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himself and all others similarly situated and aggrieved

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

JEFF V. LACAP, an individual, OFELIA
MIRANDA DE QUIROZ, an individual, on
behalf of themselves and all others similarly
situated and aggrieved,

Plaintiff,

v.

COMFORT CALIFORNIA, INC., a California
corporation; SUNBURST HOSPITALITY
CORPORATION, a Delaware corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: CGC-22-603274
Consolidated with Case No. CGC-23-605319

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

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION;
10. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT OF 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]

ELECTRONICALLY
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County of San Francisco
03/18/2025
Clerk of the Court
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Deputy Clerk

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1 Plaintiff Jeff V. Lacap (“Plaintiff Lacap”) and Ofelia Miranda De Quiroz (“Plaintiff Quiroz”
2 and collectively, with Plaintiff Lacap, the “Plaintiffs”), on behalf of Plaintiffs and all others similarly
3 situated and aggrieved, allege as follows:

4 **GENERAL ALLEGATIONS**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
7 Comfort California, Inc., and any of its respective subsidiaries or affiliated companies within the
8 State of California (“Comfort California”), and Sunburst Hospitality Corporation and any of its
9 respective subsidiaries or affiliated companies within the State of California (“Sunburst”)
10 (collectively, with DOES 1 through 100, as further defined below, “Defendants”) on behalf of
11 Plaintiffs and all other current and former non-exempt California employees employed by or
12 formerly employed by Defendants (“Class Members”).

13 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
14 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Comfort
15 California, Inc., a California corporation, and any of its respective subsidiaries or affiliated
16 companies within the State of California (“Comfort California”), and Sunburst Hospitality
17 Corporation, a Delaware corporation, and any of its respective subsidiaries or affiliated companies
18 within the State of California (“Sunburst”)(collectively, with DOES 1 through 100, as further
19 defined below, “Defendants”), as a proxy of the Labor and Workforce Development Agency of the
20 State of California (“LWDA”), on behalf of Plaintiffs and all other current and former non-exempt
21 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as
22 it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code
23 section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 245, *et seq.*,
24 Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on
25 behalf of all employees of Defendants working within the Civil Penalty Period (collectively,
26 “Aggrieved Employees”).

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1 **PARTIES**

2 **A. Plaintiffs**

3 3. Plaintiff Lacap is a resident of the State of California. At all relevant times herein,
4 Plaintiff Lacap is informed and believes, and based thereon alleges that Defendants employed
5 Plaintiff Lacap as a non-exempt employee, with duties that included, but were not limited to,
6 cleaning and maintaining guest rooms, hallways, furnishing, flooring, and work areas. Plaintiff
7 Lacap is informed and believes, and based thereon alleges, that Plaintiff Lacap worked for
8 Defendants from approximately May of 2013 through 2023.

9 4. Plaintiff Quiroz is a resident of the State of California. At all relevant times herein,
10 Plaintiff Quiroz is informed and believes, and based thereon alleges that Defendants employed
11 Plaintiff Quiroz as a non-exempt employee, with duties that included, but were not limited to,
12 cleaning and maintaining guest rooms, hallways, furnishing, flooring, and work areas. Plaintiff
13 Quiroz is informed and believes, and based thereon alleges, that Plaintiff Quiroz worked for
14 Defendants from approximately January 2022 through April 2022.

15 **B. Defendants**

16 5. Plaintiffs are informed and believe, and based thereon allege, that defendant Comfort
17 California is, and at all times relevant hereto was, a corporation organized and existing under and
18 by virtue of the laws of the State of California and doing business in the County of San Francisco,
19 State of California.

20 6. Plaintiffs are informed and believe, and based thereon allege, that defendant Sunburst
21 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
22 the laws of the State of Delaware and doing business in the County of San Francisco, State of
23 California.

24 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
25 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs,
26 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
27 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
28 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.

