

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (Cal. Bar No. 287811)
david@tomorrowlaw.com
Jeffrey D. Klein (Cal. Bar No. 297296)
jeff@tomorrowlaw.com
Jean Hopkins Power (Cal. Bar No. 326509)
jean@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Telephone: (310) 438-5555
Facsimile: (310) 300-1705

Attorneys for Plaintiff, NAKIA KALI and
on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

22CV402509

NAKIA KALI, an individual and on behalf of
all others similarly situated,

Plaintiff,

v.

GM NAMEPLATE, INC., a Washington
Corporation; BRUCE CLECKLEY, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.:

CLASS 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 PROVIDE SUITABLE
SEATING; AND
9. UNFAIR COMPETITION.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff NAKIA KALI (“Plaintiff”), on behalf of Plaintiff and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against GM NAMEPLATE, INC., and any of its respective subsidiaries or affiliated companies within the State of California (“NAMEPLATE”), BRUCE CLECKLEY , an individual (“CLECKLEY”); 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 NAKIA KALI 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 NAKIA KALI as a non-exempt employee, with duties that included, but were not limited to, operating a machine, printing labels, and machine work.. Plaintiff is informed and believes, and based thereon allege that Plaintiff NAKIA KALI worked for Defendants from approximately August of 2017 through approximately March of 2019.

B. Defendants

3. Plaintiff is informed and believes and based thereon allege that defendant NAMEPLATE is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Washington and doing business in the County of Santa Clara, State of California. At all relevant times herein, NAMEPLATE employed Plaintiff and similarly situated employees within the State of California

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

5. 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 NAMEPLATE, CLECKLEY, and any of their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

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JOINT LIABILITY ALLEGATIONS

6. 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

1 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
2 employment, joint venture, and conspiracy.

3 7. All of the acts and conduct described herein of each and every corporate defendant
4 was duly authorized, ordered, and directed by the respective and collective defendant corporate
5 employers, and the officers and management-level employees of said corporate employers. In
6 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
7 their said employees, agents, and representatives, and each of them; and upon completion of the
8 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
9 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
10 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
11 aforementioned corporate employees, agents and representatives.
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13 8. Plaintiff is further informed and believes and based thereon alleges that CLECKLEY
14 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
15 provisions in violation of Labor Code section 558.1.

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

19 10. Plaintiff is informed and believes, and based thereon allege that despite the formation
20 of the purported corporate existence of NAMEPLATE, and DOES 1 through 50, inclusive (the
21 “Alter Ego Defendants”), they, and each of them, are one and the same with CLECKLEY and DOES
22 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
23 reasons:
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25 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
26 Defendants who personally committed the wrongful and illegal acts and violated the
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1 laws as set forth in this Complaint, and who has hidden and currently hide behind the
2 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
3 other wrongful or inequitable purpose;

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

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

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

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

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

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

8 **JURISDICTION**

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

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

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

26 **FACTUAL BACKGROUND**

1 15. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
3 some of them, in violation of California state wage and hour laws as a result of, without limitation,
4 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
5 seven consecutive work days in a work week without being properly compensated for hours worked
6 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
7 worked on the seventh consecutive work day in a work week by, among other things, failing to
8 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay, to the
9 detriment of Plaintiff and Class Members.
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11 16. For at least four (4) years prior to the filing of this Action and continuing to the
12 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
13 or some of them, in violation of California state wage and hour laws as a result of, among other
14 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
15 rate of pay that is above the minimum wage, to the detriment of Plaintiff and Class Members.
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17 17. For at least four (4) years prior to the filing of this Action and continuing to the
18 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
19 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
20 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
21 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
22 for such unprovided meal periods as required by California wage and hour laws.

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

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

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

15 21. For at least one (1) year prior to the filing of this action and continuing to the present,
16 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
17 amount of their wages for labor performed in a timely fashion as required under Labor Code section
18 204.

19 22. For at least three (3) years prior to the filing of this action and continuing to the
20 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
21 costs incurred in using cellular phones for work-related purposes.

22 23. At all relevant times mentioned herein, Defendants maintained policies or practices
23 of failing to permit Plaintiff and similarly situated employees from having suitable seating as
24 required under Labor Code Section 1198.
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24. 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, 226.2, 226.7, 510, 512, 558.1, 1194, 1194.2, 1197, 1198, 2802, 2810.3, *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, failure to indemnify work-related expenses, and other such provisions of California law, and reasonable attorneys' fees and costs.

25. 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.

CLASS ACTION ALLEGATIONS

26. 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").

27. 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.

28. 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

29. 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 one-hundred (100) Class Members employed by Defendants within the State of California.

30. 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

31. 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?

- 1 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
2 with additional wages for missed rest periods?
- 3 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
4 Members upon termination or resignation all wages earned?
- 5 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
6 section 203?
- 7 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
8 Class Members with accurate wage statements?
- 9 J. Did Defendants fail to pay Class Members in a timely fashion as required under
10 Labor Code section 204?
- 11 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
12 losses incurred in direct consequence of the discharge of their duties or by obedience
13 to the directions of Defendants as required under Labor Code section 2802?
- 14 L. Did defendants fail to provide suitable seating as required under Labor Code Section
15 1198.
- 16 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
17 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 18 N. Are Class Members entitled to restitution of wages under Business and Professions
19 Code section 17203?
- 20 O. Are Class Members entitled to costs and attorneys' fees?
- 21 P. Are Class Members entitled to interest?

22 **C. Typicality**

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

4 **D. Adequacy of Representation**

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

8 **E. Superiority of Class Action**

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

15 35. Class action treatment will allow Class Members to litigate their claims in a manner
16 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
17 any difficulties that are likely to be encountered in the management of this action that would
18 preclude its maintenance as a class action.
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21 **FIRST CAUSE OF ACTION**

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

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

25 37. At all relevant times, Plaintiff and Class Members were employees or former
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1 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
2 Wage Orders.

