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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES COUNTY

MACSIMINA ARIAS, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

THE VARIEL SERVICES, LLC., a California
limited liability company; MOMENTUM
SENIOR LIVING LLC a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 22STCV40826

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT AND ACCURATE RECORD KEEPING VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT;
8. FAILURE TO PAY REPORTING TIME WAGES;
9. SECRETLY PAYING LOWER WAGE AND UNLAWFULLY COLLECTING PAID WAGES;
10. UNLAWFUL CONDITIONS FOR EMPLOYMENT AND BACKGROUND CHECKS;
11. FAILURE TO ALLOW INSPECTION

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AND RECEIPT OF PERSONNEL
RECORDS;

12. VIOLATION OF LABOR CODE § 2802;

13. VIOLATION OF LABOR CODE § 227.3;

14. UNFAIR COMPETITION; and

15. COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER 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, MACSIMINA ARIAS (“Plaintiff”), on behalf of Plaintiff and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against THE VARIEL SERVICES, LLC (“VARIEL”), a California limited liability company; MOMENTUM SENIOR LIVING LLC (“MOMENTUM SENIOR LIVING”), a California limited liability company; and DOES 1 through 100, inclusive, and any of its respective subsidiaries or affiliated companies within the State of California (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 from four (4) years before the filing of the original Class Complaint through the resolution of the action (“Class Members”). This action also includes an individual and representative cause of action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”), against Defendants on behalf of Plaintiff and all other employees of Defendants working 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”), (“Aggrieved Employees”).

PARTIES

A. Plaintiff

2. Plaintiff, MACSIMINA ARIAS is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendant employed Plaintiff, MACSIMINA ARIAS as a non-exempt employee, with duties that included, but were not limited to assisting residents with activities of daily living. Plaintiff is informed and believes, and based thereon allege that Plaintiff, MACSIMINA ARIAS worked for Defendants from approximately March of 2022 through approximately September of 2022.

B. Defendants

3. Plaintiff is informed and believes and based thereon allege that Defendant, VARIEL

1 is, and at all times relevant hereto was, a limited liability company organized and existing under and
2 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
3 State of California

4 4. Plaintiff is informed and believes and based thereon alleges that Defendant,
5 MOMENTUM SENIOR LIVING, is, and at all times relevant hereto was, a corporation organized
6 and existing under and by virtue of the laws of the State of California and doing business in the
7 County of Los Angeles, State of California.

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

21 **JOINT LIABILITY ALLEGATIONS**

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

27 7. All of the acts and conduct described herein of each, and every corporate defendant

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

9 8. Plaintiff is informed and believes, and based thereon alleges, that despite the
10 formation of the purported corporate existence of Variel, Momentum Senior Living, and DOES 1
11 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same
12 with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
13 the following reasons:

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

18 b) The Individual Defendants derive actual and significant monetary benefits by and
19 through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as the
20 funding source for the Individual Defendants’ own personal expenditures;

21 c) Plaintiff is informed and believes, and thereon alleges, that the Individual Defendants
22 and the Alter Ego Defendants, while really one and the same, were segregated to appear as though
23 separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing
24 some other wrongful or inequitable purpose;

25 d) Plaintiff is informed and believes, and thereon alleges, that the business affairs of the
26 Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned herein
27 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are
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1 inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
2 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
3 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
4 herein were, the alter egos of the Individual Defendants;

5 e) The recognition of the separate existence of the Individual Defendants from the Alter
6 Ego Defendants would promote injustice insofar that it would permit these defendants to insulate
7 themselves from liability to Plaintiffs for violations to the Civil Code, Government Code, and other
8 statutory violations. The corporate existence of these defendants should thus be disregarded in
9 equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to
10 Plaintiff herein;

11 f) Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
12 Defendants (and vice versa), and the fiction of their separate corporate existence must be
13 disregarded.

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

16 **JURISDICTION**

17 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
18 of Civil Procedure section 410.10.

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

1 12. This is a representative action, pursuant to the Labor Code Private Attorneys General
2 Act of 2004, codified at Labor Code section 2698, Act of 2004, codified at Labor Code section
3 2698, *et seq.* (“PAGA”), against The Variel Services, LLC, a California limited liability company,
4 and any of its respective subsidiaries or affiliated companies within the State of California
5 (“Variel”), and Momentum Senior Living LLC, a California limited liability company, and any of
6 its respective subsidiaries or affiliated companies within the State of California (“Momentum Senior
7 Living”) (collectively, and with DOES 1 through 100, as further defined below, “Defendants”), as a
8 proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
9 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
10 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for
11 failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section
12 226, Labor Code section 227.3, Labor Code section 245, *et seq.*, Labor Code section 2802, restraints
13 on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants
14 working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

15 13. Jurisdiction exists in the Superior Court of the State of California Pursuant to Code
16 of Civil Procedure section 410.10.

17 14. Venue is Proper in Los Angeles County, California pursuant to Code of Civil
18 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
19 causes of action complained of herein arose; the county in which the employment relationship
20 began; the county in which performance of the employment contract, or part of it, between Plaintiffs,
21 or some of them, and Defendants was due to be performed; the county in which the employment
22 contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in
23 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
24 effect on Plaintiffs and Aggrieved Employees in Los Angeles County, and because Defendants
25 employ numerous Aggrieved Employees in Los Angeles County.

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

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

10 17. During the period beginning one (1) year preceding the provision of notice to the
11 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
12 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 221,
13 223, 226, 226 (a), 226(e), 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 516, 558,
14 1102.5, 1174, 1174.5, 1182, 1182.11-1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.3,
15 1198.5, 2699, 2802, 2810.5, 6409.6, and applicable wage orders among others.

