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7 and all others similarly situated and aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10
11 SHELINA DIN, an individual, and on behalf
12 of all others similarly situated and aggrieved,

13 Plaintiff,

14 v.

15 NOBILITY HEALTH, INC., a California
16 corporation; SILVA MORADI, an individual;
and DOES 1 through 100, inclusive,

17 Defendants.
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CASE NO.: 22STCV26623

[Assigned to the Hon. David S. Cunningham
III in Dept. 11]

**FIRST 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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff SHELINA DIN (“Plaintiff”), on behalf of herself, and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against NOBILITY HEALTH, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“NOBILITY HEALTH”); SILVA MORADI, an individual (“MORADI”) and, with DOES 1 through 100, as further defined below, (“Defendants”), on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

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

PARTIES

A. Plaintiff

3. Plaintiff SHELINA DIN is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, testing patients for COVID-19 Virus, serving patients, testing students and testing staff. Plaintiff is informed and believes, and based thereon alleges, that she worked for Defendants from approximately June of 2021 through approximately February of 2022.

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1 **B. Defendants**

2 4. Plaintiff informed and believes, and based thereon alleges, that defendant
3 NOBILITY HEALTH is, and at all times relevant hereto was, a corporation organized and existing
4 under and by virtue of the laws of the State of California, and doing business in the County of Los
5 Angeles, State of California. At all relevant times herein, NOBILITY HEALTH employed Plaintiff
6 and similarly situated employees within the State of California.

7 5. Plaintiff is informed and believes and based thereon alleges that defendant MORADI
8 is, and at all times relevant hereto was, an individual residing in California, as well as Chief
9 Executive Officer, for NOBILITY HEALTH, and DOES 1 through 100, as further defined below.
10 Plaintiff is further informed and believes and based thereon alleges that MORADI violated, or
11 caused to be violated, the above-referenced and below-referenced Labor Code provisions in
12 violation of Labor Code section 558.1

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

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1 **JOINT LIABILITY ALLEGATIONS**

2 7. Plaintiff is informed and believes, and based thereon alleges, that all times mentioned
3 herein, each of the Defendants was the agent, principal, employee, employer, representative, joint
4 venture or co-conspirator of each of the other defendants, either actually or ostensibly, and in doing
5 the things alleged herein, acted within the course and scope of such agency, employment, joint
6 venture and conspiracy.

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

16 9. Plaintiff is further informed and believes and based thereon alleges that MORADI
17 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
18 provisions in violation of Labor Code section 558.1.

19 10. Plaintiff is informed and believes, and based thereon alleges, that there exists such as
20 unity of interest and ownership between Defendants, and each of them, that their individuality and
21 separateness have ceased to exist.

22 11. Plaintiff is informed and believes, and based thereon alleges that despite the
23 formation of the purported corporate existence of NOBILITY HEALTH, and DOES 1 through 50,
24 inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same with MORADI
25 and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to,
26 the following reasons:

- 27 a. The Alter Ego Defendants are completely dominated and controlled by the Individual
28 Defendants who personally committed the wrongful and illegal acts and violated the

1 laws as set forth in this Complaint, and who has hidden and currently hide behind the
2 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
3 other wrongful or inequitable purpose;

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

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

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

22 e. The recognition of the separate existence of the Individual Defendants and the Alter
23 Ego Defendants would promote injustice insofar that it would permit defendants to
24 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
25 Code, and other statutory violations. The corporate existence of these defendants
26 should thus be disregarded in equity and for the ends of justice because such
27 disregard is necessary to avoid fraud and injustice to Plaintiff herein;
28

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

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

6 **JURISDICTION**

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

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

18 15. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
19 Defendants during the applicable statutory period and suffered one or more of the Labor Code
20 violations set forth herein. Accordingly, Plaintiff seek to recover civil penalties, as the term “civil
21 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
22 Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”),
23 plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
24 employees of Defendants during the Civil Penalty Period.

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

17. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.3, and 2810.5, among others.

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

19. On or around July 13, 2022, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

20. Plaintiff also provided Defendants, and each of them, with notice under Labor Code section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage and hour violations under Labor Code section 2810.3 on July 13, 2022, by certified mail with return receipt requested.

