

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan (Cal. Bar No. 287811)
david@tomorrowlaw.com
Diego Aviles (Cal. Bar No. 315533)
diego@tomorrowlaw.com
Brian Zaghi (Cal. Bar No. 343599)
brian@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Telephone: (310) 438-5555
Facsimile: (310) 300-1705

Attorneys for Plaintiff, JULIE DE LA HOYA and
on behalf of herself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE COUNTY

JULIE DE LA HOYA, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

PRONTO CALIFORNIA GENERAL
AGENCY, LLC., a Delaware limited liability
company; ARTHUR J. GALLAGHER
SERVICE COMPANY, INC., a Delaware
corporation; ARTHUR J. GALLAGHER &
CO., a Delaware corporation; ARTHUR J.
GALLAGHER & CO. INSURANCE
BROKERS OF CALIFORNIA, INC., a
California corporation; ARTHUR J.
GALLAGHER RISK MANAGEMENT
SERVICES, INC., a Illinois corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.:30-2022-01294951-CU-OE-CXC

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

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

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DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff JULIE DE LA HOYA (“Plaintiff”), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382 on behalf of Plaintiff and all other current and former similarly situated and aggrieved employees employed by or formerly employed by PRONTO CALIFORNIA GENERAL AGENCY, LLC, a Delaware limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“PRONTO”), ARTHUR J. GALLAGHER SERVICE COMPANY, INC. a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“GALLAGHER”), ARTHUR J. GALLAGHER & CO., a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“GALLAGHER & CO.”), ARTHUR J. GALLAGHER & CO. INSURANCE BROKERS OF CALIFORNIA, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“GALLAGHER INS.”), ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC., a Illinois corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“GALLAGHER RISK”, and together with GALLAGHER, GALLAGHER & CO., GALLAGHER INS., GALLAGHER RISK, PRONTO, and DOES 1 through 100, as further defined below, “Defendants”), on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”), against Defendants, and any of their respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working

1 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
2 for violations of the Labor Code, including but not limited to, failure to comply with Labor Code
3 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, et seq.,
4 Labor Code section 2802, on behalf of all employees of Defendants working within the Civil
5 Penalty Period (collectively, “Aggrieved Employees”).

6 **PARTIES**

7 **A. Plaintiff**

8 3. Plaintiff JULIE DE LA HOYA is a resident of the State of California. At all
9 relevant times herein, Plaintiff is informed and believes, and based thereon allege that Defendants
10 employed Plaintiff JULIE DE LA HOYA as a non-exempt employee, with duties that included,
11 but were not limited to, customer service and insurance sales. Plaintiff is informed and believes,
12 and based thereon allege that Plaintiff JULIE DE LA HOYA worked for Defendants from
13 approximately July of 2019 through approximately December of 2021.

14 **B. Defendants**

15 4. Plaintiff is informed and believes and based thereon allege that defendant
16 PRONTO is, and at all times relevant hereto was, a limited liability company organized and
17 existing under and by virtue of the laws of the State of Delaware and doing business in the County
18 of Orange, State of California. At all relevant times herein, PRONTO employed Plaintiff and
19 similarly situated employees within the State of California.

20 5. Plaintiff is informed and believes and based thereon alleges that defendant
21 GALLAGHER is, and at all times relevant hereto was, a surrendered corporation organized and
22 existing under and by virtue of the laws of the State of Delaware, and doing business in the
23 County of Orange, State of California.

24 6. Plaintiff is informed and believes and based thereon alleges that defendant
25 GALLAGHER & CO. is, and at all times relevant hereto was, a surrendered corporation organized
26 and existing under and by virtue of the laws of the State of Delaware, and doing business in the
27 County of Orange, State of California.

28 7. Plaintiff is informed and believes and based thereon alleges that defendant

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

4 8. Plaintiff is informed and believes and based thereon alleges that defendant
5 GALLAGHER RISK is, and at all times relevant hereto was, a corporation organized and existing
6 under and by virtue of the laws of the State of Illinois, and doing business in the County of
7 Orange, State of California.

