

BIBIYAN LAW GROUP, P.C.

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

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Megan R. Lazar (SBN 315007)

megan@tomorrowlaw.com

1460 Westwood Blvd.

Los Angeles, CA 90024

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

Attorneys for Plaintiff, KYLE NEFF and
on behalf of himself and all others similarly situated

[additional counsel continued on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

KYLE NEFF and ERICK HOLMBERG,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CASTLE TIRE DISPOSAL, LLC, a Delaware
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 34-2023-00336483

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY/REIMBURSE;
9. VIOLATION OF LABOR CODE § 227.3;
10. UNFAIR COMPETITION;
11. COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER 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 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733
5 Attorneys for Plaintiff ERICK HOLMBERG
6 individually and on behalf of similarly situated employees

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1 Plaintiffs Kyle Neff (“Plaintiff Neff”) and Erick Holmberg (“Plaintiff Holmberg”) (Plaintiff
2 Neff and Plaintiff Holmberg sometimes collectively referred to as “Plaintiffs”), as aggrieved
3 employees and similarly situated to all putative class members, allege on behalf of themselves and
4 all others similarly situated, as follows:

5 **GENERAL ALLEGATIONS**

6 **INTRODUCTION**

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

12 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
13 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants,
14 as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”),
15 on behalf of Plaintiffs and all other current and former non-exempt employees of Defendants
16 working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged
17 claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code
18 section 226, Labor Code section 227.3, Labor Code section 245, *et seq.*, Labor Code section 2802,
19 restraints on competition, whistleblowing and freedom of speech on behalf of all employees of
20 Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

21 **PARTIES**

22 **A. Plaintiffs**

23 3. Plaintiff Neff is a resident of the State of California. At all relevant times herein,
24 Plaintiff Neff is informed and believes, and based thereon alleges, that Defendants employed
25 Plaintiff Neff as a non-exempt employee, with duties that included, but were not limited to,
26 operating a forklift to move tires. Plaintiff Neff is informed and believes, and based thereon alleges,
27 that Plaintiffs Neff worked for Defendants from approximately July 2022 through approximately
28 September of 2022.

1 4. Plaintiff Holmberg is a resident of the State of California. At all relevant times
2 herein, Plaintiff Holmberg is informed and believes, and based thereon alleges, that Defendants
3 employed Plaintiff Holmberg as a non-exempt employee in various positions relating to the
4 processing of used tires. Plaintiff Holmberg is informed and believes, and based thereon alleges,
5 that Plaintiff Holmberg worked for Defendants from approximately March 16, 2021, through June
6 29, 2023.

7 **B. Defendants**

8 5. Plaintiffs are informed and believe and based thereon allege that CASTLE is, and at
9 all times relevant hereto was, a limited liability company organized and existing under and by virtue
10 of the laws of the State of Delaware and doing business in the County of Sacramento, State of
11 California. At all relevant times herein, CASTLE employed Plaintiffs and similarly situated
12 employees within the State of California

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

26 **JOINT LIABILITY ALLEGATIONS**

27 7. Plaintiffs are informed and believe, and based thereon allege, that all the times
28 mentioned herein, each of the Defendants was the agent, principal, employee, employer,

1 representative, joint venture or co-conspirator of each of the other defendants, either actually or
2 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
3 employment, joint venture, and conspiracy.

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

13 9. Plaintiffs are further informed and believe, and based thereon allege, that Individual
14 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
15 provisions in violation of Labor Code section 558.1.

16 10. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
17 unity of interest and ownership between Defendants, and each of them, that their individuality and
18 separateness have ceased to exist.

19 11. Plaintiffs are informed and believe, and based thereon allege that despite the
20 formation of the purported corporate existence of CASTLE, and DOES 1 through 50, inclusive (the
21 “Alter Ego Defendants”), they, and each of them, are one and the same with Individual and DOES
22 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
23 reasons:

24 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
25 Defendants who personally committed the wrongful and illegal acts and violated the
26 laws as set forth in this Complaint, and who has hidden and currently hide behind the
27 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
28 other wrongful or inequitable purpose;

