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himself and all others similarly situated and aggrieved

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

DONALDO MUNOZ GARCIA on
behalf of himself and all others
similarly situated and aggrieved,

Plaintiff,

v.

ALL COUNTY ENVIRONMENTAL &
RESTORATION, INC., a California
corporation; DONALD MOSER, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2021-01236384-CU-OE-CXC

[Assigned for all purposes to the Hon. Peter Wilson
in Dept. CX 102]

**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]

1 COME NOW Plaintiff DONALDO MUNOZ GARCIA ("Plaintiff"), on behalf of himself
2 and all others similarly situated and aggrieved, and alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
6 ALL COUNTY ENVIRONMENTAL & RESTORATION, INC., a California corporation and any
7 of its respective subsidiaries or affiliated companies within the State of California ("ALL
8 COUNTY"), DONALD MOSER, an individual ("MOSER" and ALL COUNTY, with DOES 1
9 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current
10 and former non-exempt California employees employed by or formerly employed by Defendants
11 ("Class Members").

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

22 **PARTIES**

23 **A. Plaintiff**

24 3. Plaintiff DONALDO MUNOZ GARCIA is a resident of the State of California. At
25 all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that
26 Defendants employed Plaintiff DONALDO MUNOZ GARCIA as a non-exempt employee, with
27 duties that included, but were not limited to, interior construction work. Plaintiff is informed and

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believes, and based thereon alleges, that Plaintiff DONALDO MUNOZ GARCIA worked for Defendants from approximately December of 2013 through approximately March of 2021.

B. Defendants

4. Plaintiff is informed and believes, and based thereon alleges, that Defendant ALL COUNTY 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. At all relevant times herein, Defendant ALL COUNTY employed Plaintiff and all other similarly situated employees within the State of California.

5. Plaintiff is informed and believes and based thereon alleges that Defendant MOSER is, and at all times relevant hereto was, an individual residing in California, as well as Chief Executive Officer for ALL COUNTY, and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that MOSER violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues 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 First Amended 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 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include ALL COUNTY, MOSER, and any of their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

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

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

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

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

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

- a. The Alter Ego Defendants are completely dominated and controlled by the Individual Defendants who personally committed the wrongful and illegal acts and

1 violated the laws as set forth in this First Amended Complaint, and who has hidden
2 and currently hide behind the Alter Ego Defendants to perpetrate frauds,
3 circumvent statutes, or accomplish some other wrongful or inequitable purpose;

4 b. The Individual Defendants derive actual and significant monetary benefits by and
5 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
6 Defendants as the funding source for the Individual Defendants' own personal
7 expenditures;

8 c. Plaintiff is informed and believes and thereon alleges that the Individual
9 Defendants and the Alter Ego Defendants, while really one and the same, were
10 segregated to appear as though separate and distinct for purposes of perpetrating a
11 fraud, circumventing a statute, or accomplishing some other wrongful or
12 inequitable purpose;

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

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

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1 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
2 Defendants (and vice versa), and the fiction of their separate corporate existence
3 must be disregarded.

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

6 **JURISDICTION**

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

9 14. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
10 sections 392, *et seq.* because, among other things, Orange County is the county in which
11 Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
12 effect on Plaintiff and Class Members in Orange County, and because Defendants employ
13 numerous Class Members in Orange County.

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

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

25 17. During the period beginning one (1) year preceding the provision of notice to the
26 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
27 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,

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226.3, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

18. 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.

19. On or around December 15, 2021, Plaintiff provided written notice pursuant to 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 LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

20. 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 December 15, 2021 postmarked date of the herein-described notice sent by Plaintiffs to the LWDA and Defendants.

FACTUAL BACKGROUND

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

22. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other

1 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
2 rate of pay that is above the minimum wage, to the detriment of Plaintiff and Class Members.

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

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

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

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

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

1 the full amount of their wages for labor performed in a timely fashion as required under Labor
2 Code section 204.

3 28. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this
4 action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226,
5 226.7, 510, 512, 558.1, 1194, 1194.2, 1197, and California Code of Regulations, Title 8, section
6 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal
7 and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
8 other such provisions of California law, and reasonable attorneys' fees and costs.

