

1 **J. GILL LAW GROUP,**
2 *A Professional Corporation*
3 Jasmin K. Gill (Cal. Bar No. 315090)
4 *jasmin@jkgilllaw.com*
5 Sacha Pomares (Cal Bar No. 377642)
6 *sacha@jkgilllaw.com*
7 515 South Flower Street, Suite 1800
8 Los Angeles, California 90071
9 Tel: (213) 459-6023; Fax: (310) 728-2137

10 Attorneys for Plaintiff, HANI ALMORISI, as an individual and on behalf of all others
11 similarly situated and aggrieved,

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF KERN**

14 HANI ALMORISI, as an individual and on
15 behalf of all others similarly situated and
16 aggrieved,

17 Plaintiffs,

18 v.

19 M. A. MORTENSON COMPANY, a
20 Minnesota corporation; EDWARDS
21 SANBORN SOLAR III, LLC, a Delaware
22 limited liability company, dba Mortenson
23 Edwards & Sanborn Solar; and DOES 1
24 through 100, inclusive,

25 Defendants.

CASE NO.: BCV-23-100727
(Related Case No. BCV-23-101522)

FIRST AMENDED COMPLAINT FOR:

1. VIOLATION OF PAGA;
2. FAILURE TO PAY OVERTIME WAGES;
3. FAILURE TO PAY MINIMUM WAGES;
4. FAILURE TO PROVIDE MEAL PERIODS;
5. FAILURE TO PROVIDE REST PERIODS;
6. WAITING TIME PENALTIES;
7. WAGE STATEMENT VIOLATIONS;
8. FAILURE TO INDEMNIFY;
9. FAILURE TO TIMELY PAY WAGES PER LABOR CODE § 210; and
10. UNFAIR COMPETITION.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff HANI ALMORISI (“Mr. Almorisi” or “Plaintiff”), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against M.A. MORTENSON COMPANY (“Mortenson”), EDWARDS SANBORN SOLAR III, LLC, dba Mortenson Edwards & Sanborn Solar (“Sanborn Solar”) and any of their respective subsidiaries or affiliated companies within the State of California (Mortenson, Sanborn Solar and DOES 1 through 100, as further defined below, are collectively hereinafter referred to as “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also an individual and representative PAGA action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, and any of their respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code sections 206 and 206.5, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

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

1 solar panels. Plaintiff is informed and believes, and based thereon alleges that Plaintiff worked for
2 Defendants from approximately September of 2001 through March of 2022.

3 **B. Defendants**

4 4. Plaintiff is informed and believes and based thereon alleges that defendant
5 Mortenson is, and at all times relevant hereto was, a corporation duly organized, authorized, and
6 licensed to do business in the State of Minnesota. Plaintiff is further informed and believes, and
7 based thereon alleges, that Mortenson is authorized to, and does in fact operate and do business in
8 the County of Kern, California. At all relevant times herein, defendant Mortenson employed
9 Plaintiff and similarly situated and aggrieved employees within the County of Kern in the State of
10 California.

11 5. Plaintiff is informed and believes and based thereon alleges that defendant
12 Mortenson is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17
13 and Cal. Bus. & Prof. Code § 17201.

14 6. Plaintiff is informed and believes and based thereon alleges that defendant Sanborn
15 Solar is, and at all times relevant hereto was, a limited liability company authorized to and operating
16 and doing business in the County of Kern, State of California with members and/or managers
17 domiciled in and citizens of the State of California. At all relevant times herein, defendant Sanborn
18 Solar employed Plaintiff and similarly situated and aggrieved employees within the County of Kern
19 in the State of California.

20 7. Plaintiff is informed and believes and based thereon alleges that defendant Sanborn
21 Solar is, and at all times relevant hereto was, a “person” as defined in Labor Code section 17 and
22 Cal. Bus. & Prof. Code § 17201.

23 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
24 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
25 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
26 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
27 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
28 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of

1 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
2 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
3 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
4 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
5 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
6 include Mortenson, Sanborn Solar and any of their parent, subsidiary, or affiliated companies within
7 the State of California, as well as DOES 1 through 100 identified herein.