- 1 B. The Individual Defendants derive actual and significant monetary benefits by and
2 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
3 Defendants as the funding source for the Individual Defendants' own personal
4 expenditures;
- 5 C. Plaintiffs are informed and believe, and based thereon allege, that the Individual
6 Defendants and the Alter Ego Defendants, while really one and the same, were
7 segregated to appear as though separate and distinct for purposes of perpetrating a
8 fraud, circumventing a statute, or accomplishing some other wrongful or inequitable
9 purpose;
- 10 D. Plaintiffs are informed and believe, and based thereon allege, that the business affairs
11 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant
12 times mentioned herein were, so mixed and intermingled that the same cannot
13 reasonably be segregated, and the same are inextricable confusion. The Alter Ego
14 Defendants are, and at all relevant times mentioned herein were, used by the
15 Individual Defendants as mere shells and conduits for the conduct of certain of their,
16 and each of their affairs. The Alter Ego Defendants are, and at all relevant times
17 mentioned herein were, the alter egos of the Individual Defendants;
- 18 E. The recognition of the separate existence of the Individual Defendants and the Alter
19 Ego Defendants would promote injustice insofar that it would permit defendants to
20 insulate themselves from liability to Plaintiffs for violations of the Civil Code, Labor
21 Code, and other statutory violations. The corporate existence of these defendants
22 should thus be disregarded in equity and for the ends of justice because such
23 disregard is necessary to avoid fraud and injustice to Plaintiffs herein;
- 24 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
25 Defendants (and vice versa), and the fiction of their separate corporate existence
26 must be disregarded;

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

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

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

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

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

17. During the period beginning one (1) year preceding the provision of notice to the WDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 223,

225, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 256, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

18. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiffs, on behalf of Plaintiffs 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.

19. On or around March 16, 2023, Plaintiff Neff 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. Plaintiff Neff also provided Defendants, and each of them, with notice under Labor Code section 2810.3, subdivision (d) that Plaintiff Neff would seek to hold them liable for each other's wage and hour violations under Labor Code section 2810.3 on March 16, 2023, by certified mail with return receipt requested.

20. 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 March 16, 2023, postmarked date of the herein-described notice sent by Plaintiff Neff to the LWDA and Defendants.

21. Plaintiff Holmberg sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue PAGA claims against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff Holmberg gave written notice via online submission to the LWDA on approximately June 16, 2023. Plaintiff Holmberg provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act. Plaintiff Holmberg also submitted the \$75.00 filing fee. The June 16, 2023, notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff Holmberg's notice correspondence. Accordingly, Plaintiff Holmberg has exhausted all administrative remedies and may bring this action on behalf of himself and all similarly situated

employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

FACTUAL BACKGROUND

22. Defendants operate a tire recycling and resale business with locations in Stockton, Clear Lake, Redding, Los Angeles, and Sacramento. Over the course of their employment Plaintiffs, Class Members, and Aggrieved Employees held various positions relating to the processing of used tires, including, but not limited to, Laborer/Material Handler, Trailer Unloader/Processing, Route Helper, and Yard Dog. At all times, Plaintiffs, Class Members, and Aggrieved Employees were paid a base hourly rate plus various non-discretionary incentives relating to the processing of tires and the type of shifts worked. For example, Plaintiffs, Class Members, and Aggrieved Employees were paid \$10 per trailer they filled with tires for resale. Plaintiffs, Class Members, and Aggrieved Employees also received yearly bonuses that Defendants labeled as profit sharing. However, the shares ultimately paid to Plaintiffs, Class Members, and Aggrieved Employees were based on factors such as attendance, quality and quantity of work, the rate of production by an employee, and the employee's continued employment. Defendants also paid shift differentials depending on the type of shift (*e.g.* day, swing, night) that employees worked. Although Defendants paid these non-discretionary amounts to Plaintiffs, Class Members, and Aggrieved Employees in addition to their base hourly rates, Defendants failed to include the value of this extra compensation when calculating Plaintiff and similarly situated employees' regular rate of pay for premium wage payments. This included the failure to pay the correct rate for overtime, meal and/or rest period premiums, and sick leave wages. There were also several occasions where Defendants simply refused to pay the incentive compensation even though Plaintiffs, Class Members, and Aggrieved Employees had performed the required tasks, such as loading the requisite amount of trailers.

