

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)
david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)
vedang@tomorrowlaw.com

Brandon M. Chang (SBN 316197)
brandon@tomorrowlaw.com

1460 Westwood Boulevard,
Los Angeles, CA 90024

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

Attorneys for Plaintiff, CRYSTAL ROTARU and
on behalf of all others similarly situated

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

CRYSTAL ROTARU, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

BLOWER-DEMPSAY CORPORATION, a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 30-2024-01409012-CU-OE-CXC

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

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$35,000.00]

Plaintiff CRYSTAL ROTARU, on behalf of Plaintiff and all others similarly situated, alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

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

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Blower-Dempsey Corporation., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California (“Defendant”), (collectively, and with DOES 1 through 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code sections 96, 98.6, 142.3, 200, 201, 201.3, 201.5, 201.7, 202, 203, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206.5, 210, 212, 213, 221, 222, 222.5, 223, 226, 226.3, 226.7, 227.3, 231, 232, 232.5, 233, 234, 245, *et seq.*, 246, 351, 353, 404, 432, 432.3, 432.5, 432.7, 432.8, 450, 510, 511, 512, 551, 552, 558, 1101, 1102, 1102.5, 1293.1, 1290, 1292, 1293, 1294.1, 1301, 1391, 1475, 1695.55, 1696.5, 1174, 1174.5, 1771, 1774, 1775, 1776, 1811, 1815, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1700.31, 2673, 2800, 2802, 2810.5; all related provisions of the California Code of Regulations; and all related provisions of the applicable IWC Wage orders (including all claims for violations of suitable seating requirements), on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

1 ///

2 ///

3 **PARTIES**

4 **A. Plaintiff**

5 3. Plaintiff CRYSTAL ROTARU is a resident of the State of California. At all relevant
6 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
8 entering orders from customers into the computer system. Plaintiff is informed and believes, and
9 based thereon alleges, that Plaintiff CRYSTAL ROTARU worked for Defendants from
10 approximately October of 2022 through approximately June of 2023.

11 **B. Defendants**

12 4. Plaintiff is informed and believes and based thereon alleges that defendant BDC is,
13 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
14 laws of the State of California and doing business in the County of Orange, State of California. At
15 all relevant times herein, BDC employed Plaintiff and similarly situated employees within the State
16 of California.

17 5. 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 BDC, and any of their parent, subsidiary, or affiliated companies within the State of

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

2 ///

3 **JOINT LIABILITY ALLEGATIONS**

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

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

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

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

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

28 A. The Alter Ego Defendants are completely dominated and controlled by the Individual

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

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

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

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

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

28 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual

Defendants (and vice versa), and the fiction of their separate corporate existence must be disregarded;

///

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

JURISDICTION

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

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

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

15. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the

1 PAGA allegations described herein is not required.

2 16. During the period beginning one (1) year preceding the provision of notice to the
3 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
4 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 142.3, 200, 201, 201.3, 201.5, 201.7,
5 202, 203, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206.5, 210, 212, 213, 221, 222, 222.5,
6 223, 226, 226.3, 226.7, 227.3, 231, 232, 232.5, 233, 234, 245, *et seq.*, 246, 351, 353, 404, 432,
7 432.3, 432.5, 432.7, 432.8, 450, 510, 511, 512, 551, 552, 558, 1101, 1102, 1102.5, 1293.1, 1290,
8 1292, 1293, 1294.1, 1301, 1391, 1475, 1695.55, 1696.5, 1174, 1174.5, 1771, 1774, 1775, 1776,
9 1811, 1815, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1700.31, 2673, 2800, 2802,
10 2810.5, 3366, 3457, and 8397.4, among others, California Code of Regulations, Title 8, Section
11 3395, Business and Professions Code sections 16600, 16700, and 17200, Government Code section
12 12952, as well as applicable Wage Orders.

13 17. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
14 on behalf of all other aggrieved current and former employees within the statutory period, to bring a
15 civil action to recover civil penalties pursuant to the procedures specified in Labor Code section
16 2699.3 without asserting a claim to bring Plaintiff’s own claim for civil penalties under PAGA.
17 (*See, e.g., Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533.) Specifically,
18 Plaintiff does not seek to recover Plaintiff’s 25% share of civil penalties for the particular Labor
19 Code violations Plaintiff experienced. Rather, this is a purely representative PAGA action wherein
20 Plaintiff seeks to recover all civil penalties for the Labor Code violations experienced by third-party
21 aggrieved employees (Aggrieved Employees) and the State of California’s 75% of the civil penalties
22 for the Labor Code violations Plaintiff experienced.

23 18. On or around June 4, 2024, Plaintiff provided written notice pursuant to Labor Code
24 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
25 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
26 by certified mail, with return receipt requested to Defendants, and each of them.

27 19. Plaintiff also provided Defendants, and each of them, with notice under Labor Code
28 section 2810.3, subdivision (d) that Plaintiff would seek to hold them liable for each other’s wage

1 and hour violations under Labor Code section 2810.3 on June 4, 2024 by certified mail with return
2 receipt requested.

