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FILED
Superior Court of California
County of Los Angeles
07/01/2024
David W. Slayton, Executive Officer / Clerk of Court
By: A. He Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JULIO L. PLASCENCIA, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

BONNIE BRAE CONVALESCENT HOSPITAL, INC., a California corporation; BONNIE BRAE CONVALESCENT INC, a California corporation; MICHELLE CAYTON, an individual; MARLO CAYTON, an individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22STCV08189

[*Assigned to the Hon. Laura A. Seigle in Dept 17*]

THIRD AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds $25,000.00]

COMES NOW Plaintiff JULIO L. PLASCENCIA ("Plaintiff"), on behalf of Plaintiff and all others similarly situated, and as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against BONNIE BRAE CONVALESCENT HOSPITAL, INC., and any of its respective subsidiaries or affiliated companies within the State of California ("BONNIE BRAE")[1]; MARLO CAYTON, an individual ("MR. CAYTON"); and MICHELLE CAYTON, an individual ("MS. CAYTON" and, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

PARTIES

A. Plaintiff

2. Plaintiff JULIO L. PLASCENCIA is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon allege that Defendants employed Plaintiff JULIO L. PLASCENCIA as a non-exempt employee, with duties that included, but were not limited to, cooking meals. Plaintiff is informed and believes, and based thereon allege that Plaintiff JULIO L. PLASCENCIA worked for Defendants from approximately September of 2005 through approximately March of 2021.

B. Defendants

3. Plaintiff is informed and believes and based thereon allege that Defendant BONNIE BRAE is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

[1] Plaintiff previously dismissed Bonnie Brae Convalescent Hospital, Inc. without prejudice on or about September 8, 2023, and pursuant to a stipulation among the Parties and for purposes settlement, is being re-added as a named defendant in this Third Amended Complaint.

4. Plaintiff is informed and believes and based thereon alleges that Defendant MR. CAYTON is, and at all times relevant hereto was, an individual residing in California, as well as share owner for BONNIE BRAE, and DOES 1 through 100, as further defined below.

5. Plaintiff is informed and believes and based thereon alleges that Defendant MS. CAYTON is, and at all times relevant hereto was, an individual residing in California, as well as Nursing Home Administrator for BONNIE BRAE, and DOES 1 through 100, as further defined below.

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 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 BONNIE BRAE, MR. CAYTON, MS. CAYTON, 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 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.

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 believes and based thereon alleges that Defendants MR. CAYTON and MS. CAYTON 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 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.

11. Plaintiff is informed and believes, and based thereon allege that despite the formation of the purported corporate existence of BONNIE BRAE, and DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with MS. CAYTON, MR. CAYTON, 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 violated the laws as set forth in this Complaint, and who has hidden and currently hide behind the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose;

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

C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants

and the Alter Ego Defendants, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose;

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

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

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

12. 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

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

14. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, Los Angeles 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, or some of them, and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff, or some of them, 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 Los Angeles County, and because Defendants employ numerous Class Members in Los Angeles County.

15. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff 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 civil penalties, as the term "civil penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA") plus reasonable attorneys' fees and costs, for Plaintiff and all other aggrieved current and former employees of Defendants during the Civil Penalty Period.

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

17. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 404, 432, 432.5, 432.6, 510, 512, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527, 2699, 2802, 2810.5, 3366, 3457, 6409.6, and 8397.4, among others.

18. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of Plaintiff 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 March 7, 2022, 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 March 7, 2022 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

21. On April 6, 2020, the Judicial Council of California approved Appendix I – Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of action were tolled from April 6, 2020 until October 1, 2020.

FACTUAL BACKGROUND

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 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 minutes actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees to go through temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, inventive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime pay; and for paying straight pay instead of overtime pay to the detriment of Plaintiff and Class Members.

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

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

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

26. For at least three (3) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full amount of their wages owed to them upon termination and/or resignation as required by Labor Code sections 201 and 202, including for, without limitation, failing to pay overtime wages, minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

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

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

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

30. Plaintiff, on their own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, *et al.*, and California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failing to pay vested vacation time at the proper rate of pay, other such provisions of California law, and reasonable attorneys' fees and costs.

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

PAGA REPRESENTATIVE ALLEGATIONS

32. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually

worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved Employees.

33. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and failing to pay split shift premiums to the detriment of Plaintiff and other Aggrieved Employees.

34. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted, timely, and complete meal period for days on which the employee worked in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;

not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which employees worked, as required by California wage and hour laws

35. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and/or otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

36. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name of the employer and/or the name and address of the legal entity securing the employer's services if the employer is a farm labor contractor; and other such information as required by Labor Code section 226, subdivision (a).

