday, twelve (12) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) consecutive workdays in a workweek without being properly compensated for hours worked in excess of (8) hours per day in a workday, twelve (12) hours in a workday, more than forty (40) hours in a workweek, and/or on the seventh

1 consecutive workday in a workweek by, among other things, failing to accurately track and/or pay
2 for all hours actually worked; engaging, suffering, or permitting employees to work off the clock;
3 requiring employees to clock out for rest periods; detrimentally rounding, shaving, and/or
4 manipulating time entries; and failing to pay overtime at the proper rate of overtime pay to the
5 detriment of Plaintiffs and all other similarly situated employees.

6 4. For at least four (4) years prior to the filing of this Action and continuing to the
7 present, Defendants have had a consistent policy or practice of failing to pay minimum wages to
8 Plaintiff and other non-exempt employees in the State of California in violation of California state
9 wage and hour laws as a result of, among other things, failing to accurately track and/or pay for all
10 hours actually worked; engaging, suffering, or permitting employees to work off the clock;
11 requiring employees to clock out for rest periods; and detrimentally rounding, shaving or
12 manipulating time entries to the detriment of Plaintiff and all other similarly situated employees.

13 5. For at least four (4) years prior to the filing of this Action and continuing to the
14 present, Defendants have had a consistent policy or practice of failing to provide Plaintiff and all
15 other similarly situated employees or former employees within the State of California a thirty (30)
16 minute, uninterrupted, and timely meal period for days on which the employees worked more than
17 five (5) hours in a workday; a second thirty (30) minute, uninterrupted, and timely meal period for
18 days on which employees worked in excess of ten (10) hours in a workday; and/or compensation
19 for such unprovided meal periods as required by California wage and hour laws.

20 6. For at least four (4) years prior to the filing of this Action and continuing to the
21 present, Defendants have had a consistent policy or practice of failing to provide Plaintiff and all
22 other similarly situated employees or former employees within the State of California paid, timely,
23 and uninterrupted rest periods of at least ten (10) minutes per four (4) hours worked or major
24 fraction thereof and/or compensation for such unprovided rest periods as required by California
25 wage and hour laws.

26 7. At all relevant times mentioned herein, Defendants had and have a policy or
27 practice of failing to pay Plaintiff and other aggrieved employees their wages in accordance with
28 Labor Code section 204, which requires that “[l]abor performed between the 1st and 15th days,

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

5 8. For at least three (3) years prior to the filing of this Action and continuing to the
6 present, Defendants have had a consistent policy or practice of failing to pay Plaintiff and all other
7 similarly situated employees the full amount of their wages owed to them upon termination and/or
8 resignation as required by Labor Code sections 201 and 202.

9 9. For at least one (1) year prior to the filing of this Action and continuing to the
10 present, Defendants have had a consistent policy or practice of failing to furnish employees with
11 itemized wage statements that accurately reflect, among other things, gross wages earned; total
12 hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate; and the name and address of the legal
14 entity that is the direct employer (*i.e.*, each location at which they were placed to work).

15 10. At all relevant times mentioned herein, Defendants had and have a policy or
16 practice of failing to reimburse Plaintiff and other aggrieved employees for their costs incurred in
17 purchasing freezer wear and/or cold storage clothing in the furtherance of their work duties, as
18 required by Labor Code section 2802.

19 11. For at least three (3) years prior to the filing of this Action and continuing to the
20 present, Defendants have had a consistent policy or practice of, upon written request to inspect or
21 receive copies of records pursuant to Labor Code section 226, subdivision (b), pertaining to a
22 current or former employee, complying with the request within 21 days from the date thereof.

23 12. Plaintiff, on behalf of herself and all other similarly situated employees, brings this
24 Action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204,
25 226, 226.7, 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8,
26 section 11010, seeking, *inter alia*, overtime wages, minimum wages, premium wages for missed
27 meal and rest periods, penalties, and reasonable attorneys’ fees and costs.

28 13. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant to

1 California Business and Professions Code sections 17200 through 17208, also seeks injunction(s)
2 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
3 appropriate and effective means to prevent further violations, as well as all monies owed but
4 withheld and retained by Defendants to which Plaintiff and members of the Class are entitled.

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

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

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

22 **PARTIES**

23 **A. Plaintiff**

24 17. Plaintiff ARCELI MUNOZ is a resident of the State of California. At all relevant
25 times herein, Defendants employed Plaintiff ARCELI MUNOZ as a non-exempt employee, with
26 duties that included, but were not limited to, preparing, packaging and serving food, taking orders,
27 and maintaining cleanliness of restaurant, from approximately August of 2017 through
28 approximately July of 2021.

