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Attorneys for Plaintiff, MARCO ANTONIO FLORES ORNELAS and
on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

MARCO ANTONIO FLORES ORNELAS, an
individual and on behalf of all others similarly
situated,

Plaintiff,

v.

BLACK BEAR DINER SAN JOAQUIN
VALLEY CORPORATION, a California
corporation; BLACK BEAR DINER –
MADERA, LP, a California limited
partnership; BLACK BEAR DINER –
VISALIA L.P., a California limited
partnership; BLACK BEAR DINER LOS
BANOS, L.P., a California limited
partnership; BLACK BEAR DINER SLO
L.P., a California limited partnership; BLACK
BEAR DINER-HANFORD LIMITED
PARTNERSHIP, a California limited
partnership; BLACK BEAR DINER-
PORTERVILLE LIMITED PARTNERSHIP,
a California limited partnership; BLACK
BEAR DINER-TULARE L.P., a California
limited partnership;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: VCU336561

**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. FAILURE TO PRODUCE REQUESTED
RECORDS;
10. VIOLATION OF LABOR CODE § 227.3;
and
11. UNFAIR COMPETITION; and

12. CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEYS'
GENERAL ACT (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 \$35,000.00]

Plaintiff MARCO ANTONIO FLORES ORNELAS, on behalf of Plaintiff and all others
similarly situated, alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against Black Bear Diner San Joaquin Valley Corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("Black Bear San Joaquin"); Black Bear Diner – Madera LP, and any of its respective subsidiaries or affiliated companies within the state of California ("Black Bear Madera"); Black Bear Diner – Visalia L.P., and any of its respective subsidiaries or affiliated companies within the state of California ("Black Bear Visalia"); Black Bear Diner Los Banos, L.P., and any of its respective subsidiaries or affiliated companies within the state of California ("Black Bear Los Banos"); Black bear Diner Slo L.P., and any of its respective subsidiaries or affiliated companies within the state of California ("Black Bear Slo"); Black Bear Diner-Hanford Limited Partnership, and any of its respective subsidiaries or affiliated companies within the state of California ("Black Bear Hanford"); Black Bear Diner-Porterville Limited Partnership ("Black Bear Porterville"); and Black Bear Diner-Tulare L.P. ("Black Bear Tulare") (Black Bear San Joaquin, Black Bear Madera, Black Bear Visalia, Black Bear Los Banos, Black Bear Slo, Black Bear Hanford, Black Bear Porterville, and Black Bear Tulare, collectively, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt employees in California 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, and any of its respective subsidiaries or affiliated companies within the State of California as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and Aggrieved Employees that worked for Defendants during the PAGA Period. Specifically, in connection with any alleged claims for failure to comply with Labor Code sections 200, 204, 210, 226, 226.3, 245, 246, 432.5, 1198, 1198.5 as well as applicable Wage Orders, Plaintiff seeks to represent all current and former employees that worked for Defendants during the PAGA Period. On all other claims mentioned herein, Plaintiff seeks to represent only non-exempt current and former employees that worked for Defendants during the PAGA Period. Collectively, these employees are herein referred to as “Aggrieved Employees.” The “PAGA Period” refers to one year preceding the date notice was submitted to the LWDA, continuing past the date of notice to the LWDA until judgement is entered.

PARTIES

A. Plaintiff

3. Plaintiff MARCO ANTONIO FLORES ORNELAS is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employ Plaintiff as a non-exempt employee, with duties that include, but are not limited to, managing kitchen operations including making supply lists, creating employee schedules, training new employees, and supervising kitchen staff. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff MARCO ANTONIO FLORES ORNELAS has worked for Defendants from approximately January of 2022 through the present.

B. Defendants

4. Plaintiff is informed and believes and based thereon alleges that defendant Black Bear San Joaquin is, and at all times relevant hereto was, a corporation existing under and by virtue of the laws of the State of California and doing business in the County of Tulare, State of California. At all relevant times herein, Black Bear San Joaquin employed Plaintiff and similarly situated employees

1 within the State of California.

2 5. Plaintiff is informed and believes and based thereon alleges that defendant Black Bear
3 Madera is, and at all times relevant hereto was, a limited partnership existing under and by virtue of
4 the laws of the State of California and doing business in the County of Tulare, State of California. At
5 all relevant times herein, Black Bear Madera employed Plaintiff and similarly situated employees
6 within the State of California.

