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and SANDRA YESSSENIA GONZALEZ-NUNO

on behalf of themselves and all others similarly

situated and aggrieved,

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR SAN DIEGO**

JENNEFER JEAN WELCH, an individual,
 SANDRA YESSSENIA GONZALEZ-NUNO,
 an individual on behalf of all others similarly
 situated, and on behalf of all other aggrieved
 employees under the Labor Code Private
 Attorneys General Act of 2004,

Plaintiffs,

v.

HOOKE FURNISHINGS CORPORATION
 a Virginia corporation; and DOES 1 through
 100,
 inclusive,

Defendants.

CASE NO.: 37-2023-00007633-CU-OE-CTL

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

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. VIOLATION OF LABOR CODE § 227.3;
10. FAILURE TO PAY WAGES FOR ACCRUED PAID SICK DAYS;
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]

1 Plaintiffs Jennefer Jean Welch (“Plaintiff Welch”), Sandra Yessenia Gonzalez-Nuno
2 (“Plaintiff Gonzalez”) (collectively, “Plaintiffs”), as aggrieved employees, on behalf of all others
3 similarly situated, and on behalf of all other aggrieved employees under the Labor Code Private
4 Attorneys’ General Act of 2004, alleges as follows:

5 **GENERAL ALLEGATIONS**

6 **INTRODUCTION**

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

12 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
13 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, as
14 a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
15 behalf of Plaintiffs and all other current and former non-exempt employees of Defendants working
16 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for
17 failure to comply with 96, 98.6, 200, 201, 202, 203, 204, 210, 212, 213, 221, 223, 226, 226.3, 226.7,
18 227.3, 232, 232.5, 245, *et seq.*, 246, *et seq.*, 404, 432, 432.5, 432.6, 510, 512, 558, 1102.5, 1174,
19 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527, 2699, 2802, and 2810.5, 3366,
20 3457, 6401, 6403, 6409, 6409.6, 6432, and 8397.4, Cal. Code Regs, title 8, sections 3395 and
21 110404(5)(A), Cal Gov’t Code section 12952, restraints on competition, whistleblowing and freedom
22 of speech on behalf of all employees of Defendants working within the Civil Penalty Period
23 (collectively, “Aggrieved Employees”).

24 **PARTIES**

25 **A. Plaintiffs**

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

1 table, receivables, and supervising. Plaintiff Welch is informed and believes, and based thereon
2 alleges, that Plaintiff Welch worked for Defendants from approximately February of 2008 through
3 approximately August 2022. Defendant paid (or purportedly paid) Plaintiff Welch an hourly wage
4 for her service.

5 4. Plaintiff Gonzalez is a resident of the State of California. Plaintiff is informed and
6 believes, and based thereon alleges, that Defendants employed Plaintiff Gonzalez as a non-exempt
7 employee, with duties that included, but were not limited to, inbound and outbound sales calls,
8 coordinating warranties, and checking on status of orders. Plaintiff Gonzalez is informed and
9 believes, and based thereon alleges that Plaintiff Gonzalez worked for Defendants from
10 approximately 2018 through approximately November 2022. Defendant paid (or purportedly paid)
11 Plaintiff Gonzalez an hourly wage for her service.

12 **B. Defendants**

13 5. Plaintiffs are informed and believes and based thereon allege that Defendant Hooker
14 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
15 the laws of the State of Virginia and doing business in the County of San Diego, State of California.

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

JOINT LIABILITY ALLEGATIONS

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

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

JURISDICTION AND VENUE

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

10. Venue is proper in San Diego County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, San Diego County is where the causes of action complained of herein arose; the county in which performance of the employment contract, or part of it, between Plaintiffs, or some of them, and Defendant was due to be performed; the county in which the employment contract, or part of it, between Plaintiffs, or some of them, and Defendant 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 Diego County, and because Defendant employ numerous Class Members in San Diego County.

11. 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

1 violations set forth herein. Accordingly, Plaintiffs seek to recover civil penalties, as the term “civil
2 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
3 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
4 reasonable attorneys’ fees and costs, for Plaintiffs and all other aggrieved current and former
5 employees of Defendants during the Civil Penalty Period.

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

10 13. During the period beginning one (1) year preceding the provision of notice to the
11 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
12 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 212, 213,
13 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 246, *et seq.*, 404, 432, 432.5, 432.6, 510,
14 512, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527, 2699,
15 2802, and 2810.5, 3366, 3457, 6401, 6403, 6409, 6409.6, 6432, and 8397.4, Cal. Code Regs, title 8,
16 sections 3395 and 110404(5)(A), and Cal Gov’t Code section 12952, among others.

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

21 15. On or around February 23, 2023, Plaintiff Welch provided written notice pursuant to
22 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
23 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as
24 well as by certified mail, with return receipt requested to Defendants, and each of them.

