

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (Cal. Bar No. 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, CA 90024

Telephone: (310) 438-5555; Facsimile: (310) 300-1705

Attorneys for Plaintiff JAMESHA BOOTE, on behalf of herself
and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JAMESHA BOOTHE, ALEXZANDER
ROBERTS and JEANPAUL MEDELLIN,
individuals, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

LEMONADE RESTAURANT GROUP,
LLC., a Delaware limited liability company;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.:22STCV38302

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

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

Jonathan M. Genish (State Bar No. 259031)

jgenish@blackstonepc.com

Miriam L. Schimmel (State Bar No. 185089)

mschimmel@blackstonepc.com

Joana Fang (State Bar No. 309623)

jfang@blackstonepc.com

Alexandra Rose (State Bar No. 329407)

arose@blackstonepc.com

BLACKSTONE LAW, APC

8383 Wilshire Boulevard, Suite 745

Beverly Hills, California 90211

Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiffs ALEXZANDER ROBERTS, individually,
and on behalf of other similarly situated employees, and

JEANPAUL MEDELLIN, individually, and on behalf of other similarly
situated employees and aggrieved employees pursuant to the
California Private Attorneys General Act

COMES NOW Plaintiffs JAMESHA BOOTHE (“Plaintiff Boothe”), ALEXZANDER ROBERTS (“Plaintiff Roberts”) and JEANPAUL MEDELLIN (Plaintiff Medellin) (collectively, “Plaintiffs”), on behalf of Plaintiffs and all others similarly situated and aggrieved, and allege as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against LEMONADE RESTAURANT GROUP, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“Lemonade”) and, with DOES 1 through 100, as further defined below, (collectively, “Defendants”) on behalf of Plaintiffs and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

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

3. Defendants hired Plaintiffs and the Aggrieved Employees but failed to properly pay them all overtime wages and minimum wages for all hours worked, failed to provide all meal and rest breaks to which they were entitled, failed to timely pay all wages upon termination of employment, failed to provide accurate wage statements, failed to keep accurate employment records, failed to reimburse necessary business-related expenses, and failed to adhere to other related protections afforded by the California Labor Code and applicable Industrial Welfare Commission

1 Wage Order.

2 4. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
3 or should have known that Plaintiffs and the Aggrieved Employees were entitled to the protections
4 afforded by the Labor Code and the applicable Wage Order, yet as set forth in detail below, engaged
5 in a systematic pattern and practice of violating the California Labor Code and the applicable Wage
6 Order.

7 5. Defendants hired Plaintiffs and the other Class Members but failed to properly pay
8 them all overtime wages and minimum wages for all hours worked, failed to provide all meal and
9 rest breaks to which they were entitled, failed to timely pay all wages upon termination of
10 employment, failed to provide accurate wage statements, failed to reimburse necessary business-
11 related expenses, and failed to adhere to other related protections afforded by the California Labor
12 Code and applicable Industrial Welfare Commission Wage Order.

13 6. Plaintiffs and the other Class Members worked over eight (8) hours in a day, and/or
14 forty (40) hours in a week during their employment with Defendants.

15 7. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
16 or should have known that pursuant to California Labor Code sections 510 and 1198, and the
17 applicable IWC (“IWC”) Wage Order, Plaintiffs and the other Class Members were entitled to
18 receive certain wages for overtime compensation and that they were not receiving certain wages for
19 overtime compensation.

20 8. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
21 or should have known that pursuant to California Labor Code sections 1194, 1197, 1197.1, and the
22 applicable IWC Wage Order, Plaintiffs and the other Class Members were entitled to receive at least
23 minimum wages for all hours worked and that they were not receiving minimum wages for all hours
24 worked.

25 9. Plaintiffs are informed and believe, and based thereon allege, that Defendants
26 implemented time rounding practices that at times resulted in the underpayment of wages to
27 Plaintiffs and the other Class Members, including minimum and overtime wages. Defendants
28 employed a time rounding policy that was not neutral and designed to round time in Defendants’

1 favor, ensuring that Plaintiffs and the other Class Members were at times not paid for all time
2 worked.

3 10. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
4 or should have known that pursuant to California Labor Code sections 226.7, 512, and the applicable
5 IWC Wage Order, Plaintiffs and the other Class Members were entitled to receive a meal period or
6 payment of one (1) additional hour of pay at their regular rate of compensation when they were not
7 provided with an uninterrupted meal period of no less than thirty (30) minutes for a work period of
8 more than five hours per day and that Plaintiffs and the other Class Members were entitled to receive
9 a second meal period or payment of one (1) additional hour of pay at their regular rate of
10 compensation when they were not provided with an uninterrupted second meal period of no less
11 than thirty (30) minutes for a work period of more than ten (10) hours per day. However, Plaintiffs
12 and the other Class Members did not receive all meal periods or payment of one (1) additional hour
13 of pay at their regular rate of compensation when a meal period was missed, shortened, taken late,
14 and/or interrupted.

15 11. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
16 or should have known that pursuant to California Labor Code section 226.7 and the applicable IWC
17 Wage Order, Plaintiffs and the other Class Members were entitled to receive all rest periods or
18 payment of one (1) additional hour of pay at their regular rate of compensation when they were not
19 provided with an uninterrupted rest period of no less than ten (10) minutes for every four hours, or
20 major fraction thereof, worked. However, Plaintiffs and the other Class Members did not receive
21 all rest periods or payment of one (1) additional hour of pay at their regular rate of compensation
22 when a rest period was missed, shortened, taken late, and/or interrupted.

23 12. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
24 or should have known that they were required to provide Plaintiffs and the other Class Members
25 with complete and accurate itemized wage statements pursuant to California Labor Code section
26 226, but failed to do so.

27 13. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
28 or should have known pursuant to California Labor Code sections 2800 and 2802 that Plaintiffs and

1 the other Class Members were entitled to reimbursement for necessary business-related expenses,
2 but, in fact, did not reimburse them for necessary business-related expenses.

3 14. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
4 or should have known that Plaintiffs and the other Class Members were entitled to receive all wages
5 upon termination of employment, including, without limitation, overtime wages, minimum wages,
6 meal period premium wages, and rest period premium wages, and that they did not receive payment
7 of all wages upon termination of employment in violation of California Labor Code sections 201
8 and 202.