7 6. Plaintiff is informed and believes and based thereon alleges that defendant Black Bear
8 Visalia is, and at all times relevant hereto was, a limited partnership existing under and by virtue of
9 the laws of the State of California and doing business in the County of Tulare, State of California. At
10 all relevant times herein, Black Bear Visalia employed Plaintiff and similarly situated employees
11 within the State of California.

12 7. Plaintiff is informed and believes and based thereon alleges that defendant Black Bear
13 Los Banos is, and at all times relevant hereto was, a limited partnership existing under and by virtue
14 of the laws of the State of California and doing business in the County of Tulare, State of California.
15 At all relevant times herein, Black Bear Los Banos employed Plaintiff and similarly situated
16 employees within the State of California.

17 8. Plaintiff is informed and believes and based thereon alleges that defendant Black Bear
18 Slo is, and at all times relevant hereto was, a limited partnership existing under and by virtue of the
19 laws of the State of California and doing business in the County of Tulare, State of California. At all
20 relevant times herein, Black Bear Slo employed Plaintiff and similarly situated employees within the
21 State of California.

22 9. Plaintiff is informed and believes and based thereon alleges that defendant Black Bear
23 Hanford is, and at all times relevant hereto was, a limited partnership existing under and by virtue of
24 the laws of the State of California and doing business in the County of Tulare, State of California. At
25 all relevant times herein, Black Bear Hanford employed Plaintiff and similarly situated employees
26 within the State of California.

27 10. Plaintiff is informed and believes and based thereon alleges that defendant Black Bear
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1 Porterville is, and at all times relevant hereto was, a limited partnership existing under and by virtue
2 of the laws of the State of California and doing business in the County of Tulare, State of California.
3 At all relevant times herein, Black Bear Porterville employed Plaintiff and similarly situated
4 employees within the State of California.

5 11. Plaintiff is informed and believes and based thereon alleges that defendant Black Bear
6 Tulare is, and at all times relevant hereto was, a limited partnership existing under and by virtue of
7 the laws of the State of California and doing business in the County of Tulare, State of California. At
8 all relevant times herein, Black Bear Tulare employed Plaintiff and similarly situated employees
9 within the State of California.

10 12. The true names and capacities, whether individual, corporate, associate, or otherwise,
11 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who
12 therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
13 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
14 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff
15 will seek leave of court to amend this complaint to reflect the true names and capacities of the
16 defendants designated hereinafter as DOES when such identities become known.

17 13. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted
18 in all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme,
19 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
20 attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to
21 "Defendants," it shall include Black Bear San Joaquin, Black Bear Madera, Black Bear Visalia, Black
22 Bear Los Banos, Black Bear Slo, Black Bear Hanford, Black Bear Porterville, and Black Bear Tulare,
23 and any of their parent, subsidiary, or affiliated companies within the State of California, and DOES
24 1 through 100 identified herein.

25 **JOINT LIABILITY ALLEGATIONS**

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

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

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

15 **JURISDICTION**

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

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

FACTUAL BACKGROUND

19. Defendants knew or should have known Plaintiff and Class Members were entitled to receive wages for all time worked, including regular, overtime, and double times wages. Plaintiff is informed and believes, and thereon alleges Defendants failed to pay Plaintiff and Class Members all wages owed for work required to be performed in violation of California state wage and hour laws.

20. Plaintiff is informed and believes, and thereon alleges, Defendants maintains a practice and/or policy of failing to track all minutes actually worked by Plaintiff and Class Members and failing to pay Plaintiff and Class Members for all minutes worked at the proper rates of pay. Defendants engaged, suffered, or permitted Plaintiff and Class Members to work off the clock, including, without limitation, by requiring Plaintiff and Class Members to clock out and continue working to avoid paying double-time wages. Defendants also instructed Plaintiff not to clock-in on certain shifts to avoid paying double-time wages. Specifically, Defendants required Plaintiff to cook for a banquet after he was already clocked-out and he was not paid for this time.