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

20 19. On or around December 28, 2022, Plaintiff provided written notice pursuant to Labor
21 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
22 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
23 as well as by certified mail, with return receipt requested to Defendants, and each of them.

24 20. Pursuant to Labor Code section 2699.3, subdivision(a)(2)(A), the LWDA did not
25 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
26 calendar days of the December 28, 2022, postmarked date of the herein-described notice sent by
27 Plaintiff to the LWDA and Defendants.

21. On or around July 21, 2025, Plaintiff amended the December 28, 2022 PAGA notice and 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.

22. 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 21, 2025, postmarked date of the herein-described amended notice sent by Plaintiff to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

23. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other of failing to pay overtime wages, including double time, to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff 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, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, including walking time and time spent waiting, to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to walk a long distance back to clock-in after breaks without compensation for this walking time, to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, to receive and respond to text message and phone calls off the clock; failing to calculate

1 an accurate regular rate of pay by failing to include all forms of remuneration, including non-
2 discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration when
3 calculating an employee's regular rate of pay; failing to pay an accurate regular rate for overtime
4 compensation during the pay periods where overtime was worked and the additional compensation
5 was earned; detrimental rounding of employee time entries, editing and/or manipulation of time
6 entries to show less hours than actually worked, and for paying straight pay instead of overtime pay
7 (including double time), to the detriment of Plaintiff and other Aggrieved Employees. Employer
8 knew or should have known that because of these company-wide practices and/or policies,
9 Employee and other aggrieved employees were not paid for all hours worked.

10 24. At all relevant times mentioned herein, Defendants had and have a practice or policy
11 of failing of failing to compensate Plaintiff and other Aggrieved Employees with all wages,
12 including minimum wages for all hours worked or otherwise under Defendants' control as a result
13 of, without limitation, failing to accurately track and/or pay for all minutes actually worked;
14 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
15 by requiring employees: to remain on- call; to come early to work and leave late work without being
16 able to clock in for all that time, including walking time and time spent waiting, to suffer under
17 Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking
18 out (including answering calls from dispatch and others), to walk a long distance back to clock-in
19 after breaks without compensation for this walking time, to clock out for meal periods and continue
20 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
21 clock, to attend company meetings off the clock, to make phone calls or drive off the clock; to
22 receive and respond to text message and phone calls off the clock, detrimental rounding of employee
23 time entries, editing and/or manipulation of time entries to show less hours than actually worked;
24 failing to pay reporting time pay; paid time off and vacation time owed; and failing to pay split shift
25 premiums, to the detriment of Plaintiff and other Aggrieved Employees. In addition, Employee and
26 other aggrieved employees were required to report to work, and did report, but were not put to work
27 and/or were furnished less than half their usual or scheduled day's work without being paid for half
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1 the usual or scheduled work at their regular rate of pay. Employee alleges that Employees showed
2 up for work, were not provided work, and were not paid for reporting time.

3 25. Employee is informed and believes that Employer had and has a policy or practice
4 failing of punishing, discharging, and/or retaliating against Employee and employees for refusing
5 to work hours exceeding those permitted by the Industrial Welfare Commission in violation of Labor
6 Code sections 1198 and 1198.3 and applicable Wage Order.

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

17 27. At all relevant times mentioned herein, Defendants had and have a policy or practice
18 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
19 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
20 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
21 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
22 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
23 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
24 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

25 At all relevant times mentioned herein, as a result of, among other things, Employer's herein-
26 described policy or practice of failing to: accurately record time, including all time worked
27 (including, but not limited to, off-the-clock, meal periods, rounding, editing, and/or manipulation of
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1 time entries and auto-deduction of meal periods); failing to pay overtime and minimum wages;
2 provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods;
3 as described above, Employee is informed and believes, and based thereon alleges, that Defendants
4 had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a)
5 by intentionally failing to furnish Plaintiff and other Aggrieved Employees with itemized wage
6 statements that accurately reflect gross wages earned; total hours worked by the employee; net
7 wages earned; all deductions; all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee; the legal name of the
9 employer and/or the name and address of the legal entity securing the employer's services if the
10 employer is a farm labor contractor; and other such information as required by Labor Code section
11 226, subdivision (a). Employer intentionally failed to furnish employees with timely and compliant
12 itemized wage statements that accurately reflect the hours worked by Employee and other aggrieved
13 employees and the rates of pay at which they were or should have been paid (including due to failure
14 to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and
15 paid at each rate, as well. Employer also failed to correctly list all applicable hourly rates in effect
16 during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period
17 premiums, in violation of section 226(a)(9).

18 28. At all times mentioned herein, Defendants had and have a policy or practice of failing
19 to keep and provide adequate or accurate time records including compliant wage statements and
20 similar payroll documents under Labor Code section 226, subdivision (a) by intentionally failing to
21 furnish Plaintiff and other Aggrieved Employees with documents signed to obtain or hold
22 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,
23 and time records under Labor Code section 1174, making it difficult for Plaintiff and other
24 Aggrieved Employees to calculate their unpaid wages and/or premium payments, to the detriment
25 of Plaintiff and other Aggrieved Employees. Employer also failed to provide these documents to
26 Employee and other aggrieved employees upon request. As a result of not having kept accurate
27 records, Employee and aggrieved employees suffered injuries in the form of confusion over whether
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1 they received all wages owed to them, and difficulty and expense in reconstructing pay records in
2 addition to other injuries which may come to light during the discovery process.

