

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (Cal. Bar No. 287811)

david@tomorrowlaw.com

Jeffrey D. Klein (Cal. Bar No. 297296)

jeff@tomorrowlaw.com

Vedang J. Patel (Cal. Bar No. 328647)

vedang@tomorrowlaw.com

Brandon M. Chang (Cal. Bar No. 316197)

brandon@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

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

Attorneys for Plaintiff, OSCAR MOCTEZUMA and
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

OSCAR MOCTEZUMA, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

DIRECT LINE GLOBAL, LLC., a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 23CV033075

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

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3;
10. UNFAIR COMPETITION;
11. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, CAL. LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, and 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 Plaintiff OSCAR MOCTEZUMA (“Plaintiff”), on behalf of Plaintiff and all others similarly
2 situated, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against
6 DIRECT LINE GLOBAL, LLC, and any of its respective subsidiaries or affiliated companies within
7 the State of California, including DIRECT LINE HOLDINGS, LLC, (“DIRECT LINE” and
8 collectively, with DOES 1 through 100, as further defined below, “Defendants”) on behalf of
9 Plaintiff and all other current and former non-exempt California employees employed by or formerly
10 employed by Defendants (“Class Members”).

11 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
12 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants,
13 and any of their respective subsidiaries or affiliated companies within the State of California, as a
14 proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
15 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
16 within the Civil Penalty Period, as described herein, and, as it pertains to the alleged claims for
17 violations of the Labor Code, including but not limited to, failure to comply with Labor Code section
18 6409.6, Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code
19 section 246, *et seq.*, Labor Code section 432, Labor Code section 1198.5, Labor Code section 2802,
20 restraints on competition, whistleblowing and freedom of speech on behalf of all employees of
21 Defendants working within the Civil Penalty Period (“Aggrieved Employees”).

22 **PARTIES**

23 **A. Plaintiff**

24 3. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
25 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
26 exempt employee, with duties that included, but were not limited to, setting up fiber optics, voice
27 data, phone lines, internet, Wi-Fi, and alarms. Plaintiff is informed and believes, and based thereon
28 alleges, that Plaintiff worked for Defendants from approximately November 1 of 2020 through

1 approximately June of 2021.

2 **B. Defendants**

3 4. Plaintiff is informed and believes and based thereon alleges that defendant DIRECT
4 LINE is, and at all times relevant hereto was, a limited liability company organized and existing
5 under and by virtue of the laws of the State of California and doing business in the County of
6 ALAMEDA, State of California.

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

20 **JOINT LIABILITY ALLEGATIONS**

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

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

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

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

9 **JURISDICTION AND VENUE**

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

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

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

28 ///

11. Specifically, Plaintiff 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.

12. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 201, 201.3, 202, 203, 204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 432.3, 432.5, 432.6, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527, 2699, 2802, 2810.5, 3366, 3457, 6409.6, and 8397.4.

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

14. On or around May 11, 2023, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

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

FACTUAL BACKGROUND

16. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff, Class Members, and Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly

1 compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per
2 week in a work week, and/or hours worked on the seventh consecutive work day in a work week
3 by, among other things: failing to accurately track and/or pay for all minutes actually worked at the
4 proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
5 including, without limitation, by requiring Plaintiff and Class Members: to come early to work and
6 leave late work without being able to clock in for all that time, to suffer under Defendants' control
7 due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks
8 after clocking out, to clock out for meal periods and continue working, to clock out for rest periods,
9 to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
10 clock, to make phone calls off the clock, and/or go through security screenings and/or temperature
11 checks off the clock; failing to include all forms of remuneration, including non-discretionary
12 bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of
13 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
14 additional compensation was earned for the purpose of calculating the overtime rate of pay;
15 detrimental rounding of employee time entries, editing and/or manipulation of time entries to the
16 detriment of Plaintiff, Class Members and other Aggrieved Employees.