1 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
2 of the defendants designated hereinafter as DOES when such identities become known. Plaintiffs
3 are informed and believe, and based thereon allege, that each defendant acted in all respects pertinent
4 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
5 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
6 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
7 include Comfort California, Sunburst, and any of their parent, subsidiary, or affiliated companies
8 within the State of California, as well as DOES 1 through 100 identified herein.

9 **JOINT LIABILITY ALLEGATIONS**

10 8. Plaintiffs are informed and believe, and based thereon allege, that all the times
11 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
12 representative, joint venture or co-conspirator of each of the other defendants, either actually or
13 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
14 employment, joint venture, and conspiracy.

15 9. All of the acts and conduct described herein of each and every corporate defendant
16 was duly authorized, ordered, and directed by the respective and collective defendant corporate
17 employers, and the officers and management-level employees of said corporate employers. In
18 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
19 their said employees, agents, and representatives, and each of them; and upon completion of the
20 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
21 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
22 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
23 aforementioned corporate employees, agents and representatives.

24 10. Plaintiffs are informed and believe, and based thereon allege, that despite the
25 formation of the purported corporate existence of Comfort California, Sunburst, and DOES 1
26 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same
27 with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
28 the following reasons:

1 A. The Alter Ego Defendants are completely dominated and controlled by the
2 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
3 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
4 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
5 inequitable purpose;

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

9 C. Plaintiffs are informed and believe, and based thereon allege, that the
10 Individual Defendants and the Alter Ego Defendants, while really one and the same, were segregated
11 to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a
12 statute, or accomplishing some other wrongful or inequitable purpose;

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

20 E. The recognition of the separate existence of the Individual Defendants from
21 the Alter Ego Defendants would promote injustice insofar as it would permit these defendants to
22 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,
23 and other statutory violations. The corporate existence of these defendants should thus be
24 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
25 and injustice to Plaintiffs herein.

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

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

JURISDICTION

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

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

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

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

17. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,

1 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
2 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

7 19. On or around December 2, 2022, Plaintiff Lacap provided written notice pursuant to
8 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
9 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
10 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
11 them.

12 On or around December 13, 2022, Plaintiff Quiroz provided written notice pursuant to Labor
13 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
14 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
15 as well as by certified mail, with return receipt 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 2, 2022, postmarked date of the herein-described notice sent by
19 Plaintiff Lacap to the LWDA and Defendants.

20 **FACTUAL BACKGROUND**

21 21. For at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendants have, at times, failed to pay overtime wages to Plaintiffs, Class Members, and
23 other Aggrieved Employees, or some of them, in violation of California state wage and hour laws
24 as a result of, without limitation, Plaintiffs, Class Members, and other Aggrieved Employees
25 working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days
26 in a work week without being properly compensated for hours worked in excess of (8) hours per
27 day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh
28 consecutive work day in a work week by, among other things, failing to accurately track and/or pay

1 for all minutes actually worked at the proper overtime rate of pay to the detriment of Plaintiffs, Class
2 Members, and other Aggrieved Employees.

3 22. 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 minimum wages to Plaintiffs, Class Members, and
5 other Aggrieved Employees, or some of them, in violation of California state wage and hour laws
6 as a result of, among other things, at times, failing to accurately track and/or pay for all hours
7 actually worked at their regular rate of pay that is above the minimum wage to the detriment of
8 Plaintiffs, Class Members, and other Aggrieved Employees.

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

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

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

26 26. For at least one (1) year prior to the filing of this Action and continuing to the present,
27 Defendants have, at times, failed to furnish Plaintiffs, Class Members, and other Aggrieved
28 Employees, or some of them, with itemized wage statements that accurately reflect gross wages

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

6 27. At all relevant times mentioned herein, Defendants had and have a policy or practice
7 of failing to timely pay Plaintiffs and other Aggrieved Employees, among other wages, all wages
8 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
9 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
10 Code sections 201, 202, and 203.

