

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiffs, KUANETTA VICTORIA TODD,
and FLOUZEL PANINGBATAN on behalf of themselves and
all others similarly situated and aggrieved

[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

KUANETTA VICTORIA TODD, an
individual, and FLOUZEL PANINGBATAN,
an individual, on behalf of themselves and all
others similarly situated and aggrieved,

Plaintiffs,

v.

MOTIVATE LLC., a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CGC-23-605052

**FIRST AMENDED CLASS 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. VIOLATION OF LABOR CODE § 227.3;
0. UNFAIR COMPETITION; and
11. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT .

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

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

JOHN A. LOFTON, ESQ. (222259)
Aiman-Smith & Marcy, P.C.
7677 Oakport Street, Suite 1150
Oakland, CA 94621
Telephone: 510-817-2728
Email: jal@asmlawyers.com

Attorneys for Plaintiffs, KUANETTA VICTORIA TODD,
and FLOUZEL PANINGBATAN on behalf of themselves and
all others similarly situated and aggrieved

COMES NOW plaintiff KUANETTA VICTORIA TODD (“Plaintiff Todd”) and FLOUZEL PANINGBATAN (“Plaintiff Paningbatan” and together with Plaintiff Todd, “Plaintiffs”), on behalf of themselves, and all others similarly situated and aggrieved, and allege as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against MOTIVATE LLC, a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“MOTIVATE” and collectively, with DOES 1 through 100, as further defined below, “Defendants”), on behalf of Plaintiff Todd 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 Plaintiffs 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 §§96, 98.6, 201-204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 247.5, 404, 432, 432.3, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.5, 1198.5, 1527, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403, 6409.6, 8397.4 and I.W.C. Wage Orders Nos. 4-2001 and 9-2001 (8 C.C.R. §§11040, 11090) on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiffs

3. Plaintiff KUANETTA VICTORIA TODD is a resident of the State of California. Plaintiff Todd alleges that, at all relevant times herein, Defendants employed Plaintiff Todd as a non-exempt employee, with duties that included, but were not limited to, inspecting, evaluating and maintaining bike share stations and bicycles, performing repairs, and responding to reported

1 problems. Plaintiff Todd alleges that she worked for Defendants from approximately October of
2 2022 through approximately December of 2022.

3 4. Plaintiff FLOUZEL PANINGBATAN is a resident of the State of California. At all
4 relevant times herein, Defendants employed Plaintiff Paningbatan as a non-exempt employee, with
5 duties that included, but were not limited to, inspecting, evaluating and maintaining bike share
6 stations and bicycles, performing repairs, and responding to reported problems. Plaintiff
7 Paningbatan worked for Defendants from approximately June 2019 through approximately
8 December 2019.

9 **B. Defendants**

10 5. Plaintiffs are informed and believe, and based thereon allege, that defendant
11 MOTIVATE LLC is, and at all times relevant hereto was, a limited liability company organized and
12 existing under and by virtue of the laws of the State of California, and doing business in the County
13 of San Francisco, State of California.

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

27 ///

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6

7
8
9
0
1
2
3
4
5

6
7
8

901

2
3
4
5

6
7
8

1 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
2 other wrongful or inequitable purpose;

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

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

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

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

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

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

JURISDICTION

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

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

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

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

17. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated Labor Code §§96, 98.6, 201-204, 210, 212, 213, 221, 223, 226, 226.3, 226.7,

1 227.3, 232, 232.5, 245, 246, 247.5, 404, 432, 432.3, 432.5, 432.6, 432.7, 510, 512, 558, 558.1,
2 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.5, 1198.5, 1527, 2802, 2810.5, 3366,
3 3457, 6401, 6402, 6403, 6409.6, 8397.4 and I.W.C. Wage Orders Nos. 4-2001 and 9-2001 (8 C.C.R.
4 §§11040, 11090).

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

9 19. On or around February 21, 2023, plaintiff Todd provided written notice pursuant to
10 Labor Code section 2699.3 online and by certified mail, with return receipt requested, of
11 Defendants' violation of various, including the herein-described, provisions of the Labor Code, to
12 the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
13 them.

14 20. On or around February 27, 2020 plaintiff Paningbatan provided written notice
15 pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested,
16 of Defendants' violation of various, including the herein-described, provisions of the Labor Code,
17 to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of
18 them. On or around February 24, 2023 and March 9, 2023, plaintiff Paningbatan submitted and
19 served amended PAGA notices.