9 **PARTIES**

10 **A. Plaintiffs**

11 15. Plaintiff Boothe is a resident of the State of California. At all relevant times herein,
12 Plaintiff Boothe is informed and believes, and based thereon alleges that Defendants employed
13 Plaintiff Boothe as a non-exempt employee, with duties that included, but were not limited to,
14 opening the store, checking e-mails, balance the register, customer service, preparing sandwiches,
15 opening the kitchen and closing the store. Plaintiff Boothe is informed and believes and based
16 thereon allege that Plaintiff Boothe worked for Defendants from approximately June of 2019
17 through approximately December of 2021. Defendants paid (or purportedly paid) Plaintiff Boothe
18 an hourly wage for her services.

19 16. Plaintiff Roberts is a resident of the State of California. At all relevant times herein,
20 Plaintiff Roberts is informed and believes, and based thereon alleges that Defendants employed
21 Plaintiff Roberts as a non-exempt employee, with duties that included, but not limited to, working
22 in the storage, cleaning dishes and dining area and taking trash out. Plaintiff Roberts is informed
23 and believes and based thereon alleges that Plaintiff Roberts worked for Defendants from
24 approximately April of 2017, through approximately April of 2020. Defendants paid (or purportedly
25 paid) Plaintiff Roberts an hourly wage for his services.

26 17. Plaintiff Medellin is a resident of the State of California. At all relevant times herein,
27 Plaintiff Medellin is informed and believes, and based thereon alleges that Defendants employed
28 Plaintiff Medellin as a non-exempt employee, with duties that included, but not limited to,

1 dishwasher and shift lead. Plaintiff Medellin is informed and believes and based thereon alleges that
2 Plaintiff Medellin worked for Defendants from approximately July 2021, through approximately
3 August of 2023. Defendants paid (or purportedly paid) Plaintiff Medellin an hourly wage for his
4 services.

5 **B. Defendants**

6 18. Plaintiffs are informed and believe, and based thereon allege, that defendant
7 Lemonade is, and at all times relevant hereto was, a limited liability company organized and existing
8 under and by virtue of the laws of the State of Delaware and doing business in the County of Los
9 Angeles, State of California. At all relevant times herein, Lemonade employed Plaintiffs and
10 similarly situated employees within the State of California.

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

24 **JOINT LIABILITY ALLEGATIONS**

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

1 employment, joint venture, and conspiracy.

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

11 22. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
12 unity of interest and ownership between Defendants, and each of them, that their individuality and
13 separateness have ceased to exist.

14 23. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
15 thereon allege, that Defendants, and each of them, are joint employers.

16 **JURISDICTION**

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

19 25. 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 Plaintiffs,
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 Plaintiffs, or some of them, and Defendants was actually performed.
25 Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs and Class Members in
26 Los Angeles County, and because Defendants employ numerous Class Members in Los Angeles
27 County.

28 26. Plaintiff Boothe and Plaintiff Medellin are “aggrieved employees” under PAGA, as

1 were employed by Defendants during the applicable statutory period and suffered one or more of
2 the Labor Code violations set forth herein. Accordingly, Plaintiff Boothe and Plaintiff Medellin
3 seek to recover, on behalf of themselves and all other aggrieved current and former employees of
4 Defendants, the civil penalties provided by PAGA plus reasonable attorneys' fees and costs, as the
5 term "civil penalty" is defined under ZB N.A. v. Superior Court (2019) 8 Cal.5th 175.

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

10 28. 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 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7,
13 256, 432, 510, 512, 558, 1174, 1194, 1197, 1198, 1198.5, 2800, 2802, 2810.3, and 2810.5, among
14 others.

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

19 30. On December 8, 2022, Plaintiff Boothe commenced this Action by filing a complaint
20 against Defendants alleging: (1) failure to pay overtime wages; (2) failure to pay minimum wages;
21 (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods
22 or compensation in lieu thereof; (5) wage statement violations; (6) waiting time penalties; (7) failure
23 to indemnify; and (8) unfair competition.

24 **PAGA REPRESENTATIVE ALLEGATIONS**

25 31. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to comply with Labor Code section 226, subdivision (a), and by intentionally failing to
27 furnish Plaintiffs and other Aggrieved Employees with documents signed to obtain or hold
28 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,

1 and time records under Labor Code section 1174, making it difficult for Plaintiffs and other
2 Aggrieved Employees to calculate their unpaid wages and/or premium payments, to the detriment
3 of Plaintiffs and other Aggrieved Employees.

4 32. At all relevant times herein, Defendants had and have a policy or practice of failing
5 to pay Plaintiffs and Aggrieved Employees their paid time off and vacation time owed upon
6 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
7 and applicable Wage Orders.

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

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

21 35. At all relevant times mentioned herein, Defendants have had a policy or practice of
22 failing to pay Plaintiffs and Aggrieved Employees their wages in accordance with Labor Code
23 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
24 any calendar month shall be paid for between the 16th and 26th day of the month during which the
25 labor was performed, and labor performed between the 16th and the last day, inclusive of any
26 calendar month, shall be paid for between the 1st and 10th day of the following month."

27 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge

1 and experience they obtained at Defendants for purposes of competing with Defendants, including,
2 without limitation, preventing employees from disclosing their wages in negotiating a new job with
3 a prospective employer, and from disclosing who else works at Defendants and under what
4 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
5 and believe that this policy and/or practice violates Business and Professions Code sections 17200,
6 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
7 Code sections 232, 232.5, and 1197.5, subdivision (k).

8 37. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
9 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
10 to their managers or outside to private attorneys or government officials, among others, in violation
11 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
12 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
13 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information
14 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
15 of Labor Code section 232 and 232.5.

16 38. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
17 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
18 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
19 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
20 subdivision (k). Plaintiffs are informed and believe that this lawful conduct includes the exercise
21 of Plaintiffs' and/or other Aggrieved Employees' constitutional rights of freedom of speech and
22 economic liberty.

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

27 40. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who
28 is any person employed by the alleged violator and against whom one or more of the alleged

1 violations was committed.

2 41. Plaintiff Boothe and Plaintiff Medellin and the other employees are “Aggrieved
3 Employees” as defined by California Labor Code section 2699(c) because they are current or former
4 employees of Defendants against whom one of more of the alleged violations were committed.

5 42. Pursuant to California Labor Code section 2699.3 and 2699.5, an aggrieved
6 employee, including Plaintiff Boothe and Plaintiff Medellin, may pursue a civil action arising under
7 PAGA after the following requirements have been met:

8 (a) The Aggrieved Employee shall give written notice by certified mail (hereinafter
9 “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the Labor Code
10 alleged to have been violated, including the facts and theories to support the alleged violations.

