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Superior Court of California
County of Fresno
By: A. Ramos, Deputy

Attorneys for Plaintiff, ERIC J. HERNANDEZ on behalf of
himself and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

ERIC J. HERNANDEZ on behalf of
himself and all others similarly
situated and aggrieved,

Plaintiff,

v.

TONY & SONS CONSTRUCTION, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 22CECG00249

[Assigned for all purposes to the Hon. Kimberly
Gaab in Dept. 503]

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

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

COME NOW Plaintiff ERIC J. HERNANDEZ (“Plaintiff”), on behalf of himself and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and all other current and formerly similarly situated employees employed by or formerly employed by TONY & SONS CONSTRUCTION, INC., and any of its respective subsidiaries or affiliated companies within the State of California (“TONY & SONS”) within the State of California (collectively with DOE defendants as further defined below, “Defendants”).

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

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

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

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

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

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

25 7. At all relevant times mentioned herein, Defendants had and have a policy or
26 practice of failing to pay Plaintiff and other aggrieved employees their wages in accordance with
27 Labor Code section 204, which requires that “[l]abor performed between the 1st and 15th days,
28 inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month

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

4 8. For at least three (3) years prior to the filing of this Action and continuing to the
5 present, Defendants have had a consistent policy or practice of failing to pay Plaintiff and all other
6 similarly situated employees the full amount of their wages owed to them upon termination and/or
7 resignation as required by Labor Code sections 201 and 202, in addition to vacation pay pursuant
8 to Labor Code section 227.3.

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

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

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

23 12. Plaintiff, on behalf of himself and all other similarly situated employees, brings this
24 Action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204,
25 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title
26 8, section 11010, seeking, *inter alia*, overtime wages, minimum wages, premium wages for missed
27 meal and rest periods, penalties, and reasonable attorneys’ fees and costs.

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

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

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

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

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

23 **PARTIES**

24 **A. Plaintiff**

25 17. Plaintiff ERIC J. HERNANDEZ is a resident of the State of California. At all
26 relevant times herein, Defendants employed Plaintiff ERIC J. HERNANDEZ as a non-exempt
27 employee, with duties that included, but were not limited to, conducting assessments, managing
28 employees, and conducting repairs, from approximately March of 2020 through approximately

February of 2021.

B. Defendants

18. Plaintiff is informed and believes, and based thereon alleges, that Defendant TONY & SONS 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 Fresno, State of California.

19. 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 Plaintiffs, who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action, as the agent of the other Defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each joint defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include DICK’S, MARSH, and any of their subsidiaries or affiliated companies within the State of California, as well DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

20. Plaintiff is informed and believes and based thereon alleges that all the 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.

21. 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.

22. Plaintiff is informed and believes, and based thereon allege, 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.

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

JURISDICTION

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

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

26. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other aggrieved current and former employees of Defendants, the civil penalties provided by

1 PAGA plus reasonable attorneys' fees and costs, as the term "civil penalty" is defined under *ZB*
2 *N.A. v. Superior Court* (2019) 8 Cal.5th 175.

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

7 28. During the period beginning one (1) year preceding the provision of notice to the
8 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
9 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3,
10 227.3, 432, 510, 512, 558, 1174, 1194, 1197, 2802, and 2810.3, and 2810.5, among others.

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

15 30. On or around January 24, 2022, Plaintiff provided written notice under Labor Code
16 section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation
17 of various, including the herein-described, provisions of the Labor Code, to the Labor and
18 Workforce Development Agency ("LWDA"), as well as by certified mail, with return receipt
19 requested to Defendants, and each of them.

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

24 32. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
25 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
26 calendar days of the January 24, 2022 postmarked date of the herein-described notice sent by
27 Plaintiffs to the LWDA and Defendants.

28 //

FACTUAL BACKGROUND

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

34. Plaintiff and all other similarly situated employees have not been paid, during the relevant liability periods, minimum wages for all regular hours worked, as a result of, including but not limited to, a consistent policy of failing to pay minimum 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, Defendants failing to accurately track and/or pay for all hours actually worked; engaging, suffering, or permitting employees to work off the clock; requiring Plaintiffs and similarly situated employees to clock out for rest periods; and/or detrimentally rounding, shaving and/or manipulating time entries, to the detriment of Plaintiff and all other similarly situated employees. As such, Plaintiff is informed and believes, and based thereon

1 alleges, that Defendants violated, without limitation, Labor Code section 1197 and applicable
2 Wage Orders, based on their continued failure to pay minimum wages, entitling Plaintiff and other
3 aggrieved employees to relief under, without limitation, Labor Code sections 1194 and 1194.2.
4 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1,
5 and 2699.