17 17. For at least four (4) years prior to the filing of this Action and continuing to the
18 present, Defendants had and have a practice or policy of failing to compensate Plaintiff, Class
19 Members, and Aggrieved Employees with minimum wages for all hours worked or otherwise under
20 Defendants' control as a result of, without limitation: at times, failing to accurately track and/or pay
21 for all hours actually worked at their regular rate of pay that is above the minimum wage; engaging,
22 suffering, or permitting employees to work off the clock, including, without limitation, by requiring
23 Plaintiff, Class Members and other Aggrieved Employees: to come early to work and leave late
24 work without being able to clock in for all that time, to suffer under Defendants' control due to long
25 lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking
26 out, to clock out for meal periods and continue working, to clock out for rest periods, to don and
27 doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to
28 make phone calls off the clock; detrimental rounding of employee time entries; editing and/or

1 manipulation of time entries to show less hours than actually worked; failing to pay split shift
2 premiums; and failing to pay reporting time pay. As a result, Defendants failed to pay minimum
3 wages to Plaintiff, Class Members, and Aggrieved Employees, or some of them, in violation of
4 California state wage and hour laws to the detriment of Plaintiff, Class Members, and Aggrieved
5 Employees.

6 18. For at least four (4) years prior to the filing of this Action and continuing to the
7 present, Defendants have, at times, failed to provide Plaintiff, Class Members, and Aggrieved
8 Employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on
9 which they worked more than five (5) hours in a work day and a second thirty (30) minute
10 uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day.
11 Moreover, Defendants failed to provide compensation for such unprovided meal periods as required
12 by California wage and hour laws including, without limitation: by interrupting meal periods; failing
13 to provide timely meal periods; failing to provide first and second meal periods; providing short
14 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
15 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
16 periods; and auto-deducting meal periods that could not be auto-deducted by law or during which
17 employees worked.

18 19. For at least four (4) years prior to the filing of this Action and continuing to the
19 present, Defendants have, at times, failed to authorize and permit Plaintiff, Class Members, and
20 Aggrieved Employees, or some of them, to take rest periods of at least ten (10) minutes per four (4)
21 hours worked or major fraction thereof and failed to provide compensation for such unprovided rest
22 periods as required by California wage and hour laws by, without limitation: failing to provide rest
23 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
24 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
25 providing them in a timely fashion; and not permitting employees to leave the premises; and
26 otherwise requiring on-duty/on-call rest periods.

27 20. For at least three (3) years prior to the filing of this action and continuing to the
28 present, Defendants have, at times, failed to pay Plaintiff, Class Members, and Aggrieved

1 Employees, or some of them, the full amount of their wages owed to them upon termination and/or
2 resignation as required by Labor Code sections 201 and 202, including for, without limitation,
3 failing to pay overtime wages, minimum wages, premium wages, and vacation pay pursuant to
4 Labor Code section 227.3.

5 21. At all relevant times mentioned herein, Defendants have, at times, failed to furnish
6 Plaintiff, Class Members, and Aggrieved Employees, or some of them, with itemized wage
7 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all
8 deductions; all applicable hourly rates in effect during the pay period and the corresponding number
9 of hours worked at each hourly rate; and other such information as required by Labor Code section
10 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
11 an accurate calculation of gross and net wages earned, as well as gross and net wages paid.

12 22. For at least one (1) year prior to the filing of this action and continuing to the present,
13 Defendants have, at times, failed to pay Plaintiff, Class Members, and Aggrieved Employees, or
14 some of them, the full amount of their wages for labor performed in a timely fashion as required
15 under Labor Code section 204, and are liable for civil penalties under Labor Code sections 210, 558,
16 and 2699.

17 23. At all relevant times mentioned herein, Defendants had and have a policy or practice
18 of failing to timely pay Plaintiff, Class Members, and other Aggrieved Employees, or some of them,
19 among other wages, all wages owed as a result of Defendants' practice or policy of failing to pay,
20 among other wages, overtime wages, minimum wages, premium wages, paid time off and vacation
21 time owed as required by Labor Code sections 201, 202, and 203, including failure to pay wages at
22 the proper regular rate of pay, among other things.

23 24. For at least three (3) years prior to the filing of this action and continuing to the
24 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
25 costs incurred in laundering mandatory work uniforms; for the purchase and maintenance of cellular
26 phones and cellular phone plans in direct consequence of the discharge of their duties, or of their
27 obedience to the directions of Defendants; and for the costs incurred in purchasing of tools necessary
28 to perform work duties.

1 25. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendants have had a consistent policy of failing to provide Plaintiff, Class Members, and
3 Aggrieved Employees, or some of them, within the State of California with compensation at their
4 final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

5 26. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to provide Plaintiff, Class Members and Aggrieved Employees with the amount of paid
7 sick leave required to be provided pursuant to California and local laws (including, without
8 limitation, Labor Code section 246, *et seq.* Furthermore, Defendants failed to pay sick pay at the
9 proper regular rate of pay, did not permit the use of paid sick leave upon request by Plaintiff, Class
10 Members, or Aggrieved Employees, or some of them, and are liable for civil penalties under Labor
11 Code sections 558 and 2699.