8 **JOINT LIABILITY ALLEGATIONS**

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

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

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

1 **JURISDICTION**

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

4 13. Venue is proper in Kern County, California pursuant to Code of Civil Procedure
5 sections 392, *et seq.* because, among other things, Kern County is where the causes of action
6 complained of herein arose; the county in which the employment relationship began; the county
7 in which performance of the employment contract, or part of it, between Plaintiffs, or some of them,
8 and Defendants was due to be performed; the county in which the employment contract, or part of
9 it, between Plaintiffs, or some of them, and Defendants was actually performed; the county in which
10 Defendants, or some of them, have their principal place of business; and the county in which
11 Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
12 effect on Plaintiff, Class Members, and Aggrieved Employees in Kern County, and because
13 Defendants employ numerous Class Members and Aggrieved Employees in Kern County.

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

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

25 16. During the period beginning one (1) year preceding the provision of notice to the
26 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
27 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 204b, 204.1,
28 205, 205.5, 206, 206.5, 210, 2221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 248.2,

1 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802,
2 and 2810.5, among others.

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

7 18. On or around March 9, 2023, Plaintiff provided written notice pursuant to Labor
8 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
9 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
10 as well as by certified mail, with return receipt requested to Defendants, and each of them.

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

15 **FACTUAL BACKGROUND**

16 20. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of failing to pay overtime wages to Plaintiff, Class Members, and other Aggrieved Employees in the
18 State of California, in violation of California state wage and hour laws as a result of, without
19 limitation, Plaintiff, Class Members, and other Aggrieved Employees working over eight (8) hours
20 per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) consecutive workdays
21 in a workweek without being properly compensated for hours in excess of (8) hours per day in a
22 work day, twelve (12) hours per day in a work day, forty (40) hours per week in a work week,
23 and/or hours worked on the seventh consecutive work day in a work week by, among other things,
24 failing to accurately track and/or pay for all minutes and hours actually worked at the proper overtime
25 rate of pay; automatically deducting time from employees' hours worked for meal periods not
26 actually taken, interrupted, or less than 30 minutes in length; engaging, suffering, or permitting
27 employees to work off the clock, including, without limitation, by requiring employees: to complete
28 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and

1 continue working and/or suffering under Defendants' control, recording hours worked based on
2 work schedule times rather than actual hours worked; failing to include all forms of remuneration,
3 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
4 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
5 additional compensation was earned for the purpose of calculating the overtime rate of pay; editing,
6 deducting, auto-deducting and/or manipulation of time entries to show lesser hours worked;
7 detrimental rounding of time entries; failing to pay Plaintiff, Class Members, and Aggrieved
8 Employees for travel time that is required for work; and for paying straight pay instead of overtime
9 pay or otherwise paying overtime hours and minutes worked at the improper rate(s) of pay, to suffer
10 under Defendants' control due to long lines for clocking in, to the detriment of Plaintiff, Class
11 Members, and other Aggrieved Employees.

12 21. At all relevant times mentioned herein, Defendants had and have a practice or policy
13 of failing to accurately track and/or pay for all minutes and hours actually worked or otherwise
14 under Defendants' control at Plaintiff's, Class Members, and/or Aggrieved Employees' regular rate
15 of pay that is above the minimum wage; automatically deducting time from employees' hours
16 worked for meal periods not actually taken, interrupted, or less than 30-minutes in length;
17 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
18 by requiring employees: to complete pre-shift tasks before clocking in and post-shift tasks after
19 clocking out, to be clocked out for meal periods and continue working and/or suffering under
20 Defendants' control, recording hours worked based on work schedule times rather than actual hours
21 worked; editing, deducting, auto-deducting and/or manipulation of time entries to show lesser
22 hours worked; failing to pay Plaintiff and Class Members for travel time that is required for work;
23 detrimental rounding of time entries; failing to pay reporting time pay; paid time off and vacation
24 time owed; failing to pay split shift premiums; and failing to pay travel time pay, all to the detriment
25 of Plaintiff, Class Members, and other Aggrieved Employees.

26 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to provide Plaintiff, Class Members, and other Aggrieved Employees, or some of them, a
28 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than

1 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
2 which they worked in excess of ten (10) hours per day, including, without limitation: by interrupting
3 meal periods; not providing timely meal periods; failing to provide first and second meal periods;
4 providing short meal periods; otherwise requiring on-duty/on-call meal periods, which in turn
5 prevented employees from leaving the premises for meal periods; and/or auto-deducting meal
6 periods that could not be auto-deducted by law or during which employees worked, and failing to
7 provide compensation for such unprovided meal periods as required by California wage and hour
8 laws.