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

22 **JOINT LIABILITY ALLEGATIONS**

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

28 11. All of the acts and conduct described herein of each and every corporate defendant

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

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

11 **JURISDICTION**

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

14 14. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
15 sections 392, et seq. because, among other things, Orange County is where the causes of action
16 complained of, or some of them herein arose; and the county in which Defendants, or some of
17 them, reside. Moreover, Plaintiff is informed and believes that PRONTO'S main California
18 address is located in Santa Ana, California. Additionally, the unlawful acts alleged herein have a
19 direct effect on Class Members in Orange County, and because Defendants employ numerous
20 Class Members in Orange County.

21 15. Plaintiff is an "aggrieved employee" under PAGA, as she was employed by
22 Defendants during the applicable statutory period and suffered one or more of the Labor Code
23 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of herself and all
24 other aggrieved current and former employees of Defendants, the civil penalties provided by
25 PAGA plus reasonable attorneys' fees and costs, as the term "civil penalty" is defined under ZB
26 N.A. v. Superior Court (2019) 8 Cal.5th 175.

27 16. Plaintiff seeks to recover the PAGA civil penalties through a representative action
28 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*

1 Superior Court (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
2 PAGA allegations described herein is not required.

3 17. During the period beginning one (1) year preceding the provision of notice to the
4 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
5 Defendants violated, inter alia, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 256,
6 432, 510, 512, 558, 1174, 1194, 1197, 1198.5, 2802, and 2810.3, and 2810.5, among others.

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

11 19. On or around December 05, 2022, Plaintiff provided written notice under Labor
12 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
13 violation of various, including the herein-described, provisions of the Labor Code, to the Labor
14 and Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
15 requested to Defendants, and each of them.

16 20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
17 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
18 calendar days of the December 05, 2022, postmarked date of the herein-described notice sent by
19 Plaintiff to the LWDA and Defendants.

20 21. On April 6, 2020, the Judicial Council of California approved Appendix I –
21 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
22 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of
23 action are tolled from April 6, 2020 until October 1, 2020. Plaintiff worked in between April of
24 2020 and October of 2020, such that she can avail herself of the above-referenced statute.

25 **FACTUAL BACKGROUND**

26 22. For at least four (4) years prior to the filing of this action and continuing to the
27 present, except as indicated in paragraph 36 of this Complaint, Defendants have, at times, failed to
28 pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California

1 state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working
2 over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a
3 work week without being properly compensated for hours worked in excess of (8) hours per day in
4 a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh
5 consecutive work day in a work week by, among other things, failing to accurately track and/or
6 pay for all minutes actually worked at the proper overtime rate of pay; detrimental rounding or
7 manipulation of time entries; paying straight or regular pay instead of overtime pay; and failing to
8 include all forms of remuneration, including non-discretionary bonuses and/or incentive pay, into
9 the regular rate of pay for the purpose of calculating the overtime rate of pay to the detriment of
10 Plaintiff and Class Members. In addition, Defendants would also be liable for civil penalties
11 pursuant to Labor Code sections 558 and 2699.

12 23. For at least four (4) years prior to the filing of this Action and continuing to the
13 present, except as indicated in paragraph 36 of this Complaint, Defendants have, at times, failed to
14 pay minimum wages to Plaintiff and Class Members, or some of them, in violation of California
15 state wage and hour laws as a result of, among other things, at times, failing to accurately track
16 and/or pay for all hours actually worked at their regular rate of pay that is above the minimum
17 wage, detrimental rounding, or manipulation of time entries, and failing to pay all split-shift
18 premiums, to the detriment of Plaintiff and Class Members. Defendants would also be liable for
19 civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

20 24. For at least four (4) years prior to the filing of this Action and continuing to the
21 present, except as indicated in paragraph 36 of this Complaint, Defendants have, at times, failed to
22 provide Plaintiff and Class Members, or some of them, full, timely thirty (30) minute
23 uninterrupted meal period for days on which they worked more than five (5) hours in a work day
24 and a second thirty (30) minute uninterrupted meal period for days on which they worked in
25 excess of ten (10) hours in a work day, and failing to provide compensation for such unprovided
26 meal periods as required by California wage and hour laws. Defendants would also be liable for
27 civil penalties pursuant to Labor Code sections 558 and 2699.