25 16. On April 6, 2020, the Judicial Council of California approved Appendix I –
26 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
27 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of
28 action were tolled from April 6, 2020 until October 1, 2020.

18. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiffs, Class Members, and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiffs, Class Members, and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to don and doff uniforms or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment of Plaintiffs, Class Members, and other Aggrieved Employees.

19. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiffs, Class Members, and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to don and

1 doff uniforms off the clock, to attend company meetings off the clock, to make phone calls off the
2 clock; detrimental rounding of employee time entries, editing and/or manipulation of time entries to
3 show less hours than actually worked; failing to pay reporting time pay; paid time off and vacation
4 time owed; and failing to pay split shift premiums, to the detriment of Plaintiffs, Class Members, and
5 other Aggrieved Employees.

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

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

24 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
26 Plaintiffs, Class Members, and other Aggrieved Employees with itemized wage statements that
27 accurately reflect gross wages earned; total hours worked by the employee; net wages earned; all
28 deductions; all applicable hourly rates in effect during the pay period and the corresponding number

1 of hours worked at each hourly rate by the employee; the legal name of the employer and/or the name
2 and address of the legal entity securing the employer's services if the employer is a farm labor
3 contractor; and other such information as required by Labor Code section 226, subdivision (a).

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

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

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

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

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

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

21 30. At all relevant times mentioned herein, Defendants had and have a policy or practice
22 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
23 and experience they obtained at Defendants for purposes of competing with Defendants, including,
24 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
25 a prospective employer, and from disclosing who else works at Defendants and under what
26 circumstances that they might be receptive to an offer from a rival employer. Plaintiffs are informed
27 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
28

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

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

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

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

21 **CLASS ACTION ALLEGATIONS**

22 34. Plaintiff brings this action on behalf of Plaintiffs and Class Members as a class action
23 pursuant to Code of Civil Procedure section 382. Plaintiffs seeks to represent a class of all current
24 and former non-exempt employees of Defendant within the State of California at any time
25 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
26 of the class action is provided to the class (collectively referred to as "Class Members").

27 35. Plaintiffs reserves the right under California Rule of Court rule 3.765, subdivision (b)
28 to amend or modify the class description with greater specificity, further divide the defined class into

1 subclasses, and to further specify or limit the issues for which certification is sought.

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

5 **A. Numerosity**

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

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

14 **B. Commonality**

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

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

Members with additional wages for missed rest periods?

- g. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class Members upon termination or resignation all wages earned?
- h. Are Defendants liable to Class Members for waiting time penalties under Labor Code section 203?
- i. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?
- j. Did Defendants fail to pay Class Members in a timely fashion as required under Labor Code section 204?
- k. Did Defendants fail to indemnify Class Members for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties or by obedience to the directions of Defendants as required under Labor Code section 2802?
- l. Did Defendants violate Labor Code section 227.3 by not providing Class Members with compensation at their final rate of pay for vested paid vacation time?
- m. Did Defendants violate Labor Code section 246, as well as the applicable wage order, by failing to provide Class Members with proper sick pay remuneration?
- n. Did Defendants violate the Unfair Competition Law, Business and Professions Code section 17200, *et seq.*, by their unlawful practices as alleged herein?
- o. Are Class Members entitled to restitution of wages under Business and Professions Code section 17203?
- p. Are Class Members entitled to costs and attorneys' fees?
- q. Are Class Members entitled to interest?

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1 **C. Typicality**

2 40. 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 41. Plaintiffs will fairly and adequately represent and protect the interest of Class
9 Members. Counsel who represents Plaintiffs is competent and experienced in litigating wage and
10 hour class actions.

11 **E. Superiority of Class Action**

12 42. 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 are
16 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 43. 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 44. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
25 preceding paragraphs as though fully set forth hereat.

26 45. 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.

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

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

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

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

55. 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 minimum wages for all hours worked or otherwise due.

THIRD CAUSE OF ACTION

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

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

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

(Failure to Provide Rest Periods – Against All Defendants)

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

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

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

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

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

22 71. 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 owed
24 for rest periods that they were not authorized or permitted to take.

25 72. Plaintiffs and Class Members are entitled to recover the full amount of their unpaid
26 additional pay for unprovided compliant rest 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.

FIFTH CAUSE OF ACTION

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

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

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

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

76. Plaintiffs are informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendant, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiffs and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

77. Plaintiffs are informed and believes 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. Defendant 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.

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79. 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.

SIXTH CAUSE OF ACTION

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

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

83. 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.

84. Plaintiffs are informed and believes, and based thereon alleges, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendant failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked

1 at each hourly rate; and the name and address of the legal entity that is the employer, among other
2 things.