9 23. At all relevant times mentioned herein, Defendants have and had a policy or practice
10 of failing to authorize and permit Plaintiff, Class Members, and other Aggrieved Employees, or
11 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
12 fraction thereof in which they are completely relieved of all of their duties, including, without
13 limitation: by failing to provide rest periods all together; requiring that they be bundled together
14 and/or with meal periods; interrupting them; not providing them in a timely fashion; not permitting
15 employees to leave the premises; and/or otherwise requiring on-duty/on-call rest periods, and failed
16 to provide compensation for such unprovided rest periods as required by California wage and hour
17 laws.

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

28 ///

1 25. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to comply with Labor Code section 226, subdivision (a) by failing to keep adequate or
3 accurate time records including wage statements and similar payroll documents under Labor Code
4 section 226, intentionally failing to furnish Plaintiff, Class Members, and other Aggrieved
5 Employees with documents signed to obtain or hold employment under Labor Code section 432,
6 personnel records under Labor Code section 1198.5, and time records under Labor Code section
7 1174, making it difficult for Plaintiff, Class Members, and other Aggrieved Employees to calculate
8 their unpaid wages and/or premium payments, to the detriment of Plaintiff, Class Members, and
9 other Aggrieved Employees.

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

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

19 28. At all relevant times mentioned herein, Defendants have and had a policy or practice
20 of failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
21 limitation, Plaintiff, Class Members, and other Aggrieved Employees, for gas and mileage costs
22 incurred in excess of amounts provided by Defendants for mileage, for the purchase of functioning
23 protective equipment needed to perform their duties (e.g., gloves), and for the purchase and
24 maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of
25 their duties, or of their obedience to the directions of Defendants, as required by Labor Code section
26 2802, and other statutory and common law offenses.

27 29. 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 Plaintiff, Class Members, and
2 other Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their
3 employment; allowances claimed as part of the minimum wage; the regular payday designated by
4 Defendants; the name, address, and telephone number of the workers' compensation insurance
5 carrier; information regarding paid sick leave; and other pertinent information required to be
6 disclosed by Defendants under Labor Code section 2810.5.

7 30. At all relevant times mentioned herein, Defendants have had a policy or practice of
8 requiring the execution of a claim or right on account of wages due, or to become due, or made as
9 an advance on wages to be earned, without payment of those wages having been made, in violation
10 of Labor Code section 206.5. Furthermore, at all relevant times mentioned herein, Defendants have
11 had a policy or practice of failing to pay all wages to Plaintiff, Class Members, and Aggrieved
12 Employees "without condition and within the time set" conceded to be due, as required by Labor
13 Code section 206 in a case of a dispute over wages.

14 31. At all relevant times mentioned herein, Defendants failed to provide Plaintiff, Class
15 Members, and other Aggrieved Employees with the amount of paid sick leave required to be
16 provided pursuant to California and local laws (including, without limitation Labor Code section
17 246, 248.2 and/or 2021 COVID-19 Supplemental Paid Sick Leave Laws, *et seq.*), and also did not
18 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff,
19 Class Members, and all other Aggrieved Employees.

20 32. At all relevant times mentioned herein Defendants have had a policy or practice of
21 failing to pay Plaintiff, Class Members, and other Aggrieved Employees, or some of them, their
22 wages in accordance with Labor Code section 204, which requires that: "[l]abor performed between
23 the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th
24 day of the month during which the labor was performed, and labor performed between the 16th and
25 the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the
26 following month" and for payroll periods such as those that are weekly, biweekly, or semimonthly,
27 wages must be paid within seven (7) calendar days following the close of the payroll period in which
28 wages were earned.

1 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of preventing Plaintiff 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 34. Defendants had and have a policy or practice of preventing Plaintiff 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, Plaintiff is informed and believes that Defendants' herein-described policies
15 and/or practices prevent Plaintiff 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 35. Defendants had and have a policy or practice of preventing Plaintiff 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). Plaintiff is informed and believes that this lawful conduct includes the exercise of
23 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
24 economic liberty.

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

37. Plaintiff, on his own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 1197, 2802, and the applicable rules and regulations of the IWC California Wage Orders, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, reimbursement for expenses incurred in furtherance of work duties, compensation for Defendants' failure to pay vested vacation time at the proper rate of pay, penalties, other such provisions of California law, and reasonable attorneys' fees and costs.

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

CLASS ACTION ALLEGATIONS

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

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

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

///

///

1 A. **Numerosity**

2 42. 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 is informed and believes that there are at least two-hundred (200) Class
5 Members employed by Defendants within the State of California.

