

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Brandon Chang (SBN 316197)

brandon@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

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

Attorneys for Plaintiff, FLAVIO RAMIREZ and
on behalf of himself and all others similarly situated
and aggrieved

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

FLAVIO RAMIREZ, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

LEO TIDWELL EXCAVATING
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24CECG01275

**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;
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, et seq.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

1 Plaintiff FLAVIO RAMIREZ, on behalf of Plaintiff and all others similarly situated and
2 aggrieved, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

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

10 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
11 General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants,
12 as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”),
13 on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
14 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
15 for failure to comply with Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3,
16 227.3, 232, 232.5, 245, 246, 432, 432.3, 432.5, 432.7, 432.8, 1102.5, 1197.5, 1198.5, 1527, 3366,
17 3457, and 8397.4, on behalf of all employees of Defendants working within the Civil Penalty Period
18 (collectively, “Aggrieved Employees”).

19 **PARTIES**

20 **A. Plaintiff**

21 3. Plaintiff FLAVIO RAMIREZ is a resident of the State of California. At all relevant
22 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
24 capturing and collecting all the date information from site to site, check timecards, call inspectors,
25 and assist project manager . Plaintiff is informed and believes, and based thereon alleges, that
26 Plaintiff FLAVIO RAMIREZ worked for Defendants from approximately May 1, 2018 through
27 approximately August 5, 2022.

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1 **B. Defendants**

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

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

19 **JOINT LIABILITY ALLEGATIONS**

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

25 7. All of the acts and conduct described herein of each and every corporate defendant
26 was duly authorized, ordered, and directed by the respective and collective defendant corporate
27 employers, and the officers and management-level employees of said corporate employers. In
28 addition thereto, said corporate employers participated in the aforementioned acts and conduct of

1 their said employees, agents, and representatives, and each of them; and upon completion of the
2 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
3 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
4 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
5 aforementioned corporate employees, agents and representatives.

6 8. Plaintiff is further informed and believes and based thereon alleges that DOES 51
7 through 100 violated, or caused to be violated, the above-referenced and below-referenced Labor
8 Code provisions in violation of Labor Code section 558.1.

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

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

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

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

26 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
27 and the Alter Ego Defendants, while really one and the same, were segregated to
28 appear as though separate and distinct for purposes of perpetrating a fraud,

1 circumventing a statute, or accomplishing some other wrongful or inequitable
2 purpose;

3 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
4 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
5 mentioned herein were, so mixed and intermingled that the same cannot reasonably
6 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
7 are, and at all relevant times mentioned herein were, used by the Individual
8 Defendants as mere shells and conduits for the conduct of certain of their, and each
9 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
10 herein were, the alter egos of the Individual Defendants;

11 E. The recognition of the separate existence of the Individual Defendants and the Alter
12 Ego Defendants would promote injustice insofar that it would permit defendants to
13 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
14 Code, and other statutory violations. The corporate existence of these defendants
15 should thus be disregarded in equity and for the ends of justice because such
16 disregard is necessary to avoid fraud and injustice to Plaintiff herein;

17 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
18 Defendants (and vice versa), and the fiction of their separate corporate existence
19 must be disregarded;

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

22 **JURISDICTION**

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

25 13. Venue is proper in FRESNO County, California pursuant to Code of Civil Procedure
26 sections 392, et seq. because, among other things, FRESNO County is where the causes of action
27 complained of herein arose; the county in which the employment relationship began; the county in
28 which performance of the employment contract, or part of it, between Plaintiff and Defendants was

1 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
2 and Defendants was actually performed; and the county in which Defendants, or some of them,
3 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class
4 Members in FRESNO County, and because Defendants employ numerous Class Members in
5 FRESNO County.

6 14. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
7 Defendants during the applicable statutory period and suffered one or more of the Labor Code
8 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
9 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
10 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
11 reasonable attorneys’ fees and costs, for all other aggrieved current and former employees of
12 Defendants during the Civil Penalty Period. Plaintiff does not seek to assert his own claim for civil
13 penalties under PAGA as part of this Action.

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

18 16. During the period beginning one (1) year preceding the provision of notice to the
19 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
20 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 210,
21 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 404, 432, 432.3, 432.5, 432.7,
22 432.8, 510, 512, 558, 1102.5, 1174, 1174.5, 11821.12, 1194, 1197, 1197.1, 1197.5, 1198.5, 1527,
23 2699, 2802, 2810.5, 3366, 3457, and 8397.4, among others, California Code of Regulations, Title
24 8, Section 3395, Business and Professions Code sections 16600, 16700, and 17200, Government
25 Code section 12952, as well as applicable Wage Orders.