3 29. At all relevant times herein, Employee is informed and believes, and based thereon
4 alleges, that Employer also failed and refused, and continue to fail and refuse, to timely pay
5 compensation to Employee and other terminated, resigned, or departing employees, either at the time
6 of discharge, or within seventy-two (72) hours of their leaving their employment, including but not
7 limited to, all accrued wages, unpaid and earned, all overtime wages owed; all minimum wages owed;
8 and all premium pay owed as set out above, including, without limitation, for failure to pay at the
9 proper regular rate of pay, among other things.

10 30. At all relevant times herein, Employee is informed and believes, and based thereon
11 alleges, that Employer has or had a policy or practice of unlawfully deducting wages by issuing in
12 payment of wages due, or to become due, or as an advance on wages to be earned: an order, check,
13 draft, note, memorandum, gift card, or other acknowledgement of indebtedness, (unless it was
14 negotiable and payable in cash, on demand, without discount, at some established place of business
15 in the state), the name and address of which must but did not appear on the instrument, and at the
16 time of its issuance and for a reasonable time thereafter, which must be but was not at least 30 days,
17 the maker or drawer did not have sufficient funds in, or credit, arrangement, or understanding with
18 the drawee for its payment or any scrip, coupon, cards, or other thing redeemable, in merchandise
19 or purporting to be payable or redeemable otherwise than in money.

20 31. At all relevant times herein, Defendants had and have a policy or practice of failing
21 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time and other
22 compensation owed upon separation of employment as wages at their final rate of pay in violation
23 of Labor Code section 227.3 and applicable Wage Orders.

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

6 33. At all relevant times mentioned herein, Defendants have had a policy or practice of
7 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
8 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
9 Employees with 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. Employee is informed and believes that failure to provide such information,
15 including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay
16 that were not agreed upon and violate minimum wage and overtime wage laws in California.
17 Employee is additionally informed and believes that the notice requirement of Labor Code section
18 2810.5 involves a mandatory payroll or workplace injury reporting.

19 34. 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 and local laws, to the detriment
23 of Plaintiff and all other Aggrieved Employees. Employee is further informed and believes that the
24 sick pay was not provided at the accurate regular of pay as required under California law due to
25 failure to properly calculate the regular rate.

26 35. At all relevant times mentioned herein, Defendants have had a policy or practice of
27 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
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1 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
2 any calendar month shall be paid for between the 16th and 26th day of the month during which the
3 labor was performed, and labor performed between the 16th and the last day, inclusive of any
4 calendar month, shall be paid for between the 1st and 10th day of the following month.” Employee
5 is informed and believes and based thereon alleges that Employer did not and do not pay Employee
6 and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum
7 wages, and/or meal and rest period premiums in accordance with Labor Code Section 204.

8 36. Employee is informed and believes, and based thereon alleges that Employer had and
9 has a policy of failing to provide all temporary workers with owed wages weekly by not later than
10 the regular payday of the following week. As a result, pursuant to Labor Code section 201.3,
11 Employer would be liable for civil penalties pursuant to Labor Code sections 201.3.

12 37. Employee is informed and believes, and based thereon alleges that Employer had and
13 has a policy or practice of failing to provide all working employees with suitable seats when the
14 nature of the work reasonably permits the use of seats. Employee is further informed and believes,
15 and based thereon alleges that Employer has failed to place an adequate number of seats in
16 reasonable proximity to the work area and/or permitted employees to use such seats when it does
17 not interfere with the performance of their duties when employees are not engaged in the active
18 duties of their employment and the nature of their work requires standing.

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

1 39. Defendants had and have a policy or practice of preventing Plaintiff and/or other
2 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
3 to their managers or outside to private attorneys or government officials, among others, in violation
4 of Business and Professions Code section 17200 et seq., and, thus, in violation of Labor Code section
5 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
6 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
7 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
8 of Labor Code section 232 and 232.5.

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

16 41. Employee is informed and believes, and based thereon alleges that Employer had and
17 has a policy or practice of failing to furnish and use safety devices and safeguards. And adopt and
18 use practices, means, methods, operations and processes which are reasonably adequate to render
19 such employment and place of employment safe and healthful, pursuant to, including but not limited
20 to, Labor Code section 6401. Employee is informed and believes, and based thereon alleges that
21 Employer had and has a policy or practice of requiring or permitting employees to go or be in any
22 employment or place of employment which is not safe and healthful, pursuant to Labor Code section
23 6402. Employee is informed and believes, and based thereon alleges that Employer had and has a
24 policy or practice of failing or neglecting to: provide and use safety devices and safeguards
25 reasonably adequate to render the employment and place of employment safe; adopt and use
26 methods and processes reasonably adequate to render the employment and place of employment
27 safe; and do every other thing reasonably necessary to protect the life, safety, and health of
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1 employees, pursuant to Labor Code section 6403. Employee is informed and believes, and based
2 thereon alleges that these failures include, without limitation, failing to disinfect time clocks and
3 other surfaces after use by Employee and/or other aggrieved employees; failing to provide adequate
4 protection equipment to Employee and/or other aggrieved employees; and failing to provide
5 adequate distance in working conditions between Employee and/or other aggrieved employees.

6 42. Employee is informed and believes, and based thereon alleges that Employer had and
7 has a policy or practice of failing to give sufficient, adequate and proper notice to employees of the
8 Covid-19 exposure within one business day of receiving notice of potential Covid-19 workplace
9 exposure from a qualifying individual as required by Labor Code section 6409.6. Employee is
10 informed and believes that numerous employees contracted Covid-19 during the relevant time
11 periods, but that Employer failed to provide notice to employees. Employee is additionally informed
12 and believes that Defendant does not or did not keep adequate records of written notifications
13 required in subdivision (a) for a period of at least three years.

