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others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PATRICIA J. RYAN and KEVIN FLEMING,
as individuals and on behalf of all others
similarly situated,

Plaintiffs,

v.

MISSION TREATMENT SERVICES, INC., a
California corporation; ACADIA
HEALTHCARE COMPANY, INC., a
Delaware corporation; CALIFORNIA
TREATMENT SERVICES, LLC, a California
Limited Liability Company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 22STCV15217

[Assigned for all purposes to the Hon. David
S. Cunningham]

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

1. FAILURE TO PAY WAGES UNDER THE
FLSA;
2. FAILURE TO PAY OVERTIME WAGES;
3. FAILURE TO PAY MINIMUM WAGES;
4. FAILURE TO PROVIDE MEAL
PERIODS;
5. FAILURE TO PROVIDE REST PERIODS;
6. WAITING TIME PENALTIES;
7. WAGE STATEMENT VIOLATIONS;
8. FAILURE TO PAY WAGES TWICE IN A
CALENDAR MONTH
9. FAILURE TO REIMBURSE BUSINESS
EXPENSES
10. UNFAIR COMPETITION AND
UNLAWFUL BUSINESS PRACTICES
11. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS' GENERAL
ACT OF 2004 FOR VIOLATIONS OF
LABOR CODE SECTIONS 210, 226.3,
558, 1174.5, 1197.1 AND 2699, et seq.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

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KEVIN FLEMING on behalf of themselves and all
others similarly situated

COMES NOW plaintiffs PATRICIA J. RYAN (Plaintiff Ryan) and KEVIN FLEMING (Plaintiff Fleming and collectively “Plaintiffs”), on behalf of themselves 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 and a collective action pursuant to the Fair Labor Standards Act (“FLSA”), 29. U.S.C. sections 201-203, 206-207, 216, against MISSION TREATMENT SERVICES, INC., which also did business as (“Oceanside Comprehensive Treatment Center”), and any of its respective subsidiaries or affiliated companies within the State of California (“Mission Treatment”), ACADIA HEALTHCARE COMPANY, INC., and any of its respective subsidiaries or affiliated companies within the State of California (“Acadia Healthcare”), and CALIFORNIA TREATMENT SERVICES, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“CTS” and collectively with Mission Treatment, Acadia Healthcare, and with DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiffs, PATRICIA J. RYAN and KEVIN FLEMING and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”), against Defendants, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiffs PATRICIA J. RYAN and KEVIN FLEMING, and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, et seq., Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

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1 **PARTIES**

2 **A. Plaintiffs**

3 3. Plaintiff Ryan is a resident of the State of California. At all relevant times herein,
4 Plaintiff Ryan is informed and believes, and based thereon alleges that Defendants employed
5 Plaintiff Ryan as a non-exempt employee at several of Defendants' facilities in California, with
6 duties that included, but were not limited to, interacting with counselors, assisting patients, and
7 conducting monthly reports. Plaintiff Ryan is informed and believes, and based thereon alleges that
8 Plaintiff Ryan worked for Defendants from approximately October of 2020 through approximately
9 May of 2021.

10 4. Plaintiff Fleming at all relevant times, was and is a resident of California. Plaintiff
11 Fleming was employed by Defendants as a non-exempt, hourly paid Counselor. Plaintiff Fleming
12 and the other similarly situated Class Members were employed by Defendants and worked at
13 Defendants' locations throughout the United States with assigned responsibilities, including
14 counseling clients, educating clients on treatment options, methods and techniques to ensure the
15 client understands the process before treatment, maintaining health insurance records, tracking
16 personal treatment plans, and working with other staff to collaborate on treatment plans. Plaintiff
17 Fleming was employed by Defendants from approximately November 11, 2021 to August 28, 2022
18 and (1) shared similar job duties and responsibilities (2) was subjected to the same policies and
19 practices, and (3) endured similar violations at the hands of Defendants as the other Class and FLSA
20 Collective Members who served in similar and related positions.

21 **B. Defendants**

22 5. Plaintiffs are informed and believe, and based thereon allege, that defendant Mission
23 Treatment is, and at all times relevant hereto was, a corporation organized and existing under and
24 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
25 State of California.

26 6. Plaintiffs are informed and believe, and based thereon allege, that defendant Acadia
27 Healthcare is, and at all times relevant hereto was, a corporation organized and existing under and
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1 by virtue of the laws of the State of Delaware and doing business in the County of Los Angeles,
2 State of California.

3 7. Plaintiffs are informed and believe, and based thereon allege, that defendant CTS is,
4 and at all times relevant hereto was, a limited liability company organized and existing under and
5 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
6 State of California.

7 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
8 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
9 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
10 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
11 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
12 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
13 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
14 are informed and believe, and based thereon allege, that each defendant acted in all respects pertinent
15 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
16 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
17 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
18 include Mission Treatment, Acadia Healthcare, CTS, and any of their parent, subsidiary, or affiliated
19 companies within the State of California, as well as DOES 1 through 100 identified herein.

