

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan (Cal. Bar No. 287811)
2 *david@tomorrowlaw.com*
Vedang J. Patel (Cal. Bar No. 328647)
3 *vedang@tomorrowlaw.com*
Brandon M. Chang (Cal. Bar No. 316197)
4 *brandon@tomorrowlaw.com*
1460 Westwood Boulevard
5 Los Angeles, California 90024
Telephone: (310) 438-5555
6 Facsimile: (310) 300-1705

7 Attorneys for Plaintiff, MONICA G. LOZANO and
on behalf of herself and all others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 MONICA G. LOZANO, an individual and on
behalf of all others similarly situated,

12
13 Plaintiff,

14 v.

15 LECC BERG FEINFIELD EYE CENTERS,
LLC, a California limited liability company;
16 and DOES 1 through 100, inclusive,

17 Defendants.
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CASE NO.: 22STCV40646
(Related Case No. 23BBCV02359)

**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. FAILURE TO PAY INTEREST ON DEPOSITS;
10. VIOLATION OF LABOR CODE § 227.3;
11. UNFAIR COMPETITION;
12. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT OF 2004 CAL. LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1 and 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

FILED
Superior Court of California
County of Los Angeles

05/14/2024

David W. Slayton, Executive Officer / Clerk of Court

By: M. Molinar Deputy

COMES NOW plaintiff MONICA G. LOZANO (“Plaintiff”), on behalf of Plaintiff and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

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

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 24, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiffs

3. Plaintiff MONICA G. LOZANO is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff MONICA G. LOZANO as a non-exempt employee, with duties that included, but were not limited to, preparing patients, making copies of documents and transferring calls. Plaintiff is informed and believes, and based thereon alleges that Plaintiff MONICA G. LOZANO worked for Defendants from approximately June 2022 until approximately August 2022.

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1 **B. Defendants**

2 4. Plaintiff is informed and believes and based thereon alleges that defendant LECC is,
3 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
4 laws of the State of California and doing business in the County of Los Angeles, State of California.
5 At all relevant times herein, LECC employed Plaintiff and similarly situated employees within the
6 State of California.

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

20 **JOINT LIABILITY ALLEGATIONS**

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

26 7. All of the acts and conduct described herein of each and every corporate defendant
27 was duly authorized, ordered, and directed by the respective and collective defendant corporate
28 employers, and the officers and management-level employees of said corporate employers. In

1 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
2 their said employees, agents, and representatives, and each of them; and upon completion of the
3 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
4 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
5 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
6 aforementioned corporate employees, agents and representatives.

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

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

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

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

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

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

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

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

14 **JURISDICTION AND VENUE**

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

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

26 12. Venue is proper in Los Angeles County, California pursuant to Code of Civil
27 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
28 causes of action complained of herein arose; the county in which the employment relationship

1 began; the county in which performance of the employment contract, or part of it, between Plaintiffs,
2 or some of them, and Defendants was due to be performed; the county in which the employment
3 contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in
4 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
5 effect on Plaintiffs and Aggrieved Employees in Los Angeles County, and because Defendants
6 employ numerous Aggrieved Employees in Los Angeles County.

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

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

18 15. During the period beginning one (1) year preceding the provision of notice to the
19 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
20 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
21 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
22 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

27 17. On or around January 6, 2023, Plaintiff provided written notice pursuant to Labor
28 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’

1 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
2 as well as by certified mail, with return receipt requested to Defendants, and each of them.

3 18. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
4 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage
5 and hour violations under Labor Code section 2810.3 on January 6, 2023, by certified mail with
6 return receipt requested.

7 19. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
8 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
9 calendar days of the January 6, 2023, postmarked date of the herein-described notice sent by Plaintiff
10 to the LWDA and Defendants.

11 **FACTUAL BACKGROUND**

12 20. For at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendants have, at times, failed to pay overtime wages to Plaintiff, Class Members, and
14 Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a
15 result of, without limitation, Plaintiff, Class Members, and Aggrieved Employees working over
16 eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week
17 without being properly compensated for hours worked in excess of (8) hours per day in a work day,
18 forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work
19 day in a work week by, without limitation: failing to accurately track and/or pay for all minutes
20 actually worked; engaging, suffering, or permitting employees to work off the clock, including,
21 without limitation, by requiring employees to remain on-call, to suffer under Defendants' control to
22 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
23 answering calls from dispatch and others), to clock out for meal periods and continue working, to
24 don and doff safety equipment off the clock, to attend company meetings off the clock, to make
25 phone calls or drive off the clock; failing to include all forms of remuneration, including non-
26 discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the
27 regular rate of pay for the pay periods where overtime was worked and the additional compensation
28 was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee

1 time entries, editing and/or manipulation of time entries to show less hours than actually worked,
2 and for paying straight pay instead of overtime pay, to the detriment of Plaintiff, Class Members,
3 and Aggrieved Employees.

