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Attorneys for Plaintiff, ELSA DIAZ,

an individual and on behalf of all others similarly situated and aggrieved,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ELSA DIAZ, an individual and on behalf of
all others similarly situated and aggrieved,

Plaintiff,

v.

CTM APARTMENT SERVICES
CORPORATION, a California corporation;
TRILAR MANAGEMENT GROUP, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: CIVSB2316489

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION; and
10. 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]

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SEP 21 2023

BY: 
Kayla Schuebel, Deputy

COMES NOW plaintiff ELSA DIAZ ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and aggrieved (collectively, "Plaintiffs"), and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against CTM APARTMENT SERVICES CORPORATION, and any of its respective subsidiaries or affiliated companies within the State of California ("CTM"); and TRILAR MANAGEMENT GROUP, and any of its respective subsidiaries or affiliated companies within the State of California ("Trilar" and collectively, with CTM and DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

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

PARTIES

A. Plaintiff

3. Plaintiff ELSA DIAZ is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, cleaning apartment complexes and facility laundry rooms. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff worked for Defendants from approximately November of 2020 through approximately August of 2022.

1 **B. Defendants**

2 4. Plaintiff is informed and believes and based thereon alleges that defendant CTM is,
3 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
4 laws of the State of California and doing business in the County of San Bernardino, State of
5 California.

6 5. Plaintiff is informed and believes and based thereon alleges that defendant CTM is,
7 and at all times relevant hereto was, a “person” as defined in Labor Code section 18 and Cal. Bus.
8 & Prof. Code § 17201.

9 6. Plaintiff is informed and believes and based thereon alleges that defendant Trilar is,
10 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
11 laws of the State of California and doing business in the County of San Bernardino, State of
12 California.

13 7. Plaintiff is informed and believes, and based thereon alleges, that defendant Trilar is,
14 and at all times relevant hereto was, a “person” as defined in Labor Code section 18 and Cal. Bus.
15 & Prof. Code § 17201.

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

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

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

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

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

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

1 numerous Class Members and Aggrieved Employees in San Bernardino County.

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

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

13 16. During the period beginning one (1) year preceding the provision of notice to the
14 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
15 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210,
16 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 432.3, 432.5, 432.6, 510, 512, 558,
17 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and
18 2810.5, among others.

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

23 18. On or around July 17, 2023, Plaintiff provided written notice pursuant to Labor Code
24 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violations
25 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
26 by certified mail, with return receipt requested to Defendants, and each of them.

27 19. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
28 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)

1 calendar days of the July 17, 2023 postmarked date of the herein-described notice sent by Plaintiff
2 to the LWDA and Defendants.

3 **FACTUAL BACKGROUND**

4 20. From July 17, 2019 to the present, Defendants have, at times, failed to pay overtime
5 wages to Plaintiff, Class Members and/or Aggrieved Employees, or some of them, in violation of
6 California state wage and hour laws as a result of, without limitation, Plaintiff, Class Members
7 and/or Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and
8 seven consecutive work days in a work week without being properly compensated for hours worked
9 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
10 worked on the seventh consecutive work day in a work week by, among other things, failing to
11 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay:
12 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
13 by requiring Plaintiff, Class Members and/or Aggrieved Employees: to come early to work and
14 leave late work without being able to clock in for all that time, to clock out for meal periods and
15 continue working and/or suffering under Defendants' control, to clock out for rest periods, to don
16 and doff uniforms and/or safety equipment off the clock, to make phone calls off the clock, to drive
17 off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time
18 entries to the detriment of Plaintiff, Class Members and/or Aggrieved Employees.

19 21. From July 17, 2019 to the present, Defendants have, at times, failed to pay minimum
20 wages to Plaintiff, Class Members and/or Aggrieved Employees, or some of them, in violation of
21 California state wage and hour laws as a result of, among other things, at times, failing to accurately
22 track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum
23 wage: engaging, suffering, or permitting employees to work off the clock, including, without
24 limitation, by requiring Plaintiff, Class Members and/or Aggrieved Employees: to come early to
25 work and leave late work without being able to clock in for all that time, to complete pre-shift tasks
26 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
27 working and/or suffering under Defendants' control, to don and doff uniforms and/or safety
28 equipment off the clock, to make phone calls off the clock; to drive off the clock; detrimental

1 rounding of employee time entries; editing and/or manipulation of time entries to show less hours
2 than actually worked; failing to pay reporting time pay; accrued paid time off and vacation time
3 owed; and failing to pay split shift premiums, to the detriment of Plaintiff, Class Members and/or
4 Aggrieved Employees.