11 (b) The LWDA shall provide notice (hereinafter “LWDA Response”) to the employer
12 and the aggrieved employee by certified mail that it does not intend to investigate the alleged
13 violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon
14 receipt of the LWDA Response, or if the LWDA Response is not provided within sixty-five (65)
15 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may
16 commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties
17 in addition to any other penalties to which the employee may be entitled.

18 43. On December 8, 2022, Plaintiff Boothe submitted a notice with the LWDA against
19 Defendants seeking to represent other employees for various violations of the Labor Code (“Boothe
20 PAGA Notice”).

21 Additionally, on August 25, 2023, Plaintiff Medellin submitted a notice with the LWDA
22 against Defendants seeking to represent other employees for various violations of the Labor Code
23 (“Medellin PAGA Notice”).

24 44. Plaintiff Boothe and Plaintiff Medellin did not receive a LWDA Response within
25 sixty-five calendar days of providing the Employee’s Notice.

26 45. Therefore, the administrative prerequisites under California Labor Code section
27 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations
28 of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194,

1 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

2 **FACTUAL BACKGROUND**

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

13 47. For at least four (4) years prior to the filing of this Action and continuing to the
14 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
15 or some of them, in violation of California state wage and hour laws as a result of, among other
16 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
17 rate of pay that is above the minimum wage to the detriment of Plaintiffs and Class Members.
18 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1,
19 and 2699.

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

27 49. For at least four (4) years prior to the filing of this Action and continuing to the
28 present, Defendants have, at times, failed to authorize and permit Plaintiffs and Class Members, or

1 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
2 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
3 California wage and hour laws. Defendants would also be liable for civil penalties pursuant to Labor
4 Code sections 558 and 2699.

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

11 51. For at least one (1) year prior to the filing of this Action and continuing to the present,
12 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with
13 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
14 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
15 hours worked at each hourly rate; and other such information as required by Labor Code section
16 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
17 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.
18 Defendants would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558 and
19 2699.

20 52. For at least three (3) years prior to the filing of this Action and continuing to the present,
21 Defendants have, at times, failed to indemnify Class Members, or some of them, for the costs
22 incurred costs incurred for driving personal vehicles for work related purposes (i.e., mileage and
23 gas), purchasing shoes and pants, separately laundering mandatory uniforms, for the purchase and
24 maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of
25 their duties, or of their obedience to the directions of Defendants..

26 53. Plaintiffs, on their own behalf and on behalf of Class Members, bring this Action
27 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7, 510,
28 512, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and California Code of Regulations,

1 Title 8, section 11050, seeking overtime wages, minimum wages, payment of premium wages for
2 missed meal and rest periods, waiting time penalties, wage statement penalties, failure to indemnify
3 work-related expenses, other such provisions of California law, and reasonable attorneys' fees and
4 costs.

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

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

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

24 57. Plaintiff Boothe and Plaintiff Medellin, in their representative capacities, seek civil
25 penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-
26 described acts, which violate the California Labor Code as described above, including on behalf of
27 Plaintiff Boothe and Plaintiff Medellin and other Aggrieved Employees pursuant to PAGA.

28 **CLASS ACTION ALLEGATIONS**

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

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

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

12 **A. Numerosity**

13 61. The potential Class Members as defined are so numerous that joinder of all the
14 members of the Class is impracticable. While the precise number of Class Members has not been
15 determined yet, Plaintiffs are informed and believe that there are over (2,204) Class Members
16 employed by Defendants within the State of California.

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

21 **B. Commonality**

22 63. There are questions of law and fact common to Class Members. These common
23 questions include, but are not limited to:

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

26 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
27 for all other time worked at the employee's regular rate of pay and a rate of pay that
28 is greater than the applicable minimum wage?

- 1 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
2 Class Members to take compliant meal periods?
- 3 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
4 with additional wages for missed or interrupted meal periods?
- 5 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
6 Class Members to take compliant rest periods?
- 7 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
8 with additional wages for missed rest periods?
- 9 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
10 Members upon termination or resignation all wages earned?
- 11 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
12 section 203?
- 13 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
14 Class Members with accurate wage statements?
- 15 J. Did Defendants fail to indemnify Class Members for all necessary expenditures or
16 losses incurred in direct consequence of the discharge of their duties or by obedience
17 to the directions of Defendants as required under Labor Code section 2802?
- 18 K. Did Defendants violate the Unfair Competition Law, Business and Professions Code
19 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 20 L. Are Class Members entitled to restitution of wages under Business and Professions
21 Code section 17203?
- 22 M. Are Class Members entitled to costs and attorneys' fees?
- 23 N. Are Class Members entitled to interest?

24 **C. Typicality**

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

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

2 **D. Adequacy of Representation**

3 65. Plaintiffs will fairly and adequately represent and protect the interest of Class
4 Members. Counsel who represent Plaintiffs are competent and experienced in litigating wage and
5 hour class actions.

6 **E. Superiority of Class Action**

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

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

17 **FIRST CAUSE OF ACTION**

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

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

21 69. At all relevant times, Plaintiffs and Class Members were employees or former
22 employees of Defendants covered by Labor Code sections 510, 1194, 1198 and 1199, as well as
23 applicable Wage Orders.

24 70. California Labor Code section 1198 and the applicable IWC Wage Order provide
25 that it is unlawful to employ persons without compensating them at a rate of pay either time-and-
26 one-half or two-times that person's regular rate of pay, depending on the number of hours worked
27 by the person on a daily or weekly basis.

28 71. At all times relevant to this Complaint, Labor Code section 510 was in effect and

1 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
2 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
3 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

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

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

15 74. During the relevant time period, Plaintiffs and the other Class Members regularly
16 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess
17 of forty (40) hours in a week. However, Defendants did not record Plaintiffs and the other Class
18 Members’ actual hours worked and intentionally and willfully failed to pay all overtime wages owed
19 to Plaintiffs and the other Class Members and failed to pay one-and-one half times the regular hourly
20 rate for overtime hours. Defendants’ failure to pay overtime wages included, *inter alia*, amongst
21 other things, requiring Plaintiffs and the other Class Members to perform work off-the-clock – i.e.,
22 during purported meal periods and before and after shifts. This off-the-clock work included,
23 amongst other things, requiring Plaintiffs and the other Class Members to clean dishes, clean the
24 dining area, and take out the trash. Defendants also required Plaintiffs and other Class Members to
25 remaining on-call, to suffer under Defendants’ control by completing pre-shift tasks before clocking
26 in and post-shifts tasks after clocking out (including answering calls from dispatch and others), to
27 clock out for meal periods and continue working, to don and off uniforms and/or safety equipment
28 off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock;

1 failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay,
2 meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods
3 where overtime was worked and the additional compensation that was earned for the purpose of
4 calculating the overtime rate of pay; determinantal rounding of employee time entries, editing and/or
5 manipulation of time entries to show less hours than actually worked, and for paying straight pay
6 instead of overtime pay.