21. In addition, Defendants failed to include all forms of remuneration, including non-discretionary bonuses – by way of a 2.5 percentage of profits for kitchen staff and a 7.5 percentage of profits for the general managers—into the regular rate of pay during pay periods where overtime was worked. Moreover, Defendants detrimentally edited and/or manipulated time entries so the hours recorded were less than the hours actually worked. By way of example, Defendants would retroactively alter Plaintiff’s time punches to reduce the amount of overtime recorded and would add compliant meal-breaks where one was not otherwise provided.

22. Defendants knew or should have known that Plaintiff and Class Members were entitled to receive full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day, yet failed to provide Plaintiff and Class Members with legally complaint meal periods and failed to provide compensation for such unprovided meal periods as required by California wage and hour laws.

23. By way of example, Defendants regularly denied Plaintiff and Class Members lawful

1 meal periods by, without limitation, interrupting meal periods; failing to provide meal periods all
2 together; not providing timely meal periods; and failing to provide second meal periods. For example,
3 Plaintiff's meal periods were constantly interrupted by Defendants to ask questions about work-related
4 matters. Sometimes Defendants would even go out to the parking lot, where Plaintiff was resting in
5 his car during his meal period, to ask him to get back to work before the 30-minute period had
6 concluded. Moreover, Defendants never provided more than one meal period, regardless of the
7 duration of the shift; Plaintiff regularly worked over 10 hours without a second meal period provided.
8 Defendants would also alter Plaintiff's timesheets to show compliant 30-minute meal periods where
9 one was not otherwise taken.

10 24. Defendants knew or should have known that Plaintiff and Class Members were entitled
11 to receive a full ten-minute, off-duty, uninterrupted rest period for every four (4) hours worked, or
12 major fraction thereof yet failed to authorize and permit Plaintiff and Class Members to take legally
13 complaint rest periods and failed to provide compensation for such unprovided rest periods as required
14 by California wage and hour laws.

15 25. By way of example, Defendants regularly denied Plaintiff and Class Members lawful
16 rest periods by, without limitation, by interrupting rest periods; by failing to provide rest periods all
17 together; not providing rest periods in a timely fashion; and otherwise requiring on-duty/on-call rest
18 periods. For example, Plaintiff would often work shifts up to 16 hours long with only a single 10-
19 minute rest period provided.

20 26. Defendants knew or should have known that Plaintiff and Class Members who
21 separated from their employment with Defendants during the statutory period were entitled to timely
22 payment of all wages due. Plaintiff is informed and believes, and thereon alleges, that Defendants
23 failed to pay Plaintiff and Class Members the full amount of their wages owed to them upon
24 termination and/or resignation as required by Labor Code sections 201 and 202, including for, without
25 limitation, failing to pay overtime wages, minimum wages, premium wages, and vacation pay
26 pursuant to Labor Code section 227.3.

27 27. Defendants knew or should have known that Plaintiff and Class Members were entitled
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1 to receive complete and accurate wage statements and failed to abide by the requirements of Labor
2 Code section 226. Plaintiff is informed and believes, and thereon alleges that Defendants failed to
3 furnish Plaintiff and Class Members with itemized wage statements that accurately reflect gross wages
4 earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate; and other such information
6 as required by Labor Code section 226, subdivision (a). As a result thereof, Defendants failed to
7 furnish employees with an accurate calculation of gross and gross wages earned, as well as gross and
8 net wages paid.

9 28. Defendants knew or should have known that Plaintiff and Class Members were entitled
10 to receive all wages earned twice during each calendar month, on days designated in advance by
11 Defendants as the regular paydays. Plaintiff is informed and believes, and thereon alleges, Defendants
12 failed to pay Plaintiff and Class Members the full amount of wages earned in a timely fashion as
13 required under Labor Code section 204.

14 29. Defendants knew or should have known that Plaintiff and Class Members were entitled
15 to be reimbursed for necessary expenses incurred in the discharge of their duties. Plaintiff is informed
16 and believes, and thereon alleges, driving personal vehicles (*i.e.*, mileage and gas) to attend required
17 business meetings and complete supply runs; the use of personal cellular phones for work purposes
18 including communications regarding work orders and supply purchases; and the purchase of supplies
19 at stores including Smart & Final and Cisco when supplies ran short.