5 22. From July 17, 2019 to the present, Defendants have, at times, failed to provide
6 Plaintiff, Class Members and/or Aggrieved Employees, or some of them, full, timely thirty (30)
7 minute uninterrupted meal period for days on which they worked more than five (5) hours in a work
8 day and a second thirty (30) minute uninterrupted meal period for days on which they worked in
9 excess of ten (10) hours in a work day, including, without limitation: by not providing timely meal
10 periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-
11 talkies during meal periods; not permitting employees to leave the premises; otherwise requiring
12 on-duty/on-call meal periods; auto-deducting meal periods that could not be auto-deducted by law
13 or during which employees worked; and failing to provide compensation for such unprovided meal
14 periods as required by California wage and hour laws.

15 23. From July 17, 2019 to the present, Defendants have, at times, failed to authorize and
16 permit Plaintiff, Class Members and/or Aggrieved Employees, or some of them, to take rest periods
17 of at least ten (10) minutes per four (4) hours worked or major fraction thereof in which Plaintiff
18 was completely relieved of all her duties, including, without limitation, by failing to provide rest
19 periods all together; interrupting them; not providing them in a timely fashion; not permitting
20 Plaintiff to leave the premises; and otherwise requiring on-duty/on-call rest periods, and failed to
21 provide compensation for such unprovided rest periods as required by California wage and hour
22 laws.

23 24. From July 17, 2020 to the present, Defendants have, at times, failed to pay Plaintiff,
24 Class Members and/or Aggrieved Employees, or some of them, the full amount of their wages owed
25 to them upon termination and/or resignation as required by Labor Code sections 201 and 202,
26 including for, without limitation, failing to pay overtime wages, minimum wages, and premium
27 wages.

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1 25. From July 17, 2022 to the present, Defendants have, at times, failed to furnish
2 Plaintiff, Class Members and/or Aggrieved Employees, or some of them, with itemized wage
3 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate; and other such information as required by Labor Code section 226,
6 subdivision (a). As a result thereof, Defendants have further failed to furnish employees with an
7 accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

8 26. At all relevant times mentioned herein, Defendants have had a policy or practice of
9 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
10 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
11 any calendar month shall be paid for between the 16th and 26th day of the month during which the
12 labor was performed, and labor performed between the 16th and the last day, inclusive of any
13 calendar month, shall be paid for between the 1st and 10th day of the following month.” and for
14 payroll periods such as those that are weekly, biweekly, or semimonthly, wages must be paid within
15 seven (7) calendar days following the close of the payroll period in which wages were earned.

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

21 28. At all relevant times mentioned herein, Defendants had and have a policy or practice
22 of failing to comply with Labor Code section 226, subdivision (a) by failing to keep adequate or
23 accurate time records including wage statements and similar payroll documents under Labor Code
24 section 226, intentionally failing to furnish Plaintiff and other Aggrieved Employees with
25 documents signed to obtain or hold employment under Labor Code section 432, personnel records
26 under Labor Code section 1198.5, and time records under Labor Code section 1174, making it
27 difficult for Plaintiff and other Aggrieved Employees to calculate their unpaid wages and/or
28 premium payments, to the detriment of Plaintiff and other Aggrieved Employees.

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

9 30. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
10 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
11 California law (including, without limitation, Labor Code section 246, *et seq.*), and also did not
12 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
13 all other Aggrieved Employees.

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

23 32. Defendants had and have a policy or practice of preventing Plaintiff and/or other
24 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
25 to their managers or outside to private attorneys or government officials, among others, in violation
26 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
27 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
28 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information

1 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
2 of Labor Code sections 232 and 232.5.

3 33. Defendants had and have a policy or practice of preventing Plaintiff and/or other
4 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
5 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
6 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
7 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
8 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
9 economic liberty.

10 34. From July 17, 2020 to the present, Defendants have, at times, failed to indemnify
11 Plaintiff, Class Members and/or Aggrieved Employees, or some of them, for the costs incurred in
12 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using
13 cellular phones for work-related purposes; laundering mandatory work uniforms; and purchasing
14 tools necessary to perform work duties.

15 35. From July 17, 2019 to the present, Defendants have had a consistent policy of failing
16 to provide Plaintiff and similarly situated or aggrieved current or former employees within the State
17 of California with the rights provided to them under the Healthy Workplace Healthy Families Act of
18 2014, codified at Labor Code section 245, *et seq.*

19 36. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this action
20 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
21 245, *et seq.*, 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8, section
22 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and
23 rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure
24 to indemnify work-related expenses, other such provisions of California law, and reasonable
25 attorneys' fees and costs.