14 43. Employee is informed and believes, and based thereon alleges that Employer violated
15 section 1527, 3366, 3457 and 8397.4 by failing to provide adequate and readily accessible sanitation
16 facilities; a regular schedule for servicing, cleaning, and supplying each facility to ensure it is
17 maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing
18 agents, water, single-use towels or blowers; and a sufficient number of toilets to be used by each
19 sex of employee.

20 44. Employee is further informed and believes, and based thereon alleges that Employer
21 had and has a policy or practice of requiring, as a condition of employment, its applicants or
22 employees to waive any right, forum, or procedure for a violation of any provision of the California
23 Fair Employment and Housing Act or the Labor Code, including the right to file and pursue a civil
24 action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law
25 enforcement agency, or any court or other governmental entity of any alleged violation, in violation
26 of Labor Code section 432.6. Employee is additionally informed and believes that Employer knew
27 that requiring such a condition was prohibited by law. Accordingly, for violations of Labor Code
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1 sections 432.5 and 432.6, Employee and aggrieved employees are entitled to attorneys' fees, an
2 injunction, as well as civil penalties pursuant to Labor Code section 2699.

3 45. Employee is informed and believes, and based thereon alleges, that Employer had
4 and has a practice or policy of conducting unlawful background checks on prospective and current
5 employees prior to making a conditional offer. Employee is informed and believes, and based
6 thereon alleges, that Employer violated applicable laws by, without limitation: requiring job
7 applicants and employees to disclose their conviction history before Employer made a conditional
8 offer of employment; inquiring into or considering the conviction history of applicants before
9 Employer made any conditional offers of employment; considering, distributing, or disseminating
10 information about arrests not followed by conviction, referrals to or participation in a pretrial or
11 posttrial diversion program, convictions that have been sealed, dismissed, expunged, or statutorily
12 eradicated pursuant to law, or any conviction for which the convicted person has received a full
13 pardon or has been issued a certificate of rehabilitation, while conducting conviction history
14 background checks in connection with any applications for employment; intending to deny an
15 applicant a position of employment solely or in part because of the applicant's conviction history;
16 and asking applicants for employment to disclose, through any written form or verbally, information
17 concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or
18 court disposition that occurred while the person was subject to the process and jurisdiction of the
19 juvenile court, to the detriment of Employee and other aggrieved employees. As such, Employee is
20 informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor
21 Code section 432.7 and Government Code section 12952, entitling Employee and other aggrieved
22 employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code
23 sections 432.7, 432.8, and 2699.

24 46. Employee is informed and believes, and based thereon alleges, that Employer had
25 and has a practice or policy of relying on the salary history information of an applicant for
26 employment as a factor in determining whether to offer employment to an applicant or what salary
27 to offer the applicant in violation of Labor Code section 432.3 by including, on Employer's
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1 application for employment, an inquiry regarding current and/or former salary history information,
2 including, without limitation, compensation and benefits of the applicant for employment. As such,
3 Employee is informed and believes, and based thereon alleges, that Employer violated, without
4 limitation, Labor Code section 432.3 entitling Employee and other aggrieved employees to
5 damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.3
6 and 2699.

7 47. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
8 Code sections 201.3, 210, 202, 203, 210, 226, 226.3, 432.3, 432.7, 432.8, 558, 1174.5, 1197, 1197.1,
9 and 2699 for the herein-described acts, which violate the California Labor Code as described above,
10 including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

11 **FACTUAL BACKGROUND**

12 48. For at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendants have, at times, failed to pay overtime wages, including double time, to Plaintiff
14 and Class Members, or some of them, in violation of California state wage and hour laws.
15 Defendants failed to pay for all time spent working off-the-clock, including but not limited to, off-
16 the-clock, walking time, time spent waiting, donning and doffing, meal periods, rounding, editing
17 and/or manipulation of time entries, and auto-deduction of meal periods. For example, when
18 Plaintiff and other non-exempt employees arrive for their shifts they must walk all the way to the
19 back of the building to clock in. This walking time is unpaid and off-the-clock. Moreover, to ensure
20 that Plaintiff and other non-exempt employees are clocking-in on time, they must arrive several
21 minutes before the start of their shifts and wait to clock in. Plaintiff and other non-exempt employees
22 also receive off-the-clock texts and phone calls after their shift hours. Some of this off-the-clock
23 time should have been paid at the overtime rate of pay.

24 49. Defendants have failed and continue to fail to pay all overtime wages, as a result of,
25 without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40)
26 hours per week, and seven consecutive work days in a work week without being properly
27 compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per
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1 week in a work week, and/or hours worked on the seventh consecutive work day in a work week
2 by, among other things, failing to accurately track and/or pay for all minutes actually worked at the
3 proper overtime rate of pay to the detriment of Plaintiff and Class Members.

4 50. For at least four (4) years prior to the filing of this Action and continuing to the
5 present, Defendants have, at times, failed to pay all wages, including minimum wages to Plaintiff
6 and Class Members, or some of them, in violation of California state wage and hour laws as a result
7 of, among other things, at times, failing to accurately track and/or pay for all hours actually worked
8 at their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class
9 Members. Further, Defendants failed to provide reporting time pay. Moreover, Defendants
10 implemented policies that prevented Plaintiff and Class Members from being compensated for all
11 accrued PTO upon termination.

