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and JOSE AGUIRRE on behalf of themselves and all others
similarly situated and aggrieved

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JOSE ANGUIANO MARTINEZ, JOSE
AGUIRRE, ISMAEL CALDERON, OSCAR
GARCIA, EFRAIN DIAZ LOPEZ,
FRANCISCO MONTES,
EMMANUEL NAVARRO CARRILLO, and
EVELYN YEANETH BOROR BANTES, on
behalf of themselves and all other similarly
situated and aggrieved,

Plaintiffs,

v.

KENYON PLASTERING, INC., a California
corporation; KENYON PLASTERING OF
VISALIA, INC., a California corporation;
KENYON PLASTERING OF FRESNO,
INC., a California corporation; KENYON
PLASTERING OF CALIFORNIA, INC. a
California corporation; KENYON
PLASTERING OF SOUTHERN
CALIFORNIA, INC., a California
corporation; KENYON PLASTERING OF
LIVERMORE, INC., a California corporation;
KENYON PLASTERING OF STOCKTON,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: CIVSB2216155

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

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

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COME NOW Plaintiffs JOSE ANGUIANO MARTINEZ (“Plaintiff ANGUIANO MARTINEZ”), JOSE AGUIRRE (“Plaintiff AGUIRRE”), ISMAEL CALDERON (“Plaintiff CALDERON”), OSCAR GARCIA (“Plaintiff GARCIA”), EFRAIN DIAZ LOPEZ (“Plaintiff LOPEZ”), FRANCISCO MONTES (“Plaintiff MONTES”), EMMANUEL NAVARRO CARILLO (“Plaintiff CARILLO”), EVELYN YEANETH BOROR BANTES (“Plaintiff BANTES”, collectively “Plaintiffs”), as individuals and on behalf of all others similarly situated and aggrieved, and allege as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against KENYON PLASTERING, INC., (“Kenyon Plastering”); KENYON PLASTERING OF VISALIA, INC. (“Kenyon of Visalia”); KENYON PLASTERING OF FRESNO, INC., (“Kenyon of Fresno”); KENYON PLASTERING OF CALIFORNIA, INC. (“Kenyon of California”); KENYON PLASTERING OF SOUTHERN CALIFORNIA, INC., (“Kenyon of So. Cal.”); KENYON PLASTERING OF LIVERMORE, INC., (“Kenyon of Livermore”); KENYON PLASTERING OF STOCKTON, INC., (“Kenyon of Stockton”); and any of their respective subsidiaries or affiliated companies within the State of California and, DOES 1 through 100, as further defined below, (collectively, “Defendants”).

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

1 **PARTIES**

2 **A. Plaintiffs**

3 3. Plaintiff JOSE ANGUIANO MARTINEZ is a resident of the State of California. At
4 all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that
5 Defendants employed Plaintiff JOSE ANGUIANO MARTINEZ as both a piece-rate non-exempt
6 employee and as an hourly non-exempt employee with duties that included, but were not limited to,
7 assisting in the building of homes. Plaintiff ANGUIANO MARTINEZ is informed and believes
8 and based thereon alleges that he worked for Defendants from approximately May of 2002 through
9 the present.

10 4. Plaintiff JOSE AGUIRRE is a resident of the State of California. At all relevant
11 times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed
12 Plaintiff JOSE AGUIRRE as both a piece-rate non-exempt employee and as an hourly non-exempt
13 employee with duties that included, but were not limited to, assisting in the building of homes.
14 Plaintiff AGUIRRE is informed and believes and based thereon alleges that he worked for
15 Defendants from approximately 2004 through approximately November of 2021.

16 5. Plaintiff ISMAEL CALDERON is a resident of the State of California. At all
17 relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants
18 employed Plaintiff ISMAEL CALDERON as both a piece-rate non-exempt employee and as an
19 hourly non-exempt employee with duties that included, but were not limited to, Lath installation.
20 Plaintiff CALDERON is informed and believes and based thereon alleges that he worked for
21 Defendants from approximately September 2005 through November 15, 2023.