12 27. For at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
14 situated employees or former employees within the State of California with the rights provided to
15 them under the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section
16 245, *et seq.*

17 28. At all relevant times mentioned herein, Defendants had and have a policy or practice,
18 that failed to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage
19 Theft Protection Act of 2011) by, among other things, failing to provide Plaintiff, Class Members,
20 and Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their
21 employment, allowances claimed as part of the minimum wage, the regular payday designated by
22 Defendants, the name of the employer, including any “doing business as” names used, the name,
23 address and telephone number of the workers’ compensation insurance carrier, information
24 regarding paid sick leave, and other pertinent information required to be disclosed by Defendants
25 under Labor Code section 2810.5.

26 29. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of preventing Plaintiff, Class Members, and Aggrieved Employees from using or disclosing the
28 skills, knowledge and experience they obtained working for Defendants for purposes of competing

1 with Defendants, including, without limitation, preventing Plaintiff, Class Members, and Aggrieved
2 Employees from disclosing their wages in negotiating a new job with a prospective employer, and
3 from disclosing who else works for Defendants and under what circumstances that they might be
4 receptive to an offer from a rival employer. As such, this violates Business and Professions Code
5 sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code,
6 including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Defendants are liable for
7 civil penalties pursuant to Labor Code section 2699.

8 30. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of preventing Plaintiff, Class Members, and/or other Aggrieved Employees from disclosing
10 violations of state and federal law, either within Defendants to their managers or outside to private
11 attorneys or government officials, among others, in violation of Business and Professions Code
12 section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Plaintiff is informed
13 and believes that Defendants' herein-described policies and/or practices prevent Plaintiff, Class
14 Members, and/or other Aggrieved Employees from disclosing information about unsafe or
15 discriminatory working conditions, or about wage and hour violations in violation of Labor Code
16 section 232 and 232.5, and Defendants would also be liable for civil penalties under Labor Code
17 sections 558 and 2699.

18 31. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
19 other Aggrieved Employees with suitable seats when the nature of the work reasonably permits the
20 use of seats, failed to place an adequate number of seats in reasonable proximity to the work area,
21 and failed to permit employees to use such seats when it does not interfere with the performance of
22 their duties, when employees are not engaged in the active duties of their employment, and when
23 the nature of their work does not require standing. As such, Plaintiff is informed and believes, and
24 thereupon alleges, that Defendants violated California law, including but not limited to, Labor Code
25 sections 226.7, 1198, 6300, 6310, 6400, and California Code of Regulations, Title 8, section 3395.
26 As a result of these violations, Defendants are liable for civil penalties pursuant to Labor Code
27 section 2699.

28 ///

1 32. At all times mentioned herein, Defendants have had, and continue to have, a policy
2 of failing to provide all temporary workers with owed wages weekly by not later than the regular
3 payday of the following week.

4 33. At all times mentioned herein, Defendants have had, and continue to have, a policy
5 of failing to provide adequate and readily accessible sanitation facilities; a regular schedule for
6 servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
7 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
8 blowers; and a sufficient number of toilets to be used by each sex of employee in violation of
9 California Code of Regulations, Title 8, Sections 1527, 3366, 3457 and 8397.4.

10 34. At all times mentioned herein, Defendants have had, and continue to have a policy
11 or practice of requiring, as a condition of employment, its applicants or employees to waive any
12 right, forum, or procedure for a violation of any provision of the California Fair Employment and
13 Housing Act or the Labor Code, including the right to file and pursue a civil action or a complaint
14 with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any
15 court or other governmental entity of any alleged violation, in violation of Labor Code section 432.6.
16 Accordingly, for violations of Labor Code sections 432.5 and 432.6, Defendants are liable for civil
17 penalties pursuant to Labor Code section 2699.

18 35. At all times mentioned herein, Defendants have had, and continue to have a policy
19 or practice of relying on the salary history information of an applicant for employment as a factor
20 in determining whether to offer employment to an applicant or what salary to offer the applicant in
21 violation of Labor Code section 432.3 by including, on Defendants' application for employment, an
22 inquiry regarding current and/or former salary history information, including, without limitation,
23 compensation and benefits of the applicant for employment. Accordingly, for violations of Labor
24 Code sections 432.3, Defendants are liable for civil penalties pursuant to Labor Code sections 432.3
25 and 2699.