B. Defendants

18. Plaintiff is informed and believes, and based thereon alleges, that Defendant ENTERPRISES is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California, and doing business in the County of Orange, State of California. Plaintiff is informed and believes, and based thereon alleges, that ENTERPRISES is a client employer company within the meaning of Labor Code section 2810.3, specializing in the food industry. At all relevant times herein, Defendant ENTERPRISES employed Plaintiff and all other similarly situated employees within the State of California.

19. Plaintiff is informed and believes, and based thereon alleges, that Defendant MANAGEMENT is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California, and doing business in the County of Los Angeles, State of California. Plaintiff is informed and believes, and based thereon alleges, that MANAGEMENT is a labor contractor within the meaning of Labor Code section 2810.3 that provides restaurant management services, including for ENTERPRISES. At all relevant times herein, or portions thereof, Defendant MANAGEMENT employed Plaintiff and all other similarly situated employees within the State of California.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendant BURGER BOYS is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California, and doing business in the County of Los Angeles, State of California. Plaintiff is informed and believes, and based thereon alleges, that BURGER BOYS is a client employer company within the meaning of Labor Code section 2810.3, specializing in the food industry. At all relevant times herein, or portions thereof, Defendant BURGER BOYS employed Plaintiff and all other similarly situated employees within the State of California.

21. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 3 through 100, inclusive, are currently unknown to Plaintiffs, who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the

defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action, as the agent of the other Defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each joint defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include ENTERPRISES, MANAGEMENT, BURGER BOYS, and any of their subsidiaries or affiliated companies within the State of California, as well DOES 3 through 100 identified herein.

22. Defendants are each employers and/or joint employers of Plaintiff and all other similarly situated employees throughout the relevant time period by virtue of Labor Code section 2810.3, a joint enterprise between Defendants, and each of them, pursuant to common law, statute, and the relevant Industrial Welfare Commission wage orders, for the reasons stated above. Plaintiff performed services for each and every Defendant, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiffs and all other similarly situated employees, either directly or indirectly, and in the manner in which Defendants' business was and is conducted.

23. As such, Defendants, and each of them, are either solely, and/or jointly and severally, liable for the damages alleged in Plaintiff's operative complaint.

JURISDICTION

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

25. Venue is proper in Orange County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, Orange 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 Orange County as the unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within Orange County and the State of California, and because Defendants employ numerous Class Members in Orange County and the State of California.

26. Plaintiff is an “aggrieved employee” under PAGA, as she 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, on behalf of herself and all other aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175.

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

28. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 432, 510, 512, 558, 1174, 1194, 1197, 2802, and 2810.3, and 2810.5, among others.

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

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

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

32. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the October 29, 2021 postmarked date of the herein-described notice sent by Plaintiffs to the LWDA and Defendants.

FACTUAL BACKGROUND

33. Plaintiff and all other similarly situated employees have not been paid, during the relevant liability periods, overtime wages for all overtime hours worked, as a result of, including but not limited to, Plaintiff and all other similarly situated employees working more than eight (8) hours in a workday, twelve (12) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) consecutive workdays in a workweek without being properly compensated for hours worked in excess of (8) hours per day in a workday, twelve (12) hours in a workday, more than forty (40) hours in a workweek, and/or on the seventh consecutive workday in a workweek at the proper overtime rate of pay. Specifically, among other things, Defendants have failed to accurately track and/or pay for all hours actually worked; engaged, suffered, or permitted employees to work off the clock; required that employees clock out for rest periods; detrimentally rounded, shaved and/or manipulated time entries; and failed to pay Plaintiff and similarly situated employees at the proper overtime rate of pay to the detriment of Plaintiff and all other similarly situated employees. As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated Labor Code sections 510 and 1194, and applicable Wage Orders based on their practice of providing total compensation that is less than the required legal overtime compensation, entitling Plaintiff and other aggrieved employees to relief under, without limitation, these sections. In addition, Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

34. Plaintiff and all other similarly situated employees have not been paid, during the

1 relevant liability periods, minimum wages for all regular hours worked, as a result of, including
2 but not limited to, a consistent policy of failing to pay minimum wages to Plaintiff and other non-
3 exempt employees in the State of California in violation of California state wage and hour laws as
4 a result of, without limitation, Defendants failing to accurately track and/or pay for all hours
5 actually worked; engaging, suffering, or permitting employees to work off the clock; requiring
6 Plaintiffs and similarly situated employees to clock out for rest periods; and/or detrimentally
7 rounding, shaving and/or manipulating time entries, to the detriment of Plaintiff and all other
8 similarly situated employees. As such, Plaintiff is informed and believes, and based thereon
9 alleges, that Defendants violated, without limitation, Labor Code section 1197 and applicable
10 Wage Orders, based on their continued failure to pay minimum wages, entitling Plaintiff and other
11 aggrieved employees to relief under, without limitation, Labor Code sections 1194 and 1194.2.
12 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1,
13 and 2699.