22 6. Plaintiff OSCAR GARCIA is a resident of the State of California. At all relevant
23 times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed
24 Plaintiff OSCAR GARCIA as both a piece-rate non-exempt employee and as an hourly non-exempt
25 employee with duties that included, but were not limited to, Lath installation and foremanship.
26 Plaintiff GARCIA is informed and believes and based thereon alleges that he worked for Defendants
27 from approximately January of 2004 to July of 2020.

28 7. Plaintiff EFRAIN DIAZ LOPEZ is a resident of the State of California. At all

1 relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants
2 employed Plaintiff EFRAIN DIAZ LOPEZ as non-exempt employee with duties that included, but
3 were not limited to, machine operation and installation. Plaintiff LOPEZ is informed and believes
4 and based thereon alleges that he worked for Defendants from approximately 2005 to January 2023.

5 8. Plaintiff FRANCISCO MONTES is a resident of the State of California. At all
6 relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants
7 employed Plaintiff FRANCISCO MONTES as a non-exempt employee with duties that included,
8 but were not limited to machine operation and installation. Plaintiff MONTES is informed and
9 believes and based thereon alleges that he worked for Defendants from approximately February of
10 2017 through May 18 of 2023.

11 9. Plaintiff EMMANUEL NAVARRO CARRILLO is a resident of the State of
12 California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges
13 that Defendants employed Plaintiff EMMANUEL NAVARRO CARRILLO as a non-exempt
14 employee with duties that included, but were not limited to, installation. Plaintiff CARRILLO is
15 informed and believes and based thereon alleges that he worked for Defendants from approximately
16 July of 2008 through March of 2023.

17 10. Plaintiff EVELYN YEANETH BOROR BANTES is a resident of the State of
18 California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges
19 that Defendants employed Plaintiff EVELYN YEANETH BOROR BANTES as non-exempt hourly
20 non-exempt employee with duties that included, but were not limited to, general labor. Plaintiff
21 BANTES is informed and believes and based thereon alleges that he worked for Defendants from
22 approximately from July of 2021 through April of 2022.

23 **B. Defendants**

24 11. Plaintiffs are informed and believe and based thereon allege that Defendant Kenyon
25 Plastering, Inc. is, and at all times relevant hereto was, a corporation organized and existing under
26 and by virtue of the laws of the State of California and doing business in the County of San
27 Bernardino, State of California.

28 12. Plaintiffs are informed and believe and based thereon allege that defendant Kenyon

1 of Visalia, Inc. is, and at all times relevant hereto was, a corporation organized and existing under
2 and by virtue of the laws of the State of California and doing business in the County of Tulare, State
3 of California.

4 13. Plaintiffs are informed and believe and based thereon allege that defendant Kenyon
5 of Fresno, Inc. is, and at all times relevant hereto was, a corporation organized and existing under
6 and by virtue of the laws of the State of California and doing business in the County of Fresno, State
7 of California.

8 14. Plaintiff are informed and believes and based thereon allege that defendant Kenyon
9 of California, Inc. is, and at all times relevant hereto was, a corporation organized and existing under
10 and by virtue of the laws of the State of California and doing business in the County of Sacramento,
11 State of California.

12 15. Plaintiffs are informed and believe and based thereon allege that defendant Kenyon
13 of So. Cal., Inc. is, and at all times relevant hereto was, a corporation organized and existing under
14 and by virtue of the laws of the State of California and doing business in the County of San Diego,
15 State of California.

16 16. Plaintiffs are informed and believe and based thereon allege that defendant Kenyon
17 of Livermore, Inc. is, and at all times relevant hereto was, a corporation organized and existing
18 under and by virtue of the laws of the State of California and doing business in the County of
19 Alameda, State of California.

20 17. Plaintiffs are informed and believe and based thereon allege that defendant Kenyon
21 of Stockton, Inc. is, and at all times relevant hereto was, a corporation organized and existing under
22 and by virtue of the laws of the State of California and doing business in the County of San Joaquin,
23 State of California.

24 18. The true names and capacities, whether individual, corporate, associate, or otherwise,
25 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
26 who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
27 Plaintiffs are informed and believe and based thereon allege that each of the defendants designated
28 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.