26 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of preventing Plaintiff and/or other Aggrieved Employees from engaging in lawful conduct during
28 non-work hours, thus violating state statutes entitling employees to disclose wages, working

1 conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision
2 (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Plaintiff is informed and believes that this lawful
3 conduct includes the exercise of Plaintiff's and/or other Aggrieved Employee's constitutional rights
4 of freedom of speech and economic liberty.

5 37. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
6 Code sections 210, 226.3, 432.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which
7 violate the California Labor Code as described above, including on behalf of Plaintiff and other
8 Aggrieved Employees pursuant to PAGA.

9 38. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
10 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
11 227.3, 245, et seq., 510, 512, 558.1, 1194, 1194.2, 1197, 2802, and California Code of Regulations,
12 Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for
13 missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement
14 penalties, failure to indemnify work-related expenses, failing to pay vested vacation time at the
15 proper rate of pay, other such provisions of California law, and reasonable attorneys' fees and costs.

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

22 **CLASS ACTION ALLEGATIONS**

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

28 41. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)

1 to amend or modify the class description with greater specificity, further divide the defined class
2 into subclasses, and to further specify or limit the issues for which certification is sought.

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

6 **A. Numerosity**

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

11 ///

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

16 **B. Commonality**

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

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

- 1 Class Members to take compliant rest periods?
- 2 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
- 3 with additional wages for missed rest periods?
- 4 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
- 5 Members upon termination or resignation all wages earned?
- 6 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
- 7 section 203?
- 8 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
- 9 Class Members with accurate wage statements?
- 10 J. Did Defendants fail to pay Class Members in a timely fashion as required under
- 11 Labor Code section 204?
- 12 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
- 13 losses incurred in direct consequence of the discharge of their duties or by obedience
- 14 to the directions of Defendants as required under Labor Code section 2802?
- 15 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
- 16 with compensation at their final rate of pay for vested paid vacation time.
- 17 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
- 18 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 19 N. Are Class Members entitled to restitution of wages under Business and Professions
- 20 Code section 17203?
- 21 O. Are Class Members entitled to costs and attorneys' fees?
- 22 P. Are Class Members entitled to interest?

23 **C. Typicality**

24 46. The claims of Plaintiff herein alleged are typical of those claims which could be

25 alleged by any Class Members, and the relief sought is typical of the relief which would be sought

26 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and

27 damages arising out of and caused by Defendants' common course of conduct in violation of laws

28 and regulations that have the force and effect of law and statutes as alleged herein.

1 ///

2 **D. Adequacy of Representation**

3 47. Plaintiff will fairly and adequately represent and protect the interest of Class
4 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
5 hour class actions.

6 **E. Superiority of Class Action**

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

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

17 **FIRST CAUSE OF ACTION**

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

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

21 51. At all relevant times, Plaintiff and Class Members were employees or former
22 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
23 Wage Orders.

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

28 53. At all times relevant to this Complaint, Labor Code section 510 further provided that

1 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
2 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
3 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
4 pay.”

5 54. Four (4) years prior to the filing of the Complaint in this Action through the present,
6 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
7 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
8 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
9 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
10 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
11 work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come
12 early to work and leave late work without being able to clock in for all that time, to suffer under
13 Defendants’ control due to long lines for clocking in, to complete pre-shift tasks before clocking in
14 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
15 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend
16 company meetings off the clock, to make phone calls off the clock, and/or go through security
17 screenings and/or temperature checks off the clock; failing to include all forms of remuneration,
18 including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards
19 and other forms of remuneration into the regular rate of pay for the pay periods where overtime was
20 worked and the additional compensation was earned for the purpose of calculating the overtime rate
21 of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries
22 to the detriment of Plaintiff and Class Members.

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

28 56. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have

1 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
2 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
3 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

4 **SECOND CAUSE OF ACTION**

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

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

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

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

13 60. For four (4) years prior to the filing of the Complaint in this Action through the
14 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
15 their regular rate of pay that is above the minimum wage; engaged, suffered, or permitted employees
16 to work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to
17 come early to work and leave late work without being able to clock in for all that time, to suffer
18 under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before
19 clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
20 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
21 clock, to attend company meetings off the clock, to make phone calls off the clock; detrimental
22 rounding of employee time entries; editing and/or manipulation of time entries to show less hours
23 than actually worked; failing to pay split shift premiums; and failing to pay reporting time pay to
24 the detriment of Plaintiff and Class Members.