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

38. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor Code sections 201, 202, and 203.

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

40. At all relevant times mentioned herein, Defendants have had a policy or practice of failing and refusing, and continue to fail and refuse, to reimburse employees, including, without limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal vehicles (i.e., mileage and gas), purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor Code 2802.

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

42. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to California law (including, without limitation Labor Code section 246, et seq.), and also did not

permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and all other Aggrieved Employees.

43. At all relevant times mentioned herein, Defendants have had a policy or practice of failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code Section 204, which requires 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."

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

45. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Defendants to their managers or outside to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5.

46. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,

without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and economic liberty.

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

CLASS ACTION ALLEGATIONS

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

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

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

A. Numerosity

51. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class Members employed by Defendants within the State of California.

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

practicable.

B. Commonality

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

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

B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay for all other time worked at the employee's regular rate of pay and a rate of pay that is greater than the applicable minimum wage?

C. Did Defendants violate Labor Code section 512 by not authorizing or permitting Class Members to take compliant meal periods?

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

E. Did Defendants violate applicable Wage Orders by not authorizing or permitting Class Members to take compliant rest periods?

F. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed rest periods?

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

H. Are Defendants liable to Class Members for waiting time penalties under Labor Code section 203?

I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?

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

K. Did Defendants violate Labor Code section 227.3 by not providing Class Members with compensation at their final rate of pay for vested paid vacation time?

L. Did Defendants violate the Unfair Competition Law, Business and Professions Code

section 17200, *et seq.*, by their unlawful practices as alleged herein?

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

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

O. Are Class Members entitled to interest?

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

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I. CLASS CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

58. Plaintiff realleges and incorporates by reference all of the allegations 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 sections 510, 1194 and 1199, as well as applicable Wage Orders.

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

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

62. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees to go through temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, inventive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime pay; and for paying straight pay instead of overtime pay

to the detriment of Plaintiff and Class Members.

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

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

65. Plaintiff worked approximately eight (8) hours per day, six (6) days per week, which is approximately 96 hours per pay period. Plaintiff's regular rate of pay was $21.00/hr. which results in an overtime rate of $31.50/hr. Plaintiff worked approximately eight (8) hours of overtime per week. Plaintiff should have been paid at a rate of $31.50/hr. for 8 hours and twelve (12) minutes of overtime per week. The twelve (12) minutes is a result of waiting in line for approximately two (2) minutes per day to have his temperature checked before clocking in for work. 8 hours and 12 minutes x $31.50 per hour = $258.30 of earned overtime per week. However, Plaintiff was only paid at his hourly rate of $21.00 for his overtime hours. 8 hours x $21.00 per hour = $168. Plaintiff is entitled to the difference between $252 and $168 per week. $252 - $168 = $84 per week. Plaintiff is also entitled to the entirely unpaid 12 minutes of overtime per week for waiting in line for temperature checks. 0.2 minutes x $31.50 = $6.30. In total, Plaintiff is owed at least $90.30 per week for unpaid overtime. For the four (4) years preceding the filing of this Action, Plaintiff worked for approximately 209 weeks. $90.30 x 209 = $18,872.70. Plaintiff is owed at least $18,872.70 in unpaid overtime wages, plus 10% interest per year of $1,887.27, for a total of $20,759.97.

66. Plaintiff believes each and every putative Class Member suffered similar violations and is thus owed the same amount in damages as Plaintiff.

67. WHEREFORE, Plaintiff requests relief as hereinafter provided.

68. For Plaintiff, individual damages in the amount of $20,759.97, and the same amount

for each and every putative Class Member.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

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

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

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

74. 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.

75. Plaintiff's damage amounts for unpaid minimum wages is incorporated and stated herein under the cause of action for failure to pay overtime.

76. Plaintiff believes each and every putative Class Member suffered similar violations and is thus owed approximately the same amount in damages as Plaintiff.

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

77. Plaintiff realleges and incorporates by reference all of the allegations contained in

the preceding paragraphs as though fully set forth hereat.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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, 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.

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

84. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus

interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

85. Throughout the entirety of Plaintiff's employment, Plaintiff was only provided with timely meal breaks approximately three (3) times per week. Plaintiff's unpaid premiums for missed meal breaks was determined by multiplying the number of missed meal breaks per week by the number of weeks Plaintiff worked for Defendants in the four (4) years preceding the filing of this Action multiplied by Plaintiff's hourly rate of $21.00. 3 x 209 x $21.00/hr. = $13,167. Thus, Plaintiff is owed $13,167 in meal break premiums, plus 7% interest for a total damage amount of $14,088.69.