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

FACTUAL BACKGROUND

22. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff, Class Members, and other Aggrieved Employees in the State of California, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff, Class Members, and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of,

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

14 23. 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 minimum wages to Plaintiff, Class Members, and
16 other Aggrieved Employees in the State of California, or some of them, in violation of California
17 state wage and hour laws as a result of, among other things, at times, failing to accurately track
18 and/or pay for all minutes actually worked; by requiring employees: to remain on call; to suffer
19 under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after
20 clocking out (including answering calls from dispatch and others), to clock out for meal periods and
21 continue working, to don and doff uniforms and/or safety equipment off the clock, to attend
22 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
23 of employee time entries, editing and/or manipulation of time entries to show less hours than
24 actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and failing
25 to pay split shift premiums, to the detriment of Plaintiff, Class Members, and other Aggrieved
26 Employees.

27 24. For at least four (4) years prior to the filing of this Action and continuing to the
28 present, Defendants have, at times, failed to provide Plaintiff, Class Members, and other Aggrieved

1 Employees in the State of California, or some of them, full, timely thirty (30) minute uninterrupted
2 meal period for days on which they worked more than five (5) hours in a work day and a second
3 thirty (30) minute uninterrupted meal period for days on which they worked in excess of ten (10)
4 hours in a work day, and failing to provide compensation for such unprovided meal periods,
5 including, without limitation, by interrupting meal periods; not providing timely meal periods;
6 failing to provide first and second meal periods; providing short meal periods; requiring that
7 employees carry cellular telephones or walkie-talkies during meal periods; not permitting
8 employees to leave the premises; otherwise requiring on-duty/on-call meal periods; or auto-
9 deducting meal periods that could not be auto-deducted by law or during which employees worked,
10 as required by California wage and hour laws

11 25. For at least four (4) years prior to the filing of this action and continuing to the
12 present, Defendants have, at times, failed to authorize and permit Plaintiff, Class Members, and
13 other Aggrieved Employees in the State of California, or some of them, to take rest periods of at
14 least ten (10) minutes per four (4) hours worked or major fraction thereof and failed to provide
15 compensation in lieu thereof, including, without limitation, by failing to provide rest periods all
16 together; requiring that they be bundled together and/or with meal periods; interrupting them;
17 requiring that employees carry cellular telephones or walkie-talkies during rest periods not
18 providing them in a timely fashion; and not permitting employees to leave the premises; or otherwise
19 requiring on-duty/on-call rest periods, as required by California wage and hour laws.

20 26. For at least three (3) years prior to the filing of this action and continuing to the
21 present, Defendants have, at times, failed to pay Plaintiff, Class Members, and other Aggrieved
22 Employees in the State of California, or some of them, the full amount of their wages owed to them
23 upon termination and/or resignation as required by Labor Code sections 201 and 202, including for,
24 without limitation, failing to pay overtime wages, minimum wages, and premium wages.

25 27. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
27 Plaintiff, Class Members, and other Aggrieved Employees in the State of California with itemized
28 wage statements that accurately reflect gross wages earned; total hours worked by the employee;

1 net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee; the legal name of the
3 employer and/or the name and address of the legal entity securing the employer's services if the
4 employer is a farm labor contractor; and other such information as required by Labor Code section
5 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
6 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

7 28. 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 pay Plaintiff, Class Members, and other Aggrieved Employees
9 in the State of California, or some of them, the full amount of their wages for labor performed in a
10 timely fashion as required under Labor Code section 204.

11 29. For at least three (3) years prior to the filing of this action and continuing to the
12 present, Defendants have, at times, failed to indemnify Plaintiff, Class Members, and other
13 Aggrieved Employees in the State of California, or some of them, for the costs incurred in using
14 cellular phones for work-related purposes.

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

22 31. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of failing to timely pay Plaintiff, Class Members, and other Aggrieved Employees in the State of
24 California, among other wages, all wages owed as a result of Defendants' practice or policy of
25 failing to pay, among other wages, overtime wages, minimum wages, premium wages, paid time off
26 and vacation time owed as required by Labor Code sections 201, 202, and 203.

27 32. At all relevant times herein, Defendants had and have a policy or practice of failing
28 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon

1 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
2 and applicable Wage Orders.

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

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

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

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

1 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th
2 day of the following month.”

3 37. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to furnish and use safety devices and safeguards. And adopt and use practices, means,
5 methods, operations and processes which are reasonably adequate to render such employment and
6 place of employment safe and healthful, pursuant to, including but not limited to, Labor Code
7 section 6401. At all relevant times mentioned herein, Defendants had and have a policy or practice
8 of requiring or permitting employees to go or be in any employment or place of employment which
9 is not safe and healthful, pursuant to Labor Code section 6402. At all relevant times mentioned
10 herein, Defendants had and have a policy or practice of failing or neglecting to: provide and use
11 safety devices and safeguards reasonably adequate to render the employment and place of
12 employment safe; adopt and use methods and processes reasonably adequate to render the
13 employment and place of employment safe; and do every other thing reasonably necessary to protect
14 the life, safety, and health of employees, pursuant to Labor Code section 6403. Plaintiff is informed
15 and believes, and based thereon alleges that these failures include, without limitation, failing to
16 disinfect time clocks and other surfaces after use by Plaintiff and/or other Aggrieved Employees;
17 failing to provide adequate protection equipment to Plaintiff and/or other Aggrieved Employees;
18 and failing to provide adequate distance in working conditions between Plaintiff and/or other
19 Aggrieved Employees.