20 21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
21 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
22 calendar days.

23 22. On June 8, 2020, Plaintiff Paningbatan filed a complaint in Alameda County Superior
24 Court alleging individual claims as well as a claim for penalties under PAGA. The case was
25 subsequently removed to the U.S. District Court for the Northern District of California. Plaintiff
26 Paningbatan has settled her individual claims, leaving only the PAGA claim at issue.

27 23. On or around March 8, 2023, plaintiff Todd filed a wage and hour class action
28 alleging that, during the Class Period, Defendant, as it pertains to Class Members: (1) failed to pay

1 overtime wages; (2) failed to pay minimum wages; (3) failed to pay all wages due upon termination
2 or resignation; (4) failed to provide accurate and itemized wage statements; (5) failed to timely pay
3 wages during employment; (6) failed to indemnify for business expenses; (7) failed to pay unused
4 paid vacation time; and (8) engaged in unfair competition (the “Class Action Complaint”).

5 24. On or around April 27, 2023, plaintiff Todd filed a separate representative complaint
6 in San Francisco County Superior Court, alleging a single cause of action for civil penalties pursuant
7 to PAGA for various alleged Labor Code violations specified in the PAGA Notice (the “PAGA
8 Complaint”).

9 25. The Parties have agreed to stipulate to Plaintiffs filing a First Amended Complaint
10 alleging against Defendants the same causes of action identified above, plus a cause of action for
11 PAGA penalties, and including plaintiff Paningbatan as named plaintiff. The Parties have stipulated
12 that any statutes of limitations, laches, or similar time-related affirmative defenses will relate back
13 to the original actions. Hence, this First Amended Complaint, which will be the operative complaint
14 in the Action (the “Operative Complaint”).

15 **FACTUAL BACKGROUND**

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

25 27. For at least four (4) years prior to the filing of this Action and continuing to the
26 present, Defendants have, at times, failed to pay minimum wages to Plaintiffs and Class Members,
27 or some of them, in violation of California state wage and hour laws as a result of, among other
28 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular

1 rate of pay that is above the minimum wage to the detriment of Plaintiffs and Class Members.

2 28. For at least (4) years prior to the filing of this action and continuing to the present,
3 Defendants have, at times, failed to provide Plaintiffs and Class Members, or some of them, full,
4 timely thirty (30) minute uninterrupted meal periods for days on which they have worked more than
5 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
6 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
7 for such unprovided meal periods as required by California wage and hour laws.

8 29. For at least (4) years prior to the filing of this action and continuing to the present,
9 Defendants have, at times, failed to authorize Plaintiffs and Class Members, or some of them, to
10 take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and
11 failed to provide compensation for such unprovided rest periods as required by California wage and
12 hour laws.

13 30. For at least three (3) years prior to the filing of this action and continuing to the
14 present, Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the
15 full amount of their wages owed to them upon termination and/or resignation as required by Labor
16 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
17 minimum wages, premium wages and vacation pay pursuant to Labor Code section 227.3.

18 31. For at least one (1) year prior to the filing of this Action and continuing to the present,
19 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with
20 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
21 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
22 hours worked at each hourly rate; and other such information as required by Labor Code section
23 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
24 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

25 32. For at least one (1) year prior to the filing of this action and continuing to the present,
26 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full
27 amount of their wages for labor performed in a timely fashion as required under Labor Code section
28 204.

1 33. For at least three (3) years prior to the filing of this action and continuing to the
2 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
3 costs incurred in purchasing and/or providing unreturned deposits for mandatory work uniforms;
4 laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles
5 for work-related purposes; using cellular phones for work-related purposes; and purchasing tools
6 and equipment necessary to perform work duties.

7 34. For at least three (3) years prior to the filing of the action and continuing to the
8 present, Defendants have, at times, failed to return interest on deposits made by Plaintiff and Class
9 Members, or some of them, for uniforms.

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

14 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
15 of failing to pay overtime wages to Plaintiffs and other Aggrieved Employees in the State of
16 California in violation of California state wage and hour laws as a result of, without limitation,
17 Plaintiffs and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours
18 per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
19 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
20 worked; engaging, suffering, or permitting employees to work off the clock, including, without
21 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 uniforms and/or safety equipment off the clock, to attend company meetings off the
25 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
26 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
27 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
28 additional compensation was earned for the purpose of calculating the overtime rate of pay;

1 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
2 less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment
3 of Plaintiffs and other Aggrieved Employees.

