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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CECILIO OSUNA-REYES, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiff,

v.

KIRKHILL RUBBER COMPANY, a
Delaware corporation; HEXPOL HOLDING
INC., a Delaware corporation; HEXPOL
COMPOUNDING CA INC., a Delaware
corporation; DAVID SCHLOTHAUER, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV42216

[Assigned for all purposes to the Hon. Yvette M.
Palazuelos in Dept. 9]

**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; 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 CECILIO OSUNA-REYES (“Plaintiff”), on behalf of himself and all others similarly situated and aggrieved, and allege 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 KIRKHILL RUBBER COMPANY (“KIRKHILL”); HEXPOL HOLDING INC. (“HEXPOL”), HEXPOL COMPOUNDING CA INC. (“HEXPOL CA”), DAVID SCHLOTHAUER (“SCHLOTHAUER” or “MR. SCHLOTHAUER”); 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 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.*, 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,

1 twelve (12) hours in a workday, more than forty (40) hours in a workweek, and/or on the seventh
2 consecutive workday in a workweek by, among other things, failing to accurately track and/or pay
3 for all hours actually worked; engaging, suffering, or permitting employees to work off the clock;
4 requiring employees to clock out for rest periods; detrimentally rounding, shaving, and/or
5 manipulating time entries; and failing to pay overtime at the proper rate of overtime pay to the
6 detriment of Plaintiff and all other similarly situated employees.

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

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

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

27 7. At all relevant times mentioned herein, Defendants had and have a policy or
28 practice of failing to pay Plaintiff and other aggrieved employees their wages in accordance with

1 Labor Code section 204, which requires that “[l]abor performed between the 1st and 15th days,
2 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
3 during which the labor was performed, and labor performed between the 16th and the last day,
4 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
5 month.”

6 8. For at least three (3) 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 Plaintiff and all other
8 similarly situated employees the full amount of their wages owed to them upon termination and/or
9 resignation as required by Labor Code sections 201 and 202.

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

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

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

24 12. For at least three (3) years prior to the filing of this Action and continuing to the
25 present, Defendants have had a consistent policy or practice of making the contents of personnel
26 records that the employer maintains relating to the employee’s performance or to any grievance
27 concerning the employee available for inspection within 30 calendar days from the date of a
28 written request, as required by Labor Code section 1198.5.

1 13. Plaintiff, on behalf of himself and all other similarly situated employees, bring this
2 Action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226,
3 226.7, 510, 512, 1194, 1194.2, 1197, 1198.5, and California Code of Regulations, Title 8, section
4 11010, seeking, *inter alia*, overtime wages, minimum wages, premium wages for missed meal and
5 rest periods, penalties, and reasonable attorneys' fees and costs.

6 14. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant
7 to California Business and Professions Code sections 17200 through 17208, also seeks
8 injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the
9 establishment of appropriate and effective means to prevent further violations, as well as all
10 monies owed but withheld and retained by Defendants to which Plaintiff and members of the
11 Class are entitled.

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

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

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

PARTIES

A. Plaintiff

18. Plaintiff CECILIO OSUNA-REYES is a resident of the State of California. At all relevant times herein, Defendants employed Plaintiff CECILIO OSUNA-REYES as a non-exempt employee, with duties that included, but were not limited to, weighting product and operating machinery used in the manufacture of rubber, from approximately 2005 through approximately March 2, 2021.

B. Defendants

19. Plaintiff is informed and believes, and based thereon alleges, that Defendant KIRKHILL is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and doing business in the County of Los Angeles, State of California. Plaintiff is informed and believes, and based thereon alleges, that Defendant KIRKHILL is a client employer company within the meaning of Labor Code section 2810.3, specializing in producing and selling rubber compounds and products. At all relevant times herein, Defendant KIRKHILL 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 HEXPOL is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and doing business in the County of Los Angeles, State of California. Plaintiff is informed and believes, and based thereon alleges, that Defendant HEXPOL is a client employer company within the meaning of Labor Code section 2810.3, specializing in producing and selling polymer compounds and products. At all relevant times herein, Defendant HEXPOL employed Plaintiff and all other similarly situated employees within the State of California.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendant HEXPOL CA is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and doing business in the County of Los Angeles, State of California. Plaintiff is informed and believes, and based thereon alleges, that

1 Defendant HEXPOL CA is a client employer company within the meaning of Labor Code section
2 2810.3, specializing in producing and selling polymer compounds and products. At all relevant
3 times herein, Defendant HEXPOL CA employed Plaintiff and all other similarly situated
4 employees within the State of California.