23. Defendants utilized rounding when calculating Plaintiffs', Class Members', and Aggrieved Employees' hours worked. Although Defendants had the ability to, and in fact did, record the amount of time Plaintiffs, Class Members, and Aggrieved Employees worked down to the minute, it paid in increments of a quarter hour. Defendants maintained policies and procedures that prohibited Plaintiffs, Class Members, and Aggrieved Employees from clocking in prior to seven

1 minutes before the start of their shift, resulting in the systematic rounding down of Plaintiffs', Class
2 Members', and Aggrieved Employees' hours worked.

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

22 25. For at least four (4) years prior to the filing of this Action and continuing to the
23 present, Defendants have, at times, failed to provide Plaintiffs, Class Members, and Aggrieved
24 Employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on
25 which they worked more than five (5) hours in a work day and a second thirty (30) minute
26 uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day,
27 and failing to provide compensation for such unprovided meal periods as required by California
28 wage and hour laws. Defendants had and have a policy or practice of failing to provide Plaintiffs

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

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

23 27. 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 pay Plaintiffs, Class Members, and Aggrieved
25 Employees, or some of them, the full amount of their wages owed to them upon termination and/or
26 resignation as required by Labor Code sections 201 and 202, including for, without limitation,
27 failing to pay overtime wages, minimum wages, premium wages, and vacation pay pursuant to
28 Labor Code section 227.3.

28. For at least one (1) year prior to the filing of this Action and continuing to the present, Defendants have, at times,

1 deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment,
2 for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence
3 of the discharge of their duties, or of their obedience to the directions of Defendants, as required by
4 Labor Code 2802. Defendants did not provide cell phones to Plaintiffs, Class Members, and
5 Aggrieved Employees. Instead, Defendants required Plaintiffs, Class Members, and Aggrieved
6 Employees to utilize their personal cell phones to maintain communication regarding the status of
7 their work, their schedules, and various other work-related communications that needed to be made
8 during the day while Plaintiffs, Class Members, and Aggrieved Employees were stationed all over
9 the processing facilities, trailers, and/or warehouses. The communications occurred throughout the
10 day and Defendants did not reimburse Plaintiffs, Class Members, and Aggrieved Employees for any
11 portion of their cell phone bills.

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

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

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

27 35. At all relevant times mentioned herein, Defendants failed to provide Plaintiffs and
28 other Class Members and Aggrieved Employees with the amount of paid sick leave required to be

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

4 36. At all relevant times mentioned herein, Defendants had and have a policy or
5 practice of preventing Plaintiffs, Class Members, and/or Aggrieved Employees from using
6 or disclosing the skills, knowledge and experience they obtained at Defendants for purposes
7 of competing with Defendants, including, without limitation, preventing Employees from
8 disclosing their wages in negotiating a new job with a prospective employer, and from
9 disclosing who else works at Defendants and under what circumstances that they might be
10 receptive to an offer from a rival employer. Plaintiffs are informed and believe that this
11 policy and/or practice violates Business and Professions Code sections 17200, 16600 and
12 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code
13 sections 232, 232.5, and 1197.5, subdivision (k).

14 37. Defendants had and have a policy or practice of preventing Plaintiffs and/or other
15 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
16 to their managers or outside to private attorneys or government officials, among others, in violation
17 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
18 1102.5. In addition, Plaintiffs are informed and believe that Defendants' herein-described policies
19 and/or practices prevent Plaintiffs, Class Members, and/or other Aggrieved Employees from
20 disclosing information about unsafe or discriminatory working conditions, or about wage and hour
21 violations in violation of Labor Code section 232 and 232.5.

22 38. Defendants had and have a policy or practice of preventing Plaintiffs, Class
23 members, and/or other Aggrieved Employees from engaging in lawful conduct during non-work
24 hours, thus violating state statutes entitling employees to disclose wages, working conditions, and
25 illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232,
26 232.5, and 1197.5, subdivision (k). Plaintiffs are informed and believe that this lawful conduct
27 includes the exercise of Plaintiffs', Class Members', and/or other Aggrieved Employee's
28 constitutional rights of freedom of speech and economic liberty

39. Plaintiff, on their 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, 226, 226.2, 226.7, 510, 512, 1194, 1194.2, 1197, 2802, 2810.3, *et seq.*, and California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure to indemnify work-related expenses, other such provisions of California law, and reasonable attorneys' fees and costs.