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

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

23 53. For at least three (3) years prior to the filing of this action and continuing to the
24 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
25 full amount of their wages owed to them upon termination and/or resignation as required by Labor
26 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
27 minimum wages, premium wages, meal/rest period premiums, and/or vacation pay pursuant to

1 Labor code section 227.3.

2 54. 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 furnish Plaintiff and Class Members, or some of them, with
4 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
5 earned; all applicable hourly rates in effect during the pay period, including rates of pay for overtime
6 wages and/or meal and rest period premiums, and the corresponding number of hours worked at
7 each hourly rate; and other such information as required by Labor Code section 226, subdivision
8 (a). As a result thereof, Defendants have further failed to furnish employees with an accurate
9 calculation of gross and gross wages earned, as well as gross and net wages paid. Because
10 Defendants failed to provide the correct net and gross wages earned, applicable rates of pay, and
11 number of total hours worked on wage statements, Plaintiff and Class Members have been prevented
12 from verifying, solely from information on the wage statements themselves, that they were paid
13 correctly and in full. Instead, Plaintiff and Class Members have had to look to sources outside of the
14 wage statements themselves and reconstruct time records to determine whether in fact they were
15 paid correctly and the extent of underpayment, thereby causing them injury.

16 55. For at least one (1) year prior to the filing of this action and continuing to the present,
17 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
18 amount of their wages for labor performed in a timely fashion as required under Labor Code section
19 204, including, but not limited to, minimum wages, and rest period premiums.

20 56. 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 indemnify Class Members, or some of them, for the
22 costs incurred in purchasing and/or providing unreturned deposits for mandatory work uniforms;
23 laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles
24 for work-related purposes; and using cellular phones for work-related purposes.

25 57. For at least three (3) years prior to the filing of the action and continuing to the
26 present, Defendants have, at times, failed to return interest on deposits made by Plaintiff and Class
27 Members, or some of them, for uniforms.

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

59. Plaintiff, on their own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 221, 223, 226, 226(a), 226.7, 404, 227.3, 500 510, 512, 516, 1174, 1182, 1194, 1194.2, 1197, 1198, 1198.3, 2802., the applicable wage orders, and California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, failure to pay interest on deposits made, other such provisions of California law, and reasonable attorneys' fees and costs.

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

CLASS ACTION ALLEGATIONS

61. 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 through the resolution of the action (collectively referred to as "Class Members").

62. 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.

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

4 **A. Numerosity**

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

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

13 **B. Commonality**

14 66. There are questions of law and fact common to Class Members. These common
15 questions include, but are not limited to:

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

2 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
3 Members upon termination or resignation all wages earned?

4 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
5 section 203?

6 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
7 Class Members with accurate wage statements?

8 J. Did Defendants violate Labor Code section 1174 by not keeping accurate records?

9 K. Did Defendants fail to timely pay wages during the employment of Class Members?

10 L. Did Defendants fail to pay reporting time pay to Class Members when Class
11 Members reported to work and were sent home before working half of their shift?

12 M. Did Defendants secretly pay a lower wage and/or unlawfully collect wages from
13 employees that were previously paid to the same employees?

14 N. Did Defendants subject applicants and current employees to unlawful conditions for
15 employment, such as requiring a waiver of rights or unlawful background checks?

16 O. Did Defendants fail to indemnify Class Members for all necessary expenditures or
17 losses incurred in direct consequence of the discharge of their duties or by obedience
18 to the directions of Defendants as required by Labor Code section 2802?

19 P. Did Defendants violate Labor Code section 227.3 by not providing Class Members
20 with compensation at their final rate of pay for vested paid vacation time?

21 Q. Did Defendants fail to return deposits made by Class Members with accrued interest
22 thereon as required under Labor Code section 404?

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

25 S. Are Class Members entitled to restitution of wages under Business and Professions
26 Code section 17203?

27 T. Are Class Members entitled to costs and attorneys' fees?

1 U. Are Class Members entitled to interest?

2 C. **Typicality**

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

8 D. **Adequacy of Representation**

9 68. Plaintiff will fairly and adequately represent and protect the interest of Class
10 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
11 hour class actions.

12 E. **Superiority of Class Action**

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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

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

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

12 75. Four (4) years prior to the filing of the Complaint in this Action through the present,
13 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
14 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
15 consecutive workdays in a workweek, without being paid overtime wages, including double time,
16 for all hours worked as a result of, including but not limited to, Defendants failing to accurately
17 track and/or pay for all hours actually worked at an accurate overtime rate of pay and failure to pay
18 an accurate regular rate by failing to include all forms of remuneration, including non-discretionary
19 bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of
20 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
21 additional compensation was earned for the purpose of calculating the overtime rate of pay.
22 Defendants further failed to pay all overtime due to the failure to pay all wages as described above.

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

77. 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)

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

79. 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.

80. 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.

81. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to pay all wages, including minimum wages, to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other things, at times, failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members, including, but not limited to, off-the-clock work, working during unpaid meal periods, detrimental rounding, editing and/or manipulation of time entries, and auto-deduction of meal periods. Further, Defendants failed to provide reporting time pay.

82. Moreover, Defendants implemented policies that prevented Plaintiff and Class Members from being compensated for all accrued PTO upon termination.

83. 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.

84. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure

1 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
2 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
3 damages, reasonable attorneys' fees and costs of suit.

4 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

26 90. Further, for four (4) year prior to the filing of the initial Complaint in this Action,
27 Defendants failed to pay an accurate regular rate by failing to include all forms of remuneration,
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1 including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards
2 and other forms of remuneration into the when calculating an employee's regular rate of pay to the
3 detriment of Plaintiff and Class Members.

