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on behalf of himself and all others similarly situated

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Clerk of the Napa Superior Court

By: Julie Oliver, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF NAPA

TROY BO TAM, an individual and on behalf
of all others similarly situated,

Plaintiff,

v.

WINEDIRECT, INC., a Delaware corporation;
CASSEY GARCIA, an individual; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 24CV000025

**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 PAY INTEREST ON DEPOSITS;
10. VIOLATION OF LABOR CODE § 227.3;
11. UNFAIR COMPETITION; and
12. 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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 Plaintiff TROY BO TAM, on behalf of Plaintiff and all others similarly situated, alleges as
2 follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

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

11 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
12 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants,
13 as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”),
14 on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
15 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
16 for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section
17 226, Labor Code section 245, *et seq.*, Labor Code Section 432, Labor Code Section 1198.5, Labor
18 Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of
19 all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved
20 Employees”).

21 **PARTIES**

22 **A. Plaintiff**

23 3. Plaintiff TROY BO TAM is a resident of the State of California. At all relevant
24 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
26 placing wine and removing wine from the shelf for orders. Plaintiff is informed and believes, and
27 based thereon alleges, that Plaintiff TROY BO TAM worked for Defendants from approximately
28 August of 2023 through approximately October of 2023.

1 **B. Defendants**

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

5 5. Plaintiff is informed and believes and based thereon alleges that Garcia is, and at all
6 times relevant hereto was, an individual residing in California, as well as the manager of Winedirect,
7 and DOES 1 through 100, as further defined below.

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

21 **JOINT LIABILITY ALLEGATIONS**

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

27 8. All of the acts and conduct described herein of each and every corporate defendant
28 was duly authorized, ordered, and directed by the respective and collective defendant corporate

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

8 9. Plaintiff is further informed and believes and based thereon alleges that Garcia
9 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
10 provisions in violation of Labor Code section 558.1.

11 10. Plaintiff is informed and believes, and based thereon allege, that there exists such a
12 unity of interest and ownership between Defendants, and each of them, that their individuality and
13 separateness have ceased to exist.

14 11. Plaintiff is informed and believes, and based thereon alleges that despite the
15 formation of the purported corporate existence of Winedirect and DOES 1 through 50, inclusive
16 (the "Alter Ego Defendants"), they, and each of them, are one and the same with Garcia and DOES
17 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the following
18 reasons:

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

24 B. The Individual Defendants derive actual and significant monetary benefits by and
25 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
26 Defendants as the funding source for the Individual Defendants' own personal
27 expenditures;

28 ///

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

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

25 **JURISDICTION**

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

28 14. Venue is proper in Napa County, California pursuant to Code of Civil Procedure

1 sections 392, et seq. because, among other things, Napa County is where the causes of action
2 complained of herein arose; the county in which the employment relationship began; the county in
3 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
4 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
5 and Defendants was actually performed; and the county in which Defendants, or some of them,
6 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class
7 Members in Napa County, and because Defendants employ numerous Class Members in Napa
8 County.

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

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

20 17. During the period beginning one (1) year preceding the provision of notice to the
21 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
22 Defendants violated, inter alia, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
23 226.3, 226.7, 227.3, 232, 232.5, 245, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
24 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

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

19. On or around January 8, 2024, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

20. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the January 8, 2024 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FACTUAL BACKGROUND

21. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff, Class Members, and other Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff, Class Members, and other Aggrieved Employees, working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay ; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring Plaintiff, Class Members, and other Aggrieved Employees, to come early to work and leave late work without being able to clock in for all that time, to suffer under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to attend company meetings off the clock, to make phone calls off the clock, to drive off the clock,; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or

1 manipulation of time entries; and by attempting but failing to properly implement an alternative
2 workweek schedule (“AWS”) (including, without limitation, by failing to implement a written
3 agreement designating the regularly scheduled alternative workweek in which the specified number
4 of work days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot
5 election, before the performance of work, by at least a two-thirds (2/3) vote of the affected
6 employees in the work unit; failing to follow the notice/disclosures procedures prior to any AWS
7 election; and/or failing to register an AWS election with the State of California, as required by Labor
8 Code section 511 and applicable Wage Orders)] to the detriment of Plaintiff, Class Members, and
9 other Aggrieved Employees.