11 28. 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 pay Plaintiffs, Class Members, and other Aggrieved Employees,
13 or some of them, the full amount of their wages for labor performed in a timely fashion as required
14 under Labor Code section 204.

15 29. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
17 limitation, Plaintiffs, Class Members, and other Aggrieved Employees, with their costs incurred for
18 driving personal vehicles (i.e., mileage and gas), purchasing uniforms, providing uniform and other
19 deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment
20 (including work boots to handle oil), for the purchase and maintenance of cellular phones and
21 cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to
22 the directions of Defendants, as required by Labor Code 2802.

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

27 31. At all relevant times mentioned herein, Defendants have had a policy or practice of
28 failing to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft

1 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other Aggrieved
2 Employees with the rates of pay and overtime rates of pay applicable to their employment;
3 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
4 name, address, and telephone number of the workers' compensation insurance carrier; information
5 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
6 under Labor Code section 2810.5.

7 32. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
8 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
9 California law (including, without limitation Labor Code section 245, *et seq.*), and also did not
10 permit its use upon request as contemplated under California laws, to the detriment of Plaintiffs and
11 all other Aggrieved Employees.

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

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

27 35. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
28 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants

1 to their managers or outside to private attorneys or government officials, among others, in violation
2 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
3 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
4 and/or practices prevent Plaintiffs and/or other Aggrieved Employees from disclosing information
5 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
6 of Labor Code section 232 and 232.5.

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

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

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

27 39. Plaintiffs, in Plaintiffs' representative capacity, seeks civil penalties under Labor
28 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate

1 the California Labor Code as described above, including on behalf of Plaintiffs and other Aggrieved
2 Employees pursuant to PAGA.

3 **CLASS ACTION ALLEGATIONS**

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

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

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

15 **A. Numerosity**

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

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

24 **B. Commonality**

25 45. There are questions of law and fact common to Class Members. These common
26 questions include, but are not limited to:

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

- 1 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
2 for all other time worked at the employee's regular rate of pay and a rate of pay that
3 is greater than the applicable minimum wage?
- 4 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
5 Class Members to take compliant meal periods?
- 6 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
7 with additional wages for missed or interrupted meal periods?
- 8 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
9 Class Members to take compliant rest periods?
- 10 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
11 with additional wages for missed rest periods?
- 12 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
13 Members upon termination or resignation all wages earned?
- 14 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
15 section 203?
- 16 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
17 Class Members with accurate wage statements?
- 18 J. Did Defendants fail to indemnify Class Members for all necessary expenditures or
19 losses incurred in direct consequence of the discharge of their duties or by obedience
20 to the directions of Defendants as required under Labor Code section 2802?
- 21 K. Did Defendants violate the Unfair Competition Law, Business and Professions Code
22 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 23 L. Are Class Members entitled to restitution of wages under Business and Professions
24 Code section 17203?
- 25 M. Are Class Members entitled to costs and attorneys' fees?
- 26 N. Are Class Members entitled to interest?

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1 **C. Typicality**

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

7 **D. Adequacy of Representation**

8 47. Plaintiffs will fairly and adequately represent and protect the interest of Class
9 Members. Counsel who represents Plaintiffs are competent and experienced in litigating wage and
10 hour class actions.

11 **E. Superiority of Class Action**

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

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

22 **FIRST CAUSE OF ACTION**

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

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

26 51. At all relevant times, Plaintiffs and Class Members were employees or former
27 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
28 Wage Orders.

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

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

10 54. Four (4) years prior to the filing of the Complaint in this Action through the present,
11 Plaintiffs and Class Members, at times, worked for Defendants during shifts that consisted of more
12 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
13 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
14 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
15 actually worked; engaging, suffering, or permitting employees to work off the clock, including,
16 without limitation by requiring employees to clock out for meal periods and continue working; and
17 for paying straight pay instead of overtime pay to the detriment of Plaintiffs and Class Members.