9 29. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
10 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
11 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
12 appropriate and effective means to prevent further violations, as well as all monies owed but
13 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
14 restitution of amounts owed.

15 30. At all relevant times herein, Defendants had and have a policy or practice of failing
16 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
17 separation of employment as wages at their final rate of pay in violation of Labor Code section
18 227.3 and applicable Wage Orders.

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

27 32. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
28 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to

1 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
2 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
3 all other Aggrieved Employees.

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

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

14 **CLASS ACTION ALLEGATIONS**

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

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

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

26 **A. Numerosity**

27 38. The potential Class Members as defined are so numerous that joinder of all the
28 members of the Class is impracticable. While the precise number of Class Members has not been

1 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
2 Members employed by Defendants within the State of California.

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

7 **B. Commonality**

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

- 10 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay
11 all hours worked at a proper overtime rate of pay?
- 12 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing
13 to pay for all other time worked at the employee's regular rate of pay and a
14 rate of pay that is greater than the applicable minimum wage?
- 15 C. Did Defendants violate Labor Code section 512 by not authorizing or
16 permitting Class Members to take compliant meal periods?
- 17 D. Did Defendants violate Labor Code section 226.7 by not providing Class
18 Members with additional wages for missed or interrupted meal periods?
- 19 E. Did Defendants violate applicable Wage Orders by not authorizing or
20 permitting Class Members to take compliant rest periods?
- 21 F. Did Defendants violate Labor Code section 226.7 by not providing Class
22 Members with additional wages for missed rest periods?
- 23 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay
24 Class Members upon termination or resignation all wages earned?
- 25 H. Are Defendants liable to Class Members for waiting time penalties under
26 Labor Code section 203?
- 27 I. Did Defendants violate Labor Code section 226, subdivision (a) by not
28 furnishing Class Members with accurate wage statements?

1 J. Did Defendants fail to pay Class Members in a timely fashion as required
2 under Labor Code section 204?

3 K. Did Defendants fail to indemnify Class Members for all necessary
4 expenditures or losses incurred in direct consequence of the discharge of
5 their duties or by obedience to the directions of Defendants as required
6 under Labor Code section 2802?

7 L. Did Defendants violate the Unfair Competition Law, Business and
8 Professions Code section 17200, *et seq.*, by their unlawful practices as
9 alleged herein?

10 M. Are Class Members entitled to restitution of wages under Business and
11 Professions Code section 17203?

12 N. Are Class Members entitled to costs and attorneys' fees?

13 O. Are Class Members entitled to interest?

14 **C. Typicality**

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

20 **D. Adequacy of Representation**

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

24 **E. Superiority of Class Action**

25 43. A class action is superior to other available means for the fair and efficient
26 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
27 questions of law and fact common to Class Members predominate over any questions affecting
28 only individual Class Members. Class Members, as further described therein, have been damaged

1 and are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in
2 the violation of the Labor Code at times, as set out herein.

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

7 **FIRST CAUSE OF ACTION**

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

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

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

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

19 48. At all times relevant to this First Amended Complaint, Labor Code section 510
20 further provided that "[a]ny work in excess of 12 hours in one day shall be compensated at the rate
21 of no less than twice the regular rate of pay for an employee. In addition, any work in excess of
22 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than
23 twice the regular rate of pay."

24 49. Four (4) years prior to the filing of the Complaint in this Action through the
25 present, Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted
26 of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or
27 seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours
28 worked as a result of, including but not limited to, Defendants failing to accurately track and/or

1 pay for all hours actually worked at the proper overtime rate of pay, to the detriment of Plaintiff
2 and Class Members.

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

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

12 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

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

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

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

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

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

63. By their failure to provide Plaintiff and Class Members compliant meal periods as contemplated by Labor Code section 512, among other California authorities, and failing, at times,

1 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
2 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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

6 65. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
7 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
8 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and
9 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

10 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

27 70. For four (4) years prior to the filing of the Complaint in this Action through the
28 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,

1 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major
2 fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay
3 at the Class Member's regular rate of compensation on the occasions that Class Members were not
4 authorized or permitted to take compliant rest periods.

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

10 72. 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 paid additional pay
12 owed for rest periods that they were not authorized or permitted to take.

