

E-FILED
5/3/2022 4:24 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
22CV397620
Reviewed By: R. Walker

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on behalf of herself and all others similarly situated

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

22CV397620

KRISTELL TOVAR, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

CALIFORNIA SKIN INSTITUTE
MANAGEMENT, LLC., a Delaware limited
liability company; CALIFORNIA SKIN
INSTITUTE HOLDINGS, LLC, a Delaware
limited liability company; GREG S.
MORGANROTH, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3;
and
10. UNFAIR COMPETITION.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 KRISTELL TOVAR (“Plaintiff”), by and through her attorneys, and on behalf of herself and
2 all others similarly situated, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
6 CALIFORNIA SKIN INSTITUTE MANAGEMENT, LLC, and any of its respective subsidiaries
7 or affiliated companies within the State of California (“SKIN MANAGEMENT”); CALIFORNIA
8 SKIN INSTITUTE HOLDINGS, LLC, and any of its respective subsidiaries or affiliated companies
9 within the State of California (“SKIN HOLDINGS”); and GREG S. MORGANROTH
10 (“MORGANROTH” and collectively with SKIN MANAGEMENT, SKIN HOLDINGS, and DOES
11 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiff and all other current
12 and former non-exempt California employees employed by or formerly employed by Defendants
13 (“Class Members”).

14 **PARTIES**

15 **A. Plaintiff**

16 2. Plaintiff KRISTELL TOVAR is a resident of the State of California. At all relevant
17 times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed
18 Plaintiff KRISTELL TOVAR as a non-exempt employee, with duties that included, but were not
19 limited to ordering supplies, assisting clients, and assisting medical staff. Plaintiff is informed and
20 believes, and based thereon alleges that Plaintiff KRISTELL TOVAR worked for Defendants from
21 approximately August of 2017 through approximately July of 2021.

22 **B. Defendants**

23 3. Plaintiff is informed and believes and based thereon alleges that defendant SKIN
24 MANAGEMENT is, and at all times relevant hereto was, a limited liability company organized and
25 existing under and by virtue of the laws of the State of Delaware and doing business in the County
26 of Santa Clara, State of California.

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4. Plaintiff is informed and believes and based thereon alleges that defendant SKIN HOLDINGS is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware and doing business in the County of Santa Clara, State of California.

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

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include SKIN MANAGEMENT, SKIN HOLDINGS, MORGANROTH, and any of their parent, subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

JOINT LIABILITY ALLEGATIONS

7. Plaintiff is informed and believes and based thereon alleges that all the times mentioned herein, each of the Defendants was the agent, principal, employee, employer, representative, joint venture or co-conspirator of each of the other defendants, either actually or

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

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

12 9. Plaintiff is further informed and believes and based thereon alleges that
13 MORGANROTH violated, or caused to be violated, the above-referenced and below-referenced
14 Labor Code provisions in violation of Labor Code section(s) 558.1, 1197.1(a), and/or 558(a).

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

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

- 23 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
24 Defendants who personally committed the wrongful and illegal acts and violated the
25 laws as set forth in this Complaint, and who has hidden and currently hide behind the
26 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
27 other wrongful or inequitable purpose;

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- 1 B. The Individual Defendants derive actual and significant monetary benefits by and
2 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
3 Defendants as the funding source for the Individual Defendants' own personal
4 expenditures;
- 5 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
6 and the Alter Ego Defendants, while really one and the same, were segregated to
7 appear as though separate and distinct for purposes of perpetrating a fraud,
8 circumventing a statute, or accomplishing some other wrongful or inequitable
9 purpose;
- 10 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
11 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
12 mentioned herein were, so mixed and intermingled that the same cannot reasonably
13 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
14 are, and at all relevant times mentioned herein were, used by the Individual
15 Defendants as mere shells and conduits for the conduct of certain of their, and each
16 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
17 herein were, the alter egos of the Individual Defendants;
- 18 E. The recognition of the separate existence of the Individual Defendants and the Alter
19 Ego Defendants would promote injustice insofar that it would permit defendants to
20 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
21 Code, and other statutory violations. The corporate existence of these defendants
22 should thus be disregarded in equity and for the ends of justice because such
23 disregard is necessary to avoid fraud and injustice to Plaintiff herein;
- 24 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
25 Defendants (and vice versa), and the fiction of their separate corporate existence
26 must be disregarded;

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

1 **JURISDICTION**

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

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

13 **FACTUAL BACKGROUND**

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

23 16. For at least four (4) years prior to the filing of this Action and continuing to the
24 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
25 or some of them, in violation of California state wage and hour laws as a result of, among other
26 things, at times, failing to accurately track and/or pay for all minutes actually worked at their regular
27 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

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

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

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

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

24 21. For at least one (1) year prior to the filing of this action and continuing to the present,
25 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
26 amount of their wages for labor performed in a timely fashion as required under Labor Code section
27 204.