20 38. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of failing to give sufficient, adequate and proper notice to Plaintiff and other Aggrieved Employees
22 of the Covid-19 exposure within one business day of receiving notice of potential Covid-19
23 workplace exposure from a qualifying individual as required by Labor Code section 6409.6. Plaintiff
24 is informed and believes that numerous employees contracted Covid-19 during the relevant time
25 periods, but that Defendants failed to provide notice to employees. Plaintiff is additionally informed
26 and believes that Defendants do not or did not keep adequate records of written notifications
27 required in subdivision (a) for a period of at least three years.

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1 39. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing within one business day after Defendants or a representative of Defendants received notice
3 of potential exposure to COVID-19 to provide written notice to Plaintiff and other Aggrieved
4 Employees, or their exclusive representatives, who were on the premises at the same worksite as a
5 qualifying individual who was within the infectious period that they may have been exposed to
6 COVID-19. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants had and has a practice or policy of failing within one business day after Defendants or
8 a representative of Defendants received a notice of potential exposure to COVID-19 to provide
9 Plaintiff and other Aggrieved Employees who were on the premises at the same worksite as the
10 qualifying individual within the infectious period and the exclusive representative, if any, with
11 information regarding COVID-19-related benefits to which the employee may be entitled under
12 applicable federal, state, or local laws, including, but not limited to, workers' compensation, and
13 options for exposed employees, including COVID-19-related leave, company sick leave, state
14 mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation
15 and antidiscrimination protections of the employee. Plaintiff is informed and believes, and based
16 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

17 40. At all relevant times mentioned herein, Defendants had and have a policy or practice
18 of failing within one business day after Defendants or a representative of Defendants received a
19 notice of potential exposure to COVID-19 to notify Plaintiff and other Aggrieved Employees who
20 were on the premises at the same worksite as the qualifying individual within the infectious period,
21 and the employers of subcontracted employees who were on the premises at the same worksite as
22 the qualifying individual within the infectious period and the exclusive representative, if any, of the
23 cleaning and disinfection plan that the employer is implementing per the guidelines of the federal
24 Centers for Disease Control and Prevention and the COVID-19 prevention program per the Cal-
25 OSHA COVID-19 Emergency Temporary Standards. Plaintiff is informed and believes, and based
26 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

27 41. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to notify the local public health agency in the jurisdiction of the worksite of the names,

1 number, occupation, and worksite of employees who had a laboratory-confirmed case of COVID19,
2 as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed
3 health care provider; a COVID-19-related order to isolate provided by a public health official; or
4 died due to COVID-19, in the determination of a county public health department or per inclusion
5 in the COVID-19 statistics of a county. Plaintiff is informed and believes, and based thereon alleges,
6 that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

7 42. Plaintiff is informed and believes, and based thereon alleges that Defendants violated
8 sections 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily accessible
9 sanitation facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure
10 it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable
11 cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets to be used
12 by each sex of employee.

13 43. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
15 and experience they obtained at Defendants for purposes of competing with Defendants, including,
16 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
17 a prospective employer, and from disclosing who else works at Defendants and under what
18 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
19 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
20 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
21 Code sections 232, 232.5, and 1197.5, subdivision (k).

22 44. Defendants had and have a policy or practice of preventing Plaintiff and/or other
23 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
24 to their managers or outside to private attorneys or government officials, among others, in violation
25 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
26 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
27 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
28 about unsafe or discriminatory working conditions, or about wage and hour violations in violation

1 of Labor Code section 232 and 232.5.

2 45. Defendants had and have a policy or practice of preventing Plaintiff and/or other
3 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
4 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
5 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
6 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
7 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
8 economic liberty.

9 46. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
10 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
11 510, 512, 558.1, 1194, 1194.2, 1197, 2802, 2810.3, et al., and California Code of Regulations, Title
12 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
13 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
14 failure to indemnify work-related expenses, and other such provisions of California law, and
15 reasonable attorneys' fees and costs.

