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7 on behalf of himself and all others similarly situated and aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 ESTEBAN RIOS, an individual and on behalf
11 of all others similarly situated,

12 Plaintiff,

13 v.

14 SVIH MANAGEMENT, LLC, a Delaware
15 limited liability company; JEFFREY KLEIN,
an individual, and DOES 1 through 100,
16 inclusive,

17 Defendants.

CASE NO.: 22STCV19301

[Assigned for all purposes to the Hon. Stuart Rice in
Dept. 1]

**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. VIOLATION OF LABOR §227.3;
 10. UNFAIR COMPETITION; AND
 11. 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]

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

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against SVIH MANAGEMENT, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“SVIH”) and JEFFREY KLEIN (“MR.KLEIN and collectively 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, 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 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 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”).

PARTIES

A. Plaintiff

3. Plaintiff ESTEBAN RIOS is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon allege that Defendants employed Plaintiff ESTEBAN RIOS as a non-exempt employee, with duties that included, but were not limited to, placing orders, clearing tables, arranging furniture for events, and serving guests. Plaintiff is informed and believes and based thereon allege that Plaintiff ESTEBAN RIOS worked for Defendants from approximately April of 2021 through approximately October of 2021.

1 **B. Defendants**

2 4. Plaintiff is informed and believes and based thereon allege that defendant SVIH is,
3 and at all times relevant hereto was, a limited liability company organized and existing under and
4 by virtue of the laws.

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

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

24 **JOINT LIABILITY ALLEGATIONS**

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

1 employment, joint venture, and conspiracy.

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

11 9. Plaintiff is further informed and believes and based thereon alleges that MR KLEIN
12 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
13 provisions in violation of Labor Code section 558.1.

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

17 11. Plaintiff is informed and believes, and based thereon allege that despite the formation
18 of the purported corporate existence of SVIH, and DOES 1 through 50, inclusive (the “Alter Ego
19 Defendants”), they, and each of them, are one and the same with MR. KLEIN and DOES 51 through
20 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following reasons:

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

26 B. The Individual Defendants derive actual and significant monetary benefits by and
27 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego
28 Defendants as the funding source for the Individual Defendants’ own personal

1 expenditures;

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

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

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

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

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

26 **JURISDICTION**

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

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

9 15. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
10 Defendants during the applicable statutory period and suffered one or more of the Labor Code
11 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other
12 aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus
13 reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under ZB N.A. v. Superior
14 Court (2019) 8 Cal.5th 175.

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

19 17. During the period beginning one (1) year preceding the provision of notice to the
20 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
21 Defendants violated, inter alia, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 256,
22 432, 510, 512, 558, 1174, 1194, 1197, 1198.5, 2802, and 2810.3, and 2810.5, among others.

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

27 19. On or around August 5, 2022, Plaintiff provided written notice under Labor Code
28 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation

1 of various, including the herein-described, provisions of the Labor Code, to the Labor and
2 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
3 requested to Defendants, and each of them.

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

8 21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
9 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
10 calendar days of the August 5, 2022, postmarked date of the herein-described notice sent by
11 Plaintiffs to the LWDA and Defendants.

12 **FACTUAL BACKGROUND**

13 22. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
15 some of them, in violation of California state wage and hour laws as a result of, without limitation,
16 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
17 seven consecutive work days in a work week without being properly compensated for hours worked
18 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
19 worked on the seventh consecutive work day in a work week by, among other things, failing to
20 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the
21 detriment of Plaintiff and Class Members. In addition, Defendants would also be liable for civil
22 penalties pursuant to Labor Code sections 558 and 2699.

23 23. For at least four (4) years prior to the filing of this Action and continuing to the
24 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
25 or some of them, in violation of California state wage and hour laws as a result of, among other
26 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
27 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.
28 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1,

1 and 2699.

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

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

15 26. For at least three (3) years prior to the filing of this action and continuing to the
16 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
17 full amount of their wages owed to them upon termination and/or resignation as required by Labor
18 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
19 minimum wages, premium wages. Defendants would also be liable for civil penalties pursuant to
20 Labor Code sections 558 and 2699.

21 27. For at least one (1) year prior to the filing of this Action and continuing to the present,
22 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
23 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
24 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at each hourly rate; and other such information as required by Labor Code section
26 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
27 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.
28 Defendants would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558 and

1 2699.

2 28. For at least one (1) year prior to the filing of this action and continuing to the present,
3 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
4 amount of their wages for labor performed in a timely fashion as required under Labor Code section
5 204. Defendants would be liable for civil penalties pursuant to Labor Code sections 210, 558 and
6 2699.