7 75. Accordingly, by requiring Plaintiffs and Class Members to, at times, work greater
8 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
9 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
10 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194,
11 1199, and applicable IWC Wage Orders, and California law.

12 76. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have
13 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
14 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194,
15 1198 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

16 **SECOND CAUSE OF ACTION**

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

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

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

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

25 80. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
26 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
27 wage to be paid to employees, and the payment of a wage less than the minimum so fixed is
28 unlawful. Plaintiffs and the other Class Members were not paid the appropriate minimum wage for

1 all of the hours they worked. Plaintiffs and the other Class Members were not paid the minimum
2 wage for work performed beyond their scheduled shifts, and the wages paid to them were not
3 sufficient to compensate them for all hours they worked at a minimum wage rate on a cumulative
4 basis. Defendants failed to pay Plaintiffs and the other Class Members for time spent working “off-
5 the-clock” performing duties including, but not limited to, amongst other things, requiring Plaintiffs
6 and the other Class Members to clean dishes, clean the dining area, and take out the trash.
7 Defendants also failed to accurately track and/or pay for all minutes actually worked by requiring
8 Plaintiffs and other Class Members to remaining on-call, to suffer under Defendants’ control by
9 completing pre-shift tasks before clocking in and post-shifts tasks after clocking out (including
10 answering calls from dispatch and others), to clock out for meal periods and continue working, to
11 don and off uniforms and/or safety equipment off the clock, to attend company meetings off the
12 clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries,
13 editing and/or manipulation of time entries to show less hours than actually worked, failing to pay
14 reporting time pay; paid time off and vacation time owed; and failing to pay split shift premiums.
15 Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiffs and the other
16 Class Members for all hours they worked in violation of California Labor Code sections 1194, 1197,
17 and 1197.1.

18 81. Defendants’ failure to pay Plaintiffs and the other Class Members the minimum wage
19 as required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those
20 sections, Plaintiffs and the other Class Members are entitled to recover the unpaid balance of their
21 minimum wage compensation, as well as interest, costs, and attorney’s fees.

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

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

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

5 **THIRD CAUSE OF ACTION**

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

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

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

11 87. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
12 California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs and the other Class
13 Members' employment by Defendants.

14 88. At all relevant times herein set forth, California Labor Code section 226.7 provides
15 that no employer shall require an employee to work during any meal period mandated by an
16 applicable IWC Order.

17 89. At all relevant times herein set forth, California Labor Code section 512(a) provides
18 that an employer may not require, cause, or permit an employee to work for a period of more than
19 five (5) hours per day without providing the employee with a meal period of not less than thirty (30)
20 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
21 the meal period may be waived by mutual consent of both the employer and the employee.

22 90. During the relevant time period, Plaintiffs and the other Class Members who were
23 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
24 legally-mandated meal periods by mutual consent, were required to work for periods longer than
25 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

26 91. During the relevant time period, Plaintiffs and the other Class Members
27 who were scheduled to work for a period of time in excess of six (6) hours, were required to work
28 for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty

1 (30) minutes. Defendants failed to provide uninterrupted, timely, and complete 30-minute meal
2 periods or compensation in lieu thereof by, without limitation, interrupting meal periods; not
3 providing timely meal periods, failing to provide first and second meal periods; providing short meal
4 periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods;
5 not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods;
6 and auto-deducting meal periods that could not be auto-deducted by law or during which employees
7 worked.

8 92. During the relevant time period, Plaintiffs and the other Class Members,
9 who were scheduled to work for a period of time in excess of ten (10) hours but no longer than
10 twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual consent,
11 were required to work in excess of ten (10) hours without receiving a second uninterrupted meal
12 period of not less than thirty (30) minutes.

13 93. During the relevant time period, Plaintiffs and the other Class Members,
14 who were scheduled to work for a period of time in excess of twelve (12) hours, were required to
15 work for periods longer than ten (10) hours without a second uninterrupted meal period of not less
16 than thirty (30) minutes.

17 94. During the relevant time period, Defendants willfully required Plaintiffs and the
18 other Class Members to work during meal periods and failed to compensate Plaintiffs and the other
19 Class Members for work performed during meal periods. As a result, Plaintiffs worked through
20 meal periods, took late meal periods, took interrupted meal periods, or took short meal periods, if at
21 all.

22 95. During the relevant time period, Defendants failed to pay Plaintiffs and the other
23 Class Members all meal period premiums due pursuant to California Labor Code section 226.7 and
24 512. Defendants' conduct violates applicable IWC Wage Order(s), and California Labor Code
25 sections 226.7 and 512(a).

26 96. Pursuant to the applicable IWC Wage Order and California Labor Code section
27 226.7(b), Plaintiffs and the other Class Members are entitled to recover from Defendants one
28 additional hour of pay at their regular rate of compensation for each work day that a meal

1 period was not provided.

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

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

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

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

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

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

1 **FOURTH CAUSE OF ACTION**

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

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

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

7 105. At all relevant times herein set forth, the applicable IWC Wage Order and California
8 Labor Code section 226.7 were applicable to Plaintiffs and the other Class Members' employment
9 by Defendants.

10 106. At all relevant times, California Labor Code section 226.7 provides that no employer
11 shall require an employee to work during any rest period mandated by an applicable order of the
12 California IWC.

13 107. At all relevant times, the applicable IWC Wage Order provides that “[e]very
14 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
15 shall be in the middle of each work period” and that the “rest period time shall be based on the total
16 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
17 thereof unless the total daily work time is less than three and one-half (3½) hours. Defendants failed
18 to provide paid, uninterrupted, timely and complete rest periods in various ways, including, but not
19 limited to, by failing to provide rest periods altogether; requiring that they be bundled together
20 and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or
21 walkie-talkies during rest periods; not providing them in a timely fashion; and not permitting
22 employees to leave the premises; and otherwise requiring on-duty/on-call rest periods.