10 22. For at least four (4) years prior to the filing of this Action and continuing to the
11 present, Defendants have, at times, failed to pay minimum wages to Plaintiff, Class Members, and
12 other Aggrieved Employees, or some of them, in violation of California state wage and hour laws
13 as a result of, among other things, at times, failing to accurately track and/or pay for all hours
14 actually worked at their regular rate of pay that is above the minimum wage; engaging, suffering,
15 or permitting employees to work off the clock, including, without limitation, by requiring Plaintiff,
16 Class Members, and other Aggrieved Employees, to come early to work and leave late work without
17 being able to clock in for all that time, to suffer under Defendants’ control due to long lines for
18 clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
19 clock out for meal periods and continue working, to clock out for rest periods, to attend company
20 meetings off the clock, to make phone calls off the clock; to drive off the clock; detrimental rounding
21 of employee time entries; editing and/or manipulation of time entries to show less hours than
22 actually worked; failing to pay split shift premiums; and failing to pay reporting time pay to the
23 detriment of Plaintiff, Class Members, and other Aggrieved Employees .

24 23. For at least four (4) years prior to the filing of this Action and continuing to the
25 present, Defendants have, at times, failed to provide Plaintiff, Class Members, and other Aggrieved
26 Employees, or some of them, full, timely thirty (30) minute uninterrupted meal period for days on
27 which they worked more than five (5) hours in a work day and a second thirty (30) minute
28 uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day,

1 and failing to provide compensation for such unprovided meal periods as required by California
2 wage and hour laws.

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

8 25. For at least three (3) years prior to the filing of this action and continuing to the
9 present, Defendants have, at times, failed to pay Plaintiff, Class Members, and other Aggrieved
10 Employees, or some of them, the full amount of their wages owed to them upon termination and/or
11 resignation as required by Labor Code sections 201 and 202, including for, without limitation,
12 failing to pay overtime wages, minimum wages, premium wages, and vacation pay pursuant to
13 Labor Code section 227.3.

14 26. For at least one (1) year prior to the filing of this Action and continuing to the present,
15 Defendants have, at times, failed to furnish Plaintiff, Class Members, and other Aggrieved
16 Employees, or some of them, with itemized wage statements that accurately reflect gross wages
17 earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate; and other such
19 information as required by Labor Code section 226, subdivision (a). As a result thereof, Defendants
20 have further failed to furnish employees with an accurate calculation of gross and gross wages
21 earned, as well as gross and net wages paid.

22 27. 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 pay Plaintiff, Class Members, and other Aggrieved Employees,
24 or some of them, the full amount of their wages for labor performed in a timely fashion as required
25 under Labor Code section 204.

26 28. For at least four (4) years prior to the filing of this action and continuing to the
27 present, Defendants have had a consistent policy of failing to Plaintiff, Class Members, and other
28 Aggrieved Employees with compensation at their final rate of pay for unused vested paid vacation

1 days pursuant to Labor Code section 227.3 and applicable Wage Orders.

2 29. For at least four (4) years prior to the filing of this action and continuing to the
3 present, Defendants have had a consistent policy of failing to provide Plaintiff and other Aggrieved
4 Employees with the rights provided to them under the Healthy Workplace Healthy Families Act of
5 2014, codified at Labor Code section 245, *et seq.*

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

11 31. 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, in direct consequence
14 of the discharge of their duties, or of their obedience to the directions of Defendants, as required by
15 Labor Code section 2802.

16 32. For at least three (3) years prior to the filing of the action and continuing to the
17 present, Defendants have, at times, failed to return interest on deposits made by Plaintiff and Class
18 Members, or some of them, for uniforms.

19 33. 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 34. 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 35. At all relevant times mentioned herein, Defendants have had a policy or practice
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 36. 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 believe 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 37. 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 believe 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 38. 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 believe 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 39. 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.*, 404, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, and California Code of
9 Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium
10 wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage
11 statement penalties, failure to indemnify work-related expenses, failure to pay interest on deposits
12 made, failing to pay vested vacation time at the proper rate of pay, other such provisions of
13 California law, and reasonable attorneys' fees and costs.

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

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

24 **CLASS ACTION ALLEGATIONS**

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

1 of the class action is provided to the class (collectively referred to as “Class Members”).