20 **JOINT LIABILITY ALLEGATIONS**

21 9. Plaintiffs are informed and believe, and based thereon allege, that all the times
22 mentioned herein, each of the Defendants were the agent, principal, employee, employer,
23 representative, joint venture or co-conspirator of each of the other defendants, either actually or
24 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
25 employment, joint venture, and conspiracy.

26 10. All of the acts and conduct described herein of each and every corporate defendant
27 was duly authorized, ordered, and directed by the respective and collective defendant corporate
28 employers, and the officers and management-level employees of said corporate employers. In

1 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
2 their said employees, agents, and representatives, and each of them; and upon completion of the
3 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
4 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
5 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
6 aforementioned corporate employees, agents and representatives.

7 11. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
8 unity of interest and ownership between Defendants, and each of them, that their individuality and
9 separateness have ceased to exist.

10 12. Plaintiffs are informed and believe, and based thereon allege, that despite the
11 formation of the purported corporate existence of Mission Treatment, Acadia Healthcare, CTS, and
12 DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and
13 the same with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not
14 limited to, the following reasons:

15 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
16 Defendants who personally committed the wrongful and illegal acts and violated the
17 laws as set forth in this Complaint, and who have hidden and currently hide behind
18 the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish
19 some other wrongful or inequitable purpose;

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

24 C. Plaintiffs are informed and believe, and based thereon allege, that the Individual
25 Defendants and the Alter Ego Defendants, while really one and the same, were
26 segregated to appear as though separate and distinct for purposes of perpetrating a
27 fraud, circumventing a statute, or accomplishing some other wrongful or inequitable
28 purpose;

1
2 D. Plaintiffs are informed and believe, and based thereon allege, that the business affairs
3 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant
4 times mentioned herein were, so mixed and intermingled that the same cannot
5 reasonably be segregated, and the same are inextricable confusion. The Alter Ego
6 Defendants are, and at all relevant times mentioned herein were, used by the
7 Individual Defendants as mere shells and conduits for the conduct of certain of their,
8 and each of their affairs. The Alter Ego Defendants are, and at all relevant times
9 mentioned herein were, the alter egos of the Individual Defendants.

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

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

19 13. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
20 thereon allege that Defendants, and each of them, are joint employers.

21 **JURISDICTION**

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

24 15. Venue is proper in Los Angeles County, California pursuant to Code of Civil
25 Procedure sections 392, et seq. because, among other things, Los Angeles County is the county in
26 which the employment contract, or part of it, between Plaintiffs, or some of them, and Defendants
27 was actually performed, and the county in which Defendants, or some of them, reside. Moreover,
28

1 the unlawful acts alleged herein have a direct effect on Plaintiffs and Class Members in Los Angeles
2 County, and because Defendants employ numerous Class Members in Los Angeles County.

3 16. Defendant Mission Treatment is headquartered at 6100 Tower Circle, Suite 1000,
4 Franklin, TN 37067, but engages and performs substantial business throughout the State of
5 California.

6 17. Defendant Acadia Healthcare is headquartered at 6100 Tower Circle, Suite 1000,
7 Franklin, TN 37067, but engages and performs substantial business throughout the State of
8 California.

9 18. Defendant CTS is headquartered at 6100 Tower Circle, Suite 1000, Franklin, TN
10 37067, but engages and performs substantial business throughout the State of California.

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

15 20. Plaintiffs and Class Members were and are employees of Defendants within the
16 meaning of 29 U.S.C. § 203(e).

17 21. At all material times, Defendants have been an enterprise in commerce or in the
18 production of goods for commerce within the meaning of section 3(s)(1) of the FLSA because
19 Defendants have had and continue to have employees engaged in commerce. 29 U.S.C. § 203(s)(1).

20 22. Plaintiffs are informed, believe, and thereon allege that Defendants have had, and
21 continue to have, an annual gross business volume of not less than \$500,000, thereby exceeding
22 the statutory standard. 29 U.S.C. § 203(s)(1)(A)(ii).

23 23. In addition to Plaintiffs, Defendants have employed numerous other employees who,
24 like Plaintiffs, are hourly, non-exempt employees engaged in interstate commerce. Further,
25 Defendants are engaged in interstate commerce since it sells goods across state lines, conducts
26 business deals with merchants across state lines, and processes transactions with banks in other
27 states.

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1 24. Plaintiffs are informed, believe, and thereon allege that each and every one of the
2 acts and omissions alleged herein were performed by, and/or attributable to, Defendants, and that
3 said acts and failures to act were within the course and scope of Defendants' agency, employment
4 and/or direction and control.