28 25. For at least four (4) years prior to the filing of this action and continuing to the

1 present, except as indicated in paragraph 36 of this Complaint, Defendants have, at times, failed to
2 authorize and permit Plaintiff and Class Members, or some of them, to take rest periods of at least
3 ten (10) minutes per four (4) hours worked or major fraction thereof and failed to provide
4 compensation for such unprovided rest periods as required by California wage and hour laws.
5 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

6 26. For at least three (3) years prior to the filing of this action and continuing to the
7 present, except as indicated in paragraph 36 of this Complaint, Defendants have, at times, failed to
8 pay Plaintiff and Class Members, or some of them, the full amount of their wages owed to them
9 upon termination and/or resignation as required by Labor Code sections 201 and 202, including
10 for, without limitation, failing to pay overtime wages, minimum wages, and premium wages.
11 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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

21 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
22 and have a policy or practice of requesting consumer reports from Plaintiff and Class Members
23 through a consumer reporting agency to use for employment purposes without providing the
24 adequate disclosures and/or obtaining proper authorization including, without limitation, by failing
25 to provide stand-alone forms that do not include any additional information in its disclosures, in
26 accordance with 15 U.S.C. § 1681 *et seq.*

27 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
28 and have a policy or practice of requesting consumer background reports from Plaintiff and Class

1 Members through a consumer reporting agency to use for employment purposes without providing
2 the adequate disclosures and/or obtaining proper authorization including, without limitation, by
3 failing to provide stand-alone forms that do not include any additional information in its
4 disclosures in accordance with California Civil Code section 1786 *et seq.* (“ICRAA”).

5 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
6 and have a policy or practice of requesting consumer background reports from Plaintiff and Class
7 Members through a consumer reporting agency to use for employment purposes without providing
8 the adequate disclosures and/or obtaining proper authorization including, without limitation, by
9 failing to provide stand-alone forms that do not include any additional information in its
10 disclosures in accordance with California Civil Code section 1785 *et seq.* (“CCRAA”).

11 31. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
12 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7, 510,
13 512, 1194, 1194.2, 1197, and California Code of Regulations, Title 8, section 11040, seeking
14 overtime wages, minimum wages, payment of premium wages for missed meal and rest periods,
15 waiting time penalties, wage statement penalties, other such provisions of California law, and 15
16 U.S.C. section 1681 *et seq.*, California Civil Code section 1786 *et seq.*, California Civil Code
17 section 1785 *et seq.*, and seeking penalties under the FCRA, penalties under the ICRAA, and
18 penalties under the CCRAA, and reasonable attorneys’ fees and costs.

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

25 33. At all relevant times mentioned herein, Defendants have had a policy or practice of
26 failing to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft
27 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
28 Employees with the rates of pay and overtime rates of pay applicable to their employment;

1 allowances claimed as part of the minimum wage; the regular payday designated by Defendants;
2 the name, address, and telephone number of the workers' compensation insurance carrier;
3 information regarding paid sick leave; and other pertinent information required to be disclosed by
4 Defendants under Labor Code section 2810.5. As a result of these violations, Defendants are liable
5 for civil penalties pursuant to Labor Code sections 558 and 2699.