23 108. Pursuant to the applicable IWC Wage Order and California Labor Code section
24 226.7(b), Plaintiffs and the other Class Members were entitled to recover from Defendants one (1)
25 additional hour of pay at their regular hourly rate of compensation for each workday that the rest
26 period was not provided.

27 109. During the relevant time period, Defendants required Plaintiffs and the other Class
28 Members to work three and one-half (3 ½) or more hours without authorizing or permitting a ten

1 (10) minute rest period per each four (4) hour period, or major fraction thereof, worked.

2 110. During the relevant time period, Defendants willfully required Plaintiffs and the
3 other Class Members to work during rest periods. Defendants failed to relieve Plaintiffs and the
4 other Class Members of all duties such that they could take compliant rest breaks. As a result,
5 Plaintiffs worked through rest periods, took late rest periods, took interrupted rest periods, or took
6 short rest periods, if at all.

7 111. Defendants also had no policy and/or practice to pay a premium when rest periods
8 were missed, short, late, and/or interrupted and thus failed to pay Plaintiffs and the other Class
9 Members the full rest period premium due in violation of California Labor Code section 226.7.

10 112. Defendants' conduct violates the applicable IWC Wage Order and California labor
11 Code section 226.7.

12 113. Pursuant to the applicable IWC Wage Orders and California Labor Code section
13 226.7(c), Plaintiffs and the other Class Members are entitled to recover from Defendants one
14 additional hour of pay at their regular rate of compensation for each work day that a rest period was
15 not provided.

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

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

27 116. For four (4) years prior to the filing of the Complaint in this Action through the
28 present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete,

1 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
2 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
3 Member's regular rate of compensation on the occasions that Class Members were not authorized
4 or permitted to take compliant rest periods.

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

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

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

17 **FIFTH CAUSE OF ACTION**

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

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

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

24 122. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were
25 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
26 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
27 discharge immediately upon termination. Class Members who resigned were entitled to payment
28 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation

1 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
2 unpaid at the time of resignation.

3 123. California Labor Code section 203 provides that if an employer willfully fails to pay,
4 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
5 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
6 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
7 continue for more than thirty (30) days.

8 124. Plaintiffs are informed and believe, and based thereon allege, that in the three (3)
9 years before the filing of the Complaint in this Action through the present, Defendants, due to the
10 failure, at times, to provide overtime wages, minimum wages, premium wages, paid time off and
11 vacation time owed to employees as mentioned above, failed to pay Plaintiffs and Class Members
12 all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or
13 202.

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

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

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

27 128. At the time that Plaintiffs and the other Class Members' employment with
28 Defendants ended, Defendants knowingly and willfully failed to pay Plaintiffs and the other Class

Members all wages owed to them pursuant to California Labor Code sections 201 and 202, including, without limitation, overtime wages, minimum wages, meal period premium wages, and rest period premium wages.

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

SIXTH CAUSE OF ACTION

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

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

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

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

133. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendants failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name of the employer and/or the name and address of the legal entity securing the employer's services if the employer is a farm labor contractor; and; and other such information as required by Labor Code section 226, subdivision (a).

134. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate

1 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
2 Plaintiffs and the other Class Members with accurate wage statements, but, at times, willfully
3 provided wage statements that Defendants knew were not accurate.

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

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

15 137. Specifically, Plaintiffs and the other Class Members have been injured by
16 Defendants' intentional violation of California Labor Code section 226(a) because they were denied
17 both their legal right to receive, and their protected interest in receiving, accurate, itemized wage
18 statements under California Labor Code section 226(a). In addition, because Defendants failed to
19 provide the accurate number of total hours worked on wage statements, Plaintiffs and the other Class
20 Members been prevented by Defendants from determining if all hours worked were paid and the
21 extent of the underpayment. Plaintiffs had to file this lawsuit, and will further have to conduct
22 discovery, reconstruct time records, and perform computations in order to analyze whether in fact
23 Plaintiffs and the other Class Members were paid correctly and the extent of the underpayment,
24 thereby causing Plaintiffs to incur expenses and lost time. Plaintiffs would not have had to engage
25 in these efforts and incur these costs had Defendants provided the accurate number of total hours
26 worked. This has also delayed Plaintiffs' ability to demand and recover the underpayment of wages
27 from Defendants.

28 138. Plaintiffs and the other Class Members are entitled to recover from Defendants the

greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

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

SEVENTH CAUSE OF ACTION

(Violation of Labor Code § 2800 & § 2802 – Against All Defendants)

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

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

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

143. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

144. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: using personal cellular phones and purchasing and maintenance and use of devices and cellular phone plans for work-related purposes, the purchase of non-slip shoes or shoe covers, as well as costs incurred for maintenance and separate laundering of mandatory work uniforms, costs incurred for driving personal vehicles for work related purposes (i.e., mileage and gas), purchasing pants, and purchasing parking passes, in direct consequence of the discharge of their duties, or of their obedience to the

1 directions of Defendants.

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

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

8 147. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
9 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
10 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
11 costs of suit.

12 148. Defendants intentionally and willfully failed to reimburse Plaintiffs and the other
13 Class Members for all necessary business-related expenses and costs. Plaintiffs and the other Class
14 Members are entitled to recover from Defendants their business-related expenses and costs incurred
15 during the course and scope of his employment, plus interest accrued from the date on which
16 Plaintiffs and the other Class Members incurred the necessary expenditures at the same rate as
17 judgments in civil actions in the State of California.

18 **EIGHTH CAUSE OF ACTION**

19 **(Unfair Competition and Unlawful Business Practices – Against All Defendants)**

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

22 150. Plaintiffs are informed and believe, and based thereon allege, that the unlawful
23 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
24 and Professions Code section 17200. Due to their unlawful business practices in violation of the
25 Labor Code, Defendants have gained a competitive advantage over other comparable companies
26 doing business in the State of California that comply with their obligations to compensate employees
27 in accordance with the Labor Code.

28 151. Defendants' violations of California wage and hour laws constitute an unfair and

1 unlawful business practice because Defendants' aforementioned acts and omissions were done
2 repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiffs
3 and the other Class Members.