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

1 2699.3 without asserting a claim to bring Plaintiff's own claim for civil penalties under PAGA.
2 (*See, e.g., Balderas v. Fresh Start Harvesting, Inc.*) Specifically, Plaintiff does not seek to recover
3 Plaintiff's 25% share of civil penalties for the particular Labor Code violations Plaintiff experienced.
4 Rather, this is a purely representative PAGA action wherein Plaintiff seeks to recover all civil
5 penalties for the Labor Code violations experienced by third-party aggrieved employees (Aggrieved
6 Employees) and the State of California's 75% of the civil penalties for the Labor Code violations
7 Plaintiff experienced.

8 18. On or around March 22, 2024, Plaintiff provided written notice pursuant to Labor
9 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants'
10 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
11 as well as by certified mail, with return receipt requested to Defendants, and each of them.

12 19. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
13 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
14 calendar days of the March 22, 2024 postmarked date of the herein-described notice sent by Plaintiff
15 to the LWDA and Defendants.

16 **FACTUAL BACKGROUND**

17 20. For at least four (4) years prior to the filing of this action and continuing to the
18 present, Defendants have, at times, failed to pay overtime wages to Plaintiff, Class Members, and
19 other Aggrieved Employees, or some of them, in violation of California state wage and hour laws
20 as a result of, without limitation, Plaintiff, Class Members, and other Aggrieved Employees working
21 over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work
22 week without being properly compensated for hours worked in excess of (8) hours per day in a work
23 day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive
24 work day in a work week by, among other things, failing to accurately track and/or pay for all
25 minutes actually worked at the proper overtime rate of pay; engaging, suffering, or permitting
26 employees to work off the clock, including, without limitation, by requiring Plaintiff, Class
27 Members, and other Aggrieved Employees : to come early to work and leave late work without
28 being able to clock in for all that time, to suffer under Defendants' control due to long lines for

1 clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
2 clock out for meal periods and continue working, to clock out for rest periods, to don and doff
3 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make
4 phone calls off the clock, to drive off the clock, and/or go through temperature checks off the clock;
5 failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay,
6 meal allowances, mask allowances, gift cards and other forms of remuneration into the regular rate
7 of pay for the pay periods where overtime was worked and the additional compensation was earned
8 for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time
9 entries, editing and/or manipulation of time entries; and by attempting but failing to properly
10 implement an alternative workweek schedule (“AWS”) (including, without limitation, by failing to
11 implement a written agreement designating the regularly scheduled alternative workweek in which
12 the specified number of work days and work hours are regularly recurring; failing to adopt the AWS
13 in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the
14 affected employees in the work unit; failing to follow the notice/disclosures procedures prior to any
15 AWS election; and/or failing to register an AWS election with the State of California, as required
16 by Labor Code section 511 and applicable Wage Orders) to the detriment of Plaintiff, Class
17 Members, and other Aggrieved Employees .

18 21. For at least four (4) years prior to the filing of this Action and continuing to the
19 present, Defendants have, at times, failed to pay minimum wages to Plaintiff, Class Members, and
20 other Aggrieved Employees , or some of them, in violation of California state wage and hour laws
21 as a result of, among other things, at times, failing to accurately track and/or pay for all hours
22 actually worked at their regular rate of pay that is above the minimum wage ; engaging, suffering,
23 or permitting employees to work off the clock, including, without limitation, by requiring Plaintiff,
24 Class Members, and other Aggrieved Employees : to come early to work and leave late work without
25 being able to clock in for all that time, to suffer under Defendants’ control due to long lines for
26 clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to
27 clock out for meal periods and continue working, to clock out for rest periods, to don and doff
28 uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make

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

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

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

23 24. At all times relevant hereto, Defendants had and have a policy or practice of failing
24 to permit Aggrieved Employees from taking cooldown rest periods as required under California
25 Code of Regulations, Title 8, Section 3395, and have failed to pay premium pay in lieu thereof under
26 Labor Code section 226.7.

27 25. At all times mentioned herein, Defendants had and have a policy or practice of
28 unlawfully deducting wages due, or to become due, or as an advance on wages to be earned; an

1 order, check, draft, note, memorandum, gift card, or other acknowledgment of indebtedness, (unless
2 it was negotiable and payable in cash, on demand, without discount, at some established place of
3 business in the state), the name and address of which must but did not appear on the instrument, and
4 at the time of its issuance and for a reasonable time thereafter, which must be but was not at least
5 30 days, the maker or drawer did not have sufficient funds in, or credit arrangement, or
6 understanding with the drawee for its payment of any scrip, coupon, or other thing redeemable, in
7 merchandise, or purporting to be payable or redeemable otherwise than in money. Plaintiff is further
8 informed and believes, and based thereon alleges that such wages were not compensated at the
9 "regular rate" of compensation as provided under Labor Code sections 226.7 and 510, subsection
10 (a).