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

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

15 **CLASS ACTION ALLEGATIONS**

16 36. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class
17 action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all
18 current and former non-exempt employees of the Gallagher Defendants (*i.e.*, GALLAGHER,
19 GALLAGHER & CO., GALLAGHER INS., GALLAGHER RISK) within the State of California
20 at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the
21 time that notice of the class action is provided to the class. Additionally, Plaintiff seeks to
22 represent a class of all current and former non-exempt employees of PRONTO within the State of
23 California at any time commencing from August 17, 2021 up until the time that notice of the class
24 action is provided to the class (collectively referred to as "Class Members").

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

28 38. This action has been brought and may properly be maintained as a class action

1 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
2 community of interest in the litigation and the proposed Class is easily ascertainable.

3 **A. Numerosity**

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

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

12 **B. Commonality**

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

- 15 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
16 hours worked at a proper overtime rate of pay?
- 17 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
18 for all other time worked at the employee's regular rate of pay and a rate of pay that
19 is greater than the applicable minimum wage?
- 20 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
21 Class Members to take compliant meal periods?
- 22 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
23 with additional wages for missed or interrupted meal periods?
- 24 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
25 Class Members to take compliant rest periods?
- 26 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
27 with additional wages for missed rest periods?
- 28 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class

Members upon termination or resignation all wages earned?

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

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

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

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

L. Did Defendants violate the Fair Credit Reporting Act, 15 U.S.C. section 1681 *et seq.*, by their improper disclosure to Class Members?

M. Did Defendants violate the California Investigative Consumer Reporting Agencies Act, California Civil Code section 1786 *et seq.* by their improper disclosure to Class Members?

N. Did Defendants violate the Consumer Credit Reporting Agencies Act, California Civil Code section 1785 *et seq.* by their improper disclosure to Class Members?

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

P. Are Class Members entitled to interest?

C. Typicality

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

D. Adequacy of Representation

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

1 **E. Superiority of Class Action**

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

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

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

50. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay; detrimental rounding or manipulation of time entries; paying straight or regular pay instead of overtime pay; and failing to include all forms of remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of pay for the purpose of calculating the overtime rate to the detriment of Plaintiff and Class Members.

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

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

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

1 Defendants' control.

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

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

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

13 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

18 **FOURTH CAUSE OF ACTION**

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

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

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

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

1 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
2 provided thirty (30) minutes of paid rest period.

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

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

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

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

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

25 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

1 82. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
2 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
3 waiting time penalties, interest, and their costs of suit, as well.

4 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

28 88. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have

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

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

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

15 **SEVENTH CAUSE OF ACTION**

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

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

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

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

27 94. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
28 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor

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

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

9 **EIGHTH CAUSE OF ACTION**

10 **(Violation of the Fair Credit Reporting Act – Against All Defendants)**

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

13 97. At all relevant times, Plaintiff and Class Members were employees or former
14 employees of Defendants covered by Fair Credit Reporting Act, 15 U.S.C. section 1681, *et seq.*
15 (“FCRA”).

16 98. Pursuant to 15 U.S.C. section 1681b(b)(2)(A)(i) an employer may not procure, or
17 cause to be procured, consumer reports for employment purposes without providing the
18 [employee] with “a clear and conspicuous disclosure... made in writing... in a document that
19 consists solely of the disclosure that a consumer report may be obtained for employment
20 purposes.”

21 99. 15 U.S.C. section 1681d(a)(1)(B) provides that an employer may not procure or
22 cause to be prepared an investigative consumer report on any consumer unless it is “clearly and
23 accurately disclosed to the [employee] that an investigative consumer report... may be made and
24 such disclosure includes a statement informing the consumer of his right to request the additional
25 disclosures provided for under subsection (b) of this section and the written summary of the rights
26 of the consumer prepared pursuant to section 1881g(c) of this title.”

27 100. Plaintiff is informed and believes, and based thereon alleges, that for at least five
28 (5) years prior to the filing of this Action and continuing to the present, except as otherwise herein

1 stated, Defendants have, at times, obtained and used information in consumer reports to conduct
2 background checks on prospective and existing employees. Defendants have, at times, willfully
3 violated the strict disclosure and authorization requirements under the Fair Credit Reporting Act,
4 15 U.S.C. section 1681, *et seq.* (“FCRA”).