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

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

25 39. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to provide Plaintiffs and other Aggrieved Employees paid, uninterrupted, timely, and
27 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
28 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest

1 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
2 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
3 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
4 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

5 40. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
7 Plaintiffs and other Aggrieved Employees with itemized wage statements that accurately reflect
8 gross wages earned; total hours worked by the employee; net wages earned; all deductions; all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate by the employee; the legal name of the employer and/or the name and
11 address of the legal entity securing the employer's services if the employer is a farm labor contractor;
12 and other such information as required by Labor Code section 226, subdivision (a).

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

20 42. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of failing to timely pay Plaintiffs and other Aggrieved Employees, among other wages, all wages
22 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
23 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
24 Code sections 201, 202, and 203.

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

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

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

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

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

28 ///

1 48. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of preventing Plaintiffs and/or Aggrieved Employees from using or disclosing the skills, knowledge
3 and experience they obtained at Defendants for purposes of competing with Defendants, including,
4 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
5 a prospective employer, and from disclosing who else works at Defendants and under what
6 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
7 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
8 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
9 Code sections 232, 232.5, and 1197.5, subdivision (k).

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

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

25 51. Plaintiffs, on their own behalf and on behalf of Class Members, bring this action
26 pursuant to, including but not limited to, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204,
27 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5,
28 1194, 1197, 1197.1, 1997.5, 1998.5, 2699, 2802, 2810.5, and California Code of Regulations, Title

1 8, section 11040, seeking overtime wages, minimum wages, failure to pay timely wages, waiting
2 time penalties, wage statement penalties, failure to indemnify work-related expenses, failing to pay
3 vested vacation time at the proper rate of pay, other such provisions of California law, and
4 reasonable attorneys' fees and costs.

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

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

15 **CLASS ACTION ALLEGATIONS**

16 54. Plaintiff Todd brings this class action on behalf of herself and Class Members as a
17 class action pursuant to Code of Civil Procedure section 382. Plaintiff Todd seeks to represent a
18 class of all current and former non-exempt employees of Defendants within the State of California
19 at any time commencing four (4) years preceding the filing of Plaintiff Todd's complaint up until
20 the time that notice of the class action is provided to the class (collectively referred to as "Class
21 Members").

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

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

1 **A. Numerosity**

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

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

10 **B. Commonality**

11 59. There are questions of law and fact common to Class Members. These common
12 questions include, but are not limited to:

- 13 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
14 hours worked at a proper overtime rate of pay?
- 15 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to
16 pay for all other time worked at the employee's regular rate of pay and a rate of
17 pay that is greater than the applicable minimum wage?
- 18 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
19 Class Members to take compliant meal periods?
- 20 D. Did Defendants violate Labor Code section 226.7 by not providing Class
21 Members with additional wages for missed or interrupted meal periods?
- 22 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
23 Class Members to take complaint rest periods?
- 24 F. Did Defendants violate Labor Code section 226.7 by not providing Class
25 Members with additional wages for missed rest periods?
- 26 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
27 Members upon termination or resignation all wages earned?
- 28 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 the Unfair Competition Law, Business and Professions Code section 17200, *et seq.*, by their unlawful practices as alleged herein?

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

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

P. Are Class Members entitled to interest?

C. Typicality

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

D. Adequacy of Representation

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

8
9
10
11

12

13

4

5

6
7
8

19
20
21
22
23

24
25
26
27
28

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

69. Accordingly, by requiring Plaintiff Todd 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.

70. As a result of the unlawful acts of Defendants, Plaintiff Todd 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 sections 1021.5 and 1032, and Civil Code section 3287.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

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

74. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at

1 their regular rate of pay that is above the minimum wage to the detriment of Plaintiff Todd and Class
2 Members.

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

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

10 **THIRD CAUSE OF ACTION**

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

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

14 78. At all relevant times, Plaintiff Todd and Class Members were employees or former
15 employees of Defendants covered by Labor Code sections 512, as well as applicable Wage Orders.

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

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

26 81. For four (4) years prior to the filing of the Complaint in this Action through the
27 present, Plaintiffs and Class Members were, at times, not provided complete, timely 30-minute,
28 duty-free uninterrupted meal periods every five hours of work without waiving the right to take

1 them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay
2 at the Class Member's regular rate of compensation on the occasions that Class Members were not
3 provided compliant meal periods.