14 35. Defendants have had a consistent policy or practice of failing to provide Plaintiff
15 and all other similarly situated employees or former employees within the State of California a
16 thirty (30) minute, uninterrupted, and timely meal period for days on which the employees worked
17 more than five (5) hours in a workday; a second thirty (30) minute, uninterrupted, and timely meal
18 period for days on which employees worked in excess of ten (10) hours in a workday; and/or
19 compensation for such unprovided meal periods as required by California wage and hour laws. As
20 such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated Labor
21 Code section 512, entitling Plaintiff and other aggrieved employees to premium payments under
22 Labor Code section 226.7. Defendants would also be liable for civil penalties pursuant to Labor
23 Code sections 558 and 2699.

24 36. Defendants have had a consistent policy or practice of failing to provide Plaintiff
25 and all other similarly situated employees or former employees within the State of California paid,
26 timely, and uninterrupted rest periods of at least ten (10) minutes per four (4) hours worked or
27 major fraction thereof and/or compensation for such unprovided rest periods as required by
28 California wage and hour laws. As such, Plaintiff is informed and believes, and based thereon

1 alleges, that she and other aggrieved employees are entitled to relief under, without limitation,
2 Labor Code section 226.7. Defendants would also be liable for civil penalties pursuant to Labor
3 Code sections 558 and 2699.

4 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
5 and have a policy or practice of failing to pay Plaintiff and other aggrieved employees their wages
6 in accordance with Labor Code section 204, which requires that “[l]abor performed between the
7 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th
8 day of the month during which the labor was performed, and labor performed between the 16th
9 and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day
10 of the following month.” As such, Plaintiff is informed and believes, and based thereon alleges,
11 that Defendants did not and do not pay their employees in accordance with Labor Code section
12 204. Defendants would be liable for civil penalties pursuant to Labor Code sections 210, 558 and
13 2699.

14 38. At the time of Plaintiff’s employment and the employment of other former
15 employees of Defendants ended, Defendants, among other things, willfully failed to pay overtime
16 wages, minimum wages, and one hour of wages in lieu of each unprovided or interrupted meal
17 period and unprovided rest period, as set forth herein, prior to their resignation and/or termination.
18 As such, Defendants would be liable for waiting time penalties for having violated California
19 Labor Code sections 201, 202, and 203. Defendants would also be liable for civil penalties
20 pursuant to Labor Code sections 558 and 2699.

21 39. Defendants have failed to comply with Labor Code section 226, subdivision (a), by
22 intentionally failing to furnish employees with itemized wage statements that accurately reflect,
23 among other things, gross wages earned; total hours worked; net wages earned; all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at each
25 hourly rate; and the name and address of the legal entity that is the employer and/or the name and
26 address of each place where they were placed to work. Consequently, since Defendants would
27 have failed to comply with Labor Code section 226, subdivision (a), Plaintiff and other aggrieved
28 employees would be entitled to recover penalties under, without limitation, Labor Code section

226, subdivision (e). Defendants would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558 and 2699.

40. Defendants have failed, during the relevant liability periods, to comply with Labor Code section 226, subdivision (c) by failing to, upon written request to inspect or receive copies of records pursuant to Labor Code section 226, subdivision (b), pertaining to a current or former employee, complying with the request within 21 days from the date thereof, in connection with Plaintiff and all others similarly situated. As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated these Labor Code sections, entitling Plaintiff and all other aggrieved employees to civil penalties pursuant to Labor Code sections 558 and 2699.

41. Plaintiff and all other similarly situated employees or former employees at all times pertinent hereto were not exempt from minimum wage requirements, overtime wage requirements, provision of meal breaks or compensation in lieu thereof, provision of rest breaks or compensation in lieu thereof, provision of being paid all wages before resignation or termination, provision of receiving accurate, itemized wage statements, and other such provisions of California law, and the implementing rules and regulations of the IWC California Wage Orders. As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated these Labor Code sections, entitling Plaintiff and all other aggrieved employees to civil penalties pursuant to Labor Code sections 558 and 2699.