1 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
2 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
3 are informed and believe, and based thereon allege, that each defendant acted in all respects pertinent
4 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
5 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
6 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
7 include Kenyon Plastering, Kenyon of Visalia, Kenyon of Fresno, Kenyon of California, Kenyon of
8 So. Cal., Kenyon of Livermore, Kenyon of Stockton, and any of their parent, subsidiary, or affiliated
9 companies within the State of California, as well as DOES 1 through 100 identified herein.

10 11 **JOINT LIABILITY ALLEGATIONS**

12 19. Plaintiffs are informed and believe and based thereon allege that all the times
13 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
14 representative, joint venture or co-conspirator of each of the other defendants, either actually or
15 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
16 employment, joint venture, and conspiracy.

17 20. All of the acts and conduct described herein of each and every corporate defendant
18 was duly authorized, ordered, and directed by the respective and collective defendant corporate
19 employers, and the officers and management-level employees of said corporate employers. In
20 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
21 their said employees, agents, and representatives, and each of them; and upon completion of the
22 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
23 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
24 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
25 aforementioned corporate employees, agents and representatives.

26 21. As a result of the aforementioned facts, Plaintiffs are informed and believe and based
27 thereon allege that Defendants, and each of them, are joint employers.

28 **JURISDICTION**

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

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

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

16 25. Plaintiffs are each an “aggrieved employee” under PAGA, as they were employed
17 by Defendants during the applicable statutory period and suffered one or more of the Labor Code
18 violations set forth herein. Accordingly, Plaintiff ANGUIANO MARTINEZ seeks to recover, on
19 behalf of himself and all other aggrieved current and former employees of Defendants, the civil
20 penalties provided by PAGA plus reasonable attorneys’ fees and costs, as the term “civil penalty”
21 is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175.

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

26 27. During the period beginning one (1) year preceding the provision of notice to the
27 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
28 Defendants violated, inter alia, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 256,

1 432, 510, 512, 558, 1174, 1194, 1197, 1198.5, 2802, and 2810.3, and 2810.5, among others.

2 28. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
3 such as Plaintiffs, on behalf of themselves and all other aggrieved current and former employees
4 within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
5 specified in Labor Code section 2699.3.

6 29. On or around June 29, 2022, Plaintiff ANGUIANO MARTINEZ provided written
7 notice under Labor Code section 2699.3 online and by certified mail, with return receipt requested,
8 of Defendants' violation of various, including the herein-described, provisions of the Labor Code,
9 to the Labor and Workforce Development Agency ("LWDA"), as well as by certified mail, with
10 return receipt requested to Defendants, and each of them.

11 30. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
12 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
13 calendar days of the June 29, 2022 postmarked date of the herein-described notice sent by Plaintiff
14 ANGUIANO MARTINEZ to the LWDA and Defendants.

15 **FACTUAL BACKGROUND**

16 31. For at least four (4) years prior to the filing of this action and continuing to the
17 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs and Class Members,
18 or some of them, in violation of California state wage and hour laws as a result of, without limitation,
19 Plaintiffs and Class Members working over eight (8) hours per day, forty (40) hours per week, and
20 seven consecutive work days in a work week without being properly compensated for hours worked
21 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
22 worked on the seventh consecutive work day in a work week by, among other things, failing to
23 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay; failing
24 to track and/or pay for all non-productive time separate from any piece-rate compensation; failing
25 to track and/or pay for all rest and recovery time separate from any piece-rate compensation;
26 engaging, suffering, or permitting employees to work off the clock; failing to include all forms of
27 remuneration, including for piece-rate compensation, non-discretionary bonuses, incentive pay,
28 meal allowances and other forms of remuneration in the calculation of the overtime rate(s);

1 detrimental rounding of employee time entries; editing and/or manipulation of time entries to show
2 less hours than actually worked; auto-deducting time for meal periods; and for paying straight pay
3 instead of overtime pay to the detriment of Plaintiffs and Class Members. In addition, Defendants
4 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

5 32. For at least four (4) years prior to the filing of this Action and continuing to the
6 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
7 or some of them, in violation of California state wage and hour laws as a result of, among other
8 things, at times, failing to accurately track and/or pay for all minutes actually worked at their regular
9 rate of pay that is above the minimum wage; failing to track and/or pay for all non-productive time
10 separate from any piece-rate compensation; failing to track and/or pay for all rest and recovery time
11 separate from any piece-rate compensation; engaging, suffering, or permitting employees to work
12 off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time
13 entries to show less hours than actually worked; and auto-deducting time for meal periods to the
14 detriment of Plaintiffs and Class Members. Defendants would also be liable for civil penalties
15 pursuant to Labor Code sections 558, 1197.1, and 2699.