5 25. At all material times, Plaintiffs and Class Members were employees who engaged in
6 commerce or in the production of goods for commerce on behalf of Defendants as required by 29
7 U.S.C. § 207.

8 26. Plaintiffs are "aggrieved employees" under PAGA, as Plaintiffs were employed by
9 Defendants during the applicable statutory period and suffered one or more of the Labor Code
10 violations set forth herein. Accordingly, Plaintiffs seeks to recover civil penalties, as the term "civil
11 penalty" is defined under ZB N.A. v. Superior Court (2019) 8 Cal.5th 175, under the Labor Code
12 Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. ("PAGA") plus
13 reasonable attorneys' fees and costs, for Plaintiffs and all other aggrieved current and former
14 employees of Defendants during the Civil Penalty Period.

15 27. Specifically, Plaintiffs seek to recover PAGA civil penalties through a representative
16 action permitted by PAGA and the California Supreme Court in, among other authorities, Arias v.
17 Superior Court (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
18 PAGA allegations described herein is not required.

19 28. During the period beginning one (1) year preceding the provision of notice to the
20 LWDA regarding the herein-described Labor Code violations (the "Civil Penalty Period"),
21 Defendants violated, inter alia, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 218,
22 221, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558, 558.1, 1102.5, 1174,
23 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, 1198.5, 2699, 2802, and 2810.5, among others.

24 29. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
25 such as Plaintiffs, on behalf of Plaintiffs and all other aggrieved current and former employees
26 within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
27 specified in Labor Code section 2699.3.

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1 30. On or around May 6, 2022, Plaintiff Ryan provided written notice pursuant to Labor
2 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
3 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
4 as well as by certified mail, with return receipt requested to Defendants, and each of them.

5 31. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
6 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
7 calendar days of the May 6, 2022 postmarked date of the herein-described notice sent by Plaintiff
8 to the LWDA and Defendants.

9 32. On May 6, 2022, Plaintiff Ryan filed the Class Action, a putative wage-and-hour
10 class action alleging (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3)
11 Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Waiting Time Penalties;
12 (6) Wage Statement Violations; and (7) Unfair Competition.

13 33. On July 11, 2022, Plaintiff Ryan filed the PAGA Action, a separate representative
14 action in Los Angeles County Superior Court, Case No. 22STCV22280, seeking PAGA civil
15 penalties on behalf of herself and all others aggrieved.

16 34. On September 7, 2022, Plaintiff Fleming gave notice of various Labor Code
17 violations to the LWDA and to the agent for service of process for Defendants. Plaintiff Fleming
18 did not receive a response from the LWDA within the requisite statutory period.

19 35. On September 29, 2022, Plaintiff Fleming filed a class action complaint against
20 Acadia Healthcare and CTS in the United States District Court, Central District of California, Case
21 No. 8:22-cv-01791-DOC-JDE (the "Fleming Action"). Plaintiff Fleming alleged multiple violations
22 of the California Labor Code including: (1) failure to pay wages under the FLSA; (2) failure to pay
23 overtime compensation; (3) failure to pay wages for all hours worked; (4) failure to provide meal
24 periods or proper premiums; (5) failure to provide rest periods or proper premiums; (6) failure to
25 provide accurate itemized wage statements; (7) failure to pay wages due and payable twice monthly;
26 (8) failure to reimburse business expenses; (9) failure to pay wages upon termination; and (10)
27 unlawful competition and unlawful business practices.

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36. On November 15, 2022, Plaintiff Fleming filed a First Amended Complaint to include a cause of action for violation of the PAGA.

FACTUAL BACKGROUND

37. 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 Plaintiffs and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs 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 to the detriment of Plaintiffs and Class Members.

38. 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 Plaintiffs 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 Plaintiffs and Class Members.

39. 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 Plaintiffs 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.

40. 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 Plaintiffs 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.

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

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

14 43. At all relevant times mentioned herein, Defendants had and have a policy or practice
15 of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of
16 California in violation of California state wage and hour laws as a result of, without limitation,
17 Plaintiffs and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours
18 per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
19 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
20 worked; engaging, suffering, or permitting employees to work off the clock, including, without
21 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
22 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
23 answering calls from dispatch and others), to clock out for meal periods and continue working, to
24 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
25 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
26 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
27 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
28 additional compensation was earned for the purpose of calculating the overtime rate of pay;

1 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
2 less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment
3 of Plaintiffs and other Aggrieved Employees.

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

15 45. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of failing to provide Plaintiffs and other Aggrieved Employees a thirty (30) minute uninterrupted,
17 timely, and complete meal period for days on which the employee worked in excess of five (5) and
18 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
19 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
20 not providing timely meal periods; failing to provide first and second meal periods; providing short
21 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
22 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
23 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
24 employees worked, as required by California wage and hour laws.