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

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

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

15 **FOURTH CAUSE OF ACTION**

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

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

19 95. At all relevant times, Plaintiff and Class Members were employees or former
20 employees of Defendants covered by applicable Wage Orders.

21 96. California law and applicable Wage Orders require that employers "authorize and
22 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
23 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-
24 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
25 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
26 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
27 thirty (30) minutes of paid rest period.

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

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

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

100. Further, for four (4) year prior to the filing of the initial Complaint in this Action, Defendants failed to pay an accurate regular rate by failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the when calculating an employee's regular rate of pay to the detriment of Plaintiff and Class Members.

101. 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.

102. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant rest 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)

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

104. 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.

105. 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.

106. 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.

107. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned set forth above, including but not limited to, overtime wages, minimum wages, and/or meal premiums, prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or resignation.

108. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to

1 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
2 resignation, until paid, up to a maximum of thirty (30) days.

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

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

9 **SIXTH CAUSE OF ACTION**

10 **(Failure to Provide Accurate Wage Statements and Keep Accurate Records – Against All**
11 **Defendants)**

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

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

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

22 114. Pursuant to Labor Code section 1174, employers must “[k]eep, at a central location
23 in the state or at the plants or establishments at which employees are employed, payroll records
24 showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned
25 by and any applicable piece rate paid to, employees employed at the respective plants or
26 establishments.”

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

8 116. Defendants' failure to, at times, accurately record compensable information,
9 including hours worked, and provide Plaintiff and Class Members with accurate wage statements
10 was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff and the other
11 Class Members with accurate wage statements, but, at times, willfully provided wage statements
12 that Defendants knew were not accurate.

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

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

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

1 120. Pursuant to Labor Code section 1174.5, Plaintiff and Class Members are entitled to
2 recover \$500 for the failure to maintain accurate records required in Labor Code section 1174.

3 **SEVENTH CAUSE OF ACTION**

4 **(Violation of Labor Code § 204 – Against All Defendants)**

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

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

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

12 124. Labor Code section 204 also requires that all wages earned for labor in excess of the
13 normal work period shall be paid no later than the payday for the next regular payroll period.
14 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
15 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
16 paid not more than seven (7) calendar days following the close of the payroll period.

17 125. Defendants’ failure to, at times, provide Plaintiff and Class Members with timely
18 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
19 Plaintiff and the other Class Members with timely wage statements, but, at times, willfully provided
20 wage statements that Defendants knew were not accurate.

21 126. At all relevant times herein, Defendants have had a consistent policy or practice of
22 failing to pay Plaintiff and the other Class Members during their employment on a timely basis as
23 per Labor Code section 204.

24 127. Pursuant to Labor Code section 210, Plaintiff and the other Class Members are
25 entitled to recover civil penalties for Defendants’ violations of Labor Code section 204, in the
26 amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per
27 employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent

1 violation in connection with each payment that was made in violation of Labor Code section 204.

2 **EIGHTH CAUSE OF ACTION**

3 **(Violation of Labor Codes §§ 1194, 1197, 1198 and 1198.3 – Against All Defendants))**

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

6 129. At all relevant times, Plaintiff and Class Members were employees or former
7 employees of Defendants covered by Labor Code sections 1194, 1197, and 1198.3.

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

11 131. Pursuant to Labor Code sections 1198 and 1198.3, the Industrial Welfare
12 Commission and Labor Commission may set or exempt the maximum number of work hours an
13 employee may work and an employer may not punish, discharge, and/or retaliate against Employee
14 and employees for refusing to work hours exceeding those permitted by the Industrial Welfare
15 Commission or Labor Commissioner.

16 132. Section 5(A) of the applicable Wage Order provides that "employee is required to
17 report

18 133. for work and does report but is not put to work or is furnished less than half said
19 employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled
20 day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's
21 regular rate of pay, which shall not be less than the minimum wage."

22 134. For four (4) years prior to the filing of the Complaint in this Action through the
23 present, Defendants failed, at times, to pay all reporting time pay to the detriment of Plaintiff and
24 Class Members.

25 135. Pursuant to Labor Code sections 218.5, 1194, 1197, 1198, and the applicable Wage
26 Order, Plaintiff and the Plaintiff Class are entitled to recover the full amount of unpaid reporting
27 time pay, interest thereon, liquidated damages, reasonable attorney's fees and costs of suit.

1 **NINTH CAUSE OF ACTION**

2 **(Violation of Labor Codes §§ 221 & 223 – Against All Defendants))**

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

5 137. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 221 & 223 and applicable Wage Orders.

7 138. Labor Code section 221 provides that “[i]t shall be unlawful for any employer to
8 collect or receive from an employee any part of wages theretofore paid by said employer to said
9 employee.” Labor Code section 223 provides “[w]here any statute or contract requires an employer
10 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
11 purporting to pay the wage designated by statute or by contract.”

12 139. For four (4) years prior to the filing of the Complaint in this Action through the
13 present, Defendants secretly paid a lower wage and unlawfully collected and/or received wages paid
14 to the detriment of Plaintiff and Class Members.

15 140. Pursuant to Labor Code sections 225.5, 1194, 1194.2, 1197, 1198, 1199, and the
16 applicable Wage Order, Plaintiff and the Plaintiff Class are entitled to recover civil penalties and
17 wages, interest thereon, liquidated damages, reasonable attorney's fees and costs of suit.

18 **TENTH CAUSE OF ACTION**

19 **(Violation of Labor Codes §§ 432.3, 432.6 & 432.7 and Government Code § 12952 – Against**
20 **All Defendants)**

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

23 142. At all relevant times, Plaintiff and Class Members were employees or former
24 employees of Defendants covered by Labor Code sections 432.3, 432.6 & 432.7, and Government
25 Code § 12952.