16 33. For at least four (4) years prior to the filing of this Action and continuing to the
17 present, Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them,
18 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
19 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
20 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
21 for such unprovided meal periods as required by California wage and hour laws. Defendants would
22 also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

23 34. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendants have, at times, failed to authorize and permit Plaintiffs and Class Members, or
25 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
26 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
27 California wage and hour laws. Defendants would also be liable for civil penalties pursuant to Labor
28 Code sections 558 and 2699.

1 35. 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, and premium wages. Defendants would also be liable for civil penalties pursuant
6 to Labor Code sections 558 and 2699.

7 36. For at least one (1) year prior to the filing of this Action and continuing to the present,
8 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with
9 itemized wage statements that accurately reflect gross wages earned; total hours worked; total pieces
10 earned; total nonproductive time; total rest and recovery time; net wages earned; all applicable
11 hourly rates in effect during the pay period and the corresponding number of hours worked at each
12 hourly rate; all applicable piece rates in effect during the pay period and the corresponding amount
13 of pieces earned; and other such information as required by Labor Code section 226, subdivision
14 (a). As a result thereof, Defendants have further failed to furnish employees with an accurate
15 calculation of gross and net wages earned, as well as gross and net wages paid. Defendants would
16 also be liable for civil penalties pursuant to Labor Code sections 226.3, 558 and 2699.

17 37. 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 pay Plaintiffs and Class Members, or some of them, the full
19 amount of their wages for labor performed in a timely fashion as required under Labor Code section
20 204. Defendants would be liable for civil penalties pursuant to Labor Code sections 210, 558 and
21 2699.

22 38. For at least three (3) years prior to the filing of this action and continuing to the
23 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
24 costs incurred in using cellular phones for work-related purposes; purchasing tools necessary to
25 perform work duties; and mileage costs incurred in driving personal vehicles for work-related
26 purposes other than commute.

27 39. Plaintiffs, on their own behalf and on behalf of Class Members, bring this action
28 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,

1 510, 512, , 1194, 1194.2, 1197, 2802., 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, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to
4 indemnify work-related expenses, for all unpaid non-productive time and unpaid rest and recovery
5 periods separate and apart from any piece-rate compensation owed and/or earned, other such
6 provisions of California law, and reasonable attorneys' fees and costs.

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

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

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

27 43. Plaintiffs, in their representative capacity, seek civil penalties under Labor Code
28 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the

1 California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
2 Employees pursuant to PAGA.

3 **CLASS ACTION ALLEGATIONS**

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

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

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

15 **A. Numerosity**

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

20 48. Accounting for employee turnover during the relevant periods necessarily increases
21 this number. Plaintiffs allege Defendants' employment records would provide information as to the
22 number and location of all Class Members. Joinder of all members of the proposed Class is not
23 practicable.

