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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

VALERIE L. DIARD, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

MILK AND HONEY HOLDINGS, LLC, a
Texas limited liability company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 23STCV23686

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

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW Plaintiff VALERIE L. DIARD (“Plaintiff”), on behalf of Plaintiff and all others similarly situated, and as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against MILK AND HONEY HOLDINGS, LLC, and any of its respective subsidiaries or affiliated companies within the State of California (“Milk and Honey” and, with 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 a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code 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 Valerie L. Diard 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, maintaining the locker rooms, cleaning the showers, changing out dirty laundry and tending to clients. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff Valerie L. Diard worked for

1 Defendants from approximately July of 2022 through approximately October of 2022.

2 **B. Defendants**

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

7 5. Plaintiff is informed and believes and based thereon alleges that defendant Milk +
8 Honey Brentwood is, and at all times relevant hereto was, a limited liability company organized and
9 existing under and by virtue of the laws of the State of Texas and doing business in the County of
10 Los Angeles, State of California.

11 6. Plaintiff is informed and believes and based thereon alleges that defendant Milk +
12 Honey Culver City is, and at all times relevant hereto was, a limited liability company organized
13 and existing under and by virtue of the laws of the State of Texas and doing business in the County
14 of Los Angeles, State of California.

15 7. Plaintiff is informed and believes and based thereon alleges that defendant Tsaor is,
16 and at all times relevant hereto was, an individual residing in California, as well as the Area
17 Manager, and DOES 1 through 100, as further defined below.

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

1 include Milk and Honey, and DOES 1 through 100 identified herein.

2 **JOINT LIABILITY ALLEGATIONS**

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

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

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

19 **JURISDICTION**

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

22 13. Venue is proper in Los Angeles County, California pursuant to Code of Civil
23 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
24 causes of action complained of herein arose; the county in which the employment relationship
25 began; the county in which performance of the employment contract, or part of it, between Plaintiff
26 and Defendants was due to be performed; the county in which the employment contract, or part of
27 it, between Plaintiff and Defendants was actually performed. Moreover, the unlawful acts alleged
28 herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because

1 Defendants employ numerous Class Members in Los Angeles 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, 202, 203, 204, 210, 226,
16 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
17 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

22 18. On or around September 29, 2023, Plaintiff provided written notice pursuant to Labor
23 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
24 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
25 as well as by certified mail, with return receipt requested to Defendants, and each of them.

26 19. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
27 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
28 calendar days of the September 29, 2023 postmarked date of the herein-described notice sent by

1 Plaintiff to the LWDA and Defendants.

2 20. On or around September 29, 2023, Plaintiff filed a class action complaint alleging a
3 number of putative wage and hour claims including failing to: (1) pay overtime wages, (2) pay
4 minimum wages, (3) provide compliant meal periods or premium in lieu thereof, (4) provide
5 compliant rest periods or premiums in lieu thereof, (5) pay all due wages upon termination, (6)
6 provide accurate wage statements, (7) timely pay wages, (8) indemnify putative class members for
7 work-related expenses, (9) pay unused vacation pay, and (10) unfair competition (the “Class Action
8 Complaint”).

9 21. On or around December 4, 2023, Plaintiff filed a separate representative complaint
10 in Los Angeles County Superior Court, alleging a single cause of action for civil penalties pursuant
11 to PAGA for various alleged Labor Code violations specified in the PAGA Notice (the “PAGA
12 Complaint”).

13 22. On or around July 11, 2024, Defendants Milk + Honey Brentwood, LC, Milk +
14 Honey Culver City, LLC, and Michelle Tsaor were dismissed without prejudice.

15 23. The Parties have agreed to stipulate to Plaintiff’s filing a First Amended Complaint
16 alleging against Defendants the same causes of action identified above, plus a cause of action for
17 PAGA penalties. Hence, this First Amended Complaint, which will be the operative complaint in
18 the Action (the “Operative Complaint”).

19 **FACTUAL BACKGROUND**

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

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

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

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

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

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

1 wages earned, as well as gross and net wages paid.

2 30. For at least one (1) year prior to the filing of this action and continuing to the present,
3 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
4 amount of their wages for labor performed in a timely fashion as required under Labor Code section
5 204.

6 31. For at least three (3) years prior to the filing of this action and continuing to the
7 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
8 costs incurred in laundering mandatory work uniforms, among other things.