5 101. During that time period, Plaintiff is informed and believes, and based thereon
6 alleges, that Defendants’ violations of the FCRA were willful. Defendant knew or should have
7 known about its obligations under the FCRA as a result of the plain language of the statutes.

8 102. Under 15 U.S.C. section 1681n Plaintiff and Class Members are entitled to
9 statutory damages of not less than \$100 and not more than \$1,000 for each and every violation.
10 Furthermore, pursuant to 15 U.S.C. § 1681n(a)(3), Plaintiff and Class Members are also entitled to
11 recover relief, including attorney’s fees, including, without limitation, under 15 U.S.C. § 1681o.

12 **NINTH CAUSE OF ACTION**

13 **(Viol. of the Cal. Investigative Consumer Reporting Agencies Act – Against All Defendants)**

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

16 104. At all relevant times, Plaintiff and Class Members were employees or former
17 employees of Defendants covered by the California Investigative Consumer Reporting Agencies
18 Act, California Civil Code section 1786 *et seq.* (“ICRAA”).

19 105. Plaintiff is informed and believes that Plaintiff and Class Members are
20 “consumers” within the meaning Section 1786.2(b) of the ICRAA, because they are “individuals.”

21 106. Section 1786.2(c) of the ICRAA defines an “investigative consumer report” as “a
22 consumer report in which information on a consumer's character, general reputation, personal
23 characteristics, or mode of living is obtained through any means.”

24 107. Plaintiff is informed and believes that Defendants obtained background checks
25 from Plaintiff and Class Members, which qualify as an “investigative consumer report” under the
26 ICRAA, from an entity named HireRight.

27 108. Section 1786.16(a)(2) of the ICRAA provides, in relevant part, that “[i]f, at any
28 time, an investigative consumer report is sought for employment purposes... the person seeking

1 the investigative consumer report may procure the report, or cause the report to be made, only if
2 all of the following apply:

3 “(A) The person procuring or causing the report to be made has a permissible
4 purpose, as defined in Section 1786.12.

5 (B) The person procuring or causing the report to be made provides a clear and
6 conspicuous disclosure in writing to the consumer at any time before the report is
7 procured or caused to be made in a document that consists solely of the
8 disclosure...”

9 109. The plain language of the statute clearly indicates that the inclusion of this
10 extraneous information in a disclosure form violates the disclosure and authorization requirements
11 of the ICRAA, because such a form would not consist “solely” of the disclosure and that the
12 notice provided be “clear and conspicuous.”

13 110. For at least five (5) years prior to the filing of this Action and continuing to the
14 present, Defendants have, at times, obtained and used information in consumer reports to conduct
15 background checks on prospective and existing employees without providing a “clear and
16 conspicuous” notice of the disclosure that states why the report is being obtained, that the
17 disclosure may include information on the consumer’s character, general reputation, personal
18 characteristics; identification of the investigative consumer reporting agency conducting the
19 investigation; notification of the nature and scope of the investigation, including a summary of the
20 provisions of California Civil Code § 1786.22. Defendants obtained such information from
21 Plaintiff through an entity named HireRight.

22 111. Plaintiff is informed and believes that as a result of the above, Defendants have, at
23 times, willfully violated the strict disclosure and authorization requirements under the California
24 Investigative Consumer Reporting Agencies Act, California Civil Code section 1786 *et seq.*
25 (“ICRAA”).

26 112. As a result of Defendants' unlawful procurement of background reports by way of
27 its inadequate disclosures, as set forth above, Plaintiff and Class Members have been deprived of
28 their consumer rights and prevented from making informed decisions about whether to permit

1 Defendants to obtain their personal information. As such, Plaintiff and Class Members have been
2 injured, including, but not limited to, having their privacy and statutory rights invaded in violation
3 of the ICRAA.