20 30. Defendants knew or should have known that Plaintiff and Class Members were entitled
21 to the timely payment of wages upon termination. Plaintiff is informed and believes, and thereon
22 alleges, Defendants failed to pay Plaintiff and Class Members, the full amount of their wages owed
23 to them upon termination and/or resignation as required by Labor Code sections 201 and 202,
24 including for failing to pay overtime wages, minimum wages, premium wages, and vacation pay at
25 their final rate of pay pursuant to Labor Code section 227.3.

26 31. Defendants knew or should have known that Plaintiff and Class Members were entitled
27 to paid sick leave at their regular rate of pay. Plaintiff is informed and believes, and thereon alleges,
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1 Defendants failed to provide Plaintiff and Class Members with the rights provided to them under the
2 Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section 245, *et seq.*
3 Employee is further informed and believes that the sick pay was not provided at the proper regular of
4 pay as required under California law due to failure to properly calculate the regular rate.

5 32. In addition to the above, Plaintiff is informed and believes, and based thereon alleges
6 that Defendants failed and continue to fail to keep adequate or accurate time records including wage
7 statements and similar payroll documents under Labor Code section 226, documents signed to obtain
8 or hold employment under Labor Code section 432, personnel records under Labor Code section
9 1198.5, time records under Labor Code section 1174, making it difficult for Plaintiff and other
10 Aggrieved Employees to calculate their unpaid wages and/or premium payments. Defendants also
11 failed to provide these documents to Plaintiff and other Aggrieved Employees upon request on May
12 8, 2026, in violation of these Labor Code sections. Plaintiff and the Aggrieved Employees personally
13 suffered these violations, which in turn would entitle Plaintiff and other Aggrieved Employees to
14 penalties prescribed by Labor Code sections 226 and 1198.5. Defendants would also be liable for
15 civil penalties pursuant to Labor Code sections 558, 1174.5, and 2699. Plaintiff further informed and
16 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was
17 malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant
18 to Labor Code section 2699(f)(2)(B)(ii).

19 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
20 including their agents, managers, superintendents, and/or officers, required Plaintiff and/or Aggrieved
21 Employees to agree, in writing, to terms and conditions known by Defendants (and its agents,
22 managers, superintendents and/or officers) to be prohibited by law, including, without limitation,
23 terms known to be illegal in purported arbitration agreements, and other written documents presented
24 for signature and/or assent to Plaintiff and/or Aggrieved Employees by Defendants. Defendants also
25 required Plaintiff and Aggrieved Employees to inform prospective employers of Employer's
26 restrictions of Plaintiff's and Aggrieved Employees' freedom to work. As a result, Plaintiff is
27 informed and believes that Defendants violated Labor Code sections 432.5 and 1198. As such,
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1 Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other Aggrieved
2 Employees personally suffered these violations, and that Defendants violated, without limitation,
3 Labor Code section 432.5 and Government Code section 12952, entitling Plaintiff and other
4 Aggrieved Employees to damages. Plaintiff is further informed and believes, and based thereon
5 alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
6 oppressive. Defendants would also be liable for civil penalties pursuant to Labor Code sections 432.5,
7 1198, and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further
8 be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

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

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

22 **CLASS ACTION ALLEGATIONS**

23 36. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
24 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and
25 former non-exempt employees of Defendants within the State of California at any time commencing
26 four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class
27 action is provided to the class (collectively referred to as "Class Members").
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1 37. 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 into
3 subclasses, and to further specify or limit the issues for which certification is sought.

4 38. 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 of
6 interest in the litigation and the proposed Class is easily ascertainable.

7 **A. Numerosity**

8 39. 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 Members
11 employed by Defendants within the State of California.

12 40. 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 41. 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 for
22 all other time worked at the employee's regular rate of pay?
- 23 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting Class
24 Members to take compliant meal periods?
- 25 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
26 with additional wages for missed or interrupted meal periods?
- 27 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting Class
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Members to take compliant rest periods?

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

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

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

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

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

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

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

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

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

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

P. Are Class Members entitled to interest?

C. Typicality

42. The claims of Plaintiff herein alleged are typical of those claims which could be alleged by any Class Members, and the relief sought is typical of the relief which would be sought by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and

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

2 **D. Adequacy of Representation**

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

6 **E. Superiority of Class Action**

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

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

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 46. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by
19 Defendants during the PAGA Period and suffered the Labor Code violations set forth herein.
20 Accordingly, Plaintiff seeks to recover civil penalties under PAGA, plus reasonable attorneys' fees
21 and costs, for Plaintiff and all other Aggrieved Employees of Defendants during the PAGA Period.