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

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

26 **CLASS ACTION ALLEGATIONS**

27 49. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
28 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current

1 and former non-exempt employees of Defendants within the State of California at any time
2 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
3 of the class action is provided to the class (collectively referred to as "Class Members").

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

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

10 **A. Numerosity**

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

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

19 **B. Commonality**

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

- 22 a. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
23 hours worked at a proper overtime rate of pay?
- 24 b. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to
25 pay for all other time worked at the employee's regular rate of pay and a rate of
26 pay that is greater than the applicable minimum wage?
- 27 c. Did Defendants violate Labor Code section 512 by not authorizing or permitting
28 Class Members to take compliant meal periods?

- 1 d. Did Defendants violate Labor Code section 226.7 by not providing Class
2 Members with additional wages for missed or interrupted meal periods?
- 3 e. Did Defendants violate applicable Wage Orders by not authorizing or permitting
4 Class Members to take compliant rest periods?
- 5 f. Did Defendants violate Labor Code section 226.7 by not providing Class
6 Members with additional wages for missed rest periods?
- 7 g. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
8 Members upon termination or resignation all wages earned?
- 9 h. Are Defendants liable to Class Members for waiting time penalties under Labor
10 Code section 203?
- 11 i. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
12 Class Members with accurate wage statements?
- 13 j. Did Defendants fail to pay Class Members in a timely fashion as required under
14 Labor Code section 204?
- 15 k. Did Defendants fail to indemnify Class Members for all necessary expenditures
16 or losses incurred in direct consequence of the discharge of their duties or by
17 obedience to the directions of Defendants as required under Labor Code section
18 2802?
- 19 l. Did Defendants violate the Unfair Competition Law, Business and Professions
20 Code section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 21 m. Are Class Members entitled to restitution of wages under Business and
22 Professions Code section 17203?
- 23 n. Are Class Members entitled to costs and attorneys' fees?
- 24 o. Are Class Members entitled to interest?

25 **C. Typicality**

26 55. The claims of Plaintiff herein alleged are typical of those claims which could be
27 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
28 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and

1 damages arising out of and caused by Defendants' common course of conduct in violation of laws
2 and regulations that have the force and effect of law and statutes as alleged herein.

3 **D. Adequacy of Representation**

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

7 **E. Superiority of Class Action**

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

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

18 **FIRST CAUSE OF ACTION**

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

20 59. Plaintiff realleges and incorporate by reference all of the allegations contained in the
21 preceding paragraphs as though fully set forth hereat.

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

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

1 employee.”

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

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

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

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

22 **SECOND CAUSE OF ACTION**

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

24 66. Plaintiff realleges and incorporate by reference all of the allegations contained in the
25 preceding paragraphs as though fully set forth hereat.

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

28 68. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and

1 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
2 Defendants' control.

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

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

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

14 **THIRD CAUSE OF ACTION**

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

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

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

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

26 75. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
27 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
28 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate

1 of compensation for each workday that the meal period is not provided.

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

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

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

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

19 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

25 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

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

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

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

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

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

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

/ / /

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

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

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

SEVENTH CAUSE OF ACTION

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

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

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

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

107. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay

1 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
2 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
3 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
4 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
5 percent of the amount unlawfully withheld.”

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

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

15 110. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
16 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
17 interest and their costs of suit, as well.

18 **EIGHT CAUSE OF ACTION**

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

20 111. Plaintiff realleges and incorporates by reference all of the allegations contained in the
21 preceding paragraphs of this First Amended Complaint as though fully set forth hereon.

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

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

27 114. For three (3) years prior to the filing of the Complaint in this Action through the
28 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,

1 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
2 obedience to the directions of Defendants that included, without limitation using cellular phones for
3 work-related purposes.

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

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

10 117. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
11 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
12 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
13 costs of suit.

14 **NINTH CAUSE OF ACTION**

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

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

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

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

26 121. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
27 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
28 Code and requiring the establishment of appropriate and effective means to prevent further

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

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

8 **TENTH CAUSE OF ACTION**

9 **(Civil Penalties under Labor Code Private Attorneys General Act of 2004 –**

10 **Against All Defendants)**

11 **Civil Penalties Under Labor Code § 210**

12 123. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
13 incorporate each by reference as though fully set forth hereat.

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

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

26 126. At all relevant times herein, Defendants have had a consistent policy or practice of
27 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
28 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other

1 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor
2 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
3 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
4 for each subsequent violation in connection with each payment that was made in violation of Labor
5 Code section 204.

6 Civil Penalties Under Labor Code § 226.3

7 127. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
8 incorporate each by reference as though fully set forth hereat.