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

28 62. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure

1 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
2 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
3 damages, reasonable attorneys' fees and costs of suit.

4 **THIRD CAUSE OF ACTION**

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

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

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

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

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

20 67. For four (4) years prior to the filing of the Complaint in this Action through the
21 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
22 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
23 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
24 Class Member's regular rate of compensation on the occasions that Class Members were not
25 provided compliant meal periods.

26 68. By their failure to provide Plaintiff and Class Members compliant meal periods as
27 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
28 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully

1 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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

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

9 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

26 75. For four (4) years prior to the filing of the Complaint in this Action through the
27 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
28 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction

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

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

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

11 78. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
12 additional pay for unprovided compliant rest 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 **FIFTH CAUSE OF ACTION**

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

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

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

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

1 ///

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

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

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

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

20 86. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
21 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
22 waiting time penalties, interest, and their costs of suit, as well.

23 **SIXTH CAUSE OF ACTION**

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

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

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

1 ///

2 89. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
3 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
4 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
5 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate; among other things.

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

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

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

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

1 ///

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

6 **SEVENTH CAUSE OF ACTION**

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

8 95. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
9 incorporate each by reference as though fully set forth hereat.

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

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

17 98. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
18 independent and apart from, any other penalty provided in this article, every person who fails to pay
19 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
20 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
21 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
22 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
23 percent of the amount unlawfully withheld.”

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

28 100. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to

1 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one
2 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)
3 for each subsequent violation in connection with each payment that was made in violation of Labor
4 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

5 101. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
6 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
7 interest, and their costs of suit, as well.

8 **EIGHTH CAUSE OF ACTION**

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

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

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

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

17 105. For three (3) years prior to the filing of the Complaint in this Action through the
18 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
19 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
20 obedience to the directions of Defendants that included, without limitation: laundering mandatory
21 work uniforms; using cellular phones for work-related purposes; and purchasing tools necessary to
22 perform work duties.

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

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

1 108. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
2 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
3 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
4 costs of suit.

5 **NINTH CAUSE OF ACTION**

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

7 109. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
8 the preceding paragraphs of this Complaint as though fully set forth hereon.

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

14 ///

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

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

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

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

1 prejudgment interest.

2 **TENTH CAUSE OF ACTION**

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

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

6 116. Plaintiff is informed and believes and based thereon alleges that the unlawful conduct
7 of Defendants alleged herein constitutes unfair competition within the meaning of Business and
8 Professions Code section 17200. Plaintiff is further informed and believes and based thereon alleges
9 that in addition to the unlawful conduct of Defendants alleged in the preceding paragraphs, for at
10 least four (4) years prior to the filing of this action and continuing to the present, Defendants have
11 had a consistent policy of failing to provide Plaintiff and similarly situated employees or former
12 employees within the State of California with the rights provided to them under the Healthy
13 Workplace Healthy Families Act of 2014, codified at Labor Code section 245, *et seq.* Due to their
14 unlawful business practices in violation of the Labor Code, Defendants have gained a competitive
15 advantage over other comparable companies doing business in the State of California that comply
16 with their obligations to compensate employees in accordance with the Labor Code.

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

19 118. Pursuant to Business and Professions Code section 17203, Plaintiff 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 and Class Members is necessary to prevent Defendants from becoming unjustly enriched
26 by their failure to comply with the Labor Code.

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

1 ///

2 **ELEVENTH CAUSE OF ACTION**

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

5 120. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth herein.

7 121. As set forth above, at all relevant times herein, Defendants violated, *inter alia*, Labor
8 Code sections 96, 98.6, 201, 201.3, 202, 203, 204, 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3,
9 232, 232.5, 246, *et seq.*, 432, 432.3, 432.5, 432.6, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
10 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527, 2699, 2802, 2810.5, 3366, 3457, 6409.6, and 8397.4.

11 Based thereon, Plaintiff seeks civil penalties as follows:

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

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

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

25 124. At all relevant times herein, Defendants have had a consistent policy or practice of
26 failing to pay Plaintiffs and/or Aggrieved Employees during their employment on a timely basis as
27 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
28 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor

1 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
2 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
3 for each subsequent violation in connection with each payment that was made in violation of Labor
4 Code section 204.

5 Civil Penalties Under Labor Code § 226.3

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

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

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

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

25 129. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
26 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
27 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
28

1 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
2 period for each subsequent violation.