24 **B. Commonality**

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

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

- 1 b. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
2 for all other time worked at the employee's regular rate of pay and a rate of pay that
3 is greater than the applicable minimum wage?
- 4 c. Did Defendants violate Labor Code section 512 by not authorizing or permitting
5 Class Members to take compliant meal periods?
- 6 d. Did Defendants violate Labor Code section 226.7 by not providing Class Members
7 with additional wages for missed or interrupted meal periods?
- 8 e. Did Defendants violate applicable Wage Orders by not authorizing or permitting
9 Class Members to take compliant rest periods?
- 10 f. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
11 Members upon termination or resignation all wages earned?
- 12 g. Are Defendants liable to Class Members for waiting time penalties under Labor Code
13 section 203?
- 14 h. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
15 Class Members with accurate wage statements?
- 16 i. Did Defendants violate Labor Code sections 226 and 226.2 by failing to furnish
17 employees paid on a piece-rate basis with an itemized statement that included the
18 total hours of compensable rest and recovery periods, the rate of compensation, and
19 the gross wages paid for those periods during the pay period?
- 20 j. Did Defendants violate Labor Code sections 226 and 226.2 by failing to furnish
21 employees paid on a piece-rate basis with an itemized statement that included the
22 total hours of compensable nonproductive time, the rate of compensation, and the
23 gross wages paid for those periods during the pay period?
- 24 k. Did Defendants fail to pay Class Members in a timely fashion as required under
25 Labor Code section 204?
- 26 l. Did Defendants fail to indemnify Class Members for all necessary expenditures or
27 losses incurred in direct consequence of the discharge of their duties or by obedience
28 to the directions of Defendants as required under Labor Code section 2802?

1 m. Did Defendants violate the Unfair Competition Law, Business and Professions Code
2 section 17200, *et seq.*, by their unlawful practices as alleged herein?

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

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

6 p. Are Class Members entitled to interest?

7 **C. Typicality**

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

13 **D. Adequacy of Representation**

14 51. Plaintiffs will fairly and adequately represent and protect the interest of Class
15 Members. Counsel who represents Plaintiffs is competent and experienced in litigating wage and
16 hour class actions.

17 **E. Superiority of Class Action**

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

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

28 **FIRST CAUSE OF ACTION**

(Failure to Pay Overtime Wages – Against All Defendants)

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

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

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

57. 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.”

58. At all times relevant to this Complaint, Labor Code section 226.2 was in effect and provided: “this section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period...” and “shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance.” The section further provides that the total compensation for any day in the pay period must be “no less than what is due under the applicable minimum wage and any required overtime compensation.”

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

1 productive time separate from any piece-rate compensation; failing to track and/or pay for all rest
2 and recovery time separate from any piece-rate compensation; engaging, suffering, or permitting
3 employees to work off the clock; failing to include all forms of remuneration, including for piece-
4 rate compensation, non-discretionary bonuses, incentive pay, meal allowances and other forms of
5 remuneration in the calculation of the overtime rate(s); detrimental rounding of employee time
6 entries; editing and/or manipulation of time entries to show less hours than actually worked; auto-
7 deducting time for meal periods; and for paying straight pay instead of overtime pay to the detriment
8 of Plaintiffs and Class Members.

9 60. Accordingly, by requiring Plaintiffs and Class Members to, at times, work greater
10 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
11 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
12 occasion, willfully violated the provisions of the Labor Code, among others, sections 226.2, 510,
13 1194, and applicable IWC Wage Orders, and California law. Defendants had the ability to pay all
14 overtime wages earned, including all piece-rate overtime wages earned by Plaintiffs and other
15 similarly situated and aggrieved employees, but intentionally adopted policies or practices
16 incompatible with the requirements of Labor Code sections 226.2 and 510.

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

21 **SECOND CAUSE OF ACTION**

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

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

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

27 64. Pursuant to Labor Code section 226.2, 1197, and applicable Wage Orders, Plaintiffs
28 and Class Members were entitled to receive minimum wages for all hours worked or otherwise

1 under Defendants' control.

2 65. At all relevant times, Labor Code section 226.2 was in effect and provided: "this
3 section shall apply for employees who are compensated on a piece-rate basis for any work performed
4 during a pay period..." and "shall not be construed to limit or alter minimum wage or overtime
5 compensation requirements, or the obligation to compensate employees for all hours worked under
6 any other statute or local ordinance." The section further provides that employees shall be
7 compensated for other nonproductive and rest and recovery time at an hourly rate that is no less than
8 the applicable minimum wage.

9 66. For four (4) years prior to the filing of the Complaint in this Action through the
10 present, Defendants, at times, failed to accurately track and/or pay for all minutes actually worked
11 at their regular rate of pay that is above the minimum wage; failed to track and/or pay for all non-
12 productive time separate from any piece-rate compensation; failed to track and/or pay for all rest
13 and recovery time separate from any piece-rate compensation; engaged, suffered, or permitted
14 employees to work off the clock; detrimentally rounded employee time entries; edited and/or
15 manipulated time entries to show less hours than actually worked; and auto-deducted time for meal
16 periods to the detriment of Plaintiffs and Class Members.