5 22. Plaintiffs are informed and believe, and based thereon allege, that defendant MR.
6 SCHLOTHAUER is, and at all times relevant hereto was, an individual residing in California, as
7 well as owner of LEGACY and CEMCON, and DOES 1 through 100, as further defined below.
8 Plaintiffs are further informed and believe, and based thereon allege, that MR. SCHLOTHAUER
9 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
10 provisions in violation of Labor Code section 558.1.

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

25 24. Defendants are each employers and/or joint employers of Plaintiff and all other
26 similarly situated employees throughout the relevant time period by virtue of Labor Code section
27 2810.3, a joint enterprise between Defendants, and each of them, pursuant to common law, statute,
28 and the relevant Industrial Welfare Commission wage orders, for the reasons stated above.

1 Plaintiff performed services for each and every Defendant, and to the mutual benefit of all
2 defendants, and all defendants shared control of Plaintiff and all other similarly situated
3 employees, either directly or indirectly, and in the manner in which defendants' business was and
4 is conducted.

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

7 **JURISDICTION**

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

10 27. Venue is proper in Los Angeles County, California pursuant to Code of Civil
11 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
12 causes of action complained of herein arose. It is also the county in which the employment
13 relationship began, the county in which performance of the employment contract, or part of it,
14 between Plaintiff and Defendants was due to be performed, was actually performed, and was
15 breached by Defendants. Finally, venue is proper in Los Angeles County as the unlawful acts
16 alleged herein have a direct effect on Plaintiff and those similarly situated within Los Angeles
17 County and the State of California, and because Defendants employ numerous Class Members in
18 Los Angeles County and the State of California.

19 28. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by
20 Defendants during the applicable statutory period and suffered one or more of the Labor Code
21 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all
22 other aggrieved current and former employees of Defendants, the civil penalties provided by
23 PAGA plus reasonable attorneys' fees and costs, as the term "civil penalty" is defined under *ZB*
24 *N.A. v. Superior Court* (2019) 8 Cal.5th 175.

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

30. 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, 1198.5, 2802, and 2810.3, and 2810.5, among others.

31. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of himself 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.

32. On or around November 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.

33. Plaintiff also provided Defendants, and each of them, with notice under Labor Code section 2810.3, subdivision (d) that Plaintiff 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.

34. 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 November 29, 2021 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FACTUAL BACKGROUND

35. 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

1 than forty (40) hours in a workweek, and/or on the seventh consecutive workday in a workweek at
2 the proper overtime rate of pay. Specifically, among other things, Defendants have failed to
3 accurately track and/or pay for all hours actually worked; engaged, suffered, or permitted
4 employees to work off the clock; required that employees clock out for rest periods; detrimentally
5 rounded, shaved and/or manipulated time entries; and failed to pay Plaintiff and similarly situated
6 employees at the proper overtime rate of pay to the detriment of Plaintiff and all other similarly
7 situated employees. As such, Plaintiff is informed and believes, and based thereon alleges, that
8 Defendants violated Labor Code sections 510 and 1194, and applicable Wage Orders based on
9 their practice of providing total compensation that is less than the required legal overtime
10 compensation, entitling Plaintiff and other aggrieved employees to relief under, without limitation,
11 these sections. In addition, Defendants would also be liable for civil penalties pursuant to Labor
12 Code sections 558 and 2699.

13 36. Plaintiff and all other similarly situated employees have not been paid, during the
14 relevant liability periods, minimum wages for all regular hours worked, as a result of, including
15 but not limited to, a consistent policy of failing to pay minimum wages to Plaintiff and other non-
16 exempt employees in the State of California in violation of California state wage and hour laws as
17 a result of, without limitation, Defendants failing to accurately track and/or pay for all hours
18 actually worked; engaging, suffering, or permitting employees to work off the clock; requiring
19 Plaintiff and similarly situated employees to clock out for rest periods; and/or detrimentally
20 rounding, shaving and/or manipulating time entries, to the detriment of Plaintiff and all other
21 similarly situated employees. As such, Plaintiff is informed and believes, and based thereon
22 alleges, that Defendants violated, without limitation, Labor Code section 1197 and applicable
23 Wage Orders, based on their continued failure to pay minimum wages, entitling Plaintiff and other
24 aggrieved employees to relief under, without limitation, Labor Code sections 1194 and 1194.2.
25 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1,
26 and 2699.