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

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

24 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
25 and have a policy or practice of failing to pay Plaintiff and other aggrieved employees their wages
26 in accordance with Labor Code section 204, which requires that “[l]abor performed between the
27 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th
28 day of the month during which the labor was performed, and labor performed between the 16th

1 and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day
2 of the following month.” As such, Plaintiff is informed and believes, and based thereon alleges,
3 that Defendants did not and do not pay their employees in accordance with Labor Code section
4 204. Defendants would be liable for civil penalties pursuant to Labor Code sections 210, 558 and
5 2699.

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

13 39. Defendants have failed to comply with Labor Code section 226, subdivision (a), by
14 intentionally failing to furnish employees with itemized wage statements that accurately reflect,
15 among other things, gross wages earned; total hours worked; net wages earned; all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at each
17 hourly rate; and the name and address of the legal entity that is the employer and/or the name and
18 address of each place where they were placed to work. Consequently, since Defendants would
19 have failed to comply with Labor Code section 226, subdivision (a), Plaintiff and other aggrieved
20 employees would be entitled to recover penalties under, without limitation, Labor Code section
21 226, subdivision (e). Defendants would also be liable for civil penalties pursuant to Labor Code
22 sections 226.3, 558 and 2699.

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

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

2 41. 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, and other such provisions of California law, and the
7 implementing rules and regulations of the IWC California Wage Orders. As such, Plaintiff is
8 informed and believes, and based thereon alleges, that Defendants violated these Labor Code
9 sections, entitling Plaintiff and all other aggrieved employees to civil penalties pursuant to Labor
10 Code sections 558 and 2699.

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

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

24 **CLASS ACTION ALLEGATIONS**

25 44. Plaintiff brings this Action on behalf of himself and all others similarly situated, as
26 a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class
27 of all current and former non-exempt employees of Defendants within the State of California at
28 any time commencing four (4) years preceding the filing of Plaintiff's complaint up until that

1 notice of

2 the class action is provided to the class (collectively referred to as “Class Members”).

3 45. 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 46. 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 47. 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 48. 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 49. 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 fail to pay Class Members in a timely fashion as required
27 under Labor Code section 204?
- 28 p. Did Defendants fail to indemnify Class Members for all necessary

1 expenditures or losses incurred in direct consequence of the discharge of
2 their duties or by obedience to the directions of Defendants as required
3 under Labor Code section 2802?

4 q. Did Defendants violate the Unfair Competition Law, Business and
5 Professions Code section 17200, *et seq.*, by their unlawful practices as
6 alleged herein?

7 r. Are Class Members entitled to restitution of penalty wages under Business
8 and Professions Code section 17203?

9 s. Are Class Members entitled to attorneys' fees?

10 t. Are Class Members entitled to costs?

11 u. Are Class Members entitled to interest?

12 **C. Typicality**

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

19 **D. Adequacy of Representation**

20 51. Plaintiff will fairly and adequately represent and protect the interest of the members
21 of the Classes. Counsel who represents Plaintiff are competent and experienced in litigating wage
22 and hour class actions.

23 **E. Superiority of Class Action**

24 52. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
26 questions of law and fact common to the Classes predominate over any questions affecting only
27 individual members of each Class. Each member of each Class has been damaged and is entitled
28 to recovery by reason of Defendants' illegal policy and/or practice of failing to pay overtime and

1 minimum wages; failing to provide meal and rest breaks or compensation in lieu thereof; failing to
2 provide accurate itemized wage statements; failing to pay all wages due upon termination and/or
3 resignation; failing to timely pay wages; and failing to indemnify.

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

8 **FIRST CAUSE OF ACTION**

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

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

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

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

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

1 failing to pay for all hours worked meriting overtime pay at the proper overtime rate of pay to the
2 detriment of Plaintiff and the Non-Exempt Employee Class.

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

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

14 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

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

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

67. 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.

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

69. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the

1 Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were
2 not paid additional pay owed for missed, untimely, interrupted and/or incomplete meal periods.

3 70. Plaintiff and the other members of the Meal Period Class are entitled to recover the
4 full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at
5 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
6 fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections
7 1021.5 and 1032, and Civil Code section 3287.

8 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

28 75. As a result of Defendants’ unlawful conduct, Plaintiff and the other members of the

1 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were
2 not paid additional pay owed for missed, untimely, interrupted and incomplete rest periods.

3 76. Pursuant to Labor Code section 226.7, Code of Civil Procedure sections 1021.5 and
4 1032, and Civil Code section 3287, Plaintiff and members of the Rest Period Class are entitled to
5 recover the full amount of their premium pay for unprovided rest periods, interest and penalties
6 thereon, and costs of suit.

7 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 81. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages
28 earned prior to termination or resignation in accordance with Labor Code sections 201 and 202

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

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

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

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

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

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

22 **SIXTH CAUSE OF ACTION**

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

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

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

28 89. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and the other

1 members of the Wage Statement Class were entitled to receive, semi-monthly or at the time of
2 each payment of wages, an accurate itemized statement that accurately reflects, among other
3 things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in
4 effect during the pay period and the corresponding number of hours worked at each hourly rate; as
5 well as the name and address of their legal employer and every assignment at which they were
6 placed to work.