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

41. Plaintiff, on Plaintiffs' 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 Plaintiffs, Class Members, and Aggrieved Employees are entitled, as well as restitution of amounts owed.

CLASS ACTION ALLEGATIONS

42. Plaintiffs bring the First through Tenth Causes of Action on behalf of Plaintiffs and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek 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 this lawsuit up until the time that notice of the class action is provided to Class Members.

43. Plaintiffs reserve 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.

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

4 **A. Numerosity**

5 45. The potential Class Members as defined are so numerous that joinder of all the
6 members of the Class is impracticable. Plaintiffs are informed and believe that there are over
7 seventy-five (75) Class Members employed by Defendants within the State of California.

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

12 **B. Commonality**

13 47. There are questions of law and fact common to Class Members. These common
14 questions include, but are not limited to:

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

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

23 C. **Typicality**

24 48. The claims of Plaintiffs 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. Plaintiffs 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.

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49. Plaintiffs will fairly and adequately represent and protect the interest of Class members. Counsel who represents Plaintiffs are competent and experienced in litigating wage and hour class actions.

E. Superiority of Class Action

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

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

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

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

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

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

55. At all times relevant to this Complaint, Labor Code section 510 further provided that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice

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

4 56. Four (4) years prior to the filing of the Complaint in this Action through the present,
5 Plaintiffs and Class Members, at times, worked for Defendants during shifts that consisted of more
6 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
7 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
8 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
9 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
10 work off the clock, including, without limitation, by requiring employees to complete pre-shift tasks
11 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
12 working, to make phone calls off the clock; failing to include all forms of remuneration, including
13 piece rate compensation, non-discretionary bonuses, incentive pay, meal allowances, and other
14 forms of remuneration into the regular rate of pay for the workweeks in which overtime was worked
15 and the additional compensation was earned for the purpose of calculating the overtime rate of pay;
16 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
17 less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment
18 of Employee and other aggrieved employees, to the detriment of Plaintiffs and Class Members.

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

24 58. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have
25 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
26 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194
27 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.
28

1 **SECOND CAUSE OF ACTION**

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

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

5 60. At all relevant times, Plaintiffs and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

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

10 62. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
12 their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting
13 employees to work off the clock, including, without limitation, by requiring employees to complete
14 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
15 and continue working, to make phone calls off the clock; detrimental rounding of employee time
16 entries, editing and/or manipulation of time entries to show less hours than actually worked; failing
17 to track and pay for all nonproductive time and failing to accurately track and pay for rest and
18 recovery periods that is separate and apart from any piece rare compensation, to the detriment of
19 Plaintiffs and Class Members.

20 63. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
21 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
22 for all hours worked or otherwise due.

23 64. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
24 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled
25 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
26 damages, reasonable attorneys' fees and costs of suit.

1 **THIRD CAUSE OF ACTION**

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

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

5 66. At all relevant times, Plaintiffs and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

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

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

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

23 70. By their failure to provide Plaintiffs and Class Members compliant meal periods as
24 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
25 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
26 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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

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

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

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

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

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

77. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiffs and Class Members were, at times, not authorized or permitted to take complete, timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class

1 Member's regular rate of compensation on the occasions that Class Members were not authorized
2 or permitted to take compliant rest periods.

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

8 79. As a result of Defendants' unlawful conduct, Plaintiffs 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 80. Plaintiffs 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 81. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
18 preceding paragraphs as though fully set forth hereat.

19 82. At all relevant times, Plaintiffs 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 83. Pursuant to Labor Code sections 201 and 202, Plaintiffs 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.

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

85. Plaintiffs are informed and believe Defendants' failure, at times, to pay Plaintiffs and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiffs and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or resignation..

86. Pursuant to Labor Code section 203, Plaintiffs 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.

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

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

SIXTH CAUSE OF ACTION

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

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

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

1 91. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and Class Members
2 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
4 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
6 employer; and the name and address of the entity securing the services of the farm labor contractor
7 who employed Plaintiffs and Class Members, among other things. Further, Labor Code section
8 226.2 requires that wage statements also include the total compensation earned for piece rate work
9 performed, total compensation for nonproductive work performed, total compensation for rest and
10 recovery periods, the total hours of nonproductive time worked and the rate of pay therefore, the
11 total hours of rest and recovery periods taken and the rate of pay therefore, the total amount of
12 overtime wages earned, and the proper overtime rate(s) of pay.