4 21. For at least four (4) years prior to the filing of this Action and continuing to the
5 present, Defendants had and have a practice or policy of failing to compensate Plaintiff, Class
6 Members, and other Aggrieved Employees with minimum wages for all hours worked or otherwise
7 under Defendants' control as a result of, without limitation: failing to accurately track and/or pay
8 for all minutes actually worked by requiring employees to remain on-call, to suffer under
9 Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking
10 out (including answering calls from dispatch and others), to clock out for meal periods and continue
11 working, to don and doff safety equipment off the clock, to attend company meetings off the clock,
12 to make phone calls or drive off the clock; detrimental rounding of employee time entries, editing
13 and/or manipulation of time entries to show less hours than actually worked; failing to pay reporting
14 time pay; paid time off and vacation time owed; and failing to pay split shift premiums, to the
15 detriment of Plaintiff, Class Members, and Aggrieved Employees.

16 22. For at least four (4) years prior to the filing of this Action and continuing to the
17 present, Defendants have and had, at all relevant times mentioned herein, a policy or practice of
18 failing to provide Plaintiff, Class Members, and other Aggrieved Employees a thirty (30) minute
19 uninterrupted, timely, and complete meal period for days on which the employee worked in excess
20 of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete
21 30-minute meal periods or compensation in lieu thereof including, without limitation: by
22 interrupting meal periods; not providing timely meal periods; failing to provide first and second
23 meal periods; providing short meal periods; requiring that employees carry cellular telephones or
24 walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise
25 requiring on-duty/on-call meal periods; and/or auto-deducting meal periods that could not be auto-
26 deducted by law or during which employees worked, as required by California wage and hour laws.

27 23. For at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendants have and had, at all material times mentioned herein, a policy or practice of

1 failing to provide Plaintiff, Class Members, and other Aggrieved Employees paid, uninterrupted,
2 timely, and complete rest periods of at least ten (10) minutes per four (4) hours worked or major
3 fractions thereof, or compensation in lieu thereof, including, without limitation, by failing to provide
4 rest periods all together; requiring that they be bundled together and/or with meal periods;
5 interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest
6 periods not providing them in a timely fashion; and not permitting employees to leave the premises;
7 and/or otherwise requiring on-duty/on-call rest periods, as required by California wage and hour
8 laws.

9 24. At all relevant times mentioned herein, Defendants had and have a policy or practice
10 of failing to timely pay Plaintiff, Class Members, and Aggrieved Employees, among other wages,
11 all wages owed as a result of Defendants' practice or policy of failing to pay, among other wages,
12 overtime wages, minimum wages, premium wages, paid time off and vacation time owed as required
13 by Labor Code sections 201, 202, and 203.

14 25. At all relevant times mentioned herein, Defendants have, at times, failed to pay
15 Plaintiff, Class Members, and Aggrieved Employees, or some of them, the full amount of their
16 wages for labor performed in a timely fashion as required under Labor Code section 204.

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

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

27 28. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
28 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to

1 California law (including, without limitation Labor Code section 245, *et seq.*), and also did not
2 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
3 all other Aggrieved Employees.

4 29. At all relevant times mentioned herein, Defendants have had a policy or practice of
5 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
6 limitation, Plaintiff, Class Members, and Aggrieved Employees, with their costs incurred for driving
7 personal vehicles (i.e., mileage and gas), for the purchase of tools and safety equipment, for the
8 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
9 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
10 Code 2802.

11 30. For at least three (3) years prior to the filing of the action and continuing to the
12 present, Defendants have, at times, failed to return interest on deposits made Plaintiff, Class
13 Members, and Aggrieved Employees, or some of them, for uniforms.

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

22 32. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of preventing Plaintiff, Class Members, and Aggrieved Employees from using or disclosing the
24 skills, knowledge and experience they obtained at Defendants for purposes of competing with
25 Defendants, including, without limitation, preventing Plaintiff, Class Members, and Aggrieved
26 Employees from disclosing their wages in negotiating a new job with a prospective employer, and
27 from disclosing who else works at Defendants and under what circumstances that they might be
28 receptive to an offer from a rival employer. Plaintiff is informed and believes that this policy and/or

1 practice violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue
2 thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and
3 1197.5, subdivision (k).