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

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

24 **THIRD CAUSE OF ACTION**

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

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

28 70. At all relevant times, Plaintiffs and Class Members were employees or former

1 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

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

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

8 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 89. Plaintiffs are informed and believe Defendants' failure, at times, to pay Plaintiffs and
28 Class Members all wages earned prior to termination or resignation in accordance with Labor Code

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

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

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

12 92. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
13 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
14 waiting time penalties, interest, and their costs of suit, as well.

15 **SIXTH CAUSE OF ACTION**

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

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

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

21 95. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members
22 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
23 statement that accurately reflects, among other things, gross wages earned; total hours worked; total
24 pieces earned; net wages earned; all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate; all applicable piece rates in effect during
26 the pay period and the corresponding number of pieces earned at each piece rate; and the name and
27 address of the legal entity that is the employer, among other things. Further, Labor Code 226.2
28 requires that wage statements also include the total compensation earned for piece-rate work

1 performed, total compensation earned for non-productive work performed, total compensation
2 earned for rest and recovery periods, the total hours of non-productive time worked and the rate of
3 pay therefor, the total hours of rest and recovery periods taken and the rate of pay therefor, the total
4 amount of overtime wages earned, the total hours of overtime hours worked, and the proper overtime
5 rate(s) of pay.

6 96. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
7 before the filing of the Complaint in this Action through the present, Defendants failed to comply
8 with Labor Code section 226, subdivision (a) and 226.2, subdivisions (a)(2)(A-B) by adopting
9 policies and practices that resulted in their failure, at times, to furnish Plaintiffs and Class Members
10 with accurate itemized statements that accurately reflect, among other things, gross wages earned;
11 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
12 the corresponding number of hours worked at each hourly rate; all applicable piece rates in effect
13 during the pay period and the corresponding amount of pieces worked/earned; and the name and
14 address of the legal entity that is the employer, among other things.

15 97. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate
16 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
17 Plaintiffs and the other Class Members with accurate wage statements, but, at times, willfully
18 provided wage statements that Defendants knew were not accurate.

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

26 99. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs and Class Members
27 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
28 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent

1 pay period, not to exceed an aggregate \$4,000.00 per employee.

2 100. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
3 Procedure section 1032, Civil Code section 3287, Plaintiffs and Class Members are entitled to
4 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
5 attorneys' fees, and costs of suit.

6 **SEVENTH CAUSE OF ACTION**

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

8 101. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
9 incorporate each by reference as though fully set forth hereat.

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

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

17 104. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
18 independent and apart from, any other penalty provided in this article, every person who fails to pay
19 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
20 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
21 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
22 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
23 percent of the amount unlawfully withheld.”

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

28 106. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to

1 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one
2 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
3 for each subsequent violation in connection with each payment that was made in violation of Labor
4 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

5 107. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
6 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
7 penalties, interest, and their costs of suit, as well.

8 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

22 112. During that time period, Plaintiffs are informed and believe, and based thereon allege
23 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiffs and
24 Class Members for those losses and/or expenditures.

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

28 114. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and

1 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
2 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
3 costs of suit.

4 **NINTH CAUSE OF ACTION**

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

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

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

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

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

24 119. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
25 Procedure section 1032 and interest under Civil Code section 3287.

26 **TENTH CAUSE OF ACTION**

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

28 120. Plaintiff ANGUIANO MARTINEZ realleges and incorporates by reference all of the

1 allegations contained in the preceding paragraphs as though fully set forth hereat.