26 37. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members and/or Aggrieved
27 Employees, pursuant to Business and Professions Code sections 17200 through 17208, also seeks
28 (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the

1 establishment of appropriate and effective means to prevent further violations, as well as all monies
2 owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled,
3 as well as restitution of amounts owed.

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

8 **CLASS ACTION ALLEGATIONS**

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

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

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

20 **A. Numerosity**

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

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

1 **B. Commonality**

2 44. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
5 worked at a proper overtime rate of pay?
- 6 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
7 for all other time worked at the employee's regular rate of pay and a rate of pay that
8 is greater than the applicable minimum wage?
- 9 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
10 Class Members to take compliant meal periods?
- 11 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
12 with additional wages for missed or interrupted meal periods?
- 13 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
14 Class Members to take compliant rest periods?
- 15 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
16 with additional wages for missed rest periods?
- 17 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
18 Members upon termination or resignation all wages earned?
- 19 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
20 section 203?
- 21 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
22 Class Members with accurate wage statements?
- 23 J. Did Defendants fail to pay Class Members in a timely fashion as required under
24 Labor Code section 204?
- 25 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
26 losses incurred in direct consequence of the discharge of their duties or by obedience
27 to the directions of Defendants as required under Labor Code section 2802?
- 28 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code

1 section 17200, *et seq.*, by their unlawful practices as alleged herein?

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

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

5 O. Are Class Members entitled to interest?

6 **C. Typicality**

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

12 **D. Adequacy of Representation**

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

16 **E. Superiority of Class Action**

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

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

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1 **FIRST CAUSE OF ACTION**

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

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

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

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

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

17 53. From July 17, 2019 through the present, Plaintiff and Class Members, at times,
18 worked for Defendants during shifts that consisted of more than eight (8) hours in a workday and/or
19 more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek,
20 without being paid overtime wages for all hours worked as a result of, including but not limited to,
21 Defendants failing to accurately track and/or pay for all minutes actually worked at the proper
22 overtime rate of pay: engaging, suffering, or permitting employees to work off the clock, including,
23 without limitation, by requiring Plaintiff and Class Members: to come early to work and leave late
24 work without being able to clock in for all that time, to clock out for meal periods and continue
25 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the
26 clock, to make phone calls off the clock, to drive off the clock; detrimental rounding of employee
27 time entries, editing and/or manipulation of time entries to the detriment of Plaintiff and Class
28 Members.

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

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

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

59. From July 17, 2019 through the present, Defendants failed, at times, failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage: engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come early to work and leave late work without being able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to make phone calls off the clock; to drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked to the detriment of Plaintiff and Class Members.

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

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

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

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

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

65. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal 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 meal period is not provided.

66. From July 17, 2019 through the present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-free uninterrupted meal periods every five hours of work without waiving the right to take them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions that Class Members were not provided compliant meal periods.

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

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

69. Plaintiff 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)

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

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

72. 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.

73. 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 work day that the rest period is not provided.

74. From July 17, 2019 through the present, Plaintiff 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 Member's regular rate of compensation on the occasions that Class Members were not authorized or permitted to take compliant rest periods.

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

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

77. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant rest 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.

FIFTH CAUSE OF ACTION

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

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

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

80. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation

1 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
2 unpaid at the time of resignation.

3 81. Plaintiff is informed and believes, and based thereon alleges, that from July 17, 2020
4 through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned
5 above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination
6 in accordance with Labor Code sections 201 or 202.

7 82. 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 83. 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 84. 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 85. 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 86. Plaintiff realleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs as though fully set forth hereat.

27 87. 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 88. Pursuant to Labor Code section 226, subdivision (a), Plaintiff 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; and all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate, among other things.

6 89. Plaintiff is informed and believes, and based thereon alleges, that from July 17, 2020
7 through the present, Defendants failed to comply with Labor Code section 226, subdivision (a) by
8 adopting policies and practices that resulted in their failure, at times, to furnish Plaintiff and Class
9 Members with accurate itemized statements that accurately reflect, among other things, gross wages
10 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the
11 pay period and the corresponding number of hours worked at each hourly rate, among other things.

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

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

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

27 93. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
28 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to

1 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
2 attorneys' fees, and costs of suit.

3 **SEVENTH CAUSE OF ACTION**

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

5 94. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
6 incorporate each by reference as though fully set forth hereat.

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

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

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

21 98. Plaintiff is informed and believes, and based thereon alleges, that from July 17, 2022
22 through the present, Defendants employed policies and practices that resulted in, at times, not paying
23 Plaintiff and Class Members in accordance with Labor Code section 204.