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

13 33. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
15 situated employees or former employees within the State of California with the rights provided to
16 them under the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section
17 245, *et seq.*

18 34. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
20 California in violation of California state wage and hour laws as a result of, without limitation,
21 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
22 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
23 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
24 worked; engaging, suffering, or permitting employees to work off the clock, including, without
25 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
26 complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for
27 meal periods and continue working, to don and doff uniforms off the clock, to attend company
28 meetings off the clock, to make phone calls off the clock; failing to include all forms of

1 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms
2 of remuneration into the regular rate of pay for the pay periods where overtime was worked and the
3 additional compensation was earned for the purpose of calculating the overtime rate of pay;
4 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
5 less hours than actually worked, for paying straight pay instead of overtime pay, and by attempting
6 but failing to properly implement an alternative workweek schedule (“AWS”) (including, without
7 limitation, by failing to implement a written agreement designating the regularly scheduled
8 alternative workweek in which the specified number of work days and work hours are regularly
9 recurring; failing to adopt the AWS in a secret ballot election, before the performance of work, by
10 at least a two-thirds (2/3) vote of the affected employees in the work unit; failing to follow the
11 notice/disclosures procedures prior to any AWS election; and/or failing to register an AWS election
12 with the State of California, as required by Labor Code section 511 and applicable Wage Orders),
13 to the detriment of Plaintiff and other Aggrieved Employees.

14 35. At all relevant times mentioned herein, Defendants had and have a practice or policy
15 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
16 worked or otherwise under Defendants’ control as a result of, without limitation, failing to
17 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
18 call; to suffer under Defendants’ control to complete pre-shift tasks before clocking in and post-shift
19 tasks after clocking out, to clock out for meal periods and continue working, to don and doff
20 uniforms off the clock, to attend company meetings off the clock, to make phone calls off the clock;
21 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
22 less hours than actually worked; failing to pay reporting time pay; paid time off and vacation time
23 owed; and failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved
24 Employees.

25 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
27 timely, and complete meal period for days on which the employee worked in excess of five (5) and
28 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal

1 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
2 not providing timely meal periods; failing to provide first and second meal periods; providing short
3 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
4 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
5 periods; and auto-deducting meal periods that could not be auto-deducted by law or during which
6 employees worked, as required by California wage and hour laws.

7 37. At all relevant times mentioned herein, Defendants had and have a policy or practice
8 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
9 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
10 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
11 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
12 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
13 providing them in a timely fashion; and not permitting employees to leave the premises; and
14 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

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

23 39. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
25 Plaintiff and other Aggrieved Employees with 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, making it difficult for Plaintiff and other Aggrieved Employees to
28 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other

1 Aggrieved Employees.

2 40. At all relevant times mentioned herein, Defendants had and have a policy or practice
3 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
4 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
5 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
6 Code sections 201, 202, and 203.

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

11 42. At all relevant times mentioned herein, Defendants have had a policy or practice of
12 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
13 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
14 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
15 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, for the
16 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
17 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
18 Code 2802.

19 43. 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 Plaintiff and other Aggrieved
22 Employees with the rates of pay and overtime rates of pay applicable to their employment;
23 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
24 name, address, and telephone number of the workers' compensation insurance carrier; information
25 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
26 under Labor Code section 2810.5.

27 44. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
28 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to

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

4 45. At all relevant times mentioned herein, Defendants have had a policy or practice of
5 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
6 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
7 any calendar month shall be paid for between the 16th and 26th day of the month during which the
8 labor was performed, and labor performed between the 16th and the last day, inclusive of any
9 calendar month, shall be paid for between the 1st and 10th day of the following month.”

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

19 47. Defendants had and have a policy or practice of preventing Plaintiff and/or other
20 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
21 to their managers or outside to private attorneys or government officials, among others, in violation
22 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
23 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
24 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
25 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
26 of Labor Code section 232 and 232.5.

27 48. Defendants had and have a policy or practice of preventing Plaintiff and/or other
28 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state

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

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

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

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

23 **CLASS ACTION ALLEGATIONS**

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

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

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

7 **A. Numerosity**

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

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

16 **B. Commonality**

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

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

1 Class Members to take compliant rest periods?

2 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
3 with additional wages for missed rest periods?

4 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
5 Members upon termination or resignation all wages earned?

6 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
7 section 203?

8 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
9 Class Members with accurate wage statements?

10 J. Did Defendants fail to pay Class Members in a timely fashion as required under
11 Labor Code section 204?

12 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
13 losses incurred in direct consequence of the discharge of their duties or by obedience
14 to the directions of Defendants as required under Labor Code section 2802?

15 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
16 with compensation at their final rate of pay for vested paid vacation time.

17 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
18 section 17200, *et seq.*, by their unlawful practices as alleged herein?

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

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

22 P. Are Class Members entitled to interest?

23 **C. Typicality**

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

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

E. Superiority of Class Action

60. 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.

61. 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. Plaintiff is unaware of the 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)

62. Plaintiff realleges and incorporates by reference all of the allegations contained in 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 sections 510, 1194 and 1199, as well as applicable Wage Orders.

64. 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 any 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.”

65. 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 66. Four (4) years prior to the filing of the Complaint in this Action through the present,
5 Plaintiff 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 to the detriment of Plaintiff and Class Members.