25 46. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to provide Plaintiffs and other Aggrieved Employees paid, uninterrupted, timely, and
27 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
28 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest

1 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
2 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
3 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
4 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

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

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

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

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

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

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

22 54. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing to pay Plaintiffs and Aggrieved Employees their wages in accordance with Labor Code
24 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
25 any calendar month shall be paid for between the 16th and 26th day of the month during which the
26 labor was performed, and labor performed between the 16th and the last day, inclusive of any
27 calendar month, shall be paid for between the 1st and 10th day of the following month."

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1 55. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
3 and experience they obtained at Defendants for purposes of competing with Defendants, including,
4 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
5 a prospective employer, and from disclosing who else works at Defendants and under what
6 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
7 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
8 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
9 Code sections 232, 232.5, and 1197.5, subdivision (k).

10 56. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
11 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
12 to their managers or outside to private attorneys or government officials, among others, in violation
13 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
14 1102.5. In addition, Plaintiffs are informed and believes that Defendants' herein-described policies
15 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information
16 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
17 of Labor Code section 232 and 232.5.

18 57. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
19 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
20 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
21 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
22 subdivision (k). Plaintiffs are informed and believe that this lawful conduct includes the exercise of
23 Plaintiffs' and/or other Aggrieved Employees' constitutional rights of freedom of speech and
24 economic liberty.

25 58. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action
26 pursuant to, including but not limited to, the FLSA, 29. U.S.C. sections 201-203, 206-207, 216,
27 Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 232,
28 232.5, 246, 432, 510, 511, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5,

1 1198, 1199, 2800, 2802, 2810.5, *et al.*, and California Code of Regulations, Title 8, section 11040,
2 seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest
3 periods, waiting time penalties, wage statement penalties, failing to pay vested vacation time at the
4 proper rate of pay, other such provisions of California and federal law, and reasonable attorneys'
5 fees and costs.

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

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

16 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

17 61. Plaintiffs have knowledge that the FLSA Collective Members have also been denied
18 minimum, regular, and overtime pay for all hours worked. Plaintiffs worked with other FLSA
19 Collective Members, and as such, have personal knowledge of their existence, off-the-clock work
20 and minimum wage and overtime violations. Plaintiffs seek to represent a FLSA Collective
21 composed of and defined as:

22 **All persons who are employed or have been employed by Defendants in**
23 **the United States during any time from three years prior to the filing of**
24 **this collective action to the present, have worked as non-exempt**
25 **Counselors and related positions and any other non-exempt employees**
operating out of Defendants' clinics or centers in the United States (the
"FLSA Collective Members").

26 62. Other FLSA Collective Members worked for Defendants in a similar capacity and
27 were not paid at least the minimum wage for all hours worked and overtime at the rate of one and
28 one-half their regular rate when those hours exceeded 40 hours per workweek.

1 63. FLSA Collective Members perform or have performed the same or similar work as
2 Plaintiffs, regularly work or have worked in excess of 40 hours during a workweek and are not
3 exempt from receiving overtime pay at the federally mandated wage rate under the FLSA.

4 64. Plaintiffs estimate that Defendants have employed more than 1,000 FLSA Collective
5 Members working throughout the United States during the last three years who were paid an hourly
6 rate.

7 65. Defendants suffered or permitted such workers to work in the last three years and
8 failed to compensate them for all hours worked.

9 66. Defendants' failure to pay minimum, regular, and overtime compensation at the rate
10 required by the FLSA results from generally applicable policies or practices and does not depend
11 on the personal circumstances of the FLSA Collective Members.

12 67. The experiences of Plaintiff, with respect to their pay, are typical of the experiences
13 of the FLSA Collective Members.

14 68. The specific job titles or precise job responsibilities of the FLSA Collective Member
15 do not prevent collective treatment.

16 69. All FLSA Collective Members, irrespective of their particular job requirements, are
17 entitled to minimum, regular, and overtime compensation at the rate of time and a-half for hours
18 worked in excess of 40 during a workweek.

19 70. Although the exact amount of damages may vary among FLSA Collective Members,
20 the damages can be readily calculated by reference to Defendants' records and, if necessary,
21 representative testimony and evidence. The claims of all FLSA Collective Members arise from a
22 common nucleus of facts. Liability is based on a systematic course of wrongful conduct by the
23 Defendants that caused harm to all FLSA Collective Members.

24 71. Plaintiffs also bring this action on behalf of themselves and Class Members as a class
25 action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a class of all
26 current and former non-exempt employees of Defendants within the State of California at any time
27 commencing four (4) years preceding the filing of Plaintiffs' complaint up until the time that notice
28 of the class action is provided to the class (collectively referred to as "Class Members").

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

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

7 **A. Numerosity**

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

12 75. Accounting for employee turnover during the relevant periods necessarily increases
13 this number. Plaintiffs allege Defendants' employment records would provide information as to the
14 number and location of all Class Members. Joinder of all members of the proposed Class is not
15 practicable.