26 143. Labor Code section 432.3(a) provides that “[a]n employer shall not rely on the salary
27 history information of an applicant for employment as a factor in determining whether to offer
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1 employment to an applicant or what salary to offer an applicant.” Labor Code section 432.3(b)
2 provides that “[a]n employer shall not, orally or in writing, personally or through an agent, seek
3 salary history information, including compensation and benefits, about an applicant for
4 employment.”

5 144. Labor Code section 432.6(a) provides that “[a] person shall not, as a condition of
6 employment, continued employment, or the receipt of any employment-related benefit, require any
7 applicant for employment or any employee to waive any right, forum, or procedure for a violation
8 of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with
9 Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to
10 file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public
11 prosecutor, law enforcement agency, or any court or other governmental entity of any alleged
12 violation.” Labor Code section 432.6(b) provides that “[a]n employer shall not threaten, retaliate or
13 discriminate against, or terminate any applicant for employment or any employee because of the
14 refusal to consent to the waiver of any right, forum, or procedure for a violation of the California
15 Fair Employment and Housing Act or this code, including the right to file and pursue a civil action
16 or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement
17 agency, or any court or other governmental entity of any alleged violation.”

18 145. Labor Code section 432.7(a) provides that “[a]n employer, whether a public agency
19 or private individual or corporation, shall not ask an applicant for employment to disclose, through
20 any written form or verbally, information concerning an arrest or detention that did not result in
21 conviction, or information concerning a referral to, and participation in, any pretrial or posttrial
22 diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed
23 pursuant to law.” Labor Code section 432.7(b) provides that “[a]n employer, whether a public
24 agency or private individual or corporation, shall not ask an applicant for employment to disclose,
25 through any written form or verbally, information concerning or related to an arrest, detention,
26 processing, diversion, supervision, adjudication, or court disposition that occurred while the person
27 was subject to the process and jurisdiction of the juvenile court.”

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146. Government Code section 12952(a) provides that “[e]xcept as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following: (1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant’s conviction history. (2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant. (3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment.”

147. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants have subjected applicants to unlawful conditions, questions, and background checks, including, but not limited to, requesting and/or seeking salary history, relying up salary history as a fact in determining to offer employment or what salary to offer, requiring applicants and/or employees for continued employment to waive rights, forums, or procedures to violations of the FEHA, requesting a disclosure of arrests that did not lead to conviction and/or information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court, or require a conviction history to the detriment of Plaintiff and Class Members.

148. Pursuant to Labor Code sections 432.3, 432.6, 432.7, and Government Code § 12952, Plaintiff and the Plaintiff Class are entitled to recover civil penalties and wages, interest thereon, liquidated damages, reasonable attorney's fees and costs of suit.

ELEVENTH CAUSE OF ACTION

(Violation of Labor Codes § 1198.5 – Against All Defendants)

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

150. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 1198.5.

1 151. Pursuant to Labor Code section 1198.5, “every current and former employee...has
2 the right to inspect and receive a copy of the personnel records that the employer maintains relating
3 to the employee’s performance or to any grievance concerning the employee.”

4 152. Defendants were required to maintain a copy of each employee’s personnel records
5 for a period of not less than three (3) years after termination of employment and make the contents
6 of those personnel records available for inspection no later than thirty (30) calendar days from the
7 date the employer received a written request.

8 153. Defendants violated Labor Code section 1198.5 by failing to timely permit Plaintiff
9 and Class Members to inspect and/or receive copies of such documents. Moreover, Plaintiff is
10 informed and believes, and thereon alleges, that at all relevant times within the applicable limitations
11 period, Defendants maintained a policy or practice of failing to timely permit current or former
12 employees inspect or copy their complete personnel records.

13 154. As a result of Defendants’ conduct, Plaintiff and Class Members did not receive their
14 complete personnel records as contemplated by Labor Code section 1198.5 and were not able to
15 fully assess potential Labor Code and/or common law workplace-based violations by Defendants
16 against Plaintiff and Class Members while applicable statutes of limitations continue to run,
17 resulting in irreparable injuries without adequate remedies at law. Additionally, Plaintiff and Class
18 Members bear the risk of being irreparably injured should the documents and records responsive to
19 Labor Code section 1198.5 be lost and/or destroyed.

20 155. Pursuant to Labor Code section 1198.5, Plaintiff and Class Members are entitled to
21 a statutory \$750 penalty each from Defendants and injunctive relief to obtain compliance with this
22 section, as well as costs of suit and reasonable attorney’s fees.

23 **TWELFTH CAUSE OF ACTION**

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

25 156. Plaintiff realleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs as though fully set forth herein.

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

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

5 159. For three (3) years prior to the filing of the Complaint in this Action through the
6 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
7 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
8 obedience to the directions of Defendants that included, without limitation: purchasing and/or
9 providing unreturned deposits for mandatory work uniforms or required clothing; laundering
10 mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles for work-
11 related purposes; using cellular phones for work-related purposes; purchasing safety devices and
12 safeguards; and purchasing tools or equipment necessary to perform work duties.

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

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

19 162. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
20 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
21 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
22 costs of suit.

23 **THIRTEENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

21 **FOURTEENTH CAUSE OF ACTION**

22 **(Unfair Competition- Against All Defendants)**

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

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

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

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

14 173. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
15 Procedure section 1032 and interest under Civil Code section 3287.