27 37. Defendants have had a consistent policy or practice of failing to provide Plaintiff
28 and all other similarly situated employees or former employees within the State of California a

1 thirty (30) minute, uninterrupted, and timely meal period for days on which the employees worked
2 more than five (5) hours in a workday; a second thirty (30) minute, uninterrupted, and timely meal
3 period for days on which employees worked in excess of ten (10) hours in a workday; and/or
4 compensation for such unprovided meal periods as required by California wage and hour laws. As
5 such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated Labor
6 Code section 512, entitling Plaintiff and other aggrieved employees to premium payments under
7 Labor Code section 226.7. Defendants would also be liable for civil penalties pursuant to Labor
8 Code sections 558 and 2699.

9 38. Defendants have had a consistent policy or practice of failing to provide Plaintiff
10 and all other similarly situated employees or former employees within the State of California paid,
11 timely, and uninterrupted rest periods of at least ten (10) minutes per four (4) hours worked or
12 major fraction thereof and/or compensation for such unprovided rest periods as required by
13 California wage and hour laws. As such, Plaintiff is informed and believes, and based thereon
14 alleges ge, that they and other aggrieved employees are entitled to relief under, without limitation,
15 Labor Code section 226.7. Defendants would also be liable for civil penalties pursuant to Labor
16 Code sections 558 and 2699.

17 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
18 and have a policy or practice of failing to pay Plaintiff and other aggrieved employees their wages
19 in accordance with Labor Code section 204, which requires that “[l]abor performed between the
20 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th
21 day of the month during which the labor was performed, and labor performed between the 16th
22 and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day
23 of the following month.” As such, Plaintiff is informed and believes, and based thereon alleges,
24 that Defendants did not and do not pay their employees in accordance with Labor Code section
25 204. Defendants would be liable for civil penalties pursuant to Labor Code sections 210, 558 and
26 2699.

27 40. At the time of Plaintiff’s employment and the employment of other former
28 employees of Defendants ended, Defendants, among other things, willfully failed to pay overtime

1 wages, minimum wages, and one hour of wages in lieu of each unprovided or interrupted meal
2 period and unprovided rest period, as set forth herein, prior to their resignation and/or termination.
3 As such, Defendants would be liable for waiting time penalties for having violated California
4 Labor Code sections 201, 202, and 203. Defendants would also be liable for civil penalties
5 pursuant to Labor Code sections 558 and 2699.

6 41. Defendants have failed to comply with Labor Code section 226, subdivision (a), by
7 intentionally failing to furnish employees with itemized wage statements that accurately reflect,
8 among other things, gross wages earned; total hours worked; net wages earned; all applicable
9 hourly rates in effect during the pay period and the corresponding number of hours worked at each
10 hourly rate; and the name and address of the legal entity that is the employer and/or the name and
11 address of each place where they were placed to work. Consequently, since Defendants would
12 have failed to comply with Labor Code section 226, subdivision (a), Plaintiff and other aggrieved
13 employees would be entitled to recover penalties under, without limitation, Labor Code section
14 226, subdivision (e). Defendants would also be liable for civil penalties pursuant to Labor Code
15 sections 226.3, 558, and 2699.

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

23 43. Defendants have failed to comply, during the relevant liability periods, with Labor
24 Code section 1198.5 by failing to make the contents of personnel records that the employer
25 maintains relating to the employee's performance or to any grievance concerning the employee
26 available for inspection within 30 calendar days from the date of a written request, as required by
27 Labor Code section 1198.5. As such, Plaintiff is informed and believes, and based thereon alleges,
28 that Defendants violated these Labor Code sections, entitling Plaintiff and all other aggrieved

1 employees to civil penalties pursuant to Labor Code sections 558 and 2699.