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

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

8 **A. Numerosity**

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

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

17 **B. Commonality**

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

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

- 1 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
2 Class Members to take compliant rest periods?
- 3 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
4 with additional wages for missed rest periods?
- 5 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
6 Members upon termination or resignation all wages earned?
- 7 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
8 section 203?
- 9 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
10 Class Members with accurate wage statements?
- 11 J. Did Defendants fail to pay Class Members in a timely fashion as required under
12 Labor Code section 204?
- 13 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
14 losses incurred in direct consequence of the discharge of their duties or by obedience
15 to the directions of Defendants as required under Labor Code section 2802?
- 16 L. Did Defendants fail to return deposits made by Class Members with accrued interest
17 thereon as required under Labor Code section 404?
- 18 M. Did Defendants violate Labor Code section 227.3 by not providing Class Members
19 with compensation at their final rate of pay for vested paid vacation time.
- 20 N. Did Defendants violate the Unfair Competition Law, Business and Professions Code
21 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 22 O. Are Class Members entitled to restitution of wages under Business and Professions
23 Code section 17203?
- 24 P. Are Class Members entitled to costs and attorneys' fees?
- 25 Q. Are Class Members entitled to interest?

26 **C. Typicality**

- 27 48. The claims of Plaintiff herein alleged are typical of those claims which could be
28 alleged by any Class Members, and the relief sought is typical of the relief which would be sought

1 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
2 damages arising out of and caused by Defendants' common course of conduct in violation of laws
3 and regulations that have the force and effect of law and statutes as alleged herein.

4 **D. Adequacy of Representation**

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

8 **E. Superiority of Class Action**

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

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

19 **FIRST CAUSE OF ACTION**

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

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

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

26 54. At all times relevant to this Complaint, Labor Code section 510 was in effect and
27 provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
28 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated

1 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

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

7 56. Four (4) years prior to the filing of the Complaint in this Action through the present,
8 Plaintiff and Class Members at times, worked for Defendants during shifts that consisted of more
9 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
10 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
11 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
12 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
13 work off the clock, including, without limitation, by requiring Plaintiff and Class Members to come
14 early to work and leave late work without being able to clock in for all that time, to suffer under
15 Defendants’ control due to long lines for clocking in, to complete pre-shift tasks before clocking in
16 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
17 out for rest periods, to attend company meetings off the clock, to make phone calls off the clock, to
18 drive off the clock, failing to include all forms of remuneration, including non-discretionary
19 bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms of
20 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
21 additional compensation was earned for the purpose of calculating the overtime rate of pay;
22 detrimental rounding of employee time entries, editing and/or manipulation of time entries; and by
23 attempting but failing to properly implement an alternative workweek schedule (“AWS”)
24 (including, without limitation, by failing to implement a written agreement designating the regularly
25 scheduled alternative workweek in which the specified number of work days and work hours are
26 regularly recurring; failing to adopt the AWS in a secret ballot election, before the performance of
27 work, by at least a two-thirds (2/3) vote of the affected employees in the work unit; failing to follow
28 the notice/disclosures procedures prior to any AWS election; and/or failing to register an AWS

election with the State of California, as required by Labor Code section 511 and applicable Wage Orders) to the detriment of Plaintiff and Class Members.

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

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

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

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

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

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

62. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage; engaged, suffered, or permitted employees to work off the clock, including, without limitation, by requiring Plaintiff and Class Members to come early to work and leave late work without being able to clock in for all that time, to suffer under Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to attend company meetings off the clock, to make phone

1 calls off the clock; to drive off the clock; detrimental rounding of employee time entries; editing
2 and/or manipulation of time entries to show less hours than actually worked; failing to pay split shift
3 premiums; and failing to pay reporting time pay to the detriment of Plaintiff and Class Members.

4 63. 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 64. 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 65. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs as though fully set forth hereat.

15 66. 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 67. 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 68. 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 69. 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 70. 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 71. 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 72. 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 73. Plaintiff realleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs as though fully set forth hereat.

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

22 75. 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.

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

77. For four (4) years prior to the filing of the Complaint in this Action through the present, 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.

78. 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.

79. 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.

80. 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)

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

82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 90. 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 91. 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; among other things.

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

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

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

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

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

11 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

13 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

109. 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 reimbursed for the herein-described losses and/or expenditures.

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

NINTH CAUSE OF ACTION

(Violation of Labor Code § 404 – Against All Defendants)

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

112. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 400 through 410.

113. Pursuant to Labor Code section 404, Defendants were required to immediately return amounts deposited with accrued interest when Plaintiff and Class Members returned the required uniforms to Defendants.