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

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

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

24 131. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
25 and have a policy or practice of failing to furnish non-exempt employees, including, without
26 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
27 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
28 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal

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

4 132. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
5 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
6 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
7 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
8 period for each subsequent violation.

9 Violation of Labor Code § 558

10 133. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
11 incorporate each by reference as though fully set forth hereat.

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

- 16 (a) For any initial violation, fifty dollars (\$50) for each underpaid employee and
17 for each pay period for which the employee was underpaid in addition to an
18 amount sufficient to recover underpaid wages;
- 19 (b) For each subsequent violation, one hundred dollars (\$100) for each underpaid
20 employee for each pay period for which the employee was underpaid in
21 addition to an amount sufficient to recover underpaid wages;
- 22 (c) Wages recovered pursuant to this section shall be paid to the affected
23 employee."

24 135. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
25 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
26 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
27 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
28 regular payday designated by employer, the name of the employer, including any "doing business

1 as” names used, the name, address, and telephone number of the workers’ compensation insurance
2 carrier, information regarding paid sick leave, and other pertinent information.

3 136. As a direct and proximate result of the herein-described Labor Code violations,
4 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
5 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
6 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
7 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

8 Violation of Labor Code § 1174.5

9 137. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
10 incorporate each by reference as though fully set forth hereat.

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

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

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

1 earned.”

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

7 142. Plaintiff is informed and believes, and based thereon, alleges that Defendants have
8 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
9 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
10 inspection of records as required by Labor Code subdivision (b).

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

15 Violation of Labor Code § 1197.1

16 144. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
17 incorporate each by reference as though fully set forth hereat.

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

- 24 (1) For any initial violation that is intentionally committed, one hundred dollars
25 (\$100) for each underpaid employee for each pay period for which the
26 employee is underpaid. This amount shall be in addition to an amount
27 sufficient to recover underpaid wages, liquidated damages pursuant to Section
28 1194.2, and any applicable penalties imposed pursuant to Section 203.

1 (2) For each subsequent violation for the same specific offense, two hundred fifty
2 dollars (\$250) for each underpaid employee for each pay period for which the
3 employee is underpaid regardless of whether the initial violation is
4 intentionally committed. This amount shall be in addition to an amount
5 sufficient to recover underpaid wages, liquidated damages pursuant to Section
6 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

10 146. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
11 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
12 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
13 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
14 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
15 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
16 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
17 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

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

24 Civil Penalties Under Labor Code § 2699

25 148. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
26 incorporate each by reference as though fully set forth hereat.

27 149. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
28 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed

1 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
2 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of himself or herself and other current or former
4 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

11 151. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
12 of them, violated the Labor Code sections described herein, including, without limitation, for the
13 failure to: pay the rates of pay and overtime rates of pay applicable to their employment, allowances
14 claimed as part of the minimum wage, the regular payday designated by Defendants, the name of
15 the employer, including "doing business as" names used, the name, address, and telephone number
16 of the workers' compensation insurance carrier, information regarding paid sick leave, and other
17 pertinent information required to be disclosed by Defendants under Labor Code section 2810.5,
18 failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick leave
19 required to be provided pursuant to California and local laws.

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

23 **DEMAND FOR JURY TRIAL**

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

25 **PRAYER**

26 WHEREFORE, on behalf of himself, Class Members and Aggrieved Employees, Plaintiff
27 prays for judgment against Defendants as follows:

28 A. An Order certifying this case as a Class Action;

- 1 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
2 counsel as class counsel;
- 3 C. Damages for all wages earned and owed, including minimum overtime wages and
4 unpaid wages for vested vacation time, under Labor Code sections 510, 558.1, 1194,
5 1197 and 1199;
- 6 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 7 E. Damages for unpaid premium wages from missed meal and rest periods under,
8 among other Labor Code sections, 512, 558.1 and 226.7;
- 9 F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision
10 (e) and 558.1;
- 11 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 12 H. Penalties to timely pay wages under Labor Code section 210;
- 13 I. Damages under Labor Code section 2802 and 558.1;
- 14 J. Preliminary and permanent injunction(s) prohibiting Defendants from further
15 violating the California Labor Code and requiring the establishment of appropriate
16 and effective means to prevent further violations;
- 17 K. Restitution of wages and benefits due which were acquired by means of any unfair
18 business practice, according to proof;
- 19 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
20 1197.1, and 2699;
- 21 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
22 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 23 N. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- 24 O. For costs of suit incurred herein;
- 25 P. For reasonable attorneys' fees; and
- 26 Q. For such other and further relief as the Court deems just and proper.
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Dated: April 10, 2024

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