13 92. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed
14 to provide Plaintiffs and Class Members accurate itemized wage statements pursuant to Labor Code
15 sections 226, subdivision (a) and 226.2, subdivisions (a)(2)(A-B) on each and every wage statement
16 that should have been provided, including by failing to itemize and/or pay all nonproductive time
17 and rest and recovery time for each.

18 93. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
19 before the filing of the Complaint in this Action through the present, Defendants failed to comply
20 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
21 failure, at times, to furnish Plaintiffs and Class Members with accurate itemized statements that
22 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
23 all applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate; applicable piece rates in effect during the pay period and the
25 corresponding number of pieces earned; the name and address of the legal entity that is the employer;
26 name and address of the entity securing the services of the farm labor contractor who employed
27 Plaintiffs and Class Members; the total hours of compensable rest and recovery periods; the total
28 hours of nonproductive time, and other such information as required by Labor Code sections 226,

1 subdivision (a) and 226.2. Defendants' failure to, at times, provide Plaintiffs and Class Members
2 with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to
3 provide Plaintiffs and the other Class Members with accurate wage statements, but, at times,
4 willfully provided wage statements that Defendants knew were not accurate.

5 94. As a result of Defendants' unlawful conduct, Plaintiffs 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 95. Pursuant to Labor Code section 226, subdivision (e), Plaintiffs 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 96. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
17 Procedure section 1032, Civil Code section 3287, Plaintiffs 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 **SEVENTH CAUSE OF ACTION**

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

22 97. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and
23 incorporate each by reference as though fully set forth hereat.

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

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

1 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
2 month.”

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

10 101. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year
11 before the filing of the Complaint in this Action through the present, Defendants employed policies
12 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with
13 Labor Code section 204.

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

19 103. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
20 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of
21 penalties, interest, and their costs of suit, as well.

22 **EIGHTH CAUSE OF ACTION**

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

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

26 105. At all relevant times, Plaintiffs and Class Members were employees or former
27 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.
28

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

4 107. For three (3) years prior to the filing of the Complaint in this Action through the
5 present, Defendants required Plaintiffs and Class Members, or some of them, to incur, at times,
6 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
7 obedience to the directions of Defendants that included, without limitation: purchasing and using
8 cellular phones for work-related purposes.

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

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

15 110. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
16 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recover
17 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
18 costs of suit.

19 **NINTH CAUSE OF ACTION**

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

21 111. Plaintiffs reallege and incorporate by reference all of the allegations contained in the
22 preceding paragraphs of this Complaint as though fully set forth hereat.

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

1 113. Plaintiffs are informed and believe, and based thereon allege that, at all times relevant
2 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and
3 that Plaintiffs' employment contract with Defendants included paid vacations.

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

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

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

16 **TENTH CAUSE OF ACTION**

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

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

20 118. Plaintiffs are informed and believe, and based thereon allege, that the unlawful
21 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
22 and Professions Code section 17200. Due to their unlawful business practices in violation of the
23 Labor Code, Defendants have gained a competitive advantage over other comparable companies
24 doing business in the State of California that comply with their obligations to compensate employees
25 in accordance with the Labor Code.

26 119. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and Class
27 Members have suffered injury in fact and lost money or property.
28

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

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

11 **ELEVENTH CAUSE OF ACTION**

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

13 122. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
14 preceding paragraphs as though fully set forth hereat.

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

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

21 124. 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

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

Civil Penalties Under Labor Code § 226.3

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

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

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

129. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of failing to furnish non-exempt employees, including, without limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the

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

5 130. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
6 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
7 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
8 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
9 period for each subsequent violation.

10 Violation of Labor Code § 558

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

- 15 A. For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
16 pay period for which the employee was underpaid in addition to an amount sufficient
17 to recover underpaid wages;
- 18 B. For each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid in addition to
20 an amount sufficient to recover underpaid wages;
- 21 C. Wages recovered pursuant to this section shall be paid to the affected employee.

22 132. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
23 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
24 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
25 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
26 regular payday designated by employer, the name of the employer, including any "doing business
27 as" names used, the name, address, and telephone number of the workers' compensation insurance
28 carrier, information regarding paid sick leave, and other pertinent information.