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

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

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

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

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

18 68. 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 69. 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 70. 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 71. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
4 preceding paragraphs as though fully set forth hereat.

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

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

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

18 75. For four (4) years prior to the filing of the Complaint in this Action through the
19 present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete,
20 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
21 thereof due to the room cleaning schedule and quota required by Defendants. Moreover, at times,
22 Defendants failed to provide one (1) additional hour of pay at the Class Member’s regular rate of
23 compensation on the occasions that Class Members were not authorized or permitted to take
24 compliant rest periods.

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

1 Orders.

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

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

9 **FIFTH CAUSE OF ACTION**

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

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

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

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

23 82. Plaintiffs are informed and believe, and based thereon allege, that in the three (3)
24 years before the filing of the Complaint in this Action through the present, Defendants, due to the
25 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiffs and Class
26 Members all wages earned prior to resignation or termination in accordance with Labor Code
27 sections 201 or 202.

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

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

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

86. 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)

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

88. 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.

89. 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.

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

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

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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1 101. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
2 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
3 penalties, interest, and their costs of suit, as well.

4 **EIGHTH CAUSE OF ACTION**

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

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

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

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

13 105. For three (3) years prior to the filing of the Complaint in this Action through the
14 present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times,
15 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
16 obedience to the directions of Defendants that included, without limitation: laundering mandatory
17 work uniforms.

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

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

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

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1 **NINTH CAUSE OF ACTION**

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

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

5 110. Plaintiffs are informed and believe, and based thereon allege that the unlawful
6 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
7 and Professions Code section 17200. Due to their unlawful business practices in violation of the
8 Labor Code, Defendants have gained a competitive advantage over other comparable companies
9 doing business in the State of California that comply with their obligations to compensate employees
10 in accordance with the Labor Code.

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

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

21 113. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
22 Procedure section 1032 and interest under Civil Code section 3287.

23 **TENTH CAUSE OF ACTION**

24 **(Civil Penalties under Labor Code Private Attorneys' General Act of 2004 – Against All**
25 **Defendants)**

26 114. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
27 and incorporates each by reference as though fully set forth hereat.

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1 A. Civil Penalties Under Labor Code § 210

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

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

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

22 B. Civil Penalties Under Labor Code § 226.3

23 118. Defendants had and have a policy or practice of failing to comply with Labor Code
24 section 226, subdivision (a) by intentionally failing to furnish Plaintiffs and Aggrieved Employees
25 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
26 wages earned; the name and address of each employer with whom they have been placed to work;
27 all applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal

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

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

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

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

18 122. Pursuant to Labor Code section 226.3, Plaintiffs and other Aggrieved Employees are
19 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
20 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
21 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
22 period for each subsequent violation.

23 C. Violation of Labor Code § 558

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

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

4 125. For each subsequent violation, one hundred dollars (\$100) for each underpaid
5 employee for each pay period for which the employee was underpaid in addition to an amount
6 sufficient to recover underpaid wages;

7 126. Wages recovered pursuant to this section shall be paid to the affected employee.”

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

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

20 D. Violation of Labor Code § 1174.5

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

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

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

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

18 133. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
19 willfully failed to keep adequate or accurate time records including wage statements and similar
20 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
21 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
22 under Labor Code section 1174.

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

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1 E. Violation of Labor Code § 1197.1

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

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

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

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

22 136. Plaintiffs are informed and believe, and based thereon allege,, that Defendants caused
23 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
24 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ minimum
25 wages for all hours worked or otherwise under Defendants’ control due to, without limitation,
26 routinely failing to accurately track and/or pay for all hours actually worked; detrimental rounding
27 or manipulation of time entries; paying straight pay instead of overtime or otherwise failing to pay
28 overtime hours at the proper overtime rate of pay; engaging, suffering, or permitting employees to

1 work off the clock, entitling Plaintiffs and other aggrieved Employees to actual and liquidated
2 damages.