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

17 **FIFTH CAUSE OF ACTION**

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

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

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

24 76. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
25 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
26 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
27 discharge immediately upon termination. Class Members who resigned were entitled to payment
28 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of

1 resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages
2 earned and unpaid at the time of resignation.

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

8 78. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
9 Class Members all wages earned prior to termination or resignation in accordance with Labor
10 Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by
11 Plaintiff and Class Members at the time of termination in accordance with Labor Code sections
12 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of
13 Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to
14 termination or resignation.

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

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

21 81. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
22 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
23 waiting time penalties, interest, and their costs of suit, as well.

24 **SIXTH CAUSE OF ACTION**

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

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

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

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

9 85. Plaintiff is informed and believes, and based thereon alleges, that in the one (1)
10 year before the filing of the Complaint in this Action through the present, Defendants failed to
11 comply with Labor Code section 226, subdivision (a) by adopting policies and practices that
12 resulted in their failure, at times, to furnish Plaintiff and Class Members with accurate itemized
13 statements that accurately reflect, among other things, gross wages earned; total hours worked; net
14 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours; and the name and address of the legal entity that is the employer, among other
16 things.

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

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

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

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

SEVENTH CAUSE OF ACTION

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

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

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

92. 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.”

93. 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.”

94. 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

1 policies and practices that resulted in, at times, not paying Plaintiff and Class Members in
2 accordance with Labor Code section 204.

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

8 96. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
9 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of
10 penalties, interest, and their costs of suit, as well.

11 **EIGHTH CAUSE OF ACTION**

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

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

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

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

20 100. For three (3) years prior to the filing of the Complaint in this Action through the
21 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
22 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
23 obedience to the directions of Defendants that included, without limitation: laundering mandatory
24 work uniforms; mileage and/or gas costs incurred in driving personal vehicles for work-related
25 purposes; using cellular phones for work-related purposes; and purchasing tools necessary to
26 perform work duties.

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

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

7 103. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
8 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
9 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees
10 and costs of suit.

11 **NINTH CAUSE OF ACTION**

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

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

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

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

23 107. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
24 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
25 Code and requiring the establishment of appropriate and effective means to prevent further
26 violations, as well as restitution of all wages and other monies owed to them under the Labor
27 Code, including interest thereon, in which they had a property interest and which Defendants
28 nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of

1 the money owed to Plaintiff and Class Members is necessary to prevent Defendants from
2 becoming unjustly enriched by their failure to comply with the Labor Code.

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

5 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

3 Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

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Violation of Labor Code § 558

118. 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.

119. 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.

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

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Violation of Labor Code § 1174.5

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

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

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

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

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

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

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

7 Violation of Labor Code § 1197.1

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

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

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

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

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

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

12 Civil Penalties Under Labor Code § 2699

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

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

25 132. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
26 each of them, violated the Labor Code sections described herein, including, without limitation, for
27 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
28 allowances claimed as part of the minimum wage, the regular payday designated by Defendants,

1 the name of the employer, including any "doing business as" names used, the name, address and
2 telephone number of the workers' compensation insurance carrier, information regarding paid sick
3 leave, and other pertinent information required to be disclosed by Employer under Labor Code
4 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of
5 paid sick leave required to be provided pursuant to California and local laws.

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

9 **DEMAND FOR A JURY TRIAL**

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

11 **PRAYER**

12 **WHEREFORE**, on behalf of himself and all others similarly situated and aggrieved,
13 Plaintiff prays for judgment against Defendants as follows:

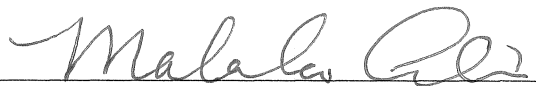
- 14 A. An Order certifying this case as a Class Action;
- 15 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
16 counsel as class counsel;
- 17 C. Damages for all wages earned and owed, including minimum and overtime wages
18 under Labor Code sections 203, 510, 1194,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

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

15
16 Dated: March 1, 2022

BIBIYAN LAW GROUP, P.C.

17
18 BY: 

MALALAI ANBARI

19 Attorney for Plaintiff DONALDO MUNOZ
20 GARCIA, on behalf of himself and all others
21 similarly situated and aggrieved
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