16 **B. Commonality**

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

- 19 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
20 worked at a proper overtime rate of pay?
- 21 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
22 for all other time worked at the employee's regular rate of pay and a rate of pay that
23 is greater than the applicable minimum wage?
- 24 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
25 Class Members to take compliant meal periods?
- 26 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
27 with additional wages for missed or interrupted meal periods?

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- 1 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
2 Class Members to take compliant rest periods?
- 3 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
4 with additional wages for missed rest periods?
- 5 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
6 Members upon termination or resignation all wages earned?
- 7 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
8 section 203?
- 9 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
10 Class Members with accurate wage statements?
- 11 J. Did Defendants violate the Unfair Competition Law, Business and Professions Code
12 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 13 K. Are Class Members entitled to restitution of wages under Business and Professions
14 Code section 17203?
- 15 L. Are Class Members entitled to costs and attorneys' fees?
- 16 M. Are Class Members entitled to interest?

17 **C. Typicality**

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

23 **D. Adequacy of Representation**

24 78. Plaintiffs will fairly and adequately represent and protect the interest of Class
25 Members. Counsel who represents Plaintiffs are competent and experienced in litigating wage and
26 hour class actions.

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1 as required by the FLSA, 29 U.S.C. §§ 206 and 207.

2 85. The precise number of unpaid regular and overtime hours will be proven at trial.

3 86. Plaintiffs propose to undertake appropriate proceedings to have such members of the
4 FLSA Collective aggrieved by Defendants' unlawful conduct notified of the pendency of this action
5 and to provide them with the opportunity to join this action as plaintiffs, pursuant to 29 U.S.C. §
6 216(b), by filing written consents to join with the Court.

7 87. Defendants' violations of the FLSA were willful within the meaning of the statute
8 and interpretive case law and decisions.

9 88. As a result of the foregoing, Plaintiffs seek judgment against Defendants on their
10 own behalf and on behalf of those FLSA Collective Members similarly situated who file written
11 consents to join in this action, for all unpaid wages, including overtime wages owed by Defendants
12 to Plaintiffs and the FLSA Collective Members, pursuant to 29 U.S.C. §§ 206 and 207, together
13 with an award of an additional equal amount as liquidated damages, and costs, interest, and
14 reasonable attorneys' fees, as provided for under 29 U.S.C. § 216(b).

15 **SECOND CAUSE OF ACTION**

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

17 89. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
18 preceding paragraphs as though fully set forth hereat.

19 90. At all relevant times, Plaintiffs and Class Members were employees or former
20 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
21 Wage Orders.

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

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

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

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

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

19 **THIRD CAUSE OF ACTION**

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

21 96. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
22 preceding paragraphs as though fully set forth hereat.

23 97. At all relevant times, Plaintiffs and Class Members were employees or former
24 employees of Defendants covered by Labor Code sections 1194, 1197, 1199 and applicable Wage
25 Orders.

26 98. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiffs and
27 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
28 Defendants’ control.

99. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage compensation, including interest thereon, reasonable attorney's fees, and costs of suit.” The action may be maintained directly against the employer in an employee’s name without first filing a claim with the Department of Labor Standards and Enforcement.

100. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted, underpaid, and/or modified certain employees' hours, including by requiring off-the-clock work, requiring work to be performed while on breaks, and by not properly paying employees all regular and/or overtime hours they worked and reported, and imposed difficult to attain job and scheduling requirements on Plaintiffs and Rule 23 California Class Members. This resulted in an underpayment of wages to employees over a period of time while benefitting Defendants.

101. 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 minutes actually worked at their regular rate of pay that is above the minimum wage to the detriment of Plaintiffs and Class Members.

102. As a result of Defendants' unlawful conduct, Plaintiffs 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.

103. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs 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.

FOURTH CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

104. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

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

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

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

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

19 109. By their failure to provide Plaintiffs and Class Members compliant meal periods as
20 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
21 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
22 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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

26 111. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
27 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
28 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,

1 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

2 **FIFTH CAUSE OF ACTION**

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

4 112. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
5 preceding paragraphs as though fully set forth hereat.

6 113. At all relevant times, Plaintiffs and Class Members were employees or former
7 employees of Defendants covered by applicable Wage Orders.

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

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

19 116. For four (4) years prior to the filing of the Complaint in this Action through the
20 present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete,
21 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
22 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
23 Member’s regular rate of compensation on the occasions that Class Members were not authorized
24 or permitted to take compliant rest periods.

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

1 Orders.

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

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

9 **SIXTH CAUSE OF ACTION**

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

11 120. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
12 preceding paragraphs as though fully set forth hereat.