7 29. For at least three (3) years prior to the filing of this action and continuing to the
8 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
9 costs incurred in purchasing mandatory work uniforms; laundering mandatory work uniforms; and
10 using cellular phones for work-related purposes.

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

15 31. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
16 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204 226, 226.7,
17 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, 2802 *et al.*, and California Code of Regulations, Title
18 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
19 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
20 failure to indemnify work-related expenses, failing to pay vested vacation time at the proper rate of
21 pay, other such provisions of California law, and reasonable attorneys' fees and costs.

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

28 / / /

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

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

14 35. At all relevant times mentioned herein, Defendants had and have a policy or practice
15 of preventing Plaintiff and other Aggrieved Employees from using or disclosing the skills,
16 knowledge and experience they obtained at Defendants for purposes of competing with Defendants,
17 including, without limitation, preventing Plaintiff and Aggrieved Employees from disclosing their
18 wages in negotiating a new job with a prospective employers, and from disclosing who else works
19 at Defendants and under what circumstances that they might be receptive to an offer from a rival
20 employers, in violation of Labor Code sections 232, 232.5, and 1197.5. Plaintiff is informed and
21 believes that this policy or practice is continuing to this day and presently prevents Plaintiff and
22 other Aggrieved Employees from disclosing or discussing their wages.

23 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to give sufficient, adequate and proper notice to employees of the Covid-19 exposure
25 within one business day of receiving notice of potential Covid-19 workplace exposure from a
26 qualifying individual as required by Labor Code section 6409.6. Additionally, Plaintiff is informed
27 and believes that Defendants had and have a practice or policy of failing within one business day
28 after Defendants or a representative of Defendants received a notice of potential exposure to

COVID-19 to provide written notice to Plaintiff and other aggrieved employees, or their exclusive representatives, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19, in further violation of Labor Code section 6432.

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

CLASS ACTION ALLEGATIONS

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

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

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

A. Numerosity

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

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

1 practicable.

2 **B. Commonality**

3 43. There are questions of law and fact common to Class Members. These common
4 questions include, but are not limited to:

- 5 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
6 worked at a proper overtime rate of pay?
- 7 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
8 for all other time worked at the employee's regular rate of pay and a rate of pay that
9 is greater than the applicable minimum wage?
- 10 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
11 Class Members to take compliant meal periods?
- 12 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
13 with additional wages for missed or interrupted meal periods?
- 14 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
15 Class Members to take compliant rest periods?
- 16 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
17 with additional wages for missed rest periods?
- 18 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
19 Members upon termination or resignation all wages earned?
- 20 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
21 section 203?
- 22 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
23 Class Members with accurate wage statements?
- 24 J. Did Defendants fail to pay Class Members in a timely fashion as required under
25 Labor Code section 204?
- 26 K. 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 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
2 with compensation at their final rate of pay for vested paid vacation time.

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

5 N. Are Class Members entitled to restitution of wages under Business and Professions
6 Code section 17203?

7 O. Are Class Members entitled to costs and attorneys' fees?

8 P. Are Class Members entitled to interest?

9 **C. Typicality**

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

15 **D. Adequacy of Representation**

16 45. Plaintiff will fairly and adequately represent and protect the interest of Class
17 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
18 hour class actions.

19 **E. Superiority of Class Action**

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

26 47. Class action treatment will allow Class Members to litigate their claims in a manner
27 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
28 any difficulties that are likely to be encountered in the management of this action that would

1 preclude its maintenance as a class action.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

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

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

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

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

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

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

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

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

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

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

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

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

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

2 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

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

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

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

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

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

81. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and 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 Plaintiff
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 82. Pursuant to Labor Code section 203, Plaintiff 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 83. As a result of Defendants' unlawful conduct, Plaintiff 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 84. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
13 1021.5 and 1032, and Civil Code section 3287, Plaintiff 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 85. Plaintiff realleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs as though fully set forth hereat.

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

21 87. Pursuant to Labor Code section 226, subdivision (a), Plaintiff 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; net
24 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
26 employer; among other things.

27 88. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
28 before the filing of the Complaint in this Action through the present, Defendants failed to comply

1 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
2 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
3 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
4 all applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate; and the name and address of the legal entity that is the employer; among
6 other things.

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

28 99. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and

1 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
2 interest, and their costs of suit, as well.

3 **EIGHTH CAUSE OF ACTION**

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

5 100. Plaintiff reallege and incorporate by reference all of the allegations contained in the
6 preceding paragraphs as though fully set forth hereat.