2
3 Civil Penalties Under Labor Code § 210

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

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

16 123. At all relevant times herein, Defendants have had a consistent policy or practice of
17 failing to pay Plaintiff ANGUIANO MARTINEZ, Plaintiff JOSE AGUIRRE, Plaintiff ISMAEL
18 CALDERON, Plaintiff OSCAR GARCIA, Plaintiff EFRAIN DIAZ LOPEZ, Plaintiff
19 FRANCISCO MONTES, Plaintiff EMMANUEL NAVARRO CARRILLO, Plaintiff EVELYN
20 YEANETH BOROR BANTES and/or Aggrieved Employees during their employment on a timely
21 basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff
22 ANGUIANO MARTINEZ and other Aggrieved Employees are entitled to recover civil penalties
23 for Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100)
24 for each Aggrieved Employee for each initial violation per employee, and two hundred dollars
25 (\$200) for each Aggrieved Employee for each subsequent violation in connection with each payment
26 that was made in violation of Labor Code section 204.

27 Civil Penalties Under Labor Code § 226.3

28 124. Defendants had and have a policy or practice of failing to comply with Labor Code

1 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
2 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
3 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate; and other such information as required
5 by Labor Code section 226, subdivision (a).

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

11 126. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
12 this section are in addition to any other penalty provided by law.”

13 127. Plaintiff ANGUIANO MARTINEZ is informed and believes, and based thereon
14 alleges, that Defendants had and have a policy or practice of failing to furnish non-exempt
15 employees, including, without limitation, Plaintiff ANGUIANO MARTINEZ, itemized wage
16 statements that accurately reflect: reflect gross wages earned; total hours worked; net wages earned;
17 all applicable hourly rates in effect during the pay period and the corresponding number of hours
18 worked at each hourly rate; and other such information as required by Labor Code section 226,
19 subdivision (a).

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

25 Violation of Labor Code § 558

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

1 penalty as follows:

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

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

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

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

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

22 Violation of Labor Code § 1174.5

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

1 or papers of the person.”

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

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

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

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

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

28 Violation of Labor Code § 1197.1

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

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

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

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

18 139. Plaintiff ANGUIANO MARTINEZ, Plaintiff JOSE AGUIRRE, Plaintiff ISMAEL
19 CALDERON, Plaintiff OSCAR GARCIA, Plaintiff EFRAIN DIAZ LOPEZ, Plaintiff
20 FRANCISCO MONTES, Plaintiff EMMANUEL NAVARRO CARRILLO, Plaintiff EVELYN
21 YEANETH BOROR BANTES are informed and believe, and based thereon allege, that Defendants
22 caused Plaintiff ANGUIANO MARTINEZ, Plaintiff JOSE AGUIRRE, Plaintiff ISMAEL
23 CALDERON, Plaintiff OSCAR GARCIA, Plaintiff EFRAIN DIAZ LOPEZ, Plaintiff
24 FRANCISCO MONTES, Plaintiff EMMANUEL NAVARRO CARRILLO, Plaintiff EVELYN
25 YEANETH BOROR BANTES and Aggrieved Employees not to be paid minimum wages as a result
26 of Defendants, without limitation, routinely failing to pay Plaintiff ANGUIANO MARTINEZ,
27 Plaintiff JOSE AGUIRRE, Plaintiff ISMAEL CALDERON, Plaintiff OSCAR GARCIA, Plaintiff
28 EFRAIN DIAZ LOPEZ, Plaintiff FRANCISCO MONTES, Plaintiff EMMANUEL NAVARRO

1 CARRILLO, Plaintiff EVELYN YEANETH BOROR BANTES or other Aggrieved Employees' to
2 pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to
3 actual and liquidated damages.

4 140. As a direct and proximate result of the herein-described Labor Code violations,
5 pursuant to Labor Code section 1197.1, Plaintiff ANGUIANO MARTINEZ, Plaintiff JOSE
6 AGUIRRE, Plaintiff ISMAEL CALDERON, Plaintiff OSCAR GARCIA, Plaintiff EFRAIN DIAZ
7 LOPEZ, Plaintiff FRANCISCO MONTES, Plaintiff EMMANUEL NAVARRO CARRILLO,
8 Plaintiff EVELYN YEANETH BOROR BANTES and other Aggrieved Employees are entitled to
9 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
10 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
11 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
12 subsequent violation.