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

11 34. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of preventing Plaintiff, Class Members, and Aggrieved Employees from disclosing violations of
13 state and federal law, either within Defendants to their managers or outside to private attorneys or
14 government officials, among others, in violation of Business and Professions Code section 17200,
15 and, thus, in violation of Labor Code section 1102.5. In addition, Plaintiff is informed and believes
16 that Defendants' herein-described policies and/or practices prevent Plaintiff, Class Members, and
17 Aggrieved Employees from disclosing information about unsafe or discriminatory working
18 conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5.

19 35. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
21 Plaintiff, Class Members and Aggrieved Employees with itemized wage statements that accurately
22 reflect gross wages earned; total hours worked by the employee; net wages earned; all deductions;
23 all applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate by the employee; the legal name and address of the employer; and other
25 such information as required by Labor Code section 226, subdivision (a). As a result thereof,
26 Defendants have further failed to furnish employees with an accurate calculation of gross and gross
27 wages earned, as well as gross and net wages paid.

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36. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff, Class Members, and Aggrieved Employees with documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Plaintiff, Class Members and Aggrieved Employees to calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff, Class Members, and Aggrieved Employees.

37. Plaintiff, on her own behalf, and on behalf of Class Members and Aggrieved Employees, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 404, 510, 512, 1194, 1194.2, 1197, 2802 *et al.*, and California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, failure to pay interest on deposits made, other such provisions of California law, and reasonable attorneys' fees and costs.

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

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

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current

1 and former non-exempt employees of Defendants within the State of California at any time
2 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
3 of the class action is provided to the class (collectively referred to as "Class Members").

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

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

10 **A. Numerosity**

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

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

19 **B. Commonality**

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

- 22 a. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
23 worked at a proper overtime rate of pay?
- 24 b. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
25 for all other time worked at the employee's regular rate of pay and a rate of pay that
26 is greater than the applicable minimum wage?
- 27 c. Did Defendants violate Labor Code section 512 by not authorizing or permitting
28 Class Members to take compliant meal periods?

- 1 d. Did Defendants violate Labor Code section 226.7 by not providing Class Members
2 with additional wages for missed or interrupted meal periods?
- 3 e. Did Defendants violate applicable Wage Orders by not authorizing or permitting
4 Class Members to take compliant rest periods?
- 5 f. Did Defendants violate Labor Code section 226.7 by not providing Class Members
6 with additional wages for missed rest periods?
- 7 g. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
8 Members upon termination or resignation all wages earned?
- 9 h. Are Defendants liable to Class Members for waiting time penalties under Labor Code
10 section 203?
- 11 i. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
12 Class Members with accurate wage statements?
- 13 j. Did Defendants fail to pay Class Members in a timely fashion as required under
14 Labor Code section 204?
- 15 k. Did Defendants fail to indemnify Class Members for all necessary expenditures or
16 losses incurred in direct consequence of the discharge of their duties or by obedience
17 to the directions of Defendants as required under Labor Code section 2802?
- 18 l. Did Defendants fail to return deposits made by Class Members with accrued interest
19 thereon as required under Labor Code section 404?
- 20 m. Did Defendants violate Labor Code section 227.3 by not providing Class Members
21 with compensation at their final rate of pay for vested paid vacation time?
- 22 n. Did Defendants violate the Unfair Competition Law, Business and Professions Code
23 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 24 o. Are Class Members entitled to restitution of wages under Business and Professions
25 Code section 17203?
- 26 p. Are Class Members entitled to costs and attorneys' fees?
- 27 q. Are Class Members entitled to interest?

28 ///

1 **C. Typicality**

2 46. The claims of Plaintiff 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. Plaintiff 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. Plaintiff will fairly and adequately represent and protect the interest of Class
9 Members. Counsel who represents Plaintiff is 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. Plaintiff is unaware of
20 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. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs as though fully set forth hereat.

