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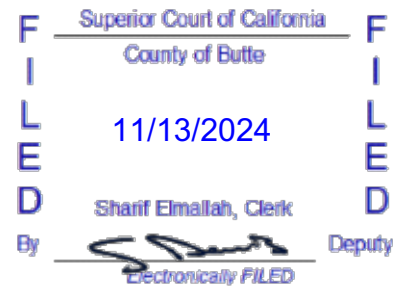
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Attorneys for Plaintiff, ESPERANZA GARCIA and
on behalf of herself and all others similarly situated
and aggrieved

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

ESPERANZA GARCIA, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

BERBERIAN NUT COMPANY, LLC, a
California limited liability company; MANUEL
QUEZADA, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 24CV01852

**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. UNFAIR COMPETITION; and
9. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (2004) FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, AND 2699, *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$35,000.00]

1 Plaintiff Esperanza Garcia, 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
6 Berberian Nut Company, LLC, and any of its respective subsidiaries or affiliated companies within
7 the State of California (“Berberian”); and Manuel Quezada (“Quezada” and collectively, with
8 Berberian and DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiff
9 and all other current and former non-exempt California employees employed by or formerly
10 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 and any of their respective subsidiaries or affiliated companies within the State of California, as a
14 proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
15 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
16 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
17 for violations of the Labor Code, including but not limited to, failure to comply with Labor Code
18 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 245, et seq.,
19 Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty
20 Period (collectively, “Aggrieved Employees”).

21 **PARTIES**

22 **A. Plaintiff**

23 3. Plaintiff Esperanza Garcia 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 swiping, washing, mopping, and performing general cleaning. Plaintiff is informed and believes,
27 and based thereon alleges, that Plaintiff Esperanza Garcia worked for Defendants from
28 approximately June of 2022 and through approximately March of 2024.

1 **B. Defendants**

2 4. Plaintiff is informed and believes and based thereon alleges that defendant Berberian
3 is, and at all times relevant hereto was, a limited liability company organized and existing under and
4 by virtue of the laws of the State of California and doing business in the County of Butte, State of
5 California. Plaintiff is informed and believes, and based thereon alleges, that Berberian is a “client
6 employer” within the meaning of Labor Code section 2810.3 that procures outplacement staffing
7 and payroll services from various staffing agencies, including but not limited to, Quezada. At all
8 relevant times herein, Berberian employed Plaintiff and similarly situated employees within the
9 State of California

10 5. Plaintiff is informed and believes and based thereon alleges that defendant Quezada
11 is, and at all times relevant hereto was, an individual residing in California, and DOES 1 through
12 100, as further defined below.. Plaintiff is informed and believes, and based thereon alleges, that
13 Quezada is a labor contractor within the meaning of Labor Code section 2810.3 that provides
14 outplacement staffing and payroll services for various industries and professions, including for
15 Berberian. At all relevant times herein, Quezada employed Plaintiff and similarly situated
16 employees within the State of California.

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

1 California, as well as Quezada and DOES 1 through 100 identified herein.

2 **JOINT LIABILITY ALLEGATIONS**

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

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

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

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

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

27 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
28 Defendants who personally committed the wrongful and illegal acts and violated the

1 laws as set forth in this Complaint, and who has hidden and currently hide behind the
2 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
3 other wrongful or inequitable purpose;

4 B. The Individual Defendants derive actual and significant monetary benefits by and
5 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
6 Defendants as the funding source for the Individual Defendants' own personal
7 expenditures;

8 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
9 and the Alter Ego Defendants, while really one and the same, were segregated to
10 appear as though separate and distinct for purposes of perpetrating a fraud,
11 circumventing a statute, or accomplishing some other wrongful or inequitable
12 purpose;

13 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
14 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
15 mentioned herein were, so mixed and intermingled that the same cannot reasonably
16 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
17 are, and at all relevant times mentioned herein were, used by the Individual
18 Defendants as mere shells and conduits for the conduct of certain of their, and each
19 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
20 herein were, the alter egos of the Individual Defendants;

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

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

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

6 **JURISDICTION**

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

9 14. Venue is proper in Butte County, California pursuant to Code of Civil Procedure
10 sections 392, et seq. because, among other things, Butte County is where the causes of action
11 complained of herein arose; the county in which the employment relationship began; the county in
12 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
13 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
14 and Defendants was actually performed; and the county in which Defendants, or some of them,
15 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class
16 Members in Butte County, and because Defendants employ numerous Class Members in Butte
17 County.

18 15. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
19 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other's wage
20 and hour violations under Labor Code section 2810.3 on or around April 23, 2024 by certified mail
21 with return receipt requested.