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

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

24. Plaintiff, on their own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, 2810.3, and California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, failing to pay vested vacation time at the proper rate of pay, other such provisions of California law, and reasonable attorneys' fees and costs.

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

CLASS ACTION ALLEGATIONS

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

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1 27. Plaintiff reserves 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 28. 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 29. 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, Plaintiff is informed and believes that there are over seventy-five (75) Class
11 Members employed by Defendants within the State of California.

12 30. Accounting for employee turnover during the relevant periods necessarily increases
13 this number. Plaintiff alleges 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 31. 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
20 minutes 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 fail to pay Class Members in a timely fashion as required under
12 Labor Code section 204?
- 13 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
14 losses incurred in direct consequence of the discharge of their duties or by obedience
15 to the directions of Defendants as required under Labor Code section 2802?
- 16 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
17 with compensation at their final rate of pay for vested paid vacation time.
- 18 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
19 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 20 N. Are Class Members entitled to restitution of wages under Business and Professions
21 Code section 17203?
- 22 O. Are Class Members entitled to costs and attorneys' fees?
- 23 P. Are Class Members entitled to interest?

24 **C. Typicality**

25 32. The claims of Plaintiff herein alleged are typical of those claims which could be
26 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
27 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
28 damages arising out of and caused by Defendants' common course of conduct in violation of laws

1 and regulations that have the force and effect of law and statutes as alleged herein.

2 **D. Adequacy of Representation**

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

6 **E. Superiority of Class Action**

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

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

17 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

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

46. 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 Plaintiff and Class Members.

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

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

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

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

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

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

1 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
2 of compensation for each workday that the meal period is not provided.

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

26 59. California law and applicable Wage Orders require that employers "authorize and
27 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
28 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-

1 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
2 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
3 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
4 thirty (30) minutes of paid rest period.

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

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

27 70. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
28 waiting time penalties from the date their earned and unpaid wages were due, upon termination or

1 resignation, until paid, up to a maximum of thirty (30) days.

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

5 72. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 waiting time penalties, interest, and their costs of suit, as well.

8 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

27 77. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
28 wage statements was knowing, intentional, and willful. Defendants had the ability to provide

1 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
2 provided wage statements that Defendants knew were not accurate.

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

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

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

18 **SEVENTH CAUSE OF ACTION**

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

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

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

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

1 84. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
2 independent and apart from, any other penalty provided in this article, every person who fails to pay
3 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
4 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
5 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
6 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
7 percent of the amount unlawfully withheld.”

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

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

17 87. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
18 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
19 interest, and their costs of suit, as well.

20 **EIGHTH CAUSE OF ACTION**

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

22 88. Plaintiff reallege and incorporate by reference all of the allegations contained in the
23 preceding paragraphs as though fully set forth hereat.

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

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

91. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiff 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: laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; and using cellular phones for work-related purposes.

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

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

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

NINTH CAUSE OF ACTION

(Violation of Labor Code § 227.3 – Against All Defendants)

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

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

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

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

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

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

TENTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

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

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

104. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as restitution of all wages and other monies owed to them under the Labor Code,

1 including interest thereon, in which they had a property interest and which Defendants nevertheless
2 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
3 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
4 by their failure to comply with the Labor Code.

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

7 **DEMAND FOR JURY TRIAL**

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

9 **PRAYER**

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

- 12 A. An order certifying this case as a Class Action;
- 13 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
14 counsel as class counsel;
- 15 C. Damages for all wages earned and owed, including minimum. overtime wages and
16 unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,
17 1194, 1197 and 1199 and 227.3;
- 18 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 19 E. Damages for unpaid premium wages from missed meal and rest periods under,
20 among other Labor Code sections, 512, 558.1 and 226.7;
- 21 F. Penalties for inaccurate wage statements under Labor Code sections 226,
22 subdivision (e) and 558.1;
- 23 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 24 H. Penalties to timely pay wages under Labor Code section 210;
- 25 I. Damages under Labor Code sections 2802 and 558.1;
- 26 J. Preliminary and permanent injunctions prohibiting Defendants from further
27 violating the California Labor Code and requiring the establishment of appropriate
28 and effective means to prevent future violations;

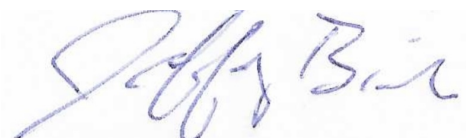
- 1 K. Restitution of wages and benefits due which were acquired by means of any unfair
2 business practice, according to proof;
3 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
4 M. For attorneys' fees in prosecuting this action;
5 N. For costs of suit incurred herein; and
6 O. For such other and further relief as the Court deems just and proper.

7 Dated: May 3, 2022

BIBIYAN LAW GROUP, P.C.

8

9

BY: 

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JEFFREY C. BILS

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DAVID D. BIBIYAN

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Attorneys for Plaintiff KRISTELL TOVAR on behalf
of herself and all others similarly situated

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