2 44. Plaintiff and all other similarly situated employees or former employees at all times
3 pertinent hereto were not exempt from minimum wage requirements, overtime wage requirements,
4 provision of meal breaks or compensation in lieu thereof, provision of rest breaks or compensation
5 in lieu thereof, provision of being paid all wages before resignation or termination, provision of
6 receiving accurate, itemized wage statements, permitting inspection of documents requested by
7 employees under Labor Code sections 226 and 1198.5, and other such provisions of California
8 law, and the implementing rules and regulations of the IWC California Wage Orders. As such,
9 Plaintiff is informed and believes, and based thereon alleges, that Defendants violated these Labor
10 Code sections, entitling Plaintiff and all other aggrieved employees to civil penalties pursuant to
11 Labor Code sections 558 and 2699.

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

21 46. Plaintiff, in his representative capacity, seek civil penalties under Labor Code
22 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
23 California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
24 Employees pursuant to PAGA.

25 **CLASS ACTION ALLEGATIONS**

26 47. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class
27 action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all
28 current and former non-exempt employees of Defendants within the State of California at any time

1 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that
2 notice of the class action is provided to the class (collectively referred to as "Class Members").

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

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

9 **A. Numerosity**

10 50. The potential members of the Class as defined are so numerous that joinder of all
11 the members of the Class is impracticable. While the precise number of Class Members has not
12 been determined yet, Plaintiff is informed and believes, and based thereon alleges, that there are
13 over fifty (50) Class Members employed by Defendants within the State of California.

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

18 **B. Commonality**

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

- 21 a. Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing
22 to adequately track, and therefore adequately pay, wages for time worked
23 by Class Members?
- 24 b. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay
25 non-exempt employees overtime pay for all overtime hours worked at the
26 proper overtime rate of pay?
- 27 c. Did Defendants violate Labor Code sections 510, 1194, and 1197 by
28 engaging, suffering, or permitting Class Members to work off the clock?

- 1 d. Did Defendants violate Labor Code sections 510, 1194, and 1197 by
2 rounding, shaving and/or manipulating Class Members' time entries to their
3 detriment?
- 4 e. Did Defendants violate Labor Code sections 510, 1194, and 1197 by
5 requiring Class Members to clock out for rest periods?
- 6 f. Did Defendants violate Labor Code sections 1194 and 1197 by failing to
7 adequately track (and therefore adequately pay minimum wages) for time
8 spent walking to and from punch in and punch out time-keeping machines?
- 9 g. Are Class Members entitled to liquidated damages under Labor Code
10 section 1194.2 for Defendants' failure to pay minimum wages for all hours
11 worked?
- 12 h. Did Defendants violate Labor Code section 512 by not providing Class
13 Members with compliant meal periods?
- 14 i. Did Defendants violate Labor Code section 226.7 by not providing Class
15 Members with additional wages for missed or interrupted meal periods?
- 16 j. Did Defendants violate the applicable Wage Order(s) by not providing
17 Class Members with compliant rest periods?
- 18 k. Did Defendants violate Labor Code section 226.7 by not providing Class
19 Members with additional wages for missed or interrupted rest periods?
- 20 l. Did Defendants violate Labor Code sections 201 and 202 by failing to pay
21 Class Members upon termination or resignation all wages earned?
- 22 m. Are Defendants liable to Class Members for waiting time penalties and/or
23 penalty wages under Labor Code section 203?
- 24 n. Did Defendants violate Labor Code section 226, subdivision (a) by not
25 furnishing Class Members with accurate wage statements?
- 26 o. Did Defendants violate Labor Code section 226, subdivision (c) by not
27 timely providing Class Members with (or permitting them to inspect) a
28 complete set of the documents described in Labor Code section 226,

- 1 subdivision (b) upon request?
- 2 p. Are Defendants liable to Class Members for penalties under Labor Code
- 3 section 226, subdivision (f)?
- 4 q. Did Defendants violate Labor Code section 1198.5 by not providing Class
- 5 Members with timely and complete personnel records described under
- 6 Labor Code section 1198.5, subdivision (a) upon request?
- 7 r. Are Defendants liable to Class Members for penalties under Labor Code
- 8 section 1198.5, subdivision (k)?
- 9 s. Did Defendants fail to pay Class Members in a timely fashion as required
- 10 under Labor Code section 204?
- 11 t. Did Defendants violate Labor Code section 227.3 by not providing Class
- 12 Members with compensation at their final rate of pay for vested paid
- 13 vacation time?
- 14 u. Did Defendants violate the Unfair Competition Law, Business and
- 15 Professions Code section 17200, *et seq.*, by their unlawful practices as
- 16 alleged herein?
- 17 v. Are Class Members entitled to restitution of penalty wages under Business
- 18 and Professions Code section 17203?
- 19 w. Are Class Members entitled to attorneys' fees?
- 20 x. Are Class Members entitled to costs?
- 21 y. Are Class Members entitled to interest?