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

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

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

15 **FOURTH CAUSE OF ACTION**

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

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

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

21 87. California law and applicable Wage Orders require that employers "authorize and
22 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour
23 work period "or major fraction thereof." Accordingly, employees who work shifts of three-and-a-
24 half (3.5) hours to six (6) hours must be provided ten (10) minutes of paid rest period, employees
25 who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
26 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
27 provided thirty (30) minutes of paid rest period.

28 88. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee

1 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
2 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
3 regular rate of compensation for each work day that the rest period is not provided.

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

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

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

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

22 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

26 100. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
27 1021.5 and 1032, and Civil Code section 3287, Plaintiff Todd and Class Members are entitled to
28 recover waiting time penalties, interest and their costs of suit, as well.

1 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

25 106. As a result of Defendants' unlawful conduct, Plaintiff Todd and Class Members have
26 suffered injury. The absence of accurate information on Class Members' wage statements at times
27 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
28 mathematical computations to determine the amount of wages owed; causes difficulty and expense

1 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
2 about wages and amounts deducted from wages to state and federal governmental agencies, among
3 other things.

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

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

12 **SEVENTH CAUSE OF ACTION**

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

14 109. Plaintiff Todd realleges each and every allegation set forth in the preceding
15 paragraphs and incorporates each by reference as though fully set forth hereat.

16 110. At all relevant times, Plaintiff Todd and Class Members were employees or former
17 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

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

23 112. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
24 independent and apart from, any other penalty provided in this article, every person who fails to pay
25 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
26 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
27 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
28 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25

1 percent of the amount unlawfully withheld.”

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

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

11 115. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
12 1032, and Civil Code section 3287, Plaintiff Todd and Class Members are entitled to recovery of
13 penalties, interest and their costs of suit, as well.

14 **EIGHTH CAUSE OF ACTION**

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

16 116. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
17 in the preceding paragraphs of this First Amended Complaint as though fully set forth hereon.

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

21 118. For three (3) years prior to the filing of the Complaint in this Action through the
22 present, Defendants required Plaintiff Todd and Class Members, or some of them, to incur, at times,
23 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
24 obedience to the directions of Defendants that included, without limitation: purchasing and/or
25 providing unreturned deposits for mandatory work uniforms; laundering mandatory work uniforms;
26 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using
27 cellular phones for work-related purposes; and purchasing tools and equipment necessary to perform
28 work duties.

1 119. During that time period, Plaintiff Todd is informed and believes, and based thereon
2 alleges that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff
3 Todd and Class Members for those losses and/or expenditures.

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

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

11 **NINTH CAUSE OF ACTION**

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

13 122. Plaintiff Todd realleges and incorporates by reference all of the allegations contained
14 in the preceding paragraphs of this First Amended Complaint as though fully set forth hereon.

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

20 124. Plaintiff Todd is informed and believes, and based thereon alleges that, at all times
21 relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid
22 vacations, and that Plaintiff Todd's employment contract with Defendants included paid vacations.

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

27 126. As a proximate result of Defendants' failure to pay vested vacation at the final rate
28 of Plaintiff Todd and Class Members upon their resignation or termination, Defendants violated

1 Labor Code section 227.3, entitling Plaintiff Todd and Class Members to all vested and unused
2 vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment
3 between Plaintiff Todd and Class Members, on the one hand, and Defendants, on the other hand.

4 127. As a further proximate result of Defendants' above-described acts and/or omissions,
5 Plaintiff Todd and Class Members are entitled to recover reasonable attorneys' fees, costs of suit
6 and prejudgment interest.

7 **TENTH CAUSE OF ACTION**

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

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

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

17 130. As a result of Defendants' unfair competition as alleged herein, Plaintiff Todd and
18 Class Members have suffered injury in fact and lost money or property.

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

27 132. Plaintiff Todd and Class Members are entitled to costs of suit under Code of Civil
28 Procedure section 1032 and interest under Civil Code section 3287.

ELEVENTH CAUSE OF ACTION

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

133. Plaintiffs incorporate the allegations above as though they were fully set forth herein.

134. Plaintiffs bring this cause of action in a representative capacity on behalf of the general public pursuant to the California Private Attorneys General Act (Labor Code §2698, *et seq.*), and seek to vindicate their rights under the Labor Code as well as those of all other aggrieved current and former employees of Defendants.