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

26 48. Labor Code section 2699, subdivisions (a) and (g), authorizes Aggrieved Employees
27 such as Plaintiff to bring a civil action to recover civil penalties pursuant to the procedures specified
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1 in Labor Code section 2699.3 on behalf of Plaintiff and all other Aggrieved Employees within the
2 PAGA Period.

3 49. Pursuant to Labor Code section 2699.3, on or around June 25, 2026, Plaintiff provided
4 written notice of Defendants' violation of various provisions of the Labor Code to the LWDA online
5 and by certified mail, with return receipt requested, to Defendants ("PAGA Notice").

6 50. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
7 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
8 calendar days of the PAGA Notice.

9 51. To the extent Defendants, or either of them, previously used the notice and cure
10 provision of Labor Code section 2699.3 within the last twelve months, under section 2699.3(d), then
11 Defendants, or those who have availed themselves of the cure provisions validly, are not eligible to
12 cure the violations discussed herein under section 2699.3 or otherwise use the early evaluation
13 conference process pursuant to section 2699.3(f).

14 52. In the event that Defendants, or either of them, is/are determined to have satisfied
15 sections 2699(g), 2699(h), or otherwise 2699(d)(1), Defendants, or any that is determined to have
16 satisfied sections 2699(g), 2699(h), is also, in the alternative, liable for civil penalties pursuant to
17 Labor Code sections 2699(j), 2699(e)(2), and 2699(f)(2).

18 53. In the event that Defendants, or either of them, is/are determined to have, prior to this
19 notice or a request for records pursuant to Labor Code section 226, 432, or 1198.5, from Plaintiff
20 and/or his counsel, adequately taken all reasonable steps to be in compliance with all provisions
21 identified in this notice, said defendant(s) is/are still liable for civil penalties pursuant to section
22 2699(g)(1)-(3).

23 54. In the event that Defendants, or either of them is/are deemed to have adequately taken
24 all reasonable steps to be in compliance with all provisions identified in this notice within sixty (60)
25 days of receiving this notice, said defendant(s) is/are still liable for civil penalties pursuant to Labor
26 Code section 2699(h)(1)-(3).

27 55. In the event, the LWDA and/or a court issued a finding or determination to the
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1 Defendants, or either of them, that within five (5) years preceding the date of the PAGA Notice the
2 policies or practices which gave rise to the violations alleged herein were unlawful, Defendants, or
3 any of them, would be subject to heightened penalties pursuant to Labor Code sections
4 2699(f)(2)(B)(i), 2699(g)(3) and 2699(h)(3) and **not** eligible for reduced penalties under either Labor
5 Code sections 2699(g) or 2699(h) for remedying violations either prior to or after the serving of the
6 PAGA Notice. Regardless, Plaintiff alleges Defendants' conduct giving rise to the violations as
7 detailed herein was and is malicious, fraudulent, and/or oppressive, particularly given, among other
8 reasons, Defendants have been sued for these violations in the past. Thus, Defendants, or any of them,
9 are further subject to increased penalties under Labor Code section 2699(f)(2)(B)(ii) and lack
10 eligibility for reduced penalties under either Labor Code sections 2699(g) or 2699(h).

11 **FIRST CAUSE OF ACTION**

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

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

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

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

22 59. At all times relevant to this complaint, Labor Code section 510 further provided that
23 "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
24 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh
25 day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay."