4 113. Plaintiff, on behalf of herself and Class Members, seeks all available remedies
5 pursuant to California Civil Code section 1786.50, including statutory damages punitive damages,
6 and attorneys' fees and costs.

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9 **TENTH CAUSE OF ACTION**

10 **(Violation of the Consumer Credit Reporting Agencies Act – Against All Defendants)**

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

13 115. At all relevant times, Plaintiff and Class Members were employees or former
14 employees of Defendants covered by the Consumer Credit Reporting Agencies Act, California
15 Civil Code section 1785 *et seq.* (“CCRAA”).

16 116. Section 1785.3(c) of the ICRAA defines “consumer credit report” as “[a]ny written,
17 oral, or other communication or any information by a consumer credit reporting agency bearing on
18 a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to
19 be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the
20 consumer's eligibility for: ... (2) employment purposes...”

21 117. Plaintiff is informed and believes that the employment background checks procured
22 by Defendants on behalf of Plaintiff and Class Members qualify as consumer credit reports under
23 the CCRAA, including those done through HireRight.

24 118. Section 1785.20.5(a) of the CCRAA provides, in relevant part, that “[p]rior to
25 requesting a consumer credit report for employment purposes, the user of the report shall provide
26 written notice to the person involved. The notice shall inform the person that a report will be used,
27 and shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for
28 use of the report. The notice shall also inform the person of the source of the report...”

119. For at least five (5) years prior to the filing of this Action and continuing to the present, Defendants have, at times, obtained and used information in consumer reports to conduct background checks on prospective and existing employees without providing proper notice informing Plaintiff and Class Members of the source of the reports and without supplying the name and address of the consumer credit reporting agency making the report, as required by California Civil Code section 1785.20.5(b).

120. Plaintiff is informed and believes that as a result of the above, Defendants have, at times, willfully violated the strict disclosure and authorization requirements under the Consumer Credit Reporting Agencies Act, California Civil Code section 1785 *et seq.* (“CCRAA”).

121. Plaintiff is informed and believes Defendants' conduct in violation of Section 1785.20.5(a) of the CCRAA was and is willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their obligations and the rights of applicants and employees, including Plaintiff and Class Members.

122. As a result of Defendants' illegal procurement of credit reports by way of their inadequate notice, as set forth above, Plaintiff and Class Members have been injured including, but not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

123. Plaintiff, on behalf of herself and Class Members, seeks all available remedies pursuant to California Civil Code section 1785.31, including statutory damages and/or actual damages, punitive damages, injunctive relief, and attorneys' fees and costs.

ELEVENTH CAUSE OF ACTION

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

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

Civil Penalties Under Labor Code § 210

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

1 between the 1st and 10th day of the following month.”

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

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

17 Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

14 Violation of Labor Code § 558

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

27 134. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
28 each of them, violated, or caused to be violated, the Labor Code sections described herein,

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

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

13 Violation of Labor Code § 1174.5

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

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

24 138. At all times mentioned herein, Labor Code section 1174, subdivision (d) has
25 required every person employing labor in California to “[k]eep, at a central location in the state or
26 at the plants or establishments at which employees are employed, payroll records showing the
27 hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
28 applicable piece rate paid to, employees employed at the respective plants or establishments.

1 These records shall be kept in accordance with rules established for this purpose by the
2 commission, but in any case, shall be kept on file for not less than three years. An employer shall
3 not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a
4 piece-rate basis, piece-rate units earned.”

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

11 140. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
12 willfully failed to keep adequate or accurate time records including wage statements and similar
13 payroll documents under Labor Code section 226, documents signed to obtain or hold
14 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,
15 and time records under Labor Code section 1174.

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

20 Violation of Labor Code § 1197.1

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

27 A. For any initial violation that is intentionally committed, one hundred dollars
28 (\$100) for each underpaid employee for each pay period for which the employee is underpaid.