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

1 100. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
2 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,
3 interest, and their costs of suit, as well.

4 **EIGHTH CAUSE OF ACTION**

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

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

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

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

13 104. From July 17, 2020 through the present, Defendants required Plaintiff and Class
14 Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence
15 of the discharge of their duties or at the obedience to the directions of Defendants that included,
16 without limitation mileage and/or gas costs incurred in driving personal vehicles for work-related
17 purposes; using cellular phones for work-related purposes; laundering mandatory work uniforms;
18 and purchasing tools necessary to perform work duties.

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

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

25 107. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
26 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
27 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
28 costs of suit.

1 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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1 **TENTH CAUSE OF ACTION**

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

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

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

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

11 115. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
12 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
13 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
14 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
15 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
16 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
17 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

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Civil Penalties Under Labor Code § 226.3

117. 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).

118. 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."

119. 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."

120. 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 corresponding number of hours worked at each hourly rate in effect during the pay period; 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).

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

1 period for each subsequent violation.

2 Violation of Labor Code § 558

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

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

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

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

14 123. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each
15 of them, violated, or caused to be violated, the Labor Code sections described herein, including
16 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
17 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
18 regular payday designated by employer, the name of the employer, including any “doing business
19 as” names used, the name, address, and telephone number of the workers’ compensation insurance
20 carrier, information regarding paid sick leave, and other pertinent information.

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

26 Violation of Labor Code § 1174.5

27 125. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
28 every person employing labor in California to “[a]llow any member of the commission or the

1 employees of the Division of Labor Standards Enforcement free access to the place of business or
2 employment of the person to secure any information or make any investigation that they are
3 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
4 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
5 or papers of the person.”

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

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

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

23 129. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
24 willfully failed to keep adequate or accurate time records including wage statements and similar
25 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
26 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
27 under Labor Code section 1174.

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

Violation of Labor Code § 1197.1

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

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee."

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

1 hours worked or otherwise under Defendants' control due to, without limitation, routinely failing to
2 accurately track and/or pay for all hours actually worked; detrimental rounding, editing or
3 manipulation of time entries; engaging, suffering, or permitting employees to work off the clock;
4 failing to pay reporting time pay, accrued paid time off and/or vacation time owed; and failing to
5 pay split shift premiums, entitling Plaintiff and other Aggrieved Employees to actual and liquidated
6 damages.

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

12 Civil Penalties Under Labor Code § 2699

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

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

25 136. Plaintiff is informed and believes, and based thereon alleges that Defendants, and each
26 of them, violated the Labor Code sections described herein, including, without limitation, for the
27 failure to: pay the rates of pay and overtime rates of pay applicable to their employment, allowances
28 claimed as part of the minimum wage, the regular payday designated by Defendants, the name of

1 the employer, including “doing business as” names used, the name, address, and telephone number
2 of the workers’ compensation insurance carrier, information regarding paid sick leave, and other
3 pertinent information required to be disclosed by Defendants under Labor Code section 2810.5,
4 failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick leave
5 required to be provided pursuant to California and local laws.

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

9 **DEMAND FOR JURY TRIAL**

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

11 **PRAYER**

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

- 14 A. An order certifying this case as a Class Action;
- 15 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s
16 counsel as class counsel;
- 17 C. Damages for all wages earned and owed, including minimum and overtime wages,
18 under Labor Code sections 510, 1194, 1197 and 1199;
- 19 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 20 E. Damages for unpaid premium wages from missed meal and rest periods under,
21 among other Labor Code sections, 512 and 226.7;
- 22 F. Penalties for inaccurate wage statements under Labor Code section 226, subdivision
23 (e);
- 24 G. Waiting time penalties under Labor Code section 203;
- 25 H. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
26 1197.1, and 2699;
- 27 J. Damages under Labor Code section 2802;
- 28 K. Preliminary and permanent injunctions prohibiting Defendants from further violating

1 the California Labor Code and requiring the establishment of appropriate and
2 effective means to prevent future violations;

3 L. Restitution of wages and benefits due which were acquired by means of any unfair
4 business practice, according to proof;

5 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;

6 N. For attorneys' fees in prosecuting this action including, without limitation, an award
7 of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3,
8 558, 1174.5, 1197.1, and 2699;

9 O. For costs of suit incurred herein; and

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

11
12 Dated: September 21, 2023

J. GILL LAW GROUP, P.C.

13
14 BY:

/s/ Jasmin K. Gill

15 JASMIN K. GILL

16 Attorneys for Plaintiff, ELSA DIAZ, an
17 individual and on behalf of all others similarly
18 situated and aggrieved
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