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

19 27. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to timely pay Plaintiff, Class Members, and other Aggrieved Employees, among other
21 wages, all wages owed as a result of Defendants' practice or policy of failing to pay, among other
22 wages, overtime wages at the regular rate of pay, minimum wages, premium wages at the regular
23 rate of pay, paid time off, paid sick leave, and vacation time owed as required by Labor Code
24 sections 201, 202, and 203.

25 28. At all relevant times mentioned herein, Defendants have had a policy or practice of
26 failing to pay Plaintiff, Class Members, and other Aggrieved Employees their wages in accordance
27 with Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th
28 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month

1 during which the labor was performed, and labor performed between the 16th and the last day,
2 inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following
3 month.”

4 29. For at least three (3) years prior to the filing of this action and continuing to the
5 present, Defendants have, at times, failed to indemnify Plaintiff, Class Members, and other
6 Aggrieved Employees, or some of them, for the costs incurred in mileage and/or gas costs incurred
7 in driving personal vehicles for work-related purposes; using cellular phones for work-related
8 purposes.

9 30. At all relevant times mentioned herein, Defendants had or have a policy or practice
10 of failing to reimburse deposits made, including uniform deposits, together with all interest owed at
11 the separation of employment in violation of Labor Code section 404, to the detriment of Plaintiff,
12 Class Members, and other Aggrieved Employees.

13 31. 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, Class Members, and
15 other Aggrieved Employees with compensation at their final rate of pay for unused vested paid
16 vacation days pursuant to Labor Code section 227.3.

17 32. At all relevant times mentioned herein, Defendants have had a policy or practice of
18 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
19 limitation, Employee and other aggrieved employees, with their costs incurred for driving personal
20 vehicles (i.e., mileage and gas), and for the purchase and maintenance of cellular phones and cellular
21 phone plans, in direct consequence of the discharge of their duties, or of their obedience to the
22 directions of Defendant, as required by Labor Code section 2802.

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

1 leave; and other pertinent information required to be disclosed by Defendants under Labor Code
2 section 2810.5.

3 34. For at least four (4) years prior to the filing of this action and continuing to the
4 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
5 situated employees or former employees within the State of California with the rights provided to
6 them under the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section
7 245, *et seq.*

8 35. At all times mentioned herein, Defendants have had, and continue to have, a policy
9 of failing to provide all working employees with suitable seats when the nature of the work
10 reasonably permits the use of seats. Defendants have also failed to place an adequate number of
11 seats in reasonable proximity to the work area and/or permitted employees to use such seats when
12 it does not interfere with the performance of their duties and employees are not engaged in the active
13 duties of their employment, and the nature of their work requires standing.

14 36. At all times mentioned herein, Defendants have had, and continue to have, a policy
15 of failing to provide all temporary workers with owed wages weekly by not later than the regular
16 payday of the following week.

17 37. At all times mentioned herein, Defendants have had, and continue to have, a policy
18 of failing to provide adequate and readily accessible sanitation facilities; a regular schedule for
19 servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
20 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
21 blowers; and a sufficient number of toilets to be used by each sex of employee.

22 38. At all times mentioned herein, Defendants have had, and continue to have, a policy
23 of failing to conducting unlawful background checks on prospective and current employees prior to
24 making a conditional offer. Plaintiff is informed and believes, and based thereon alleges, that
25 Defendants violated applicable laws by, without limitation: requiring job applicants and employees
26 to disclose their conviction history before Defendants made a conditional offer of employment;
27 inquiring into or considering the conviction history of applicants before Defendants made any
28 conditional offers of employment; considering, distributing, or disseminating information about

1 arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion
2 program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant
3 to law, or any conviction for which the convicted person has received a full pardon or has been
4 issued a certificate of rehabilitation, while conducting conviction history background checks in
5 connection with any applications for employment; intending to deny an applicant a position of
6 employment solely or in part because of the applicant's conviction history; and asking applicants
7 for employment to disclose, through any written form or verbally, information concerning or related
8 to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that
9 occurred while the person was subject to the process and jurisdiction of the juvenile court, to the
10 detriment of Aggrieved Employees.

11 39. At all times mentioned herein, Defendants have had, and continue to have, a practice
12 or policy of relying on the salary history information of an applicant for employment as a factor in
13 determining whether to offer employment to an applicant or what salary to offer the applicant in
14 violation of Labor Code section 432.3 by including, on Defendants' application for employment, an
15 inquiry regarding current and/or former salary history information, including, without limitation,
16 compensation and benefits of the applicant for employment.