86. Plaintiff believes each and every putative Class Member suffered similar violations and is thus owed approximately the same amount in damages as Plaintiff.

87. WHEREFORE, Plaintiff requests relief as hereinafter provided.

88. For Plaintiff, individual damages in the amount of $14,088.69, inclusive of interest, and the same amount for each and every putative Class Member.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

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

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

92. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest 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 work day that the rest period is not provided.

93. 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 authorized or permitted to take complete, timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. 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 authorized or permitted to take compliant rest periods.

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

95. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for rest periods that they were not authorized or permitted to take.

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

97. Throughout the entirety of Plaintiff's employment, Plaintiff was never provided with timely rest breaks. Plaintiff's unpaid premiums for missed rest breaks was determined by multiplying the number of missed rest breaks per week by the number of weeks Plaintiff worked for Defendants in the four (4) years preceding the filing of this Action multiplied by Plaintiff's hourly rate of $21.00. 6 x 209 x $21.00/hr. = $26,334. Thus, Plaintiff is owed $26,334 in rest break premiums, plus 7% interest for a total damage amount of $28,177.38.

98. Plaintiff believes each and every putative Class Member suffered similar violations and is thus owed approximately the same amount in damages as Plaintiff.

99. WHEREFORE, Plaintiff requests relief as hereinafter provided.

100. For Plaintiff, individual damages in the amount of $28,177.38, inclusive of interest, and the same amount for each and every putative Class Member.

FIFTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

109. Plaintiff's average wage rate per day was calculated by multiplying his hourly rate of $21.00/hr. by 8 regular hours per work per day plus two (2) minutes of overtime per day multiplied by thirty (30) days. $168 + $0.63 x 30 = $5,058.90. Thus, Plaintiff is owed $5,058.90 plus 7% interest for a total damage amount of $5,413.02.

110. Plaintiff believes each and every putative Class Member suffered similar violations and is thus owed approximately the same amount in damages as Plaintiff.

111. WHEREFORE, Plaintiff requests relief as hereinafter provided.

112. For Plaintiff, individual damages in the amount of $5,413.02, inclusive of interest, and the same amount for each and every putative Class Member.

SIXTH CAUSE OF ACTION

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

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

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

115. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate; and the name and address of the legal entity that is the employer, among other things.

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

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

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

119. 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.

120. 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.

121. Plaintiff's damages for failure to pay proper wage statements was determined by multiplying the amount of wage statement violations by $50 for the first violation and $100 for additional violations. There were a total of 24 wage statement violations as Plaintiff worked for Defendants for approximately 12 months during the one (1) year preceding the filing of this action and he was paid bi-monthly. Therefore, Plaintiff is owed $50 for the first violation + 23 x $100 for subsequent violations equaling $2,350.

122. Plaintiff believes each and every putative Class Member suffered similar violations and is thus owed approximately the same amount in damages as Plaintiff.

123. WHEREFORE, Plaintiff requests relief as hereinafter provided.

124. For Plaintiff, individual damages in the amount of $2,350, and the same amount for each and every putative Class Member.

SEVENTH CAUSE OF ACTION

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

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

126. 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.

127. 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."

128. 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."

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

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

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

132. Plaintiff's damages for failure to timely pay wages during employment was determined by figuring the number of late payments in the one (1) year preceding the filing of this action and applying $100 for the first violation, $200 for additional violations and 25% of Plaintiff's bi-monthly pay. There was a total of approximately 24 late payments as Plaintiff worked for Defendants for approximately 12 months during the one (1) year preceding the filing of this action and he was paid bi-monthly. Therefore, Plaintiff is owed $100 for the first violation + 23 x $200 + 25% of Plaintiff's bi-monthly pay. $100 + $4,600 + $590.21 = $5,290.21.

133. Plaintiff believes each and every putative Class Member suffered similar violations and is thus owed approximately the same amount in damages as Plaintiff.

134. WHEREFORE, Plaintiff requests relief as hereinafter provided.

135. For Plaintiff, individual damages in the amount of $5,290.21, and the same amount for each and every putative Class Member.