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

10 B. **Commonality**

11 44. 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 hours
14 worked at a proper overtime rate of pay?
- 15 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
16 for all other time worked at the employee's regular rate of pay and a rate of pay that
17 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 Members
21 with additional wages for missed, late, short or interrupted meal periods?
- 22 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
23 Class Members to take compliant rest periods?
- 24 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
25 with additional wages for missed, late, short or interrupted 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

- 1 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
2 section 203?
- 3 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
4 Class Members with accurate wage statements?
- 5 J. Did Defendants fail to pay Class Members in a timely fashion as required under
6 Labor Code section 204?
- 7 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
8 losses incurred in direct consequence of the discharge of their duties or by obedience
9 to the directions of Defendants as required under Labor Code section 2802?
- 10 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
11 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 12 M. Are Class Members entitled to restitution of wages under Business and Professions
13 Code section 17203?
- 14 N. Are Class Members entitled to costs and attorneys' fees?
- 15 O. Are Class Members entitled to interest?

16 **C. Typicality**

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

22 **D. Adequacy of Representation**

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

26 **E. Superiority of Class Action**

27 47. A class action is superior to other available means for the fair and efficient
28 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

1 questions of law and fact common to Class Members predominate over any questions affecting only
2 individual Class Members. Class Members, as further described therein, have been damaged and
3 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
4 violation of the Labor Code, as detailed and set out herein.

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

9 **FIRST CAUSE OF ACTION**

10 **(Violation of PAGA – Against All Defendants)**

11 49. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
12 and incorporates each by reference as though fully set forth hereat.

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

14 50. At all relevant times herein, Labor Code section 204, requires and required that:
15 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
16 between the 16th and 26th day of the month during which the labor was performed, and labor
17 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
18 between the 1st and 10th day of the following month” and for payroll periods such as those that are
19 weekly, biweekly, or semimonthly, wages must be paid within seven (7) calendar days following
20 the close of the payroll period in which wages were earned.

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

28 52. At all relevant times herein, Defendants have had a consistent policy or practice of

1 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
2 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
3 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor
4 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
5 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
6 for each subsequent violation in connection with each payment that was made in violation of Labor
7 Code section 204.

8 Civil Penalties Under Labor Code § 226.3

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

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

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

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

28 57. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are

1 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
2 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
3 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
4 period for each subsequent violation.

5 Violation of Labor Code § 558

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

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

13 (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover underpaid wages;

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

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

26 60. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
28 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars

1 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
2 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

3 Violation of Labor Code § 1174.5

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

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

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

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

27 65. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
28 willfully failed keep adequate or accurate time records including wage statements and similar payroll

documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174.

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

Violation of Labor Code § 1197.1

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

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

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

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

68. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' to pay minimum

1 wages for all hours worked or otherwise under Defendants' control due to, without limitation,
2 routinely failing to accurately track and/or pay for all minutes and hours actually worked at their
3 regular rate of pay that is above the minimum wage; automatically deducting time from employees'
4 hours worked for meal periods not actually taken, interrupted and/or less than 30-minutes in length;
5 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
6 by requiring employees: to complete pre-shift tasks before clocking in and post-shift tasks after
7 clocking out, to clock out for meal periods and continue working and/or suffering under Defendants'
8 control, recording hours worked based on work schedule times rather than actual hours worked;
9 editing, deducting, auto-deducting and/or manipulation of time entries to show lesser hours than
10 actually worked; detrimental rounding of time entries; failing to pay Plaintiff and Aggrieved
11 Employees for travel time that is required for work; detrimental rounding of employee time entries;
12 failing to pay reporting time pay; accrued paid time off and vacation time owed; and failing to pay
13 split shift premiums, entitling Plaintiff and other Aggrieved Employees to actual and liquidated
14 damages.

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

21 Civil Penalties Under Labor Code § 2699

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

28 71. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor

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

6 72. Plaintiff is informed and believes, and based thereon allege that Defendants, and each
7 of them, violated the Labor Code sections described herein, including, without limitation, requiring
8 the execution of a claim or right on account of wages due, or to become due, or made as an advance
9 on wages to be earned, without payment of those wages having been made, in violation of Labor
10 Code sections 206 and 206.5 and for the failure to: pay overtime wages and minimum wages;
11 provide meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage
12 statements; pay wages after employment separation; provide employees the opportunity to inspect
13 employment records; failure to maintain accurate and complete records; reimburse Aggrieved
14 Employees for costs incurred in furtherance of their work duties; provide notice as required under
15 Labor Code section 2810.5; provide the proper accrual and use of paid sick leave pursuant to
16 California and local laws; paying employees all owed paid time off and vacation time owed by
17 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
18 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
19 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

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

23 **SECOND CAUSE OF ACTION**

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

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

27 ///

28 ///

1 75. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
3 Wage Orders.