26 51. At all relevant times, Plaintiff 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 Plaintiff 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
15 minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
16 including, without limitation, by requiring employees: to remain on-call, to suffer under Defendants’
17 control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out
18 (including answering calls from dispatch and others), to clock out for meal periods and continue
19 working, to don and doff safety equipment off the clock, to attend company meetings off the clock,
20 to make phone calls or drive off the clock; failing to include all forms of remuneration, including
21 non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into
22 the regular rate of pay for the pay periods where overtime was worked and the additional
23 compensation was earned for the purpose of calculating the overtime rate of pay; detrimental
24 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
25 than actually worked, and for paying straight pay instead of overtime pay, to the detriment of
26 Plaintiff and Class Members.

27 55. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
28 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays

1 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
2 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
3 applicable IWC Wage Orders, and California law.

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

8 **SECOND CAUSE OF ACTION**

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

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

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

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

17 60. For four (4) years prior to the filing of the Complaint in this Action through the
18 present, Defendants failed to pay minimum wages to Plaintiff and Class Members, in violation of
19 California state wage and hour laws as a result of, among other things: a practice or policy of failing
20 to compensate Plaintiff, Class Members, and other Aggrieved Employees with minimum wages for
21 all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to
22 accurately track and/or pay for all minutes actually worked; by requiring employees to remain on-
23 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
24 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal
25 periods and continue working, to don and doff safety equipment off the clock, to attend company
26 meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee
27 time entries, editing and/or manipulation of time entries to show less hours than actually worked;
28 failing to pay reporting time pay; paid time off and vacation time owed; and failing to pay split shift

1 premiums to the detriment of Plaintiff and Class Members.

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

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

9 **THIRD CAUSE OF ACTION**

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

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

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

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

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

25 67. For four (4) years prior to the filing of the Complaint in this Action through the
26 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
27 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
28 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the

1 Class Member's regular rate of compensation on the occasions that Class Members were not
2 provided compliant meal periods.

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

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

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

14 **FOURTH CAUSE OF ACTION**

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

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

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

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

27 74. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
28 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare

1 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
2 regular rate of compensation for each work day that the rest period is not provided.

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

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

27 81. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
28 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.

1 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
2 discharge immediately upon termination. Class Members who resigned were entitled to payment
3 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
4 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
5 unpaid at the time of resignation.

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

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

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

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

24 86. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
25 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
26 waiting time penalties, interest, and their costs of suit, as well.

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1 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

27 92. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
28 suffered injury. The absence of accurate information on Class Members' wage statements at times

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

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

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

14 **SEVENTH CAUSE OF ACTION**

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

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

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

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

25 98. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
26 independent and apart from, any other penalty provided in this article, every person who fails to pay
27 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
28 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars

1 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
2 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
3 percent of the amount unlawfully withheld.”

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

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

13 101. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
14 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
15 interest, and their costs of suit, as well.

16 **EIGHTH CAUSE OF ACTION**

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

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

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

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

25 105. For three (3) years prior to the filing of the Complaint in this Action through the
26 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
27 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
28 obedience to the directions of Defendants that included, without limitation: purchasing and/or

1 providing unreturned deposits for mandatory work uniforms; laundering mandatory work uniforms;
2 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using
3 cellular phones for work-related purposes; and purchasing tools necessary to perform work duties.

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

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

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

14 **NINTH CAUSE OF ACTION**

15 **(Violation of Labor Code § 404 – Against All Defendants)**

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

18 110. At all relevant times, Plaintiff and Class Members were employees or former
19 employees of Defendants covered by Labor Code sections 400 through 410.

20 111. Pursuant to Labor Code section 404, Defendants were required to immediately return
21 amounts deposited for uniforms with accrued interest when Plaintiff and Class Members returned
22 the required uniforms to Defendants.

23 112. Plaintiff is informed and believes, and based thereon allege that for three (3) years
24 prior to the filing of this Action through the present, due to policies and practices adopted by
25 Defendants, Defendants violated Labor Code section 404 by failing to, at times, immediately return
26 accrued interest on deposits made by Plaintiff and Class Members upon their returning their
27 uniforms to Defendants.

28 113. As a result of Defendants' conduct, Plaintiff and Class Members have suffered

1 damages in an amount subject to proof, to the extent they were not compensated for accrued interest
2 on amounts deposited for mandatory uniforms upon returning their uniforms to Defendants.

3 114. Pursuant to Labor Code sections 218, 218.5, and 404, Plaintiff and Class Members
4 are entitled to recover their unpaid accrued interest on uniform deposits, reasonable attorney's fees
5 and costs of suit.