22 **C. Typicality**

23 53. The claims of Plaintiff herein alleged are typical of those claims which could be

24 alleged by any member of the classes, and the relief sought is typical of the relief which would be

25 sought by each of the members of the classes in separate actions. Plaintiff and all members of the

26 Classes sustained injuries and damages arising out of and caused by Defendants' common course

27 of conduct in violation of laws and regulations that have the force and effect of law and statutes as

28 alleged herein.

1 **D. Adequacy of Representation**

2 54. Plaintiff will fairly and adequately represent and protect the interest of the members
3 of the Classes. Counsel who represents Plaintiff are competent and experienced in litigating wage
4 and hour class actions.

5 **E. Superiority of Class Action**

6 55. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
8 questions of law and fact common to the Classes predominate over any questions affecting only
9 individual members of each Class. Each member of each Class has been damaged and is entitled
10 to recovery by reason of Defendants' illegal policy and/or practice of failing to pay overtime and
11 minimum wages; failing to provide meal and rest breaks or compensation in lieu thereof; failing to
12 provide accurate itemized wage statements; failing to pay all wages due upon termination and/or
13 resignation; and failing to timely permit inspection of complete records under Labor Code sections
14 226 and 1198.5.

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

19 **FIRST CAUSE OF ACTION**

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

21 57. 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 hereat.

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

28 59. At all times relevant to this Complaint, Labor Code section 510 further provided

1 that “[a]ny work in excess of twelve (12) hours in one day shall be compensated at the rate of no
2 less than twice the regular rate of pay for an employee. In addition, any work in excess of eight
3 (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
4 the regular rate of pay of an employee.”

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

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

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

25 **SECOND CAUSE OF ACTION**

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

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

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

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

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

15 67. Pursuant to Labor Code section 1194 and 1194.2, Code of Civil Procedure sections
16 1021.5 and 1032, and Civil Code section 3287, Plaintiff and members of the Non-Exempt
17 Employee Class are entitled to recover the full amount of unpaid minimum wages, interest and
18 penalties thereon, liquidated damages, reasonable attorneys' fees, and costs of suit.

19 **THIRD CAUSE OF ACTION**

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

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

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

1 other members of the Meal Period Class were not provided with requisite uninterrupted meal
2 periods as contemplated under the law.

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

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

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

14 73. Plaintiff and the other members of the Meal Period Class are entitled to recover the
15 full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at
16 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
17 fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections
18 1021.5 and 1032, and Civil Code section 3287.

19 **FOURTH CAUSE OF ACTION**

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

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

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

1 provided thirty (30) minutes of paid rest period. Plaintiff and other members of the Rest Period
2 Class were not provided with requisite rest periods as contemplated under the law.

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

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

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

14 79. Pursuant to Labor Code section 226.7, Code of Civil Procedure sections 1021.5 and
15 1032, and Civil Code section 3287, Plaintiff and members of the Rest Period Class are entitled to
16 recover the full amount of their premium pay for unprovided rest periods, interest and penalties
17 thereon, and costs of suit.

18 **FIFTH CAUSE OF ACTION**

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

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

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

24 82. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the
25 Late Pay Class were entitled upon termination to timely payment of all wages earned and unpaid
26 prior to termination, including overtime and minimum wages. Discharged employees were
27 entitled to payment of all wages earned and unpaid, including without limitation, overtime and
28 minimum wages, prior to discharge immediately upon termination. Employees who resigned were

1 entitled to payment of all wages earned and unpaid, including, without limitation, overtime and
2 minimum wages, prior to resignation within 72 hours after giving notice of resignation or, if they
3 gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid,
4 including overtime wages, at the time of resignation.