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

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

12 78. At all relevant times herein mentioned, Plaintiff and Class Members, at times,
13 worked for Defendants during shifts that consisted of more than eight (8) hours in a workday, more
14 than twelve (12) hours in a workday, and/or more than forty hours in a workweek, and/or seven (7)
15 consecutive workdays in a workweek, without being properly compensated for hours in excess of
16 (8) hours per day in a work day, twelve (12) hours per day in a work day, forty (40) hours per week
17 in a work week, and/or hours worked on the seventh consecutive work day in a work week by,
18 among other things, failing to accurately track and/or pay for all minutes and hours actually worked
19 at the proper overtime rate of pay; automatically deducting time from employees’ hours worked for
20 meal periods not actually taken, interrupted, or less than 30-minutes in length; engaging, suffering,
21 or permitting employees to work off the clock, including, without limitation, by requiring
22 employees: to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
23 clock out for meal periods and continue working and/or suffering under Defendants’ control,
24 recording hours worked based on work schedule times rather than actual hours worked; failing to
25 include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal
26 allowances, and other forms of remuneration into the regular rate of pay for the pay periods where
27 overtime was worked and the additional compensation was earned for the purpose of calculating the
28 overtime rate of pay; editing, deducting, auto-deducting and/or manipulation of time entries to

1 show lesser hours worked; detrimental rounding of time entries; failing to pay Plaintiff and Class
2 Members for travel time that is required for work; and for paying straight pay instead of overtime
3 pay or otherwise paying overtime hours and minutes worked at the improper rate(s) of pay, to suffer
4 under Defendants' control due to long lines for clocking in, to the detriment of Plaintiff and Class
5 Members.

6 79. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
7 than eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per workweek,
8 and/or seven (7) straight workdays without properly compensating overtime wages at the proper
9 overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code,
10 among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

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

15 **THIRD CAUSE OF ACTION**

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

17 81. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
18 the preceding paragraphs of this Complaint as though fully set forth hereat.

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

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

24 84. At all relevant times herein mentioned, Defendants failed, at times, to accurately
25 track and/or pay for all minutes and hours actually worked or otherwise under Defendants' control
26 at Plaintiff and/or Class Members' regular rate of pay that is above the minimum wage;
27 automatically-deducted 30-minutes from employees' hours worked for meal periods not actually
28 taken, interrupted, or less than 30-minutes in length; engaged, suffered, or permitted employees to

1 work off the clock, including, without limitation, by requiring employees: to complete pre-shift tasks
2 before clocking in and post-shift tasks after clocking out, to be clocked out for meal periods and
3 continue working and/or suffering under Defendants' control, recording hours worked based on
4 work schedule times rather than actual hours worked; editing, deducting, auto-deducting and/or
5 manipulation of time entries to show lesser hours worked; failing to pay Plaintiff and Class
6 Members for travel time that is required for work detrimental rounding of time entries; failing to pay
7 reporting time pay; paid time off and vacation time owed; failing to pay split shift premiums; and
8 failing to pay travel time pay, all to the detriment of Plaintiff and Class Members.

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

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

16 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

5 91. At all relevant times herein mentioned, Plaintiff and Class Members were, at times,
6 not provided a full, timely thirty (30) minute, duty-free uninterrupted meal periods every five hours
7 of work without waiving the right to take them, as permitted. Moreover, at times, Defendants failed
8 to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the
9 occasions that Class Members were not provided compliant meal periods.

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

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

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

21 **FIFTH CAUSE OF ACTION**

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

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

25 96. At all relevant times, Plaintiff and Class Members were employees or former
26 employees of Defendants covered by applicable Wage Orders

27 97. California law and applicable Wage Orders require that employers "authorize and
28 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour

1 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
2 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
3 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
4 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
5 thirty (30) minutes of paid rest period.

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

10 99. At all relevant times herein mentioned, Plaintiff and Class Members were, at times,
11 not authorized or permitted to take complete, timely 10-minute, duty-free uninterrupted rest periods
12 every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to
13 provide one (1) additional hour of pay at the Class Member’s regular rate of compensation on the
14 occasions that Class Members were not authorized or permitted to take compliant rest periods.