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

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

23 123. Plaintiffs are informed and believe, and based thereon allege, that in the three (3)
24 years before the filing of the Complaint in this Action through the present, Defendants, due to the
25 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiffs and Class
26 Members all wages earned prior to resignation or termination in accordance with Labor Code
27 sections 201 or 202.

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1 124. Plaintiffs are informed and believe Defendants' failure, at times, to pay Plaintiffs and
2 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
3 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiffs
4 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
5 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
6 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
7 or resignation.

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

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

14 127. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
15 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
16 waiting time penalties, interest, and their costs of suit, as well.

17 **SEVENTH CAUSE OF ACTION**

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

19 128. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
20 preceding paragraphs as though fully set forth hereat.

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

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

1 131. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
2 before the filing of the Complaint in this Action through the present, Defendants failed to comply
3 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
4 failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that
5 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
6 all applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
8 other things.

9 132. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate
10 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
11 Plaintiffs and the other Class Members with accurate wage statements, but, at times, willfully
12 provided wage statements that Defendants knew were not accurate.

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

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **(Failure to Pay Wages at Least Twice in a Calendar Month – Against All Defendants)**

3 136. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
4 incorporate each by reference as though fully set forth hereat.

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

7 138. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
8 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
9 during which the labor was performed, and labor performed between the 16th and the last day,
10 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
11 month.”

12 139. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
13 independent and apart from, any other penalty provided in this article, every person who fails to pay
14 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
15 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
16 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
17 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
18 percent of the amount unlawfully withheld.”

19 140. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
20 before the filing of the Complaint in this Action through the present, Defendants employed policies
21 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
22 Labor Code section 204.

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

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

NINTH CAUSE OF ACTION

(Failure to Reimburse Business Expenses – Against All Defendants)

143. Plaintiffs reallege and incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

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

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

146. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: using cellular phones for work-related purposes.

147. During that time period, Plaintiffs is informed and believes, and based thereon allege that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiffs sand Class Members for those losses and/or expenditures.

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

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

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1 **TENTH CAUSE OF ACTION**

2 **(Unfair Competition and Unlawful Business Practices – Against All Defendants)**

3 150. Plaintiffs realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

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

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

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

21 154. At all times relevant hereto, from time to time, the Rule 23 California Class Members
22 have worked as employees of Defendants. The representative Plaintiffs herein and members of the
23 Rule 23 California Class have had their hours adjusted, changed, underpaid, and/or modified to not
24 reflect their actual number of hours worked per day and per pay period, including by Defendants'
25 failure to pay for all off-the-clock hours worked at the appropriate rate of pay and by requiring off-
26 the-clock work before and after work shifts.

27 155. At all times relevant hereto, from time to time, Plaintiffs and Rule 23 California Class
28 Members have been denied meal and/or rest breaks by Defendants.

1 156. Defendants, and each of them, are “persons” as defined under of Business &
2 Professions Code § 17021.

3 157. Since at least four years prior to the present Complaint filing and at all times relevant
4 hereto, by and through the conduct described herein, Defendants have engaged in unfair, unlawful
5 and fraudulent business practices, in violation of California Business & Professions Code §§ 17200,
6 et seq., and have thereby deprived Plaintiffs, and all persons in interest, of fundamental rights and
7 privileges guaranteed to all employees under California law.

8 158. Defendants own, operate and manage facilities in California which provide services
9 in California to the public as defined in Business & Professions Code §§ 17022 and 17024.

10 159. Defendants, as set forth in this Complaint, supra, engaged in false, unfair and
11 misleading business practices, consisting of acts and omissions that include, but are not limited to:

- 12 A. The fact that Defendants adjusted, altered, underpaid and/or changed time and/or pay
13 schedules to reflect that Class Members had not worked off-the-clock;
- 14 B. The fact that Defendants required non-exempt, hourly employees to work more than
15 three and a-half hour shifts without a ten minute rest period;
- 16 C. The fact that Defendants required non-exempt, hourly employees to work more than
17 5 hours in a workday and/or who worked longer than 10 hours in a workday without
18 timely, uninterrupted meal period(s) of at least 30 minutes;
- 19 D. The fact that Defendants kept no detailed records of non-exempt, hourly employees’
20 actual daily work activities, in part, to prevent Plaintiffs and Class Members from
21 recovering overtime wages from Defendants after the discovery of Defendants’
22 deceptive, fraudulent,
- 23 E. false, unfair and unlawful conduct;
- 24 F. The fact that Defendants failed to pay all earned wages to Plaintiffs and Class
25 Members all hours worked;
- 26 G. The fact that Defendants failed to pay all earned wages to Plaintiffs and Class
27 Members twice monthly for all hours worked;

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1 H. The fact that Defendants failed to pay all earned wages to Plaintiffs and Rule 23
2 California Class Members upon termination of employment; and

3 I. The fact that Defendants' activities related to their failure to disclose material and
4 relevant information constitutes violations of Business & Professions Code § 17200.