13 Civil Penalties Under Labor Code § 2699

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

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

26 143. Plaintiff ANGUIANO MARTINEZ, Plaintiff JOSE AGUIRRE, Plaintiff ISMAEL
27 CALDERON, Plaintiff OSCAR GARCIA, Plaintiff EFRAIN DIAZ LOPEZ, Plaintiff
28 FRANCISCO MONTES, Plaintiff EMMANUEL NAVARRO CARRILLO, Plaintiff EVELYN

1 YEANETH BOROR BANTES are informed and believe, and based thereon allege that Defendants,
2 and each of them, violated the Labor Code sections described herein, including, without limitation,
3 for the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
4 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
5 name of the employer, including any “doing business as” names used, the name, address and
6 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
7 leave, and other pertinent information required to be disclosed by Employer under Labor Code
8 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
9 sick leave required to be provided pursuant to California and local laws.

10 144. Moreover, Plaintiff ANGUIANO MARTINEZ, Plaintiff JOSE AGUIRRE, Plaintiff
11 ISMAEL CALDERON, Plaintiff OSCAR GARCIA, Plaintiff EFRAIN DIAZ LOPEZ, Plaintiff
12 FRANCISCO MONTES, Plaintiff EMMANUEL NAVARRO CARRILLO, Plaintiff EVELYN
13 YEANETH BOROR BANTES and other Aggrieved Employees within the State of California
14 whom they seek to represent are entitled to an award of reasonable attorneys’ fees and costs in
15 connection with their herein-described claims for civil penalties.

16 **DEMAND FOR JURY TRIAL**

17 145. Plaintiffs demand a trial by jury on all causes of action contained herein.

18 **PRAYER**

19 WHEREFORE, on behalf of Plaintiffs and Class Members, Plaintiffs pray for judgment
20 against Defendants as follows:

- 21 A. An order certifying this case as a Class Action;
- 22 B. An Order appointing Plaintiffs as Class representatives and appointing Plaintiffs’
23 counsel as Class Counsel;
- 24 C. Damages for all wages earned and owed, including minimum overtime wages
25 under Labor Code sections 510, 1194, 1197, and 1199;
- 26 D. Liquidated damages pursuant to Labor Code sections 1194.2;
- 27 E. Damages for unpaid premium wages from missed meal and rest periods under,
28 among other Labor Code sections, 512 and 226.7;

- 1 F. Penalties for inaccurate wage statements under Labor Code sections 226,
2 subdivision (e) and 226.2;
- 3 G. Waiting time penalties under Labor Code sections 203
- 4 H. Penalties to timely pay wages under Labor Code section 210;
- 5 I. Damages under Labor Code sections 2802;
- 6 K. Preliminary and permanent injunctions prohibiting Defendants from further
7 violating the California Labor Code and requiring the establishment of appropriate
8 and effective means to prevent future violations;
- 9 L. Restitution of wages and benefits due which were acquired by means of any unfair
10 business practice, according to proof;
- 11 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 12 N. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
13 1174.5, 1197.1, and 2699;
- 14 O. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
15 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 16 P. For attorneys' fees in prosecuting this action;
- 17 Q. For costs of suit incurred herein; and
- 18 R. For such other and further relief as the Court deems just and proper.

19
20 Dated: December 4, 2024

BIBIYAN LAW GROUP, P.C.

21
22 BY: /s/ Vedang Patel

23 VEDANG PATEL

24 DIEGO AVILES

DAVID D. BIBIYAN

25 Attorneys for Plaintiffs on behalf of themselves
26 and all others similarly situated and aggrieved.
27
28

1 Dated: December 4, 2024

KYLE TODD, P.C.

2

3

BY: /s/ Kyle Todd

4

KYLE TODD

5

Attorney for Plaintiffs on behalf of themselves and
others similarly situated and aggrieved.

6

7

Dated: December 4, 2024

ELKIN GAMBOA, LLP

8

9

BY: /s/ Michael Elkin

10

MICHAEL ELKIN

11

JESSICA GAMBOA

12

Attorney for Plaintiffs on behalf of themselves and
others similarly situated and aggrieved.

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16

Dated: December 4, 2024

LAW OFFICES OF FARRAH MIRABEL

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BY: /s/ Farrah Mirabel

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FARRAH MIRABEL

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Attorney for Plaintiffs on behalf of themselves and
others similarly situated and aggrieved.

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