22 16. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
23 Defendants during the applicable statutory period and suffered one or more of the Labor Code
24 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other
25 aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus
26 reasonable attorneys' fees and costs, as the term "civil penalty" is defined under *ZB N.A. v. Superior*
27 *Court* (2019) 8 Cal.5th 175.

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

5 18. During the period beginning one (1) year preceding the provision of notice to the
6 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
7 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 256,
8 432, 510, 512, 558, 1174, 1194, 1197, 1198.5, 2802, and 2810.3, and 2810.5, among others.

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

13 20. On or around July 19, 2024, Plaintiff provided written notice under Labor Code
14 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
15 of various, including the herein-described, provisions of the Labor Code, to the Labor and
16 Workforce Development Agency (“LWDA”), as well as by certified mail, with return receipt
17 requested to Defendants, and each of them.

18 21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
19 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
20 calendar days of the July 19, 2024 postmarked date of the herein-described notice sent by Plaintiff
21 to the LWDA and Defendants.

22 **FACTUAL BACKGROUND**

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

1 worked on the seventh consecutive work day in a work week by, among other things, failing to
2 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay;
3 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
4 by requiring Plaintiff and Class Members: to come early to work and leave late work without being
5 able to clock in for all that time, to suffer under Defendants' control due to long lines for clocking
6 in, and to clock out for meal periods and continue working; detrimental rounding of employee time
7 entries; and/or editing and/or manipulation of time entries to show less hours than actually worked;
8 to the detriment of Plaintiff and Class Members. In addition, Defendants would also be liable for
9 civil penalties pursuant to Labor Code sections 558 and 2699.

10 23. 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 and Class Members,
12 or some of them, in violation of California state wage and hour laws as a result of, among other
13 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
14 rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work
15 off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come early
16 to work and leave late work without being able to clock in for all that time, to suffer under
17 Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in
18 and post-shift tasks after clocking out, and to clock out for meal periods and continue working;
19 detrimental rounding of employee time entries; and/or editing and/or manipulation of time entries
20 to show less hours than actually worked to the detriment of Plaintiff and Class Members. In addition,
21 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

22 24. For at least four (4) years prior to the filing of this Action and continuing to the
23 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
24 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
25 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
26 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
27 for such unprovided meal periods as required by California wage and hour laws. In addition,
28 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

1 25. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
3 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
4 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
5 California wage and hour laws. In addition, Defendants would also be liable for civil penalties
6 pursuant to Labor Code sections 558 and 2699.

7 26. For at least three (3) years prior to the filing of this action and continuing to the
8 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
9 full amount of their wages owed to them upon termination and/or resignation as required by Labor
10 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
11 minimum wages, and premium wages. In addition, Defendants would also be liable for civil
12 penalties pursuant to Labor Code sections 558 and 2699.

13 27. For at least one (1) year prior to the filing of this Action and continuing to the present,
14 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
15 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
16 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
17 hours worked at each hourly rate; the name and address of the legal entity that is the employer; the
18 name and address of the entity securing the services of the farm labor contractor who employed
19 Plaintiff and Class Members; and other such information as required by Labor Code section 226,
20 subdivision (a). As a result thereof, Defendants have further failed to furnish employees with an
21 accurate calculation of gross and gross wages earned, as well as gross and net wages paid. In
22 addition, Defendants would also be liable for civil penalties pursuant to Labor Code sections 226.3,
23 558 and 2699.

24 28. For at least one (1) year prior to the filing of this action and continuing to the present,
25 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
26 amount of their wages for labor performed in a timely fashion as required under Labor Code section
27 204. In addition, Defendants would also be liable for civil penalties pursuant to Labor Code sections
28 558 and 2699.

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

6 30. 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,
8 245, *et seq.*, 510, 512, 558.1, 1194, 1194.2, 1197, and California Code of Regulations, Title 8,
9 section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
10 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
11 other such provisions of California law, and reasonable attorneys' fees and costs.

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

18 32. At all relevant times mentioned herein, Defendants have had a policy or practice of
19 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
20 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
21 Employees with the rates of pay and overtime rates of pay applicable to their employment;
22 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
23 name, address, and telephone number of the workers' compensation insurance carrier; information
24 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
25 under Labor Code section 2810.5. In addition, Defendants would also be liable for civil penalties
26 pursuant to Labor Code sections 558 and 2699.

27 33. 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 34. Plaintiff, in Plaintiff's representative capacity, seek civil penalties under Labor Code
5 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
6 California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
7 Employees pursuant to PAGA.

8 **CLASS ACTION ALLEGATIONS**

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

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

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

20 **A. Numerosity**

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

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

1 **B. Commonality**

2 40. 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 violate the Unfair Competition Law, Business and Professions Code
26 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 27 L. Are Class Members entitled to restitution of wages under Business and Professions
28 Code section 17203?