3 Violation of Labor Code § 558

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

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

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

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

16 131. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
17 each of them, violated, or caused to be violated, the Labor Code sections described herein with
18 respect to Plaintiff and other Aggrieved Employees, including but not limited to: (1) failure to pay
19 or properly pay overtime wages (including due to off-the-clock work by requiring Plaintiff and
20 Aggrieved Employees to come early to work and leave late work without being able to clock in for
21 all that time, to suffer under Defendants’ control due to long lines for clocking in, to complete pre-
22 shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
23 and continue working, to clock out for rest periods, to don and doff uniforms and/or safety
24 equipment off the clock, to attend company meetings off the clock, to make phone calls off the
25 clock, and/or go through security screenings and/or temperature checks off the clock; failing to
26 include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal
27 allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay
28 for the pay periods where overtime was worked and the additional compensation was earned for the

1 purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries,
2 editing and/or manipulation of time entries to the detriment; and paying straight pay instead of
3 overtime pay); (2) failure to pay minimum or other wages for all hours worked (including due to
4 off-the-clock work by, without limitation: failing to accurately track and/or pay for all hours actually
5 worked at their regular rate of pay that is above the minimum wage; engaging, suffering, or
6 permitting employees to work off the clock, including, without limitation, by requiring Plaintiff,
7 Class Members and other Aggrieved Employees: to come early to work and leave late work without
8 being able to clock in for all that time, to suffer under Defendants' control due to long lines for
9 clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
10 clock out for meal periods and continue working, to clock out for rest periods, to don and doff
11 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make
12 phone calls off the clock; detrimental rounding of employee time entries; editing and/or
13 manipulation of time entries to show less hours than actually worked; failing to pay split shift
14 premiums; and failing to pay reporting time pay; (3) failure to provide meal periods or compensation
15 in lieu thereof (including, without limitation, break premiums); and (4) failure to provide rest and/or
16 cooldown periods or compensation in lieu thereof (including, without limitation, break premiums).

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

22 Violation of Labor Code § 1174.5

23 133. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
24 every person employing labor in California to "[a]llow any member of the commission or the
25 employees of the Division of Labor Standards Enforcement free access to the place of business or
26 employment of the person to secure any information or make any investigation that they are
27 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
28

1 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
2 or papers of the person.”

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

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

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

20 137. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
21 willfully failed keep adequate or accurate time records including wage statements and similar
22 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
23 under Labor Code section 432, and time records under Labor Code section 1174.

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

28 Violation of Labor Code § 1197.1

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

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

13 (2) For each subsequent violation for the same specific offense, two hundred fifty
14 dollars (\$250) for each underpaid employee for each pay period for which the
15 employee is underpaid regardless of whether the initial violation is
16 intentionally committed. This amount shall be in addition to an amount
17 sufficient to recover underpaid wages, liquidated damages pursuant to
18 Section 1194.2, and any applicable penalties imposed pursuant to Section
19 203.

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

23 140. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
24 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
25 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages
26 for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated
27 damages.

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

7 Civil Penalties Under Labor Code § 2699

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

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

20 144. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
21 each of them, violated the Labor Code sections described herein, including, without limitation, for:
22 (1) failure to pay or properly pay overtime wages (including due to off-the-clock work by requiring
23 Plaintiff and Aggrieved Employees to come early to work and leave late work without being able to
24 clock in for all that time, to suffer under Defendants' control due to long lines for clocking in, to
25 complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for
26 meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or
27 safety equipment off the clock, to attend company meetings off the clock, to make phone calls off
28 the clock, and/or go through security screenings and/or temperature checks off the clock; failing to