26 60. Four (4) years prior to the filing of the complaint in this action through the present,
27 Plaintiff and Class Members worked for Defendants during shifts that consisted of more than eight
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(8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failure to pay Plaintiff and Class Members all wages owed for work required to be performed in violation of California state wage and hour laws. Plaintiff is informed and believes, and thereon alleges, Defendants maintains a practice and/or policy of failing to track all minutes actually worked by Plaintiff and Class Members and failing to pay Plaintiff and Class Members for all minutes worked at the proper rates of pay. Defendants engaged, suffered, or permitted Plaintiff and Class Members to work off the clock, including, without limitation, by requiring Plaintiff and Class Members to clock out and continue working to avoid paying double-time wages. Defendants also instructed Plaintiff not to clock-in on certain shifts to avoid paying double-time wages. Specifically, Defendants required Plaintiff to cook for a banquet after he was already clocked-out and he was not paid for this time. In addition, Defendants failed to include all forms of remuneration, including non-discretionary bonuses – by way of a 2.5 percentage of profits for kitchen staff and a 7.5 percentage of profits for the general managers—into the regular rate of pay during pay periods where overtime was worked. Moreover, Defendants detrimentally edited and/or manipulated time entries so the hours recorded were less than the hours actually worked. By way of example, Defendants would retroactively alter Plaintiff’s time punches to reduce the amount of overtime recorded and would add compliant meal-breaks where one was not otherwise provided..

61. Accordingly, by requiring Plaintiff and Class Members to 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.

62. 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.

1 **SECOND CAUSE OF ACTION**

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

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

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

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

10 66. For four (4) years prior to the filing of the complaint in this action through the present,
11 Defendants failed to pay Plaintiff and Class Members all wages owed for work required to be
12 performed in violation of California state wage and hour laws. Plaintiff is informed and believes, and
13 thereon alleges, Defendants maintains a practice and/or policy of failing to track all minutes actually
14 worked by Plaintiff and Class Members and failing to pay Plaintiff and Class Members for all minutes
15 worked at the proper rates of pay. Defendants engaged, suffered, or permitted Plaintiff and Class
16 Members to work off the clock, including, without limitation, by requiring Plaintiff and Class
17 Members to clock out and continue working to avoid paying double-time wages. Defendants also
18 instructed Plaintiff not to clock-in on certain shifts to avoid paying double-time wages. Specifically,
19 Defendants required Plaintiff to cook for a banquet after he was already clocked-out and he was not
20 paid for this time. In addition, Defendants failed to include all forms of remuneration, including non-
21 discretionary bonuses – by way of a 2.5 percentage of profits for kitchen staff and a 7.5 percentage of
22 profits for the general managers—into the regular rate of pay during pay periods where overtime was
23 worked. Moreover, Defendants detrimentally edited and/or manipulated time entries so the hours
24 recorded were less than the hours actually worked. By way of example, Defendants would
25 retroactively alter Plaintiff's time punches to reduce the amount of overtime recorded and would add
26 compliant meal-breaks where one was not otherwise provided, to the detriment of Plaintiff and Class
27 Members.
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67. 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.

68. 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)

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

70. 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.

71. 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.

72. 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.

73. For four (4) years prior to the filing of the complaint in this action through the present, Plaintiff and Class Members were 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, Defendants failed to provide one (1) additional hour of pay at the Class Member's regular rate of

1 compensation on the occasions that Class Members were not provided compliant meal periods.

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

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

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

13 **FOURTH CAUSE OF ACTION**

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

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

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

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

26 80. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
27 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
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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.

81. For four (4) years prior to the filing of the complaint in this action through the present, Plaintiff and Class Members were 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, 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.

82. By their failure 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.

83. 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.

84. 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)

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

86. 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.

87. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were

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

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

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

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

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

23 92. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
24 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
25 waiting time penalties, interest, and their costs of suit, as well.

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1 amounts deducted from wages to state and federal governmental agencies, among other things.

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

6 100. Pursuant to Labor Code section 226, subdivision (h), Plaintiff and class members seek
7 an injunction on Defendants for their failure to comply with the requirements set forth in Labor Code
8 Section 226 (a).

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

13 **SEVENTH CAUSE OF ACTION**

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

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

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

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

23 105. 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
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1 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
2 percent of the amount unlawfully withheld.”

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

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

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

15 **EIGHTH CAUSE OF ACTION**

16 **(Failure to Indemnify – Against All Defendants)**

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

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

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

24 112. For three (3) years prior to the filing of the complaint in this action through the present,
25 Defendants required Plaintiff and Class Members to incur necessary expenditures or losses in direct
26 consequence of the discharge of their duties or at the obedience to the directions of Defendants that
27 included, without limitation: the costs incurred for driving personal vehicles (*i.e.*, mileage and gas) to
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1 attend required business meetings and complete supply runs; the use of personal cellular phones for
2 work purposes including communications regarding work orders and supply purchases; and the
3 purchase of supplies at stores including Smart & Final and Cisco when supplies ran short.