3 85. Defendants' failure to, at times, provide Plaintiffs and Class Members with accurate
4 wage statements was knowing, intentional, and willful. Defendant had the ability to provide Plaintiffs
5 and the other Class Members with accurate wage statements, but, at times, willfully provided wage
6 statements that Defendant knew were not accurate.

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

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

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

22 **SEVENTH CAUSE OF ACTION**

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

24 89. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
25 incorporate each by reference as though fully set forth hereat.

26 90. At all relevant times, Plaintiffs and Class Members were employees or former
27 employees of Defendant covered by Labor Code section 204 and applicable Wage Orders.
28

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

6 92. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
7 independent and apart from, any other penalty provided in this article, every person who fails to pay
8 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
9 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
10 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
11 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
12 percent of the amount unlawfully withheld.”

13 93. Plaintiffs are informed and believes, and based thereon alleges, that in the one (1) year
14 before the filing of the Complaint in this Action through the present, Defendant employed policies
15 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
16 Labor Code section 204.

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

22 95. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
23 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of penalties,
24 interest, and their costs of suit, as well.

25 **EIGHTH CAUSE OF ACTION**

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

27 96. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
28 incorporate each by reference as though fully set forth hereat.

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

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

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

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

17 101. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
18 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
19 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
20 costs of suit.

21 **NINTH CAUSE OF ACTION**

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

23 102. Plaintiffs re-allege and incorporate by reference all of the allegations contained in the
24 preceding paragraphs of this Complaint as though fully set forth hereon.

25 103. According to Labor Code section 227.3, whenever a contract of employment or
26 employer policy provides for paid vacations, and an employee is terminated without having taken off
27 his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
28

1 accordance with such contract of employment or employer policy respecting eligibility or time
2 served.

3 104. Plaintiffs are informed and believes, and based thereon alleges that, at all times
4 relevant hereto, Defendant promulgated and maintained a uniform policy providing for paid
5 vacations, and that Plaintiffs' employment contract with Defendant included paid vacations.

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

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

15 107. As a further proximate result of Defendants' above-described acts and/or omissions,
16 Plaintiffs and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and
17 prejudgment interest.

18 **TENTH CAUSE OF ACTION**

19 **(Failure to Pay Wages for Accrued Paid Sick Days – Against All Defendants)**

20 108. Plaintiff incorporates all paragraphs above as though fully set forth herein.

21 109. At all times relevant to this Complaint, Plaintiff and Class Members were employees
22 of Defendants, covered by Labor Code section 246 and Wage Order 4.

23 110. Labor Code section 246, subdivision (a), states in relevant part "[a]n employee
24 who...works in California for the same employer for 30 or more days within a year from the
25 commencement of employment is entitled to paid sick days." Additionally, an employee accrues paid
26 sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning at the
27 commencement of employment. Labor Code section 246(b).

111. Here, Plaintiff and the Class Members were employed by Defendants for 30 or more days and were entitled to paid sick days. Also, Plaintiff and the Class Members began accruing paid sick days during their employment with Defendants.

112. Labor Code section 246, subdivision (l), provides that an employer shall calculate the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the workweek in which the employee elected to use paid sick time. “The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

113. In this case, Plaintiff alleges that when she and the Class Members elected to use paid sick time, Defendants failed to pay them sick time wages at the proper sick time rate of pay due to Defendants’ failure to include all remuneration when calculating the sick time rate of pay.

114. Defendants’ unlawful conduct alleged herein occurred in the course of employment of Plaintiff and Class Members, and such conduct has continued through the filing of this First Amended Complaint.

115. Because Defendants failed to provide employees with wages for sick time in compliance with the law, Defendants are liable to Plaintiff and Class Members for payment at the regular rate of compensation for each sick time period that Defendants did not provide sick pay, pursuant to Labor Code section 246.

116. Plaintiff, on behalf of herself, and the Class Members, seek damages and all other relief allowable for each sick time period taken where Defendants failed to pay wages for, plus pre-judgment interest.

ELEVENTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

118. Plaintiffs are informed and believe, and based thereon allege, that the unlawful conduct of Defendant alleged herein constitutes unfair competition within the meaning of Business

1 and Professions Code section 17200. Due to their unlawful business practices in violation of the
 2 Labor Code, Defendant have gained a competitive advantage over other comparable companies doing
 3 business in the State of California that comply with their obligations to compensate employees in
 4 accordance with the Labor Code.

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

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

15 121. Plaintiffs and Class Members are entitled to costs of suit under Code of Civil
 16 Procedure section 1032 and interest under Civil Code section 3287.

17 **TWELFTH CAUSE OF ACTION**

18 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

19 122. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the
 20 preceding paragraphs as though fully set forth hereat.