17 40. At all times mentioned herein, Defendants have had, and continue to have, a practice
18 or policy of requiring Aggrieved Employees to agree in writing to confidentiality policies that
19 unlawfully restrain trade by prohibiting Aggrieved Employees from speaking with prospective
20 employers about their work with Defendants, including but not limited to their wages and working
21 conditions. Defendants also required Aggrieved Employees to inform prospective employers of
22 Defendants' restrictions of Aggrieved Employees' freedom to work.

23 41. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of preventing Aggrieved Employees from using or disclosing the skills, knowledge and experience
25 they obtained at Defendants for purposes of competing with Defendants, including, without
26 limitation, preventing Aggrieved Employees from disclosing their wages in negotiating a new job
27 with a prospective employer, and from disclosing who else works at Defendants and under what
28 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed

1 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
2 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
3 Code sections 232, 232.5, and 1197.5, subdivision (k).

4 42. Defendants had and have a policy or practice of preventing Aggrieved Employees
5 from disclosing violations of state and federal law, either within Defendants to their managers or
6 outside to private attorneys or government officials, among others, in violation of Business and
7 Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition,
8 Plaintiff is informed and believes that Defendants' herein-described policies and/or practices
9 prevent Aggrieved Employees from disclosing information about unsafe or discriminatory working
10 conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5.

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

17 44. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
18 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
19 227.3, 245, *et seq.*, 404, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, and California Code of
20 Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium
21 wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage
22 statement penalties, failure to indemnify work-related expenses, failure to pay interest on deposits
23 made, failing to pay vested vacation time at the proper rate of pay, other such provisions of
24 California law, and reasonable attorneys' fees and costs.

25 45. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
26 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
27 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
28 appropriate and effective means to prevent further violations, as well as all monies owed but

1 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
2 restitution of amounts owed.

3 46. Plaintiff, in Plaintiff's representative capacity *only*, seeks civil penalties under Labor
4 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts on behalf of
5 only and all other Aggrieved Employees, which violate the California Labor Code as described
6 above.

7 **CLASS ACTION ALLEGATIONS**

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

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

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

19 **A. Numerosity**

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

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

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1 **B. Commonality**

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

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

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

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

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

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

8 P. Are Class Members entitled to interest?

9 C. **Typicality**

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

15 D. **Adequacy of Representation**

16 54. Plaintiff will fairly and adequately represent and protect the interest of Class
17 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
18 hour class actions.

19 E. **Superiority of Class Action**

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

26 56. Class action treatment will allow Class Members to litigate their claims in a manner
27 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
28

1 any difficulties that are likely to be encountered in the management of this action that would
2 preclude its maintenance as a class action.

3 **FIRST CAUSE OF ACTION**

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

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

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

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

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

19 61. Four (4) years prior to the filing of the Complaint in this Action through the present,
20 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
21 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
22 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
23 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
24 actually worked at the proper overtime rate of pay ; engaging, suffering, or permitting employees to
25 work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come
26 early to work and leave late work without being able to clock in for all that time, to suffer under
27 Defendants’ control due to long lines for clocking in, to complete pre-shift tasks before clocking in
28 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock

out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls off the clock, to drive off the clock, and/or go through temperature checks 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 manipulation of time entries; and by attempting but failing to properly implement an alternative workweek schedule (“AWS”) (including, without limitation, by failing to implement a written agreement designating the regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit; failing to follow 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.

62. 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.

63. 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)

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

65. 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.

66. 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.

67. 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 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls off the clock; to drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; failing to pay split shift premiums; and failing to pay reporting time pay to the detriment of Plaintiff and Class Members.

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

69. 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)

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

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

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

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

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

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

23 76. 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 additional pay
25 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

26 77. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
27 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
28

1 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
2 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

3 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

20 82. For four (4) years prior to the filing of the Complaint in this Action through the
21 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
22 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
23 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
24 Member's regular rate of compensation on the occasions that Class Members were not authorized
25 or permitted to take compliant rest periods.

26 83. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
27 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
28 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants

1 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

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

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

9 **FIFTH CAUSE OF ACTION**

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

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

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

16 88. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
17 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
18 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
19 discharge immediately upon termination. Class Members who resigned were entitled to payment
20 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
21 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
22 unpaid at the time of resignation.

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

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

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

92. 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 for all wages earned prior to termination or resignation.

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

SIXTH CAUSE OF ACTION

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

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

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

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

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1 97. 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 failed to comply
3 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
4 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
5 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
6 all applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate; among other things.