4 113. During that time period, Plaintiff is informed and believes, and based thereon alleges
5 that Defendants failed and refused, and still fail and refuse to reimburse Plaintiff sand Class Members
6 for those losses and/or expenditures.

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

10 115. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
11 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover reimbursement
12 for their herein-described losses and/or expenditures, reasonable attorneys' fees and costs of suit.

13 **NINTH CAUSE OF ACTION**

14 **(Failure to Produce Requested Records – Against All Defendants)**

15 116. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the
16 preceding paragraphs of this complaint as though fully set forth hereon.

17 117. Pursuant to California Labor Code § 226(b), current and former employees have the
18 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
19 request to their employer. Under this statute, an employer that receives a request to inspect or receive
20 a copy of records pertaining to a current or former employee must comply with the request as soon as
21 practicable, but no later than twenty-one calendar days from the date of the request.

22 118. Pursuant to California Labor Code § 1198.5(a), every current and former employee, or
23 his or her representative, has the right to inspect and receive a copy of the personnel records that the
24 employer maintains relating to the employee's performance or to any grievance concerning the
25 employee. Under this statute, upon written request from a current or former employee or his or her
26 representative, an employer must make the contents of those personnel records available for inspection
27 or provide a copy of the personnel records to the current or former employee, or his or her
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1 representative, not later than thirty calendar days from the date the employer receives the written
2 request, subject to some limited exceptions.

3 119. Plaintiff sent written requests through Plaintiff's counsel on May 8, 2026, to
4 Defendants for Plaintiff's payroll records, timecards, and personnel records. However, Plaintiff has
5 not received all of the requested records as of the date of this complaint.

6 120. Plaintiff is informed and believes, and based thereon alleges, that for three (3) years
7 prior to the filing of this action through the present Defendants violated Labor Code sections 226 and
8 1198.5 by failing to produce employment and personnel records upon request.

9 121. On information and belief, Defendants' failure to provide Plaintiff with all of the
10 requested employment records is not an isolated incident but was instead consistent with Defendants'
11 policy and practice that applied to Plaintiff and Class Members.

12 122. Pursuant to California Labor Code § 226(f) and 1198.5(k), Plaintiff and Class
13 Members are entitled to a penalties of seven hundred fifty dollars (\$750) from Defendants and
14 attorneys' fees and cost.

15 **TENTH CAUSE OF ACTION**

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

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

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

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

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

3 127. As a proximate result of Defendants' failure to pay vested vacation at the final rate of
4 Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor Code
5 section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at their
6 final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and
7 Class Members, on the one hand, and Defendants, on the other hand.

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

11 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

1 132. Moreover, as a result of Defendants' unfair competition, as alleged herein, the public
2 has suffered injury. Defendants' Labor Code violations provide them with an unfair competitive
3 advantage against other California employers. Pursuant to Business and Professions Code sections
4 17203 and 17204, Plaintiff seeks public injunctive relief for the benefit of the general public that
5 prohibits Defendants from further violating the Labor Code and requiring the establishment of
6 appropriate and effective means to prevent further violations. This relief benefits Plaintiff only
7 incidentally and as a member of the general public. The primary purpose and effect of this prohibition
8 is to prohibit unlawful acts that threaten future injury to the general public by means of Defendants'
9 unlawful competition with other California employers. (*McGill v. CitiBank, N.A.* (2017) 2 Cal.5th
10 945, 954; *accord* at 957.)

11 133. As a distinct ground, Plaintiff seeks under Labor Code section 17203 restitution of all
12 wages and other monies owed to them under the Labor Code, including interest thereon, in which
13 Plaintiff and Class Members had a property interest and which Defendants nevertheless failed to pay
14 them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff
15 and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their
16 failure to comply with the Labor Code.

17 134. Plaintiff and Class Members are entitled to costs of suit under Code of Civil Procedure
18 section 1032 and interest under Civil Code section 3287.

19 **TWELFTH CAUSE OF ACTION**

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

21 135. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
22 preceding paragraphs as though fully set forth hereat.