135. As set forth above, Defendants have violated Labor Code §§96, 98.6, 201-204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 247.5, 404, 432, 432.3, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.5, 1198.5, 1527, 2802, 2810.5, 3366, 3457, 6401, 6402, 6403, 6409.6, 8397.4 and I.W.C. Wage Orders Nos. 4-2001 and 9-2001 (8 C.C.R. §§11040, 11090) with respect to Plaintiffs and the Representative Group, who have been injured as a result of these violations.

136. For purposes of this cause of action, the group of aggrieved employees consists of those hourly, non-exempt employees of Defendants working in California (the “Representative Group”) at any time since February 27, 2019, and through the date of entry of final judgment in this matter.

137. Plaintiffs seek to recover civil penalties for violations of the Labor Code committed by Defendants against Plaintiffs and all other aggrieved employees as set out in the PAGA Notice documents submitted to the Labor and Workforce Development Agency (“LWDA”) on February 27, 2020 and February 21, 2023, and the Amended PAGA Notice documents filed February 24, 2023 and March 9, 2023, the contents of which are incorporated herein by reference as though expressly set out herein.

138. For the violations of the Labor Code alleged, Plaintiffs and other aggrieved employees have no administrative remedies to exhaust.

139. Plaintiffs have fully complied with notice requirements under PAGA by giving written notice to both the LDWA and Defendants pursuant to Labor Code §2699.3(a)(1)(A), and by

1 paying the filing fee required by subsection (a)(1)(B) of the same.

2 140. Sixty-five calendar days have now passed since Plaintiffs gave the LWDA notice of
3 their PAGA claims, and the LWDA has not responded or taken any position as to those claims.
4 Accordingly, Plaintiffs now have the right to pursue those claims through a representative civil suit
5 pursuant to Labor Code §2699.3(a)(2)(A).

6 141. Plaintiffs have been injured as a direct and proximate result of Defendants' violations
7 of the Labor Code as set out in those PAGA Notices.

8 142. Pursuant to Labor Code §2699(a) and (f), Plaintiffs accordingly seek to recover civil
9 penalties against Defendants for the specified Labor Code violations against Plaintiffs and all other
10 aggrieved employees.

11 143. In addition, Plaintiffs seek to recover their reasonable attorneys' fees and costs
12 pursuant to Labor Code §2699(g)(1).

13 **DEMAND FOR JURY TRIAL**

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

15 **PRAYER**

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

- 18 A. An order certifying this case as a Class Action;
- 19 B. An Order appointing Plaintiff Todd as Class representative and appointing
20 Plaintiffs' counsel as class counsel;
- 21 C. Damages for all wages earned and owed, including minimum overtime wages
22 and unpaid wages for vested vacation time, under Labor Code sections 510,
23 558.1, 1194, 1197 and 1199 and 227.3;
- 24 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 25 E. Damages for unpaid premium wages from missed meal and rest periods
26 under, among others, Labor Code sections 512, 558.1, and 226.7.
- 27 F. Penalties for inaccurate wage statements under Labor Code section 226,
28 subdivision (e) and 558.1;

- 1 G. Waiting time penalties under Labor Code sections 203 and 558.1;
2 H. Penalties to timely pay wages under Labor Code sections 210;
3 I. Damages under Labor Code sections 2802 and 558.1;
4 J. Preliminary and permanent injunctions prohibiting Defendants from further
5 violating the California Labor Code and requiring the establishment of
6 appropriate and effective means to prevent future violations;
7 K. Restitution of wages and benefits due which were acquired by means of any
8 unfair business practice, according to proof;
9 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
10 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
11 1174.5, 1197.1, and 2699;
12 N. An award of reasonable attorneys' fees and costs pursuant to Labor Code
13 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699.
14 O. Pre-judgment and post-judgment interest;
15 P. For attorneys' fees in prosecuting this action;
16 Q. For costs of suit incurred herein; and
17 R. For such other and further relief as the Court deems just and proper.

18
19
20 Dated: October 23, 2023

BIBIYAN LAW GROUP, P.C.

21
22 BY: Vedang J. Patel

23 VEDANG J. PATEL

24 Attorneys for Plaintiffs KUANETTA VICTORIA
25 TODD and FLOUZEL PANINGBATAN, on behalf of
26 themselves, and all others similarly situated and
27 aggrieved
28

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

DATED: October 23, 2023

AIMAN-SMITH & MARCY, P.C.



John A. Lofton, Esq.
Attorneys for Plaintiffs