42. At all relevant times mentioned herein, Defendants have had a policy or practice of failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the name, address, and telephone number of the workers' compensation insurance carrier; information regarding paid sick leave; and other pertinent information required to be disclosed by Defendants under Labor Code section 2810.5. As a result of these violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and 2699.

43. Plaintiff, in her 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

44. Plaintiff brings this Action on behalf of herself and all others similarly situated, 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 that notice of the class action is provided to the class (collectively referred to as "Class Members").

45. Plaintiff reserves the right under California Rules of Court, rule 3.765, subdivision (b) to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

46. 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 classes are easily ascertainable.

A. Numerosity

47. The potential members of the Class 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, and based thereon alleges, that there are over fifty (50) Class Members employed by Defendants within the State of California.

48. Accounting for employee turnover during the relevant time periods necessarily increases this number substantially. 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

49. 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, 1194, and 1197 by failing

1 to adequately track, and therefore adequately pay, wages for time worked
2 by Class Members?

3 b. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay
4 non-exempt employees overtime pay for all overtime hours worked at the
5 proper overtime rate of pay?

6 c. Did Defendants violate Labor Code sections 510, 1194, and 1197 by
7 engaging, suffering, or permitting Class Members to work off the clock?

8 d. Did Defendants violate Labor Code sections 510, 1194, and 1197 by
9 rounding, shaving and/or manipulating Class Members' time entries to their
10 detriment?

11 e. Did Defendants violate Labor Code sections 510, 1194, and 1197 by
12 requiring Class Members to clock out for rest periods?

13 f. Did Defendants violate Labor Code sections 1194 and 1197 by failing to
14 adequately track (and therefore adequately pay minimum wages) for time
15 spent walking to and from punch in and punch out time-keeping machines?

16 g. Are Class Members entitled to liquidated damages under Labor Code
17 section 1194.2 for Defendants' failure to pay minimum wages for all hours
18 worked?

19 h. Did Defendants violate Labor Code section 512 by not providing Class
20 Members with compliant meal periods?

21 i. Did Defendants violate Labor Code section 226.7 by not providing Class
22 Members with additional wages for missed or interrupted meal periods?

23 j. Did Defendants violate the applicable Wage Order(s) by not providing
24 Class Members with compliant rest periods?

25 k. Did Defendants violate Labor Code section 226.7 by not providing Class
26 Members with additional wages for missed or interrupted rest periods?

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

- 1 m. Are Defendants liable to Class Members for waiting time penalties and/or
2 penalty wages under Labor Code section 203?
- 3 n. Did Defendants violate Labor Code section 226, subdivision (a) by not
4 furnishing Class Members with accurate wage statements?
- 5 o. Did Defendants fail to pay Class Members in a timely fashion as required
6 under Labor Code section 204?
- 7 p. Did Defendants fail to indemnify Class Members for all necessary
8 expenditures or losses incurred in direct consequence of the discharge of
9 their duties or by obedience to the directions of Defendants as required
10 under Labor Code section 2802?
- 11 q. Did Defendants violate the Unfair Competition Law, Business and
12 Professions Code section 17200, *et seq.*, by their unlawful practices as
13 alleged herein?
- 14 r. Are Class Members entitled to restitution of penalty wages under Business
15 and Professions Code section 17203?
- 16 s. Are Class Members entitled to attorneys' fees?
- 17 t. Are Class Members entitled to costs?
- 18 u. Are Class Members entitled to interest?

19 **C. Typicality**

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

26 **D. Adequacy of Representation**

27 51. Plaintiff will fairly and adequately represent and protect the interest of the members
28 of the Classes. Counsel who represents Plaintiff are competent and experienced in litigating wage

1 and hour class actions.

2 **E. Superiority of Class Action**

3 52. A class action is superior to other available means for the fair and efficient
4 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
5 questions of law and fact common to the Classes predominate over any questions affecting only
6 individual members of each Class. Each member of each Class has been damaged and is entitled
7 to recovery by reason of Defendants' illegal policy and/or practice of failing to pay overtime and
8 minimum wages; failing to provide meal and rest breaks or compensation in lieu thereof; failing to
9 provide accurate itemized wage statements; failing to pay all wages due upon termination and/or
10 resignation; failing to timely pay wages; and failing to indemnify.

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

15 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

59. 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)

60. 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.