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

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

12 103. For three (3) years prior to the filing of the Complaint in this Action through the
13 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
14 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
15 obedience to the directions of Defendants that included, without limitation: purchasing mandatory
16 work uniforms; laundering mandatory work uniforms; using cellular phones for work-related
17 purposes.

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

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

24 106. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
25 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
26 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
27 costs of suit.

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1 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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

25 **TENTH CAUSE OF ACTION**

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

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

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

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

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

17 117. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
18 Procedure section 1032 and interest under Civil Code section 3287.

19 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

Civil Penalties Under Labor Code § 226.3

122. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees with itemized wage statements that accurately reflect: reflect 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 other such information as required by Labor Code section 226, subdivision (a).

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

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

3 125. Plaintiffs are informed and believe, and based thereon allege, that Defendants had
4 and have a policy or practice of failing to furnish non-exempt employees, including, without
5 limitation, Plaintiffs, itemized wage statements that accurately reflect: reflect gross wages earned;
6 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
7 the corresponding number of hours worked at each hourly rate; and other such information as
8 required by Labor Code section 226, subdivision (a).

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

14 Violation of Labor Code § 558

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

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

26 128. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
27 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
28 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime

1 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
2 regular payday designated by Employer, the name of the employer, including any “doing business
3 as” names used, the name, address and telephone number of the workers’ compensation insurance
4 carrier, information regarding paid sick leave, and other pertinent information.

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

10 Violation of Labor Code § 1174.5

11 130. 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.”

18 131. 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.”

21 132. 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.”

2 133. 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).

7 134. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
8 willfully failed keep adequate or accurate time records including wage statements and similar
9 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
10 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
11 under Labor Code section 1174.

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

16 Violation of Labor Code § 1197.1

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

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

28 / / /

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

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

10 137. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
11 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
12 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
13 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
14 and liquidated damages.

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

21 Civil Penalties Under Labor Code § 2699

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

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

7 141. Plaintiffs are informed and believe, and based thereon allege that Defendants, and
8 each of them, violated the Labor Code sections described herein, including, without limitation, for
9 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
10 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
11 name of the employer, including any “doing business as” names used, the name, address and
12 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
13 leave, and other pertinent information required to be disclosed by Defendants under Labor Code
14 section 2810.5, failing to provide Plaintiff and other aggrieved employees with the amount of paid
15 sick leave required to be provided pursuant to California and local laws, failing to provide notice to
16 Plaintiff and other aggrieved employees, including local health officials, regarding potential
17 exposure to COVID-19, and prohibiting employees from using or disclosing the skills, knowledge
18 and experience they obtained from Defendants for purposes of competing with Defendants.

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

22 **DEMAND FOR JURY TRIAL**

23 143. Plaintiff demands a trial by jury on all causes of action contained herein.

24 **PRAYER**

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

27 A. An order certifying this case as a Class Action;

28 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s

- 1 counsel as class counsel;
- 2 C. Damages for all wages earned and owed, including minimum. overtime wages and
- 3 unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,
- 4 1194, 1197 and 1199 and 227.3;
- 5 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 6 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 7 among other Labor Code sections, 512, 558.1 and 226.7;
- 8 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 9 subdivision (e) and 558.1;
- 10 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 11 H. Penalties to timely pay wages under Labor Code section 210;
- 12 I. Damages under Labor Code sections 2802 and 558.1;
- 13 K. Preliminary and permanent injunctions prohibiting Defendants from further
- 14 violating the California Labor Code and requiring the establishment of appropriate
- 15 and effective means to prevent future violations;
- 16 L. Restitution of wages and benefits due which were acquired by means of any unfair
- 17 business practice, according to proof;
- 18 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 19 N. An award for civil penalties pursuant to Labor Code sections 210, 226.3, 558,
- 20 1174.5, 1197.1, and 2699;
- 21 O. 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 P. For attorneys' fees in prosecuting this action;
- 24 Q. For costs of suit incurred herein; and
- 25 R. For such other and further relief as the Court deems just and proper.

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Dated: December 29, 2022

BIBIYAN LAW GROUP, P.C.

BY: /s/ Diego Aviles
DIEGO AVILES
Attorneys for Plaintiff ESTEBAN RIOS on behalf of
himself and all others similarly situated and aggrieved

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On December 29, 2022, I served the following document(s) described as **FIRST AMENDED COMPLAINT** on the interested in this action listed below via electronic service through Case Anywhere:

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Counsel for Defendants

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on December 29, 2022 at Beverly Hills, California.

/s/ Jasmin Rodriguez
Jasmin Rodriguez