4 152. Defendants have avoided payment of overtime wages, minimum wages, meal period
5 premiums, rest period premiums, and other benefits as required by the California Labor Code, the
6 California Code of Regulations, and the applicable IWC Wage Order. Further, Defendants have
7 failed to record, report, and pay the correct sums of assessment to the state authorities under the
8 California Labor Code and other applicable regulations.

9 153. As a result of Defendants' unfair and unlawful business practices, Defendants have
10 reaped unfair and illegal profits during Plaintiffs and the other Class Members' tenure at the expense
11 of Plaintiffs, the other Class Members, and members of the public. Defendants should be made to
12 disgorge its ill-gotten gains and to restore them to Plaintiffs and the other Class Members.

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

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

23 156. As a result of Defendants' unfair and unlawful business practices, Defendants have
24 reaped unfair and illegal profits during Plaintiffs and the other Class Members' tenure at the expense
25 of Plaintiffs, the other Class Members, and members of the public. Defendants should be made to
26 disgorge its ill-gotten gains and to restore them to Plaintiffs and the other Class Members.

27 157. Defendants' unfair and unlawful business practices entitle Plaintiffs and the other
28 Class Members to seek preliminary and permanent injunctive relief, including but not limited to

1 orders that Defendants account for, disgorge, and restore to Plaintiffs and the other Class Members
2 the wages and other compensation unlawfully withheld from them. Plaintiffs and the other Class
3 Members are entitled to restitution of all monies to be disgorged from Defendants in an amount
4 according to proof at the time of trial.

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

7 **NINTH CAUSE OF ACTION**

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

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

11 160. Plaintiff Boothe and Plaintiff Medellin bring this action on an individual basis and
12 on a representative basis on behalf of other Aggrieved Employees and the State of California, in
13 Plaintiff Boothe and Plaintiff Medellin’s capacity as private attorney generals pursuant to the Private
14 Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

15 161. PAGA expressly provides for a private right of action to recover civil penalties for
16 violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision
17 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
18 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
19 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
20 brought by an aggrieved employee on behalf of himself or herself and other current or former
21 employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a).

22 162. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
23 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
24 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
25 penalty.

26 163. Plaintiff Boothe and Plaintiff Medellin and the other hourly-paid, non-exempt
27 employees are “Aggrieved Employees” as defined by California Labor Code section 2699(c) in that
28 they are all current or former employees of Defendants, and one or more of the alleged violations

1 were committed against them.

2 164. Defendants' conduct, as alleged herein, violates numerous sections of the California
3 Labor Code, including, but not limited to, the following:

- 4 (a) Violation of California Labor Code sections 510 and 1198 for failure to pay
5 overtime wages, based on the theories outlined above, and as set forth more fully
6 below;
- 7 (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure
8 to pay minimum wages, based on the theories outlined above, and as set forth
9 more fully below;
- 10 (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to
11 provide legally required meal periods, based on the theories outlined above, and
12 as set forth more fully below;
- 13 (d) Violation of California Labor Code sections 226.7 and 512(a) for failure to pay
14 required meal period premiums, as set forth more fully below;
- 15 (e) Violation of California Labor Code section 226.7 for failure to provide legally
16 required rest periods, based on the theories outlined above, and as set forth more
17 fully below;
- 18 (f) Violation of California Labor Code section 226.7 for failure to pay required rest
19 period premiums, as set forth more fully below;
- 20 (g) Violation of California Labor Code section 204 for failure to timely pay wages
21 to Plaintiffs and Aggrieved Employees during employment, based on the
22 theories outlined above, and as set forth more fully below;
- 23 (h) Violation of California Labor Code sections 201, 202, and 203 for failure to pay
24 all wages at time of discharge from employment, based on the theories outlined
25 above, and as set forth more fully below;
- 26 (i) Violation of California Labor Code section 226(a) for failure to provide accurate
27 wage statements to Plaintiffs and Aggrieved Employees, based on the theories
28 outlined above, and as set forth more fully below;

- 1 (j) Violation of California Labor Code section 1174(d) for failure to keep complete
2 and accurate payroll records relating to Plaintiffs and Aggrieved Employees,
3 based on the theories outlined above, and as set forth more fully below; and
4 (k) Violation of California Labor Code sections 2800 and 2802 for failure to
5 reimburse Plaintiffs and Aggrieved Employees for necessary business-related
6 expenses, based on the theories outlined above, and as set forth more fully
7 below.

8 165. Pursuant to PAGA, , and in particular Labor Code sections 2699(a), 2699.3, and
9 2699.5, Plaintiff Boothe and Plaintiff Medellin, acting in the public interest as private attorney
10 generals, seek assessment and collection of civil penalties for Plaintiffs, all Aggrieved Employees,
11 and the State of California against Defendants for violations of Labor Code sections set forth herein,
12 including penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3,
13 1174.5, and 1197.1, penalties under the applicable IWC Wage Order, and any and all additional
14 penalties and remedies as provided by the California Labor Code and/or other statutes.

15 166. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
16 Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for
17 the enforcement of labor laws and education of employers and employees about their rights and
18 responsibilities and twenty-five (25%) to the Aggrieved Employees.

19 167. Plaintiff Boothe and Plaintiff Medellin retained counsel to file this court action, and
20 to assess and collect the civil penalties owed by Defendants. Plaintiff Boothe and Plaintiff Medellin
21 therefore seek an award of reasonable attorney's fees and costs pursuant to Labor Code §§ 210,
22 218.5, 2699(g)(1), and any other applicable statute.

23 Violation of Labor Code Section § 201, 202 and 203

24 168. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are
25 required to timely pay all earned and unpaid wages to an employee who is discharged.

26 169. California Labor Code section 201 mandates that if an employer discharges an
27 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable
28 immediately.

1 170. California Labor Code section 202 mandates that if an employee quits, his or her
2 wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the
3 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
4 employee is entitled to his or her wages at the time of quitting.

5 171. California Labor Code section 203 provides that if an employer willfully fails to pay,
6 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
7 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
8 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
9 continue for more than thirty (30) days.

10 172. At the time that Plaintiffs and Aggrieved Employees' employment with Defendants
11 ended, Defendants knowingly and willfully failed to pay Plaintiffs and the Aggrieved Employees
12 all wages owed to them pursuant to California Labor Code sections 201 and 202, including, without
13 limitation, overtime wages, minimum wages, and meal and rest period premium wages.