61. 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

1 hours worked or otherwise under Defendants' control.

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

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

11 64. Pursuant to Labor Code section 1194 and 1194.2, Code of Civil Procedure sections
12 1021.5 and 1032, and Civil Code section 3287, Plaintiff and members of the Non-Exempt
13 Employee Class are entitled to recover the full amount of unpaid minimum wages, interest and
14 penalties thereon, liquidated damages, reasonable attorneys' fees, and costs of suit.

15 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

70. Plaintiff and the other members of the Meal Period Class are entitled to recover the full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at trial, and are entitled to recovery of such amounts, 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.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

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

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

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

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

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

10 76. Pursuant to Labor Code section 226.7, Code of Civil Procedure sections 1021.5 and
11 1032, and Civil Code section 3287, Plaintiff and members of the Rest Period Class are entitled to
12 recover the full amount of their premium pay for unprovided rest periods, interest and penalties
13 thereon, and costs of suit.

14 **FIFTH CAUSE OF ACTION**

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

16 77. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs of this Complaint as though fully set forth hereat.

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

20 79. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the
21 Late Pay Class were entitled upon termination to timely payment of all wages earned and unpaid
22 prior to termination, including overtime and minimum wages. Discharged employees were
23 entitled to payment of all wages earned and unpaid, including without limitation, overtime and
24 minimum wages, prior to discharge immediately upon termination. Employees who resigned were
25 entitled to payment of all wages earned and unpaid, including, without limitation, overtime and
26 minimum wages, prior to resignation within 72 hours after giving notice of resignation or, if they
27 gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid,
28 including overtime wages, at the time of resignation.

1 80. Plaintiff is informed and believes, and based thereon alleges, that Defendants, due
2 to a policy or practice of not paying all wages earned and owed, including overtime and minimum
3 wages, prior to resignation or termination, failed to pay Plaintiff and other members of the Late
4 Pay Class all wages earned and unpaid, including overtime wages and minimum wages prior to
5 resignation or termination in accordance with Labor Code sections 201 or 202.

6 81. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages
7 earned prior to termination or resignation in accordance with Labor Code sections 201 and 202
8 was willful. Defendants had the ability to pay all wages earned by Plaintiff and other members of
9 the Late Pay Class at the time of termination or resignation in accordance with Labor Code
10 sections 201 and 202, but intentionally adopted policies or practices incompatible with the
11 requirements of Labor Code sections 201 and 202.

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

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

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

7 89. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and the other
8 members of the Wage Statement Class were entitled to receive, semi-monthly or at the time of
9 each payment of wages, an accurate itemized statement that accurately reflects, among other
10 things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in
11 effect during the pay period and the corresponding number of hours worked at each hourly rate; as
12 well as the name and address of their legal employer and every assignment at which they were
13 placed to work.

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

21 91. Defendants failed to provide Plaintiff and the other members of the Wage
22 Statement Class accurate itemized wage statements in accordance with Labor Code section 226,
23 subdivision (a).

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

27 93. Defendants' failure to provide Plaintiff and other members of the Wage Statement
28 Class with accurate wage statements was knowing, intentional, and willful. Defendants had the

1 ability to provide Plaintiff and the other members of the Wage Statement Class with accurate wage
2 statements, but willfully provided wage statements that Defendants knew were not accurate.

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

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

15 96. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
16 Procedure section 1032, Civil Code section 3287, Plaintiff and the other members of the Wage
17 Statement Class are entitled to recover the full amount of penalties due under Labor Code section
18 226, subdivision (e), reasonable attorneys' fees, and costs of suit.

19 **SEVENTH CAUSE OF ACTION**

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

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

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

25 99. Labor Code section 204 provides that "[l]abor performed between the 1st and 15th
26 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
27 during which the labor was performed, and labor performed between the 16th and the last day,
28 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following

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1 in direct consequence of the discharge of his or her duties . . .”

2 107. For three (3) years prior to the filing of the Complaint in this Action through the
3 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
4 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
5 obedience to the directions of Defendants that included, without limitation: purchasing mandatory
6 work uniforms and laundering mandatory work uniforms.

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

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

13 110. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
14 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
15 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees
16 and costs of suit.

17 **NINTH CAUSE OF ACTION**

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

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

21 112. The unlawful conduct of Defendants alleged herein constitutes unfair competition
22 within the meaning of Business and Professions Code section 17200. Due to their unlawful
23 business practices in violation of the Labor Code, Defendants have gained a competitive
24 advantage over other comparable companies doing business in the State of California that comply
25 with their obligations to compensate employees in accordance with the Labor Code.