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

Violation of Labor Code § 1174.5

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

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

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

137. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any

1 member of the commission or employees of the division to inspect records pursuant to subdivision
2 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

3 138. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
4 willfully failed to keep adequate or accurate time records including wage statements and similar
5 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
6 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
7 under Labor Code section 1174.

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

12 Violation of Labor Code § 1197.1

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

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

24 B. For each subsequent violation for the same specific offense, two hundred fifty dollars
25 (\$250) for each underpaid employee for each pay period for which the employee is
26 underpaid regardless of whether the initial violation is intentionally committed. This
27 amount shall be in addition to an amount sufficient to recover underpaid wages,
28

1 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
2 pursuant to Section 203.

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

6 141. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
7 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
8 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
9 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
10 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
11 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
12 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
13 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

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

20 Civil Penalties Under Labor Code § 2699

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

27 144. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
28 Code except those for which a civil penalty is specifically provided, the established civil penalty for

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

5 145. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
6 each of them, violated the Labor Code sections described herein, including, without limitation, for
7 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
8 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
9 name of the employer, including “doing business as” names used, the name, address, and telephone
10 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
11 other pertinent information required to be disclosed by Defendants under Labor Code section
12 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
13 leave required to be provided pursuant to California and local laws.

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

17 **DEMAND FOR JURY TRIAL**

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

19 **PRAYER**

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

- 22 A. An order certifying this case as a Class Action;
23 B. An Order appointing Plaintiffs as Class representative and appointing their counsel
24 as class counsel;
25 C. Damages for all wages earned and owed, including minimum and overtime wages,
26 under Labor Code sections 510, 1194, 1197 and 1199;
27 D. Liquidated damages pursuant to Labor Code section 1194.2;
28

- 1 E. Damages for unpaid premium wages from missed meal and rest periods under,
2 among other Labor Code sections, 512 and 226.7;
- 3 F. Penalties for inaccurate wage statements under Labor Code sections 226,
4 subdivision (e) and 226.2;
- 5 G. Waiting time penalties under Labor Code sections 203;
- 6 H. Penalties to timely pay wages under Labor Code section 210;
- 7 I. Damages under Labor Code sections 227.3 and 2802;
- 8 J. Preliminary and permanent injunctions prohibiting Defendants from further
9 violating the California Labor Code and requiring the establishment of appropriate
10 and effective means to prevent future violations;
- 11 K. Restitution of wages and benefits due which were acquired by means of any unfair
12 business practice, according to proof;
- 13 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
14 1174.5, 1197.1, and 2699;
- 15 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
16 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 17 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 18 O. For attorneys' fees in prosecuting this action;
- 19 P. For costs of suit incurred herein; and
- 20 Q. For such other and further relief as the Court deems just and proper.

21
22 Dated: December 16, 2025

BIBIYAN LAW GROUP, P.C.

23
24 BY: /s/ Megan R. Lazar

25 MEGAN R. LAZAR

26 Attorneys for Plaintiffs KYLE NEFF, on behalf of
27 himself and all others similarly situated
28

1 Dated: December 16, 2025

Shimoda & Rodriguez Law, PC

2

By: /s/ Justin P. Rodriguez

3

Galen T. Shimoda

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Justin P. Rodriguez

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Renald Konini

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Attorneys for Plaintiff ERICK HOLMBERG

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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 Boulevard, Los Angeles, California 90024.

On December 23, 2025, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED COMPLAINT** to be served by electronic transmission to the below-referenced electronic e-mail addresses as follows:

DORSEY & WHITNEY LLP

Nisha Verma

Verma.nisha@dorsey.com

Hannah R. Green

Green.hannah@dorsey.com

Cheryl Potter

Potter.Cheryl@dorsey.com

Kim Rayson Massure

Massure.Rayson.Kim@dorsey.com

600 Anton Boulevard, Suite 2000

Costa Mesa, CA 92626- 7655

Telephone: (714) 800- 1400

Facsimile: (714) 800- 1499

Attorneys for Defendant, CASTLE TIRE DISPOSAL, LLC

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

Executed on December 23, 2025, at Los Angeles, California.

/s/ Jennifer Echeverria

Jennifer Echeverria