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

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

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

20 93. Defendants' failure to provide Plaintiff and other members of the Wage Statement
21 Class with accurate wage statements was knowing, intentional, and willful. Defendants had the
22 ability to provide Plaintiff and the other members of the Wage Statement Class with accurate wage
23 statements, but willfully provided wage statements that Defendants knew were not accurate.

24 94. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
25 Wage Statement Class have suffered injury. The absence of accurate information on their wage
26 statements has delayed timely challenge to Defendants' unlawful pay practices; requires discovery
27 and mathematical computations to determine the amount of wages owed; causes difficulty and
28 expense in attempting to reconstruct time and pay records; led to submission of inaccurate

1 information about wages and amounts deducted from wages to state and federal governmental
2 agencies; and prevented Plaintiff from bringing action against all employers with which they
3 worked because of the failure to list them on wage statements.

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

8 96. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
9 Procedure section 1032, Civil Code section 3287, Plaintiff and the other members of the Wage
10 Statement Class are entitled to recover the full amount of penalties due under Labor Code section
11 226, subdivision (e), reasonable attorneys' fees, and costs of suit.

12 **SEVENTH CAUSE OF ACTION**

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

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

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

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

23 100. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
24 independent and apart from, any other penalty provided in this article, every person who fails to
25 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
26 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
27 hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent
28 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay

1 each employee, plus 25 percent of the amount unlawfully withheld.”

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

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

11 103. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
12 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of
13 penalties, interest, and their costs of suit, as well.

14 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

28 108. During that time period, Plaintiff is informed and believes, and based thereon

1 alleges that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff
2 sand Class Members for those losses and/or expenditures.

3 109. 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 reimbursed for the
5 herein-described losses and/or expenditures.

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

10 **NINTH CAUSE OF ACTION**

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

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

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

19 113. As a result of Defendants' unfair competition as alleged herein, Plaintiff and all
20 other similarly situated Class Members have suffered injury in fact and lost money or property.
21 Plaintiff and all other similarly situated Class Members have been deprived of, among other
22 things, overtime and minimum wage compensation; provision of meal and rest breaks, or
23 compensation in lieu thereof; provision of all wages upon termination or resignation; accurate
24 wage statements; timely paying wages; and indemnifying expenses.

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

1 themselves. Restitution of the money owed to Plaintiff and all other similarly situated Class
2 Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to
3 comply with the Labor Code.

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

6 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

4 120. 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).

10 121. 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.”

15 122. 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.”

17 123. 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).

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

28 //

1 Violation of Labor Code § 558

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

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

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

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

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

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

28 //

Violation of Labor Code § 1174.5

128. 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.”

129. 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.”

130. 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.”

131. 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).

132. 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.

3 133. 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

8 134. 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 employee is underpaid.
16 This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
17 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
18 203.

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 employee is
21 underpaid regardless of whether the initial violation is intentionally committed. This amount shall
22 be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
23 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

26 135. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of
28 Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' to

1 pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to
2 actual and liquidated damages.

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

9 Civil Penalties Under Labor Code § 2699

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

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

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

1 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of
2 paid sick leave required to be provided pursuant to California and local laws.

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

6 **DEMAND FOR A JURY TRIAL**

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

8 **PRAYER**

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

- 11 A. An Order certifying this case as a Class Action;
- 12 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
13 counsel as class counsel;
- 14 C. Damages for all wages earned and owed, including minimum and overtime wages
15 and unpaid wages for vested vacation time under Labor Code sections 203, 510,
16 1194, 1197, and 1199;
- 17 D. Liquidated damages pursuant to Labor Code section 1194.2 and 2810.3;
- 18 E. Damages for unpaid premium wages from missed meal and rest periods under,
19 among other Labor Code sections, 512, and 226.7;
- 20 F. Penalties for inaccurate wage statements under Labor Code sections 226,
21 subdivision (e);
- 22 G. Damages for unpaid penalty wages under Labor Code sections 203;
- 23 H. Waiting time penalties under Labor Code sections 203;
- 24 I. Penalties to timely pay wages under Labor Code section 210;
- 25 J. Damages under Labor Code section 2802;
- 26 K. Penalties for failure to timely permit inspection of documents under Labor Code
27 sections 226, subdivision (b);
- 28 L. Preliminary and permanent injunction(s) prohibiting Defendants from further

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

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Dated: March 14, 2022

BIBIYAN LAW GROUP, P.C.

BY: /s/ Jeffrey D. Klein

JEFFREY D. KLEIN

Attorney for Plaintiff ERIC J. HERNANDEZ, on
behalf of himself and all others similarly situated and
aggrieved