14 Violation of Labor Code § 204

15 173. California Labor Code section 204 provides that all wages earned by any person in
16 any employment between the 1st and 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and the 26th day
18 of the month during which the labor was performed. It further provides all wages earned by any
19 person in any employment between the 16th and the last day, inclusive, of any calendar month, other
20 than those wages due upon termination of an employee, are due and payable between the 1st and
21 the 10th day of the following month.

22 174. California Labor Code section 204 provides that all wages earned for labor in excess
23 of the normal work period shall be paid no later than the payday for the next regular payroll period.

24 175. During the relevant time period, Defendants intentionally and willfully failed to pay
25 Plaintiffs and the Aggrieved Employees all wages due to them, within any time period permissible
26 under California Labor Code section 204, including wages for overtime compensation, minimum
27 wage compensation, meal period premiums, and rest period premiums.

28 Civil Penalties Under Labor Code § 210

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

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

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

21 Civil Penalties Under Labor Code § 226.3

22 179. Defendants had and have a policy or practice of failing to comply with Labor Code
23 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
24 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
25 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate; and other such information as required
27 by Labor Code section 226, subdivision (a).

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

1 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
2 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
3 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
4 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

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

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

14 183. Pursuant to Labor Code section 226.3, Plaintiffs 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 § 226.7

20 184. California Labor Code section 226.7 provides: “[i]f an employer fails to provide an
21 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
22 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
23 Commission,... the employer shall pay the employee one additional hour of pay at the employee's
24 regular rate of compensation for each workday that the [rest] period is not provided.

25 185. The applicable IWC Wage Order provides: “[i]f an employer fails to provide an
26 employee a rest period in accordance with the applicable provisions of this Order, the employer
27 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
28 workday that the rest period is not provided.

1 186. Defendants required Plaintiffs and the Aggrieved Employees to work four (4) or
2 more hours without authorizing or permitting a timely ten (10) minute uninterrupted rest period
3 during which time they were relieved of their duties per each four (4) hour period, or major fraction
4 thereof worked.

5 187. Defendants failed to pay Plaintiffs and Aggrieved Employees meal period premiums
6 due in violation of California Labor Code sections 226.7 and 512 on each day when a complete,
7 timely, and uninterrupted meal period of at least thirty (30) minutes was not provided.

8 188. Moreover, if and when meal break premiums were provided, Defendants failed to
9 incorporate all nondiscretionary payments for work performed by Plaintiffs and the Aggrieved
10 Employees in the regular rate of compensation for purposes of such premiums.

11 189. Defendants failed to pay Plaintiffs and Aggrieved Employees required rest break
12 premiums due when compliant rest periods were not provided.

13 190. Defendants' conduct therefore violates the applicable IWC Wage Orders and
14 California Labor Code section 226.7.

15 191. California Labor Code section 512(a) provides that an employer may not require,
16 cause, or permit an employee to work for a period of more than five (5) hours per day without
17 providing the employee with a meal period of not less than thirty (30) minutes, except that if the
18 total work period per day of the employee is not more than six (6) hours, the meal period may be
19 waived by mutual consent of both the employer and the employee.

20 192. California Labor Code section 512(a) further provides that an employer may not
21 employ an employee for a work period of more than 10 hours per day without providing the
22 employee with a second meal period of not less than 30 minutes, except that if the total hours worked
23 is no more than 12 hours, the second meal period may be waived by mutual consent of the employer
24 and the employee only if the first meal period was not waived.

25 193. The applicable IWC Wage Order sets forth the same requirements for meal breaks.

26 194. Plaintiffs and Aggrieved Employees who were scheduled to work for no longer than
27 six (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were
28 required to work for periods longer than five (5) hours without a meal period of not less than thirty

1 (30) minutes.

2 195. Plaintiffs and the Aggrieved Employees who were scheduled to work for more than
3 six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted
4 meal period of not less than thirty (30) minutes.

5 196. Plaintiffs and the Aggrieved Employees, who were scheduled to work for more than
6 ten (10) hours but no longer than twelve (12) hours, and who did not waive their legally-
7 mandated meal periods by mutual consent, were required to work in excess of ten (10) hours without
8 receiving a second uninterrupted meal period of not less than thirty (30) minutes.

9 197. Plaintiffs and the Aggrieved Employees, who were scheduled to work for a period
10 of time in excess of twelve (12) hours, were required to work for periods longer than ten (10) hours
11 without a second uninterrupted meal period of not less than thirty (30) minutes.

12 198. Moreover, when meal breaks were provided, they were often interrupted, cut-short,
13 and/or Plaintiffs and the Aggrieved Employees were not relieved of all duties as required by law.

14 199. Such conduct violates California Labor Code sections 226.7 and 512(a) and the
15 applicable IWC Wage Order.

16 Violation of Labor Code §510

17 200. Labor Code section 510 and the applicable IWC Wage Order require Defendants to
18 pay Plaintiffs and Aggrieved Employees who worked more than eight (8) hours in a day; more than
19 forty (40) hours in a workweek, and/or seven (7) consecutive days, at the rate of one-and-a-half
20 times their regular rate for all such hours worked.

21 201. Labor Code section 510 and the applicable IWC Wage Order further requires
22 Defendants to pay Plaintiffs and Aggrieved Employees who worked more than twelve (12) hours in
23 a day or more than eight (8) hours on the seventh consecutive day, overtime compensation at a rate
24 of two (2) times their regular rate of pay for all such hours worked.

25 202. During the relevant time period, Plaintiffs and Aggrieved Employees regularly
26 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of
27 forty (40) hours in a workweek and/or for seven (7) or more consecutive days, but Defendants
28 routinely failed to properly account for all such overtime hours and further failed to compensate

1 Plaintiffs and Aggrieved Employees at the correct overtime rates.

2 203. Defendants' failure to pay correct overtime wages included, *inter alia*: (a) when the
3 combined total of the off-the-clock work discussed *supra* and the on-the-clock work exceed the
4 number of hours that trigger the payment of overtime wages under Labor Code sections 510 and/or
5 the applicable Wage Order; (b) when Defendants intentionally, willfully and/or negligently
6 mischaracterized overtime as straight time, or double time as time-and-a-half; (c) when Defendants
7 assigned more work than could reasonably be completed in a workday or workweek to Plaintiffs
8 and Aggrieved Employees, but refused to authorize the overtime necessary for them to complete the
9 assigned work; and (d) when Defendants failed to include all required wages and renumeration when
10 calculating the overtime rate.