5 160. Defendants, and each of them, have underreported to state authorities, wages earned
6 by non-exempt, hourly employees and, therefore, have underpaid state taxes, employer matching
7 funds, unemployment premiums and Worker's Compensation premiums. The aforesaid conduct is
8 criminal in nature and subjects the Defendants, and each of them, to sanctions, fines and
9 imprisonment, and is actionable under of Business & Professions Code §§ 17000, et seq. and 17200,
10 et seq.

11 161. Pursuant to of Business & Professions Code §§ 17071 and 17075, the failure of
12 Defendants, and each of them, to pay overtime wages, related benefits, and employment taxes, is
13 admissible as evidence of Defendants' intent to violate Chapter 4 of the Unfair Business Trade Act.

14 162. Defendants' practices are unlawful, unfair, deceptive, untrue, and misleading. Non-
15 exempt, hourly employees, including Plaintiffs and Class Members are likely to be deceived by
16 these practices.

17 163. As a direct and proximate result of these acts and omissions, Plaintiffs, are informed
18 and believes, and based upon that information and belief alleges, that the Defendants, and each of
19 them, were able to unfairly compete with other facilities in the State of California by not paying
20 overtime and wages in violation of Business & Professions Code Chapters 4 and 5, et al. Due to
21 these unfair business practices, Defendants have been able to charge lower prices for their services
22 than the prices charged by other comparable entities doing business in the State of California.

23 164. The victims of these unfair business practices include, but are not limited to, all non-
24 exempt, hourly employees of Defendants, competitors of Defendants in the State of California, and
25 the general public.

26 165. Plaintiffs are informed and believes, and based upon that information and belief
27 allege, that Defendants, and each of them, performed the above-mentioned acts with the intent of
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1 gaining an unfair competitive advantage and thereby injuring Plaintiffs, other employees, other
2 competitors, and the general public.

3 166. By and through the conduct described above, Plaintiffs and all non-exempt, hourly
4 employees have been deprived of the right to be paid all wages earned, including meal-and-rest
5 premiums and overtime compensation earned by virtue of employment with the Defendants at
6 regular intervals, in accordance with the requirements of Labor Code §§ 200-203, 204, 226.7, 1197,
7 et seq.

8 167. By and through their unfair, unlawful and/or fraudulent business practices described
9 herein, Defendants, have obtained valuable property, money and services from Plaintiffs, and all
10 persons similarly situated, and has deprived Plaintiffs, and all non-exempt, hourly employees of
11 valuable rights and benefits guaranteed by law, all to their detriment.

12 168. Plaintiffs and Class Members have suffered injury-in-fact as a result of Defendants'
13 conduct. Moreover, Plaintiffs and Class Members have lost money as a direct result of Defendants'
14 unfair, unlawful, deceptive and fraudulent conduct.

15 169. All of the acts described herein as violations of, among other things, the FLSA,
16 California Labor Code and Industrial Welfare Commission Wage Orders, are unlawful and in
17 violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and
18 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in
19 violation of California Business & Professions Code §§ 17200, et seq.

20 170. Plaintiffs, individually, and on behalf of Class Members, are entitled to, and do seek
21 such relief as may be necessary to disgorge the profits which the Defendants have acquired, or of
22 which Plaintiffs has been deprived, by means of the above-described unfair, unlawful and/or
23 fraudulent business practices. Plaintiffs, and Class Members, are not obligated to establish
24 individual knowledge of the unfair practices of Defendants in order to recover restitution.

25 171. Plaintiffs, individually, and on behalf of Class Members, are further entitled to and
26 do seek a declaration that the above-described business practices are unfair, unlawful and/or
27 fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any
28 of the above-described unfair, unlawful and/or fraudulent business practices in the future.

1 172. Plaintiffs, individually, and on behalf of Class Members, have no plain, speedy,
2 and/or adequate remedy at law to redress the injuries suffered as a consequence of the Defendants'
3 unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or
4 fraudulent business practices described above, Plaintiffs and Class Members have suffered and will
5 continue to suffer irreparable harm unless the Defendants and each of them, are restrained from
6 continuing to engage in said unfair, unlawful and/or fraudulent business practices.

7 173. Plaintiffs also allege that if Defendants are not enjoined from the conduct set forth
8 herein above, they will continue their failure to compensate non-exempt hourly employees for off-
9 the-clock work. In addition, Defendants, and each of them, will continue to avoid paying the
10 appropriate taxes, insurance and unemployment holdings.

11 174. Plaintiffs, individually, and on behalf of Class Members, request that the Court issue
12 a preliminary and permanent injunction prohibiting Defendants, and each of them, from requiring
13 non-exempt, hourly employees from working off-the-clock.