8 98. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
9 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
10 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
11 provided wage statements that Defendants knew were not accurate.

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

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

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

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1 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

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

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

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

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

112. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using cellular phones for work-related purposes.

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

114. 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.

115. 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.

1 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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

20 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

16 **ELEVENTH CAUSE OF ACTION**

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

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

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

1 advantage over other comparable companies doing business in the State of California that comply
2 with their obligations to compensate employees in accordance with the Labor Code.

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

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

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

15 **TWELFTH CAUSE OF ACTION**

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

18 133. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
19 preceding paragraphs as though fully set forth hereat.

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

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

26 135. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
27 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
28 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,

1 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
3 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
4 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

12 137. Plaintiff does not seek to recover Plaintiff’s 25% share of civil penalties for the
13 particular Labor Code violation(s) that Plaintiff experienced.

14 Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

143. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the particular Labor Code violation(s) that Plaintiff experienced.

Violation of Labor Code § 558

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

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

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

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

147. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the particular Labor Code violation(s) that Plaintiff experienced.

Violation of Labor Code § 1174.5

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

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

150. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
2 piece rate paid to, employees employed at the respective plants or establishments. These records
3 shall be kept in accordance with rules established for this purpose by the commission, but in any
4 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
5 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
6 earned.”

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

12 152. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
13 willfully failed to keep adequate or accurate time records including wage statements and similar
14 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
15 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
16 under Labor Code section 1174.

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

21 154. Plaintiff does not seek to recover Plaintiff’s 25% share of civil penalties for the
22 particular Labor Code violation(s) that Plaintiff experienced.

23 Violation of Labor Code § 1197.1

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

3 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for
4 each underpaid employee for each pay period for which the employee is underpaid.
5 This amount shall be in addition to an amount sufficient to recover underpaid wages,
6 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
7 pursuant to Section 203.

8 (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
9 (\$250) for each underpaid employee for each pay period for which the employee is
10 underpaid regardless of whether the initial violation is intentionally committed. This
11 amount shall be in addition to an amount sufficient to recover underpaid wages,
12 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
13 pursuant to Section 203.

14 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section
15 203, recovered pursuant to this section shall be paid to the affected employee.”

16 156. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
17 Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation,
18 routinely failing to pay Aggrieved Employees’ minimum wages for all hours worked or otherwise
19 under Defendants’ control due to, without limitation, routinely failing to accurately track and/or pay
20 for all hours actually worked; detrimental rounding or manipulation of time entries; paying straight
21 pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime rate of
22 pay; engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff and other
23 Aggrieved Employees to actual and liquidated damages.

24 157. As a direct and proximate result of the herein-described Labor Code violations,
25 pursuant to Labor Code section 1197.1, Aggrieved Employees are entitled to recover civil penalties
26 for Defendants’ herein-described Labor Code violations in the amount one hundred dollars (\$100)
27 for each Aggrieved Employee per pay period for the initial violation, and two hundred and fifty
28 dollars (\$250) for each Aggrieved Employee per pay period for each subsequent violation.

158. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the particular Labor Code violation(s) that Plaintiff experienced.

Civil Penalties Under Labor Code § 2699

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

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

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

162. Moreover, Aggrieved Employees within the State of California are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

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163. Plaintiff does not seek to recover Plaintiff's 25% share of civil penalties for the particular Labor Code violation(s) that Plaintiff experienced

DEMAND FOR JURY TRIAL

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

PRAYER

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

- A. An order certifying this case as a Class Action;
- B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;
- C. Damages for all wages earned and owed, including minimum and overtime wages and unpaid wages for vested vacation time, under Labor Code sections 510, 558.1, 1194, 1197 and 1199 and 227.3;
- D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512, 558.1 and 226.7;
- F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision (e) and 558.1;
- G. Waiting time penalties under Labor Code sections 203 and 558.1;
- H. Penalties to timely pay wages under Labor Code section 210;
- I. Damages under Labor Code sections 2802 and 558.1;
- J. Damages under Labor Code section 404;
- K. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, and 2802, and all other applicable sections listed *infra*;
- L. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;

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- M. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- O. An award of reasonable attorneys' fees pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed *infra*;
- P. For costs of suit incurred herein; and
- Q. For such other and further relief as the Court deems just and proper.

Dated: July 22, 2025

BIBIYAN LAW GROUP, P.C.

BY: /s/ Brandon M. Chang

DAVID D. BIBIYAN
VEDANG J. PATEL
BRANDON M. CHANG

Attorneys for Plaintiff FLAVIO RAMIREZ on behalf
of himself and all others similarly situated