16 **FIFTEENTH CAUSE OF ACTION**

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

18 174. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and
19 incorporates each by reference as though fully set forth herein.

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

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

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

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

9 178. Aggrieved Employees are entitled to recover civil penalties for Defendants’
10 violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each
11 Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for
12 each Aggrieved Employee for each subsequent violation in connection with each payment that was
13 made in violation of Labor Code section 204.

14 Civil Penalties Under Labor Code § 226.3

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

23 180. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)

24 181. of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
25 dollars (\$250)

26 182. per employee per violation in an initial citation and one thousand dollars (\$1,000)
27 per employee for
28

1 183. each violation in a subsequent citation, for which the employer fails to provide the
2 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
3 Section 226.”

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

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

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

19 Violation of Labor Code § 558

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

- 24 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
25 pay period for which the employee was underpaid in addition to an amount sufficient
26 to recover underpaid wages;
27

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

4 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”
5

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

13 189. As a direct and proximate result of the herein-described Labor Code violations,
14 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover

15 190. civil penalties for Defendants’ herein-described Labor Code violations in the amount
16 fifty dollars

17 191. (\$50) for each Aggrieved Employee per pay period for the initial violation, and one
18 hundred dollars

19 192. (\$100) for each Aggrieved Employee per pay period for each subsequent violation.
20

21 Violation of Labor Code § 1174.5

22 193. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required

23 194. every person employing labor in California to “[a]llow any member of the
24 commission or the employees of the Division of Labor Standards Enforcement free access to the
25 place of business or employment of the person to secure any information or make any investigation
26 that they are authorized by this chapter to ascertain or make. The commission may inspect or make
27 excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls,
28 documents, or papers of the person.”

1 195. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
2 196. every person employing labor in California to “[k]eep a record showing the names
3 and addresses of
4 197. all employees employed and the ages of all minors.”
5 198. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
6 every person employing labor in California to “[k]eep, at a central location in the state or at the
7 plants or establishments at which employees are employed, payroll records showing the hours
8 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
9 piece rate paid to, employees employed at the respective plants or establishments. These records
10 shall be kept in accordance with rules established for this purpose by the commission, but in any
11 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
12 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
13 earned.”
14 199. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
15 200. fails to maintain the records required by subdivision (c) of [Labor Code] Section
16 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174,
17 or to allow any member of the commission or employees of the division to inspect records pursuant
18 to subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred
19 dollars (\$500).
20 201. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
21 202. willfully failed keep adequate or accurate time records including wage statements
22 and similar payroll documents under Labor Code section 226, documents signed to obtain or hold
23 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,
24 and time records under Labor Code section 1174.
25 203. As a direct and proximate result of the herein-described Labor Code violation,
26 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
27 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
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204. hundred dollars (\$500) per violation per Aggrieved Employee.

Violation of Labor Code § 1197.1

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

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

206. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of

1 time entries; paying straight pay instead of overtime (including double time) or otherwise failing to
2 pay overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees
3 to work off the clock, entitling Plaintiff and other aggrieved Employees to actual and liquidated
4 damages.

5 207. As a direct and Proximate result of the herein-described Labor Code violations,

6 208. pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are
7 entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the
8 amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial
9 violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for
10 each subsequent violation.

11 Civil Penalties Under Labor Code § 2699

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

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

24 211. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
25 each of them, violated the Labor Code sections described herein, including, without limitation, for
26 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
27 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the

1 name of the employer, including “doing business as” names used, the name, address, and telephone
2 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
3 other pertinent information required to be disclosed by Defendants under Labor Code section
4 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
5 leave required to be provided pursuant to California and local laws.

6 212. Moreover, Plaintiff and other Aggrieved Employees within the States of California
7 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
8 connection with their herein-described claims for civil penalties.

9 **DEMAND FOR JURY TRIAL**

10 213. Plaintiff demands a trial by jury on all causes of action contained herein.

11 **PRAYER**

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

- 14 A. An order certifying this case as a Class Action;
- 15 B. An Order Appointing Plaintiff as Class representative and appointing Plaintiff’s
16 counsel as class counsel;
- 17 C. Damages for all wages earned and owed, including minimum overtime wages
18 under Labor Code sections 510, 1194, 1197 and 1199 and 227.3 ;
- 19 D. Liquidated damages pursuant to Labor Code sections and 1194.2;
- 20 E. Damages for unpaid premium wages from missed meal and rest periods under,
21 among other Labor Code sections, 512, and 226.7;
- 22 F. Penalties for inaccurate wage statements under Labor Code sections 226,
23 subdivision (e);
- 24 G. Waiting time penalties under Labor Code sections 203;
- 25 I. Damages under Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 221, 223,
26 226, 226(a), 226(e), 226.7, 432.3, 432.6, 432.7, 500, 510, 512, 558, 1174, 1174.5,
27 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1198.3, 1199, 2802 and Government
28

Code section 12952;

J. Damages under Labor Code section 404;

K. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;

L. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;

M. Prejudgment and post-judgment interest at the maximum rate allowed by law;

N. For attorneys' fees in prosecuting this action;

O. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, and 2802, and all other applicable sections listed *infra*;

P. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed *infra*;

Q. Pre-judgment and post-judgment interest;

R. For costs of suit incurred herein; and

S. For such other and further relief as the Court deems just and proper.

Dated: July 21, 2025

BIBIYAN LAW GROUP, P.C.

BY: /s/ Megan R. Lazar
VEDANG J. PATEL
MEGAN R. LAZAR

Attorneys for Plaintiff, MACSIMINA ARIAS on
behalf of himself and all others similarly situated