26 113. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and all
27 other similarly situated Class Members have suffered injury in fact and lost money or property.
28 Plaintiff and all other similarly situated Class Members have been deprived of, among other

1 things, overtime and minimum wage compensation; provision of meal and rest breaks, or
2 compensation in lieu thereof; provision of all wages upon termination or resignation; accurate
3 wage statements; timely paying wages; and indemnifying expenses.

4 114. Pursuant to Business and Professions Code section 17203, Plaintiff and all other
5 similarly situated Class Members are entitled to restitution of all wages and other monies owed to
6 them under the Labor Code, including interest thereon, in which they had a property interest and
7 which Defendants nevertheless failed to pay them and instead withheld and retained for
8 themselves. Restitution of the money owed to Plaintiff and all other similarly situated Class
9 Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to
10 comply with the Labor Code.

11 115. Plaintiff and all other similarly situated Class Members are entitled to costs of suit
12 under Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

13 **TENTH CAUSE OF ACTION**

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

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

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

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

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

1 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

10 Civil Penalties Under Labor Code § 226.3

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

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

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

24 123. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
25 and have a policy or practice of failing to furnish non-exempt employees, including, without
26 limitation, Plaintiff, itemized wage statements that accurately reflect: reflect gross wages earned;
27 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period
28 and the corresponding number of hours worked at each hourly rate; and other such information as

required by Labor Code section 226, subdivision (a).

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

Violation of Labor Code § 558

125. 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;

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

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

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

127. As a direct and proximate result of the herein-described Labor Code violations,

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

6 Violation of Labor Code § 1174.5

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

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

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

26 131. Pursuant to Labor Code section 1174.5, "[a]ny person employing labor who
27 willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or
28 accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to

1 allow any member of the commission or employees of the division to inspect records pursuant to
2 subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred
3 dollars (\$500).

4 132. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
5 willfully failed keep adequate or accurate time records including wage statements and similar
6 payroll documents under Labor Code section 226, documents signed to obtain or hold
7 employment under Labor Code section 432, and time records under Labor Code section 1174.

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

12 Violation of Labor Code § 1197.1

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

19 A. For any initial violation that is intentionally committed, one hundred dollars
20 (\$100) for each underpaid employee for each pay period for which the employee is underpaid.
21 This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
22 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
23 203.

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

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

3 135. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of
5 Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to
6 pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to
7 actual and liquidated damages.

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

14 Civil Penalties Under Labor Code § 2699

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

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

27 139. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
28 each of them, violated the Labor Code sections described herein, including, without limitation, for

1 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
2 allowances claimed as part of the minimum wage, the regular payday designated by Defendants,
3 the name of the employer, including any “doing business as” names used, the name, address and
4 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
5 leave, and other pertinent information required to be disclosed by Employer under Labor Code
6 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of
7 paid sick leave required to be provided pursuant to California and local laws.

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

11 **DEMAND FOR A JURY TRIAL**

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

13 **PRAYER**

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

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

- 1 sections 226, subdivision (b) and 2810.3;
- 2 J. Penalties for failure to timely permit inspection of documents under Labor Code
- 3 section 2810.3;
- 4 K. Preliminary and permanent injunction(s) prohibiting Defendants from further
- 5 violating the Labor Code and requiring the establishment of appropriate and
- 6 effective means to prevent further violations;
- 7 L. Restitution under Business and Professions Code section 17203;
- 8 M. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- 9 N. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 10 1174.5, 1197.1, and 2699;
- 11 O. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 12 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 13 P. For costs of suit incurred herein;
- 14 Q. For reasonable attorneys' fees; and
- 15 R. For such other and further relief as the Court deems just and proper.

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17 Dated: February 9, 2022

BIBIYAN LAW GROUP, P.C.

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BY: /s/ Jeffrey D. Klein

JEFFERY D. KLEIN

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Attorney for Plaintiff ARACELI MUNOZ, on behalf
of herself and all others similarly situated and
aggrieved

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On February 9, 2022, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail address as follows:

Robert B. Bader
Luanne Sacks
Sacks, Ricketts & Case LLP
177 Post Street
Suite 650
San Francisco, CA 94108
rbader@srclaw.com
lsacks@srclaw.com

Counsel for Defendant Carl Karcher Enterprises, LLC

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

Executed on February 9, 2022, at Beverly Hills, California.

/s/ Emanuel Munquia
Emanuel Munquia