1 include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal
2 allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay
3 for the pay periods where overtime was worked and the additional compensation was earned for the
4 purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries,
5 editing and/or manipulation of time entries to the detriment; and paying straight pay instead of
6 overtime pay); (2) failure to pay minimum or other wages for all hours worked (including due to
7 off-the-clock work by, without limitation: failing to accurately track and/or pay for all hours actually
8 worked at their regular rate of pay that is above the minimum wage; engaging, suffering, or
9 permitting employees to work off the clock, including, without limitation, by requiring Plaintiff,
10 Class Members and other Aggrieved Employees: to come early to work and leave late work without
11 being able to clock in for all that time, to suffer under Defendants' control due to long lines for
12 clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
13 clock out for meal periods and continue working, to clock out for rest periods, to don and doff
14 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make
15 phone calls off the clock; detrimental rounding of employee time entries; editing and/or
16 manipulation of time entries to show less hours than actually worked; failing to pay split shift
17 premiums; and failing to pay reporting time pay; (3) failure to provide meal periods or compensation
18 in lieu thereof (including, without limitation, break premiums); and (4) failure to provide rest and/or
19 cooldown periods or compensation in lieu thereof (including, without limitation, break premiums);
20 (5) failure to pay all wages due upon separation from employment; (6) failure to issue accurate wage
21 statements; (7) failure to timely pay wages during employment; (8) failure to properly reimburse
22 employees for business-related expenses; (9) violations of Labor Code section 227.3 with respect to
23 the payment of vacation wages; (10) failure to maintain and/or produce payroll and time records;
24 (11) payment of wages via non-compliant instruments; (12) unlawful deductions from wages; (13)
25 failure to provide compliant Labor Code section 2810.5 notices; (14) failure to provide or properly
26 pay for sick leave; (15) restraints on lawful conduct; (16) failure to provide suitable seating; (17)
27 failure to provide adequate and accessible sanitation facilities; (18) requiring employees to waive
28

1 violations of California Fair Employment and Housing Act or the Labor Code; and (19) relying on
2 salary history in making hiring decisions.

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

6 ///

7 ///

8 **DEMAND FOR JURY TRIAL**

9 145. Plaintiff demands a trial by jury on all causes of action contained herein.

10 **PRAYER**

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

- 13 A. An order certifying this case as a Class Action;
- 14 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
15 counsel as class counsel;
- 16 A. Damages for all wages earned and owed, including minimum and overtime wages
17 and unpaid wages for vested vacation time under Labor Code sections 203, 510,
18 227.3, 1194, 1197, and 1199;
- 19 B. Liquidated damages pursuant to Labor Code sections 1194.2 and 2810.3;
- 20 C. Damages for unpaid premium wages from missed meal and rest periods under,
21 among other Labor Code sections 512, and 226.7;
- 22 D. Penalties for inaccurate wage statements under Labor Code section 226,
23 subdivision (e);
- 24 E. Damages for unpaid penalty wages under Labor Code section 203;
- 25 F. Waiting time penalties under Labor Code section 203;
- 26 G. Penalties to timely pay wages under Labor Code section 210;
- 27 H. Damages under Labor Code section 2802;
- 28 I. Penalties for failure to timely permit inspection of documents under Labor Code

1 section 226, subdivision (b);

2 J. Preliminary and permanent injunction(s) prohibiting Defendants from further
3 violating the Labor Code and requiring the establishment of appropriate and
4 effective means to prevent further violations;

5 K. Restitution under Business and Professions Code section 17203;

6 L. Pre-judgment and post-judgment interest at the maximum rate allowed by law;

7 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
8 1174.5, 1197.1, and 2699;

9 N. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
10 210, 226.3, 558, 1174.5, 1197.1, and 2699;

11 O. For costs of suit incurred herein;

12 P. For reasonable attorneys' fees; and

13 For such other and further relief as the Court deems just and proper.

14 Dated: July 10, 2024

BIBIYAN LAW GROUP, P.C.

15
16
17 BY: 

18 DAVID D. BIBIYAN

JEFFREY D. KLEIN

VEDANG J. PATEL

19 BRANDON M. CHANG

20 Attorneys for Plaintiff OSCAR MOCTEZUMA on
21 behalf of himself and all others similarly situated
22
23
24
25
26
27
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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 1460 Westwood Blvd, Los Angeles, California 90024.

On July 18, 2024 and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing documents(s) described as **FIRST AMENDED COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail address as follows:

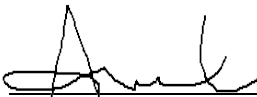
Shannon B. Nakabayashi (State Bar No. 215469)
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, California 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
Email: Shannon.Nakabayashi@jacksonlewis.com

Isabella L. Shin (State Bar No. 294937)
JACKSON LEWIS P.C.
160 W. Santa Clara St., Ste. 400
San Jose, California 95113
Telephone: (408) 579-0404
Facsimile: (408) 454-0290
Email: Isabella.Shin@jacksonlewis.com

Attorneys for Defendant, DIRECT LINE GLOBAL, LLC

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

Executed on July 18, 2024 at Los Angeles, California.



Araceli Marquez