11 204. Defendants' failure to pay Plaintiffs and Aggrieved Employees proper overtime
12 compensation, as required by California law, violates the provisions of California Labor Code
13 section 510, and is therefore unlawful.

14 Violation of Labor Code § 558

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

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

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

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

27 206. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
28 each of them, violated, or caused to be violated, the Labor Code sections described herein, including

1 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
2 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
3 regular payday designated by the employer, the name of the employer, including any “doing
4 business as” names used, the name, address and telephone number of the workers’ compensation
5 insurance carrier, information regarding paid sick leave, and other pertinent information.

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

11 Violation of Labor Code § 1174.5

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

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

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

1 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
2 earned.”

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

8 212. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
9 willfully failed to keep adequate or accurate time records including wage statements and similar
10 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
11 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
12 under Labor Code section 1174. Plaintiffs and the Aggrieved Employees have been injured by
13 Defendants’ intentionally and willful violation of California Labor Code section 1174(d) because
14 they were denied both their legal right and protected interested, in having available, accurate and
15 complete payroll records pursuant to California Labor Code section 1174(d).

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

20 Violation of Labor Code § 1194, 1197, and 1197.1

21 214. California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum
22 wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the
23 payment of a wage less than the minimum so fixed is unlawful.

24 215. The IWC set the minimum wage for Plaintiffs and the Aggrieved Employees in the
25 applicable IWC Wage Order.

26 216. Defendants failed to pay minimum wage to Plaintiffs and the Aggrieved Employees
27 for a wide range of off-the-clock work performed, including, *inter alia*, requiring Plaintiffs and other
28

1 Aggrieved Employees to perform a self-health check on the phone before clocking in; receive and
2 respond to text messages off-the-clock; and work during purported meal periods.

3 217. Defendants had a policy, practice and procedure of rounding employee time such
4 that Plaintiffs and Aggrieved Employees were systematically unpaid and/or underpaid for time
5 worked over the course of their employment.

6 218. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiffs
7 and the Aggrieved Employees for all hours they worked in violation of California Labor Code
8 section 1194, 1197, and 1197.1.

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

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

19 B. For each subsequent violation for the same specific offense, two hundred fifty
20 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
21 regardless of whether the initial violation is intentionally committed. This amount shall be in
22 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
23 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

26 220. Plaintiffs are informed and believe, and based thereon allege, that Defendants caused
27 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
28 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees to pay minimum

1 wages for all hours worked, entitling Plaintiffs and other Aggrieved Employees to actual and
2 liquidated damages.

3 221. As a direct and proximate result of the herein-described Labor Code violations,
4 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to
5 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
6 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
7 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
8 subsequent violation.

9 Violation of Labor Code § 1194, 1197, and 1197.1

10 222. Plaintiffs and the Aggrieved Employees incurred necessary business-related
11 expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, the
12 purchase of non-slip shoes, non-slip shoe covers, purchase of parking passes, mileage incurred on
13 personal vehicles, and the usage of personal cell phones for work-related purposes, costs incurred
14 for purchasing pants, and costs incurred for maintenance and separate laundering of mandatory work
15 uniforms.

16 Civil Penalties Under Labor Code § 2699

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

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

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

10 226. Moreover, Plaintiff Boothe and Plaintiff Medellin and other Aggrieved Employees
11 within the State of California whom they seek to represent are entitled to an award of reasonable
12 attorneys’ fees and costs in connection with their herein-described claims for civil penalties.

13 **DEMAND FOR JURY TRIAL**

14 227. Plaintiffs demand a trial by jury on all causes of action contained herein.

15 **PRAYER**

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

- 18 A. An order certifying this case as a Class Action;
- 19 B. An order appointing Plaintiffs as Class representatives and appointing Plaintiffs’
20 counsel as class counsel;
- 21 C. Damages for all wages earned and owed, including minimum and overtime wages,
22 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
- 23 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 24 E. Damages for unpaid premium wages from missed meal and rest periods under,
25 among other Labor Code sections, 512, 558.1 and 226.7;
- 26 F. Penalties for inaccurate wage statements under Labor Code sections 226,
27 subdivision (e) and 558.1;
- 28 G. Waiting time penalties under Labor Code sections 203 and 558.1;

- 1 H. Damages under Labor Code sections 2802 and 558.1;
- 2 I. Preliminary and permanent injunctions prohibiting Defendants from further
- 3 violating the California Labor Code and requiring the establishment of appropriate
- 4 and effective means to prevent future violations;
- 5 J. Restitution of wages and benefits due which were acquired by means of any unfair
- 6 business practice, according to proof;
- 7 K. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 8 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
- 9 1197.1, and 2699;
- 10 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 11 210, 218.5, 226.3, 558, 1174.5, 1197.1, and 2699(g)(1);
- 12 N. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210,
- 13 558, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California
- 14 Labor Code and/or other applicable statutes;
- 15 O. For attorneys' fees in prosecuting this action;
- 16 P. For costs of suit incurred herein; and
- 17 Q. For such other and further relief as the Court deems just and proper.

18 ///

19 ///

20 ///

21 Dated: October 25, 2024 BIBIYAN LAW GROUP, P.C.

22

23 BY: /s/ Vedang J. Patel

24 VEDANG J. PATEL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attorneys for Plaintiff JAMESHA BOOTHE,
on behalf of herself and all others similarly
situated and aggrieved

Dated: October 25, 2024

BLACKSTONE LAW, APC

BY: /s/ Jonathan M. Genish
JONATHAN M. GENISH
Attorneys for Plaintiffs ALEXZANDER ROBERTS,
individually, and on behalf of other similarly situated
employees, and JEANPAUL MEDELLIN, individually,
and on behalf of other similarly situated employees and
aggrieved employees pursuant to the
California Private Attorneys General Act

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1460 Westwood Boulevard, Los Angeles, CA 90024.

On October 29, 2024, I caused a true and correct copy of the foregoing document(s) described as: **THIRD AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below service list:

Ryan C. Bykerk
Anthony E. Guzman II
GREENBERG TRAURIG
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Telephone: (310) 586-7700
Facsimile: (310) 586-7800
Email: bykerkr@gtlaw.com
guzmanan@gtlaw.com

Counsel for Defendant Lemonade Restaurant Groupe, LLC

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiffs ALEXZANDER ROBERTS and JEANPAUL MEDELLIN

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

Executed on October 29, 2024, at Los Angeles, California.

/s/ Araceli Marquez