6 **TENTH CAUSE OF ACTION**

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

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

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

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

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

22 101. As a proximate result of Defendants' failure to pay vested vacation at the final rate
23 of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor
24 Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at
25 their final rate of pay, as set out in Defendants' policy or the contract of employment between
26 Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

27 102. As a further proximate result of Defendants' above-described acts and/or omissions,
28 Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and

1 prejudgment interest.

2 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

22 107. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
23 Procedure section 1032 and interest under Civil Code section 3287.

24 **TWELFTH CAUSE OF ACTION**

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

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

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

Civil Penalties Under Labor Code § 226.3

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

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

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).

3 113. 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."

8 114. 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."

10 115. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
11 and have a policy or practice of failing to furnish non-exempt employees, including, without
12 limitation, Plaintiff, 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 and address of the employer and/or the name and address of the legal entity securing the
16 employer's services if the employer is a farm labor contractor; and other such information as
17 required by Labor Code section 226, subdivision (a).

18 116. Pursuant to Labor Code section 226.3, Plaintiff 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 Violation of Labor Code § 558

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

118. Plaintiff is informed and believes, and based thereon allege, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during their employment and after their employment separation; receive accurate, itemized wage statements; be provided with the opportunity to inspect employment records; be provided with notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate of pay.

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

Violation of Labor Code § 1174.5

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

1 or papers of the person.”

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

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

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

19 124. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
20 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
21 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
22 inspection of records as required by Labor Code subdivision (b).

23 125. As a direct and proximate result of the herein-described Labor Code violations,
24 pursuant to Labor Code section 1174.5, Plaintiff 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 Violation of Labor Code § 1197.1

2 126. 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.”

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

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

7 Civil Penalties Under Labor Code § 2699

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

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

20 131. Plaintiff is informed and believes and based thereon alleges that Defendants, and
21 each of them, violated the Labor Code sections described herein, including, without limitation, for
22 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
23 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
24 employment and after employment separation; provide employees the opportunity to inspect
25 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
26 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
27 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
28 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and

1 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
2 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

3 132. Moreover, Plaintiff 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**

7 133. Plaintiff demands a trial by jury on all causes of action contained herein.

8 **PRAYER**

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

- 11 A. An order certifying this case as a Class Action;
- 12 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
13 counsel as class counsel;
- 14 C. Damages for all wages earned and owed, including minimum, overtime wages and
15 unpaid wages for vested vacation time, under Labor Code sections 510, 1194,
16 1197, 1199, and 227.3
- 17 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 18 E. Damages for unpaid premium wages from missed meal and rest periods under,
19 among other Labor Code sections, 512, and 226.7;
- 20 F. Penalties for inaccurate wage statements under Labor Code sections 226 and
21 subdivision (e)
- 22 G. Waiting time penalties under Labor Code section 203;
- 23 H. Penalties to timely pay wages under Labor Code section 210;
- 24 I. Damages under Labor Code section 2802;
- 25 J. Damages under Labor Code section 404;
- 26 K. Preliminary and permanent injunctions prohibiting Defendants from further
27 violating the California Labor Code and requiring the establishment of appropriate
28 and effective means to prevent future violations;

- 1 L. Restitution of wages and benefits due which were acquired by means of any unfair
2 business practice, according to proof;
3 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
4 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: March 1, 2024

BIBIYAN LAW GROUP, P.C.

11
12 BY: 

13 DAVID D. BIBIYAN

14 BRANDON M. CHANG

15 Attorneys for Plaintiff MONICA G. LOZANO on
16 behalf of herself and all others similarly situated
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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 within action; my mailing address is 1460 Westwood Blvd.,
Los Angeles, California 90024.

5 On May 14, 2024, I caused a true and correct copy of the document(s) described as:
6 **FIRST AMENDED COMPLAINT** to be served by electronic transmission via Case Anywhere
7 to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below
service list:

8 **BALLARD ROSENBERG GOLPER & SAVITT, LLP**

9 DAVID FISHMAN

10 *dfishman@brgslaw.com*

STEPHANIE B. KANTOR

11 *skantor@brgslaw.com*

JANET S. SOULTANIAN

12 *jsoultanian@brgslaw.com*

15760 Ventura Boulevard, Eighteenth Floor

Encino, California 91436

13 Telephone: (818) 508-3700

14 Facsimile: (818) 506-4827

15 **Attorneys for Defendant**

16 **LECC BERG FEINFELD EYE CENTERS, LLC**

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

18 Executed on May 14, 2024, at Los Angeles, California.

19
20 /s/ Araceli Marquez

21 Araceli Marquez
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