114. Plaintiff is informed and believes, and based thereon alleges that for three (3) years prior to the filing of this Action through the present, due to policies and practices adopted by Defendants, Defendants violated Labor Code section 404 by failing to, at times, immediately return accrued interest on deposits made by Plaintiff and Class Members

115. As a result of Defendants' conduct, Plaintiff and Class Members have suffered damages in an amount subject to proof, to the extent they were not compensated for accrued interest on amounts deposited.

116. Pursuant to Labor Code sections 218, 218.5, and 404, Plaintiff and Class Members are entitled to recover their unpaid accrued interest on uniform deposits, reasonable attorney's fees and costs of suit.

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1 **TENTH CAUSE OF ACTION**

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

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

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

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

13 120. 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 Plaintiff and similarly situated
15 employees or former employees within the State of California with compensation at their final rate
16 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

17 121. As a proximate result of Defendants' failure to pay vested vacation at the final rate
18 of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor
19 Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at
20 their final rate of pay, as set out in Defendants' policy or the contract of employment between
21 Plaintiff and Class Members on the one hand, and Defendants, on the other hand.

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

25 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

TWELFTH CAUSE OF ACTION

**(Civil Penalties under Labor Code Private Attorneys' General Act of 2004 –
Against All Defendants)**

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

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

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132. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name of the employer and/or the name and address of the legal

1 entity securing the employer's services if the employer is a farm labor contractor; and other such
2 information as required by Labor Code section 226, subdivision (a).

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

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

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

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

23 C. Violation of Labor Code § 558

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

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

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

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

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

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

20 D. Violation of Labor Code § 1174.5

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

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

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

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

18 144. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
19 willfully failed to keep adequate or accurate time records including wage statements and similar
20 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
21 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
22 under Labor Code section 1174.

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

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1 E. Violation of Labor Code § 1197.1

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

8 i. For any initial violation that is intentionally committed, one hundred dollars
9 (\$100) for each underpaid employee for each pay period for which the
10 employee is underpaid. This amount shall be in addition to an amount
11 sufficient to recover underpaid wages, liquidated damages pursuant to
12 Section 1194.2, and any applicable penalties imposed pursuant to Section
13 203.

14 ii. For each subsequent violation for the same specific offense, two hundred fifty
15 dollars (\$250) for each underpaid employee for each pay period for which the
16 employee is underpaid regardless of whether the initial violation is
17 intentionally committed. This amount shall be in addition to an amount
18 sufficient to recover underpaid wages, liquidated damages pursuant to
19 Section 1194.2, and any applicable penalties imposed pursuant to Section
20 203.

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

24 147. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
25 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
26 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
27 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
28 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of

1 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
2 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
3 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

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

10 F. Civil Penalties Under Labor Code § 2699

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

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

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

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

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

7 **DEMAND FOR JURY TRIAL**

8 153. Plaintiff demands a trial by jury on all causes of action contained herein.

9 **PRAYER**

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

- 12 A. An order certifying this case as a Class Action;
- 13 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
14 counsel as class counsel;
- 15 C. Damages for all wages earned and owed, including minimum and overtime wages
16 and unpaid wages for vested vacation time, under Labor Code sections 510, 1194,
17 1197, 1199 and 227.3;
- 18 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 19 E. Damages for unpaid premium wages from missed meal and rest periods under,
20 among other Labor Code sections, 512, 558.1 and 226.7;
- 21 F. Penalties for inaccurate wage statements under Labor Code sections 226,
22 subdivision (e) and 558.1;
- 23 G. Waiting time penalties under Labor Code sections 203;
- 24 H. Damages under Labor Code section 2802;
- 25 I. Damages under Labor Code section 404;
- 26 J. Preliminary and permanent injunctions prohibiting Defendants from further
27 violating the California Labor Code and requiring the establishment of appropriate
28 and effective means to prevent future violations;

- 1 K. Restitution of wages and benefits due which were acquired by means of any unfair
2 business practice, according to proof;
- 3 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3,
4 558,1174.5, 1197.1, 2699, and 2802, and all other applicable sections listed *infra*;
- 5 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
6 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed
7 *infra*;
- 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: March 20, 2025

BIBIYAN LAW GROUP, P.C.

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15 BY: 

16 BRANDON M. CHANG

17 Attorneys for Plaintiff TROY BO TAM on behalf of
18 himself and all others similarly situated
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