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

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

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

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **(Failure to Provide Due Wages at Termination – Against All Defendants)**

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

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

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

15 106. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times
16 herein mentioned, Defendants, due to the failure, at times, to provide overtime wages mentioned
17 above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination
18 in accordance with Labor Code sections 201 or 202, including, without limitation, overtime wages,
19 minimum wages, premium wages, and paid time off and/or vacation pay pursuant to Labor Code
20 section 227.3.

21 107. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
22 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
23 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
24 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
25 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
26 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
27 or resignation.
28

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

109. As a result of Defendants' unlawful conduct, Plaintiff 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.

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

SEVENTH CAUSE OF ACTION

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

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

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

113. Pursuant to Labor Code section 226, subdivision (a), Plaintiff 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 deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name(s) and address(es) of the legal entity(ies) that is/are the employer(s), among other things.

114. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times herein mentioned, Defendants failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name(s) and address(es) of the legal entity(ies) that is/are the employer(s), among other things.

1 115. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
2 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
3 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
4 provided wage statements that Defendants knew were not accurate.

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

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

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

20 **EIGHTH CAUSE OF ACTION**

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

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

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

26 121. Labor Code section 2802, subdivision (a) provides that "an employer shall indemnify
27 his or her employee for all necessary expenditures or losses incurred by the employee in direct
28 consequence of the discharge of his or her duties . . .".

122. At all relevant times herein mentioned, Defendants required Plaintiff and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: for gas and mileage costs incurred in excess of amounts provided by Defendants for mileage; for the purchase of functioning protective equipment (e.g., gloves) needed to perform their duties; and for the purchase and maintenance of cellular phones and cellular phone plans.

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

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

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

NINTH CAUSE OF ACTION

(Failure To Timely Pay Wages During Employment Per Labor Code § 210 – Against All Defendants)

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

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

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

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

130. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times herein mentioned, Defendants employed policies and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with Labor Code section 204.

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

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

TENTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

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

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

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

3
4 136. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
5 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
6 Code and requiring the establishment of appropriate and effective means to prevent further
7 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
8 including interest thereon, in which they had a property interest and which Defendants nevertheless
9 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
10 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
11 by their failure to comply with the Labor Code.

12 137. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
13 Procedure section 1032 and interest under Civil Code section 3287.

14 **DEMAND FOR JURY TRIAL**

15 138. Plaintiff demands a trial by jury on all causes of action contained herein.

16 **PRAYER**

17 WHEREFORE, on behalf of Plaintiff, Class Members, and Aggrieved Employees, Plaintiff
18 prays for judgment against Defendants as follows:

- 19 A. An order certifying this case as a Class Action;
20 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
21 counsel as class counsel;
22 C. Damages for all wages earned and owed, including minimum, overtime wages and
23 unpaid wages for vested vacation time and/or paid time off and other damages, under
24 Labor Code sections 227.3, 510, 1194, 1197 and 1199;
25 D. Liquidated damages pursuant to Labor Code section 1194.2;
26 E. Damages for unpaid premium wages from missed meal and rest periods under,
27 among other Labor Code sections 512 and 226.7;
28

- 1 F. Penalties for inaccurate wage statements under Labor Code section 226, subdivision
2 (e);
- 3 G. Waiting time penalties under Labor Code section 203;
- 4 H. Penalties for failure to timely pay wages under Labor Code sections 204 and 210;
- 5 I. Damages under Labor Code section 2802;
- 6 J. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
7 1197.1, and 2699;
- 8 K. Preliminary and permanent injunctions prohibiting Defendants from further violating
9 the California Labor Code and requiring the establishment of appropriate and
10 effective means to prevent future violations;
- 11 L. Restitution of wages and benefits due which were acquired by means of any unfair
12 business practice, according to proof;
- 13 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 14 N. For attorneys' fees in prosecuting this action and all claims and allegations associated
15 with this action;
- 16 O. For costs of suit incurred herein; and
- 17 P. For such other and further relief as the Court deems just and proper.

18 Dated: August 19, 2024

J GILL LAW GROUP, P.C.

19
20 BY: /s/ Jasmin K. Gill

JASMIN K. GILL

21 Attorneys for Plaintiff, HANI ALMORISI, as an
22 individual and on behalf of all others similarly situated
23 and aggrieved,
24
25
26
27
28