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

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

19 **SECOND CAUSE OF ACTION**

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

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

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

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

28 72. For four (4) years prior to the filing of the Complaint in this Action through the

1 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
2 their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class
3 Members.

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

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

11 **THIRD CAUSE OF ACTION**

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

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

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

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

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

27 79. For four (4) years prior to the filing of the Complaint in this Action through the
28 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-

1 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
2 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
3 Class Member's regular rate of compensation on the occasions that Class Members were not
4 provided compliant meal periods.

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

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

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

16 **FOURTH CAUSE OF ACTION**

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

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

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

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

86. 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.

87. For four (4) years prior to the filing of the Complaint in this Action 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.

88. 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.

89. 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.

90. 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)

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

92. 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.

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

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

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

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

12 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

1 percent of the amount unlawfully withheld.”

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

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

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

14 **EIGHTH CAUSE OF ACTION**

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

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

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

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

23 117. For three (3) years prior to the filing of the Complaint in this Action through the
24 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
25 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
26 obedience to the directions of Defendants that included, without limitation: laundering mandatory
27 work uniforms.

28 118. During that time period, Plaintiff is informed and believes, and based thereon alleges

1 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and
2 Class Members for those losses and/or expenditures.

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

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

10 **NINTH CAUSE OF ACTION**

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

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

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

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

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

26 125. As a proximate result of Defendants' failure to pay vested vacation at the final rate
27 of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor
28 Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at

1 their final rate of pay, as set out in Defendants' policy or the contract of employment between
2 Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

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

6 **TENTH CAUSE OF ACTION**

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

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

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

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

23 130. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
24 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
25 Code and requiring the establishment of appropriate and effective means to prevent further
26 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
27 including interest thereon, in which they had a property interest and which Defendants nevertheless
28 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed

1 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
2 by their failure to comply with the Labor Code.

3 131. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
4 Procedure section 1032 and interest under Civil Code section 3287.

5 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

1 for each subsequent violation in connection with each payment that was made in violation of Labor
2 Code section 204.

3 Civil Penalties Under Labor Code § 226.3

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

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

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

19 139. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
20 and have a policy or practice of failing to furnish non-exempt employees, including, without
21 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
22 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
23 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
24 name of the employer and/or the name and address of the legal entity securing the employer's
25 services if the employer is a farm labor contractor; and other such information as required by Labor
26 Code section 226, subdivision (a).

27 140. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
28 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision

1 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
2 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
3 period for each subsequent violation.

4 Violation of Labor Code § 558

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

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

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

15 C. Wages recovered pursuant to this section shall be paid to the affected employee.”

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

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

28 ///

Violation of Labor Code § 1174.5

144. 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.”

145. 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.”

146. 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.”

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

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

1 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
2 under Labor Code section 1174.

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

7 Violation of Labor Code § 1197.1

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

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

25 151. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
26 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
27 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees' minimum wages for all
28 hours worked or otherwise under Defendants' control due to, without limitation, routinely failing to

1 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
2 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
3 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
4 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

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

11 Civil Penalties Under Labor Code § 2699

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

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

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

1 number of the workers' compensation insurance carrier, information regarding paid sick leave, and
2 other pertinent information required to be disclosed by Defendants under Labor Code section
3 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
4 leave required to be provided pursuant to California and local laws.

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

8 **DEMAND FOR JURY TRIAL**

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

10 **PRAYER**

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

- 13 A. An order certifying this case as a Class Action;
- 14 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
15 counsel as class counsel;
- 16 C. Damages for all wages earned and owed, including minimum and overtime wages
17 and unpaid wages for vested vacation time, under Labor Code sections 510, 1194,
18 1197, 1199 and 227.3;
- 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,
23 subdivision (e);
- 24 G. Waiting time penalties under Labor Code section 203;
- 25 H. Penalties to timely pay wages under Labor Code section 210;
- 26 I. Damages under Labor Code sections 2802;
- 27 J. Preliminary and permanent injunctions prohibiting Defendants from further
28 violating the California Labor Code and requiring the establishment of appropriate

1 and effective means to prevent future violations;

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

4 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
5 1174.5, 1197.1, and 2699;

6 M, An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
7 210, 226.3, 558, 1174.5, 1197.1, and 2699;

8 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;

9 O. For attorneys' fees in prosecuting this action;

10 P. For costs of suit incurred herein; and

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

12
13 Dated: May 30, 2025

BIBIYAN LAW GROUP, P.C.

14
15 BY: /s/ Megan R. Lazar

16 VEDANG J. PATEL

MEGAN R. LAZAR

17 Attorneys for Plaintiff VALERIE L. DIARD on behalf
18 of herself and all others similarly situated
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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 action; my business address is 1460 Westwood Boulevard, Los Angeles, CA 90024.

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

/s/ Jennifer Echeverria
Jennifer Echeverria