14 175. Plaintiffs, individually, and on behalf of Class Members, also request the Court order
15 Defendants to disgorge all illegally obtained monies from failing to pay taxes, state disability
16 insurance premiums, and unemployment taxes, obtained by way of their violation of Business &
17 Professions Code § 17200, et seq.

18 176. As Plaintiffs seeks to enforce an important right affecting the public interest, to wit,
19 and the disgorgement of ill-gotten gains and the restitution of unlawfully withheld wages, with
20 interest thereon, Plaintiffs requests an award of attorneys' fees, pursuant to Code of Civil Procedure
21 § 1021.5.

22 177. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
23 Procedure section 1032 and interest under Civil Code section 3287.

24 **ELEVENTH CAUSE OF ACTION**

25 **(Civil Penalties under Labor Code Private Attorneys' General Act of 2004—Against All**
26 **Defendants)**

27 178. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the
28 preceding paragraphs as though fully set forth hereat.

1 A. Civil Penalties Under Labor Code § 210

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

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

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

22 B. Civil Penalties Under Labor Code § 226.3

23 182. Defendants had and have a policy or practice of failing to comply with Labor Code
24 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
25 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
26 wages earned; the name and address of each employer with whom they have been placed to work;
27 all applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal

1 entity securing the employer's services if the employer is a farm labor contractor; and other such
2 information as required by Labor Code section 226, subdivision (a).

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

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

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

18 186. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are
19 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
20 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
21 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
22 period for each subsequent violation.

23 C. Violation of Labor Code § 558

24 187. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
25 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
26 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
27 penalty as follows:

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- 1 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
2 pay period for which the employee was underpaid in addition to an amount sufficient
3 to recover underpaid wages;
- 4 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
5 employee for each pay period for which the employee was underpaid in addition to
6 an amount sufficient to recover underpaid wages;
- 7 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

8 188. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
9 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
10 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
11 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
12 regular payday designated by employer, the name of the employer, including any “doing business
13 as” names used, the name, address, and telephone number of the workers’ compensation insurance
14 carrier, information regarding paid sick leave, and other pertinent information.

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

20 D. Violation of Labor Code § 1174.5

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

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

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

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

18 194. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
19 willfully failed to keep adequate or accurate time records including wage statements and similar
20 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
21 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
22 under Labor Code section 1174.

23 195. As a direct and proximate result of the herein-described Labor Code violations,
24 pursuant to Labor Code section 1174.5, Plaintiffs and other Aggrieved Employees are entitled to
25 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
26 hundred dollars (\$500) per violation per Aggrieved Employee.

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1 E. Violation of Labor Code § 1197.1

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

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

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

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

22 197. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
23 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
24 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ minimum
25 wages for all hours worked or otherwise under Defendants’ control due to, without limitation,
26 routinely failing to accurately track and/or pay for all hours actually worked; detrimental rounding
27 or manipulation of time entries; paying straight pay instead of overtime or otherwise failing to pay
28 overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees to

1 work off the clock, entitling Plaintiffs and other aggrieved Employees to actual and liquidated
2 damages.

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

9 F. Civil Penalties Under Labor Code § 2699

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

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

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

1 2810.5, failing to provide Plaintiffs and other Aggrieved Employees with the amount of paid sick
2 leave required to be provided pursuant to California and local laws.

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

6 **DEMAND FOR JURY TRIAL**

7 203. Plaintiffs demand a trial by jury on all causes of action contained herein.

8 **PRAYER**

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

- 11 A. An order certifying this case as a Class Action;
- 12 B. An Order appointing Plaintiffs as Class representative and appointing Plaintiff's
13 counsel as class counsel;
- 14 C. Damages for all wages earned and owed, including minimum and overtime wages,
15 under Labor Code sections 510, 1194, 1197 and 1199;
- 16 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 17 E. Damages for unpaid premium wages from missed meal and rest periods under,
18 among other Labor Code sections, 512 and 226.7;
- 19 F. Penalties for inaccurate wage statements under Labor Code section 226(e);
- 20 G. Waiting time penalties under Labor Code sections 203;
- 21 I. Preliminary and permanent injunctions prohibiting Defendants from further violating
22 the California Labor Code and requiring the establishment of appropriate and
23 effective means to prevent future violations;
- 24 J. Restitution of wages and benefits due which were acquired by means of any unfair
25 business practice, according to proof;
- 26 K. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
27 1197.1, and 2699;

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- 1 L. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
2 210, 226.3, 558, 1174.5, 1197.1, and 2699;
3 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
4 N. For attorneys' fees in prosecuting this action;
5 O. For costs of suit incurred herein; and
6 P. For such other and further relief as the Court deems just and proper.

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8 Dated: March 7, 2025

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13 Attorneys for Plaintiffs PATRICIA J. RYAN and
14 KEVIN FLEMING on behalf of themselves and all
15 others similarly situated
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