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

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

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

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

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

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

28 89. Pursuant to Labor Code sections 203, 218, 218.5, 218.6, Code of Civil Procedure

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

5 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

25 94. Defendants failed to provide Plaintiff and the other members of the Wage
26 Statement Class accurate itemized wage statements in accordance with Labor Code section 226,
27 subdivision (a).

28 95. Defendants' practices resulted and continue to result in the issuance of wage

1 statements to Plaintiff and other members of the Late Pay Class that do not comply with Labor
2 Code section 226, subdivision (a).

3 96. Defendants' failure to provide Plaintiff and other members of the Wage Statement
4 Class with accurate wage statements was knowing, intentional, and willful. Defendants had the
5 ability to provide Plaintiff and the other members of the Wage Statement Class with accurate wage
6 statements, but willfully provided wage statements that Defendants knew were not accurate.

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

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

19 99. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
20 Procedure section 1032, Civil Code section 3287, Plaintiff and the other members of the Wage
21 Statement Class are entitled to recover the full amount of penalties due under Labor Code section
22 226, subdivision (e), reasonable attorneys' fees, and costs of suit.

23 **SEVENTH CAUSE OF ACTION**

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

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

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

102. Labor Code section 204 provides 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.”

103. Labor Code section 210, subdivision (a) states 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, 204.2, 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.”

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

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

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

EIGHTH CAUSE OF ACTION

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

107. 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 herein.

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

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

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

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

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

NINTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

113. 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.

114. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply

1 with their obligations to compensate employees in accordance with the Labor Code.

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

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

16 117. Plaintiff and all other similarly situated Class Members are entitled to costs of suit
17 under Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

18 **TENTH CAUSE OF ACTION**

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

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

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

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

28 120. At all relevant times herein, Labor Code section 210, subdivision (a) states and

1 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
2 this article, every person who fails to pay the wages of each employee as provided in Sections
3 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1)
4 For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and
5 “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars
6 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

15 Civil Penalties Under Labor Code § 226.3

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

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

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

125. Plaintiff is informed and believes, and based thereon alleges, 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).

126. 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

127. 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; and

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

128. 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

1 minimum wage, the regular payday designated by Employer, the name of the employer, including
2 any “doing business as” names used, the name, address and telephone number of the workers’
3 compensation insurance carrier, information regarding paid sick leave, and other pertinent
4 information.

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

11 Violation of Labor Code § 1174.5

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

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

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

1 not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a
2 piece-rate basis, piece-rate units earned.”

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

9 134. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
10 willfully failed keep adequate or accurate time records including wage statements and similar
11 payroll documents under Labor Code section 226, documents signed to obtain or hold
12 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,
13 and time records under Labor Code section 1174.

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

18 Violation of Labor Code § 1197.1

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

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

1 203.

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

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

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

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

20 Civil Penalties Under Labor Code § 2699

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

27 140. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the
28 Labor Code except those for which a civil penalty is specifically provided, the established civil

1 penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the
2 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
3 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
4 each aggrieved employee per pay period for each subsequent violation.

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

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

17 **DEMAND FOR A JURY TRIAL**

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

19 **PRAYER**

20 **WHEREFORE**, on behalf of himself, class members, and aggrieved employees, Plaintiff
21 prays for judgment against Defendants as follows:

- 22 A. An Order certifying this case as a Class Action;
- 23 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s
24 counsel as class counsel;
- 25 C. Damages for all wages earned and owed, including minimum wages, overtime
26 wages and unpaid wages for vested vacation time under Labor Code sections 203,
27 227.3, 510, 1194, 1197, 1199 and 2810.3;
- 28 D. Liquidated damages pursuant to Labor Code section 1194.2 and 2810.3;

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

23
24 Dated: February 9, 2022

BIBIYAN LAW GROUP, P.C.

25
26 BY: /s/ Jeffrey D. Klein

JEFFREY D. KLEIN

27 Attorneys for Plaintiff CECILIO OSUNA-REYES,
28 on behalf of himself 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 mailing address is 8484 Wilshire Boulevard, Suite 500, Beverly Hills, California 90211.

On February 9, 2022, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT; SUMMONS ON FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below service list:

Wesley A. Krueger
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Los Angeles, CA 90071
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Counsel for Defendants KIRKHILL RUBBER COMPANY, HEXPOL HOLDING INC., and HEXPOL COMPOUNDING CA INC.

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