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

2 N. Are Class Members entitled to interest?

3 C. **Typicality**

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

9 D. **Adequacy of Representation**

10 42. Plaintiff will fairly and adequately represent and protect the interest of Class
11 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
12 hour class actions.

13 E. **Superiority of Class Action**

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

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

24 **FIRST CAUSE OF ACTION**

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

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

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1 46. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
3 Wage Orders.

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

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

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

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50. 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.

51. 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)

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

53. 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.

54. 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.

55. 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, and to clock out for meal periods and continue working; detrimental rounding of employee time entries; and/or editing and/or manipulation of time entries to show less hours than actually worked to the detriment of Plaintiff and Class Members.

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56. 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.

57. 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)

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

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

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

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

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

1 provided compliant meal periods.

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

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

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

13 **FOURTH CAUSE OF ACTION**

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

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

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

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

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69. 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.

70. 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.

71. 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.

72. 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.

73. 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)

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

75. 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 76. 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 77. 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 78. 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 79. 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 80. 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 81. 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 82. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 83. 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 84. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
8 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
9 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
10 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
11 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
12 employer; and the name and address of the entity securing the services of the farm labor contractor
13 who employed Plaintiff and Class Members, among other things.

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

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

27 87. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
28 suffered injury. The absence of accurate information on Class Members' wage statements at times

1 has delayed timely challenge to Defendants’ unlawful pay practices; requires discovery and
2 mathematical computations to determine the amount of wages owed; causes difficulty and expense
3 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
4 about wages and amounts deducted from wages to state and federal governmental agencies, among
5 other things.

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

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

14 **SEVENTH CAUSE OF ACTION**

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

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

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

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

25 93. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
26 independent and apart from, any other penalty provided in this article, every person who fails to pay
27 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
28 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars

1 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
2 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
3 percent of the amount unlawfully withheld.”

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

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

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

16 **EIGHTH CAUSE OF ACTION**

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

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

20 98. 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 99. 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.

5 100. 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.

13 101. 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 **NINTH CAUSE OF ACTION**

16 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

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

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

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

25 104. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
26 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
27 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
28 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any

1 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
2 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
3 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

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

12 Civil Penalties Under Labor Code § 226.3

13 106. Defendants had and have a policy or practice of failing to comply with Labor Code
14 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
15 with itemized wage statements that accurately reflect: reflect gross wages earned; total hours
16 worked; net wages earned; all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate; and other such information as required
18 by Labor Code section 226, subdivision (a).

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

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

26 109. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
27 and have a policy or practice of failing to furnish non-exempt employees, including, without
28 limitation, Plaintiff, itemized wage statements that accurately reflect: reflect gross wages earned;

1 total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate; and other such information as
3 required by Labor Code section 226, subdivision (a).

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

9 Violation of Labor Code § 558

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

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

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

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

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

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

6 Violation of Labor Code § 1174.5

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

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

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

26 117. Pursuant to Labor Code section 1174.5, "[a]ny person employing labor who willfully
27 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
28 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any

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

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

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

12 Violation of Labor Code § 1197.1

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

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

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

28 ///

1 C. Wages, liquidated damages, and any applicable penalties imposed pursuant
2 to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

3 121. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
4 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
5 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages
6 for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated
7 damages.

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

14 Civil Penalties Under Labor Code § 2699

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

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

27 125. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
28 each of them, violated the Labor Code sections described herein, including, without limitation, for

1 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
2 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
3 name of the employer, including any “doing business as” names used, the name, address and
4 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
5 leave, and other pertinent information required to be disclosed by Employer under Labor Code
6 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
7 sick leave required to be provided pursuant to California and local laws.

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

11 **DEMAND FOR JURY TRIAL**

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

13 **PRAYER**

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

- 16 A. An order certifying this case as a Class Action;
17 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff’s
18 counsel as class counsel;
19 C. Damages for all wages earned and owed, including minimum and overtime wages,
20 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
21 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
22 E. Damages for unpaid premium wages from missed meal and rest periods under,
23 among other Labor Code sections, 512, 558.1 and 226.7;
24 F. Penalties for inaccurate wage statements under Labor Code sections 226,
25 subdivision (e) and 558.1;
26 G. Waiting time penalties under Labor Code sections 203 and 558.1;
27 H. Penalties to timely pay wages under Labor Code section 210;

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

14
15 Dated: November 13, 2024

SHIRIAN LAW, P.C.

16
17 BY: 

JOSHUA SHIRIAN

Attorneys for Plaintiff ESPERANZA GARCIA on
behalf of herself and all others similarly situated and
aggrieved