1 This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
2 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section
3 203.

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

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

11 143. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of
13 Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to
14 pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to
15 actual and liquidated damages.

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

22 Civil Penalties Under Labor Code § 2699

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

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

7 147. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
8 each of them, violated the Labor Code sections described herein, including, without limitation, for
9 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
10 allowances claimed as part of the minimum wage, the regular payday designated by Defendants,
11 the name of the employer, including any “doing business as” names used, the name, address and
12 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
13 leave, and other pertinent information required to be disclosed by Employer under Labor Code
14 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of
15 paid sick leave required to be provided pursuant to California and local laws.

16 148. Moreover, Plaintiff and other Aggrieved Employees within the State of California
17 whom she seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
18 connection with their herein-described claims for civil penalties.

19 **DEMAND FOR JURY TRIAL**

20 149. Plaintiff demands a trial by jury on all causes of action contained herein.

21 **PRAYER**

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

- 24 A. An order certifying this case as a Class Action;
- 25 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s
26 counsel as class counsel;
- 27 C. Damages for all wages earned and owed, including minimum. overtime wages and,
28 under Labor Code sections 510, 1194, 1197 and 1199;

- 1 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 2 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 3 among other Labor Code sections, 512 and 226.7;
- 4 F. Penalties for inaccurate wage statements under Labor Code sections 226,
- 5 subdivision (e);
- 6 G. Waiting time penalties under Labor Code section 203;
- 7 K. Preliminary and permanent injunctions prohibiting Defendants from further
- 8 violating the California Labor Code and requiring the establishment of appropriate
- 9 and effective means to prevent future violations;
- 10 L. Restitution of wages and benefits due which were acquired by means of any unfair
- 11 business practice, according to proof;
- 12 M. An award of statutory damages to Plaintiff and Class Members in an amount equal
- 13 to \$1,000 for Plaintiff and each Class Member pursuant to 15 U.S.C. section
- 14 1681n(a)(1)(A), for Defendants' willful violation of the FCRA;
- 15 N. An award of punitive damages to Plaintiff and Class Members pursuant to 15
- 16 U.S.C. section 1681n(a)(2) for Defendants' violations of the FCRA;
- 17 O. An award of statutory damages, punitive damages, and award for costs of suit and
- 18 reasonable attorneys' fees for violations of the ICRAA;
- 19 P. An award of statutory damages, punitive damages, and award for costs of suit and
- 20 reasonable attorneys' fees for violations of the CCRAA
- 21 Q. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 22 R. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558.
- 23 1174.5, 1197.1. and 2699;
- 24 S. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
- 25 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 26 T. For attorneys' fees in prosecuting this action;
- 27 U. For costs of suit incurred herein; and
- 28 V. For such other and further relief as the Court deems just and proper.

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Dated: February 03, 2023

BIBIYAN LAW GROUP, P.C.

BY: /s/ Brian Zaghi

BRIAN ZAGHI

Attorneys for Plaintiff JULIE DE LA HOYA on behalf
of herself and all others similarly situated and
aggrieved

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On March 6, 2023, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail addresses as follows:

Caitlin Tran Esq.
CWTran@winston.com
Joan Fife, Esq.
JFife@winston.com
Samuel R. Freeman, Esq.
SFreeman@winston.com
Winston & Strawn LLP 333 S. Grand
Avenue Los Angeles, CA 90071

Counsel for Defendants, PRONTO CALIFORNIA GENERAL AGENCY, LLC., ARTHUR J. GALLAGHER SERVICE COMPANY, INC., ARTHUR J. GALLAGHER & CO., ARTHUR J. GALLAGHER & CO. INSURANCE BROKERS OF CALIFORNIA, INC., ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

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

Executed on March 6, 2023, at Beverly Hills, California.

BY: /s/ Jasmin Rodriguez
JASMIN RODRIGUEZ