3 137. 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 F. Civil Penalties Under Labor Code § 2699

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

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

22 140. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
23 each of them, violated the Labor Code sections described herein, including, without limitation, for
24 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
25 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
26 name of the employer, including "doing business as" names used, the name, address, and telephone
27 number of the workers' compensation insurance carrier, information regarding paid sick leave, and
28 other pertinent information required to be disclosed by Defendants under Labor Code section

1 2810.5, failing to provide Plaintiffs and other Aggrieved Employees with the amount of paid sick
2 leave required to be provided pursuant to California and local laws.

3 141. Moreover, Plaintiffs and other Aggrieved Employees within the State of California
4 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
5 connection with their herein-described claims for civil penalties

6 **DEMAND FOR JURY TRIAL**

7 G. Plaintiffs demand a trial by jury on all causes of action contained herein.

8 **PRAYER**

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

- 11 A. An order certifying this case as a Class Action;
- 12 B. An Order appointing Plaintiffs as Class representatives and appointing Plaintiffs'
13 counsel as class counsel;
- 14 C. Damages for all wages earned and owed, including minimum. overtime wages and,
15 under Labor Code sections 510, 1194, 1197 and 1199;
- 16 D. Liquidated damages pursuant to Labor Code sections 1194.2;
- 17 E. Damages for unpaid premium wages from missed meal and rest periods under,
18 among other Labor Code sections, 512, and 226.7;
- 19 F. Penalties for inaccurate wage statements under Labor Code sections 226,
20 subdivision (e);
- 21 G. Waiting time penalties under Labor Code section 203;
- 22 H. Penalties to timely pay wages under Labor Code section 210;
- 23 I. Damages under Labor Code sections 2802;
- 24 J. Preliminary and permanent injunctions prohibiting Defendants from further
25 violating the California Labor Code and requiring the establishment of appropriate
26 and effective means to prevent future violations;
- 27 K. Restitution of wages and benefits due which were acquired by means of any unfair
28 business practice, according to proof;

- 1 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
2 1174.5, 1197.1, and 2699;
3 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
4 210, 226.3, 558, 1174.5, 1197.1, and 2699
5 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
6 O. For attorneys' fees in prosecuting this action;
7 P. For costs of suit incurred herein; and
8 Q. For such other and further relief as the Court deems just and proper.
9

10 Dated: February 26, 2025

BIBIYAN LAW GROUP, P.C.; LAVI &
EBRAHIMIAN, LLP

11
12
13 BY: 

14 DAVID D. BIBIYAN
15 VEDANG J. PATEL
16 BRANDON M. CHANG
17 JOSEPH LAVI
18 VINCENT C. GRANBERRY
19 WILLIAM TRAN
20 ERIC J. NAESSIG

21 Attorneys for Plaintiff JEFF V. LACAP and Plaintiff
22 OFELIA MIRANDA DE QUIROZ on behalf of
23 themselves and all others similarly situated and
24 aggrieved
25
26
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

6 On March 18, 2025, and pursuant to Code of Civil Procedure section 1010.6, I caused a
7 true and correct copy of **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
8 COMPALINT** to be served by electronic transmission pursuant to an electronic service
9 agreement via email to the addresses below:

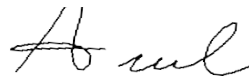
10 **HIRSCHFELD KRAEMER LLP**

11 Monte Grix
12 233 Wilshire Boulevard, Suite 600
13 Santa Monica, CA 90401
14 *mgrix@hkemploymentlaw.com*
15 *margueta@hkemploymentlaw.com*

16 **Counsel for Defendants COMFORT CALIFORNIA, INC.,
17 and SUNBURST HOSPITALITY CORPORATION**

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

20 Executed on March 18, 2025, at Los Angeles, California.

21 

22 _____
23 Araceli Marquez
24
25
26
27
28