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

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

27 124. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
 28 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this

1 article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204,
2 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial
3 violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each
4 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
5 failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

14 Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

16 Violation of Labor Code § 558

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

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

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

28 ///

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

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

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

15 Violation of Labor Code § 1174.5

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

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

26 136. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
27 every person employing labor in California to “[k]eep, at a central location in the state or at the plants
28 or establishments at which employees are employed, payroll records showing the hours worked daily

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

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

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

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

20 Violation of Labor Code § 1197.1

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

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

1 the employee is underpaid. This amount shall be in addition to an amount
2 sufficient to recover underpaid wages, liquidated damages pursuant to
3 Section 1194.2, and any applicable penalties imposed pursuant to Section
4 203.

5 (2) For each subsequent violation for the same specific offense, two hundred
6 fifty dollars (\$250) for each underpaid employee for each pay period for
7 which the employee is underpaid regardless of whether the initial violation
8 is intentionally committed. This amount shall be in addition to an amount
9 sufficient to recover underpaid wages, liquidated damages pursuant to
10 Section 1194.2, and any applicable penalties imposed pursuant to Section
11 203.

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

15 141. Plaintiffs are informed and believes, and based thereon alleges, that Defendant caused
16 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendant, without
17 limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ minimum wages for all
18 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
19 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
20 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at the
21 proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
22 entitling Plaintiffs and other aggrieved Employees to actual and liquidated damages.

23 142. As a direct and proximate result of the herein-described Labor Code violations,
24 pursuant to Labor Code section 1197.1, Plaintiffs and other Aggrieved Employees are entitled to
25 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
26 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two
27 hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each subsequent
28 violation.

Civil Penalties Under Labor Code § 2699

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

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

145. Plaintiffs are informed and believes, and based thereon alleges that Defendant, and each of them, violated the Labor Code sections described herein, including, without limitation, Labor Code sections 96(k), 98.6, 201.3, 210, 226.3, 432.7, 432.8, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 226, 226.7, 227.3, 232, 232.5, 246 et seq., 404, 432, 432.3, 432.5, 432.6, 510, 512, 558, 1102.5, 1174, 1182.12, 1194, 1194.2, 1197, 1197.5, 1198.5, 1527, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403, 6409, 6409.6, 6432 and 8397.4, Cal. Code Regs, title 8, sections 3395 and 110404(5)(A), Cal. Gov't Code section 12952, by, among other things: (1) failing to pay (or properly pay) overtime wages; (2) failing to pay minimum or other wages for all hours worked; (3) failing to provide meal periods or compensation in lieu thereof (including, without limitation, break premiums); (4) failing to provide rest periods or compensation in lieu thereof (including, without limitation, break premiums); (5) failing to pay all wages due upon separation from employment; (6) failing to issue accurate wage statements; (7) failing to timely pay wages during employment; (8) failing to properly reimburse employees for business-related expenses; (9) violations of Labor Code section 227.3 with respect to the payment of vacation wages; (10) failing to maintain and/or produce payroll and time records;

(11) payment of wages via non-compliant instruments; (12) failing to provide Labor Code section 2810.5 notices; (13) failing to provide or properly pay for sick leave; (14) failing to provide weekly pay to temporary workers; (15) failing to provide suitable seating; (16) whistleblower retaliation; (17) failing to comply with COVID-19-related notice requirements; (18) failing to provide safety devices/safeguards; (19) failing to keep adequate sanitation facilities; (20) requiring employees to sign unlawful agreements; (21) unlawful pre-employment inquiries and background checks; and (22) unlawful reliance on salary history in making hiring and compensation offers.

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

DEMAND FOR JURY TRIAL

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

PRAYER

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

- A. An order certifying this case as a Class Action;
- B. An Order appointing Plaintiffs as Class representative and appointing plaintiffs' counsel as class counsel;
- C. Damages for all wages earned and owed, including minimum, overtime wages and unpaid wages for vested vacation time and sick pay, under Labor Code sections 510, 558.1, 1194, 1197 and 1199, 227.3 and 246;
- D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512, 558.1 and 226.7;
- F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision (e) and 558.1;
- G. Waiting time penalties under Labor Code sections 203 and 558.1;
- H. Penalties for failure to timely pay wages under Labor Code section 210;

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

17 Dated: February 14, 2025

BIBIYAN LAW GROUP, P.C.

18
19 BY: Brandon M. Chang

20 DAVID D. BIBIYAN

VEDANG J. PATEL

21 BRANDON M. CHANG

22 Attorneys for Plaintiffs, JENNEFER JEAN
23 WELCH and SANDRA YESSANIA
24 GONZALEZ-NUNO on behalf of themselves
25 and all others similarly situated and aggrieved,
26
27
28