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

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

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

9 138. At all relevant times herein, Defendants have had a consistent policy or practice of
10 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as per
11 Labor Code section 204 including, without limitation, for the reasons and in a manner set forth in the
12 preceding paragraphs. Thus, pursuant to Labor Code section 210, Plaintiff and other Aggrieved
13 Employees are entitled to recover as civil penalties injunctive relief and monetary civil penalties in
14 the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per
15 employee, and two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
16 the amount unlawfully withheld for each Aggrieved Employee for each subsequent violation in
17 connection with each payment that was made in violation of Labor Code section 204.

18 Civil Penalties Under Labor Code § 226.3

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

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

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

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

13 Violation of Labor Code § 558

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

- 18 1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
19 pay period for which the employee was underpaid in addition to an amount sufficient
20 to recover underpaid wages;
- 21 2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
22 employee for each pay period for which the employee was underpaid in addition to an
23 amount sufficient to recover underpaid wages;
- 24 3) Wages recovered pursuant to this section shall be paid to the affected employee."

25 144. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each
26 of them, violated, or caused to be violated, the Labor Code sections and Wage Orders regulating
27 wages, hours and/or days of work as described herein, including but not limited to Labor Code sections
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1 203, 226, 226.7, 1194.

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

7 Violation of Labor Code § 1174.5

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

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

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

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

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

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

13 Violation of Labor Code § 1197.1

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

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

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

6 153. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
7 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants routinely
8 failing to accurately track and/or pay for all minutes actually worked by Plaintiff and Aggrieved
9 Employees at the proper rates of pay, as described above.

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

16 Civil Penalties Under Labor Code § 2699

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

23 156. Plaintiff is informed and believes, and based thereon alleges that Defendants, and each
24 of them, violated the Labor Code sections described in the preceding paragraphs.

25 157. As such, Plaintiff and aggrieved employees are entitled to injunctive relief, one
26 hundred dollars (\$100) for each Aggrieved Employee for each pay period in the PAGA Period, and
27 two hundred dollars (\$200) for each Aggrieved Employee for each pay period in the PAGA Period to
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1 the extent Defendants' conduct is found to be malicious, fraudulent and/or oppressive.

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

5 **DEMAND FOR JURY TRIAL**

6 159. Plaintiff demands a trial by jury on all causes of action one (1) through twelve (12)
7 contained herein.

8 **PRAYER**

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

- 11 A. An order certifying this case as a Class Action;
- 12 B. An Order appointing Plaintiff as Class Representative and appointing Plaintiff's
13 counsel as Class counsel;
- 14 C. Damages for all wages earned and owed, including minimum, overtime wages, and
15 unpaid wages for vested vacation time, under Labor Code sections 510, 558.1, 1194,
16 1197 and 1199 and 227.3;
- 17 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 18 E. Damages for unpaid premium wages from missed meal and rest periods under,
19 among other Labor Code sections, 512, 558.1 and 226.7;
- 20 F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision
21 (e) and 558.1;
- 22 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 23 H. Penalties for failing to produce records under Labor Code § 226(e) and 1198.5;
- 24 I. An injunction under Labor Code Section 226(h) for Defendants failure to comply
25 with the requirements set forth under Labor Code Section 226(a);
- 26 J. Penalties to timely pay wages under Labor Code section 210;
- 27 K. Damages under Labor Code sections 2802 and 558.1;
- 28

- 1 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
2 1197.1, and 2699;
- 3 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
4 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 5 N. Preliminary and permanent public injunctions under Labor Code section 17200, *et*
6 *seq.* imposed for the benefit of the public prohibiting Defendants from further
7 violating the California Labor Code and requiring the establishment of appropriate
8 and effective means to prevent future violations, thus permitting proper competition
9 by other California employers;
- 10 O. Restitution of wages and benefits due which were acquired by means of any unfair
11 business practice, according to proof;
- 12 P. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 13 Q. For attorneys' fees in prosecuting this action;
- 14 R. For costs of suit incurred herein; and;
- 15 S. For such other and further relief as the Court deems just and proper.

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17 Dated: August 7, 2026

BIBIYAN LAW GROUP, P.C.

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19 BY: /s/ Sarah Cohen
20 Sarah Cohen

21 Attorneys for Plaintiff MARCO ANTONIO
22 FLORES ORNELAS and on behalf of all others
23 similarly situated
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