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

7
8 39. At all times relevant to this Complaint, Labor Code section 510 further provided that
9 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
10 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
11 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
12 pay.”

13 40. Four (4) years prior to the filing of the Complaint in this Action through the present,
14 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
15 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
16 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
17 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
18 actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

19
20 41. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
21 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
22 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
23 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
24 applicable IWC Wage Orders, and California law.

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

3 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

23 **THIRD CAUSE OF ACTION**

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

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

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

5 51. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
6 employ an employee for a work period of more than five (5) hours without a timely meal break of
7 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
8 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
9 per day without providing the employee with a second timely meal period of not less than thirty (30)
10 minutes in which the employee is relieved of all of his or her duties.
11

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

16 53. For four (4) years prior to the filing of the Complaint in this Action through the
17 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
18 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
19 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
20 Class Member's regular rate of compensation on the occasions that Class Members were not
21 provided compliant meal periods.
22

23 54. By their failure to provide Plaintiff and Class Members compliant meal periods as
24 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
25 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
26 violated the provisions of Labor Code section 512 and applicable Wage Orders.
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55. 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.

56. 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.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

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

59. 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.

60. 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.

1 61. For four (4) years prior to the filing of the Complaint in this Action through the
2 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
3 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
4 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
5 Member's regular rate of compensation on the occasions that Class Members were not authorized
6 or permitted to take compliant rest periods.

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

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

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

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20 **FIFTH CAUSE OF ACTION**

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

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

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

1 67. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
2 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
3 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
4 discharge immediately upon termination. Class Members who resigned were entitled to payment
5 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
6 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
7 unpaid at the time of resignation.
8

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

14 69. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
15 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
16 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
17 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
18 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
19 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
20 or resignation..
21

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

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

2 72. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
3 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
4 waiting time penalties, interest, and their costs of suit, as well.

5 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

20
21
22 **SEVENTH CAUSE OF ACTION**

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

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

26 82. At all relevant times, Plaintiff and Class Members were employees or former
27

1 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

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

7 84. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
8 independent and apart from, any other penalty provided in this article, every person who fails to pay
9 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
10 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
11 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
12 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
13 percent of the amount unlawfully withheld.”

14 85. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
15 before the filing of the Complaint in this Action through the present, Defendants employed policies
16 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
17 Labor Code section 204.
18

19 86. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to
20 recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one
21 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
22 for each subsequent violation in connection with each payment that was made in violation of Labor
23 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.
24

25 87. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
26 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
27

1 interest, and their costs of suit, as well.

2
3 **EIGHTH CAUSE OF ACTION**

4 **(Failure to Provide Suitable seating Labor Code § 1198 – Against All Defendants)**

5 88. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though full set forth herein.

7
8 89. California Labor Code Section § 1198 makes it illegal to employ an employee
9 under conditions of labor that are prohibited by the applicable wage order.

10 90. California Labor Code § 1198 requires that “. . . the standard conditions of labor
11 fixed by the commissions shall be the . . . standard conditions of labor for employees.

12 The employment of any employee . . . under conditions of labor prohibited by the
13 order is unlawful.”
14

15 91. Section 14 of the applicable Wage Order provides that: (A) All working employees
16 shall be provided with suitable seats when the nature of the work reasonably permits
17 the use of seats. (B) When employees are not engaged in the active duties of their
18 employment and the nature of the work requires standing, an adequate number of
19 suitable seats shall be placed in reasonable proximity to the work area and employees
20 shall be permitted to use such seats when it does not interfere with the performance
21 of their duties.
22

23 92. At all relevant times, Defendants have failed to provide such suitable seating to
24 Plaintiff and Class Members, including when Plaintiff and Class Members are not
25 engaged in the active duties of their employment. Upon information and belief, the
26 work performed by persons in these positions includes common tasks that could be
27

1 performed while seated and the location of the tasks to be performed made it feasible
2 to do so while seated.

3 93. Plaintiff and Class Members are entitled to recover all remedies available for
4 violations of California Labor Code § 1198.
5

6
7 **TENTH CAUSE OF ACTION**

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

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

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

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

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

1 by their failure to comply with the Labor Code.

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

4 **DEMAND FOR JURY TRIAL**

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

6 **PRAYER**

7 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
8 against Defendants as follows:
9

- 10 A. An order certifying this case as a Class Action;
- 11 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
12 counsel as class counsel;
- 13 C. Damages for all wages earned and owed, including minimum. overtime wages and
14 unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,
15 1194, 1197 and 1199;
- 16 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 17 E. Damages for unpaid premium wages from missed meal and rest periods under,
18 among other Labor Code sections, 512, 558.1 and 226.7;
- 19 F. Penalties for inaccurate wage statements under Labor Code sections 226,
20 subdivision (e) and 558.1;
- 21 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 22 H. Penalties to timely pay wages under Labor Code section 210;
- 23 I. Damages under Labor Code sections 2802 and 558.1;
- 24 J. Preliminary and permanent injunctions prohibiting Defendants from further
25 violating the California Labor Code and requiring the establishment of appropriate
26

1 and effective means to prevent future violations;

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

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

5 M. For attorneys' fees in prosecuting this action;

6 N. For costs of suit incurred herein; and

7 O. For such other and further relief as the Court deems just and proper.
8

9
10 Dated: August 26, 2022

BIBIYAN LAW GROUP, P.C.

11
12 BY: */s/ Jean H. Power*

13 JEAN H. POWER

JEFFREY D. KLEIN

14 DAVID D. BIBIYAN

Attorneys for Plaintiff NAKIA KALI on behalf of
15 herself and all others similarly situated
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