EIGHTH CAUSE OF ACTION

(Violation of Labor Code § 227.3 – Against All Defendants

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

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

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

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

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

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

142. According to Defendants' policy, Plaintiff was entitled to two (2) weeks of vacation per year, which he did not use. Throughout Plaintiff's employment, Plaintiff was only paid $500 for unused vacation. Thus, Plaintiff is entitled to his unused vacation which is calculated by multiplying Plaintiff's average weekly earnings of $1,098.30 by eight (8) weeks subtracted by $500. $1098.30 x 8 – $500 = $8,286.40.

143. Plaintiff believes each and every putative Class Member suffered similar violations

and is thus owed approximately the same amount in damages as Plaintiff.

144. WHEREFORE, Plaintiff requests relief as hereinafter provided.

145. For Plaintiff, individual damages in the amount of $8,286.40, and the same amount for each and every putative Class Member.

NINTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

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

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

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

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

151. Plaintiff believes each and every putative Class Member suffered similar violations and is thus owed approximately the same amount in damages as Plaintiff.

152. WHEREFORE, Plaintiff requests relief as hereinafter provided.

153. For Plaintiff, individual damages in the amount of $2,500 which is the statutory penalty, and the same amount for each and every putative Class Member.

TENTH CAUSE OF ACTION

II. REPRESENTATIVE CAUSES OF ACTION UNDER THE LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT OF 2004 FOR CIVIL PENALTIES UNDER LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1 and 2699 – Against All Defendants

(Civil Penalties Under Labor Code § 210)

154. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

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

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

157. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred dollars ($100) for each Aggrieved Employee for

each initial violation per employee, and two hundred dollars ($200) for each Aggrieved Employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204.

Civil Penalties Under Labor Code § 226.3

158. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name of the employer and/or the name and address of the legal entity securing the employer's services if the employer is a farm labor contractor; and other such information as required by Labor Code section 226, subdivision (a).

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

160. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in this section are in addition to any other penalty provided by law."

161. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of failing to furnish non-exempt employees, including, without limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the corresponding number of hours worked at each hourly rate in effect during the pay period; the legal name of the employer and/or the name and address of the legal entity securing the employer's services if the employer is a farm labor contractor; and other such information as required by Labor Code section 226, subdivision (a).

162. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are

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

Violation of Labor Code § 558

163. 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."

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

165. 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.

Violation of Labor Code § 1174.5

166. 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."

167. 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."

168. 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."

169. 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).

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

under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174.

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

Violation of Labor Code § 1197.1

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

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

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

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

173. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused

Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' minimum wages for all hours worked or otherwise under Defendants' control due to, without limitation, routinely failing to accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

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

Civil Penalties Under Labor Code § 2699

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

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

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

the failure to: pay the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the name of the employer, including "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 required to be disclosed by Defendants under Labor Code section 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to California and local laws.

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

DEMAND FOR JURY TRIAL

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

PRAYER

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

A. An order certifying this case as a Class Action;

B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;

C. Damages for all wages earned and owed, including minimum and overtime wages, under Labor Code sections 510, 1194, 1197 and 1199;

D. Liquidated damages pursuant to Labor Code section 1194.2;

E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512 and 226.7;

F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision (e);

G. Waiting time penalties under Labor Code sections 203;

H. Penalties for failure to timely pay wages under Labor Code section 210;

I. Damages under Labor Code sections 2802;

J. Preliminary and permanent injunctions prohibiting Defendants from further violating the

California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;

K. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;

L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;

M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;

N. Prejudgment and post-judgment interest at the maximum rate allowed by law;

O. For attorneys' fees in prosecuting this action;

P. For costs of suit incurred herein; and

Q. For such other and further relief as the Court deems just and proper.

Dated: June 24, 2024

BIBIYAN LAW GROUP, P.C.

BY: */s/ Vedang J. Patel*
VEDANG J. PATEL

Attorneys for Plaintiff JULIO L. PLASCENCIA on behalf of himself and all others similarly situated and aggrieved

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 1460 Westwood Boulevard, Los Angeles, California 90024.

On July 1, 2024, I caused a true and correct copy of the foregoing document(s) described as **THIRD AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**, to be served as follows:

O'HAGAN MEYER LLP — **Attorneys for Defendants**
Megan Childress
Joseph C. Ramil
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Los Angeles, CA 90071-2678
Telephone No.: 213-423-6006
emartin@OHaganMeyer.com
jramli@ohaganmeyer.com

☒ **BY CASE ANYWHERE:**
Pursuant to the Court's Order regarding Electronic Service, I caused the documents described above to be E-Served via CaseAnywhere by electronically mailing a true and correct copy via CaseAnywhere to the individual(s) listed above.

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

Executed on July 1, 2024 at Los Angeles, California.

/s/Jennifer Echeverria
Jennifer Echeverria