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

7 **FACTUAL BACKGROUND**

8 21. For at least four (4) years prior to the filing of this action and continuing to the
9 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
10 some of them, in violation of California state wage and hour laws as a result of, without limitation,
11 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
12 seven consecutive work days in a work week without being properly compensated for hours worked
13 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
14 worked on the seventh consecutive work day in a work week by, among other things, failing to
15 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay;
16 engaging, suffering, or permitting employees to work off the clock, including, without limitation, by
17 requiring Plaintiff and Class Members: to come early to work and leave late work without being
18 able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks
19 after clocking out, to clock out for meal periods and continue working, to clock out for rest periods,
20 to attend company meetings off the clock, to make phone calls off the clock, to drive off the clock,
21 and/or go through security screenings and/or temperature checks off the clock; failing to include all
22 forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask
23 allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay
24 periods where overtime was worked and the additional compensation was earned for the purpose of
25 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
26 manipulation of time entries; and by attempting but failing to properly implement an alternative
27 workweek schedule ("AWS") (including, without limitation, by failing to implement a written
28 agreement designating the regularly scheduled alternative workweek in which the specified number

1 of work days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot
2 election, before the performance of work, by at least a two-thirds (2/3) vote of the affected
3 employees in the work unit; failing to follow the notice/disclosures procedures prior to any AWS
4 election; and/or failing to register an AWS election with the State of California, as required by
5 Labor Code section 511 and applicable Wage Orders) to the detriment of Plaintiff and Class
6 Members.

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

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

26 24. For at least four (4) years prior to the filing of this action and continuing to the
27 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
28 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major

1 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
2 California wage and hour laws.

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

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

16 27. For at least one (1) year prior to the filing of this action and continuing to the present,
17 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
18 amount of their wages for labor performed in a timely fashion as required under Labor Code section
19 204.

20 28. For at least three (3) years prior to the filing of this action and continuing to the
21 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
22 costs incurred in mileage and/or gas costs incurred in driving personal vehicles for work-related
23 purposes; and using cellular phones for work-related purposes.

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

28 30. For at least four (4) years prior to the filing of this action and continuing to the

1 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly
2 situated employees or former employees within the State of California with the rights provided to
3 them under the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section
4 245, *et seq.*

5 31. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
6 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
7 227.3, 245, *et seq.*, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, and California Code of Regulations,
8 Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for
9 missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement
10 penalties, failure to indemnify work-related expenses, failing to pay vested vacation time at the
11 proper rate of pay, other such provisions of California law, and reasonable attorneys' fees and costs.

12 32. 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 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of failing to pay overtime wages to Aggrieved Employees in the State of California in violation of
20 California state wage and hour laws as a result of, without limitation, Aggrieved Employees
21 working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays
22 in a workweek without paying them proper overtime wages, as a result of, without limitation, failing
23 to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
24 employees to work off the clock, including, without limitation, by requiring employees: to come
25 early to work and leave late work without being able to clock in for all that time, to suffer under
26 Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in
27 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock
28 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend

1 company meetings off the clock, to make phone calls or drive off the clock, and/or go through
2 security screenings and/or temperature checks off the clock; failing to include all forms of
3 remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask
4 allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay
5 periods where overtime was worked and the additional compensation was earned for the purpose of
6 calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or
7 manipulation of time entries to show less hours than actually worked, for paying straight pay instead
8 of overtime pay, and by attempting but failing to properly implement an alternative workweek
9 schedule (“AWS”) (including, without limitation, by failing to implement a written agreement
10 designating the regularly scheduled alternative workweek in which the specified number of work
11 days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot election,
12 before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the
13 work unit; failing to follow the notice/disclosures procedures prior to any AWS election; and/or
14 failing to register an AWS election with the State of California, as required by Labor Code section
15 511 and applicable Wage Orders) all to the detriment of Employee and other aggrieved employees.
16 Consequently, Employee is informed and believes, and based thereon alleges, that Employer
17 violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of
18 providing total compensation that is less than the required legal overtime compensation for the
19 overtime worked, entitling Employee and other aggrieved employees to damages, to the detriment of
20 Aggrieved Employees.

21 34. At all relevant times mentioned herein, Defendants had and have a practice or policy
22 of failing to compensate Aggrieved Employees with minimum wages for all hours Aggrieved
23 Employees worked or were otherwise under Defendants’ control as a result of, without limitation,
24 failing to accurately track and/or pay for all minutes actually worked; by requiring Aggrieved
25 Employees: to come early to work and leave late work without being able to clock in for all that
26 time, to suffer under Employer’s control due to long lines for clocking in, to complete pre-shift tasks
27 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue
28 working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the

1 clock, to attend company meetings off the clock, to make phone calls or drive off the clock;
2 detrimental rounding of employee time entries; editing and/or manipulation of time entries to show
3 less hours than actually worked; and failing to pay split shift premiums. In addition, aggrieved
4 employees were required to report to work, and did report, but were not put to work and/or were
5 furnished less than half their usual or scheduled day's work without being paid for half the usual or
6 scheduled work at their regular rate of pay, to the detriment of Aggrieved Employees.

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

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

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

1 38. At all times relevant hereto, Defendants had and have a policy or practice of failing
2 to pay premium payments under Labor Code section 226.7 to Aggrieved Employees for non-
3 compliant meal periods and rest periods, as well as the failure to provide cooldown periods, at the
4 proper regular rate of pay in violation of Labor Code sections 512, 226.7, and applicable wage
5 orders.

6 39. At all times mentioned herein, Defendants had and have a policy or practice of
7 issuing payment of wages due, or to become due, or as an advance on wages to be earned: (1) an
8 order, check, draft, note, memorandum, gift card, or other acknowledgment of indebtedness, which
9 was not negotiable and payable in cash, on demand, without discount, at some established place of
10 business in the state; and/or upon which the name and address did not appear on the instrument;
11 and/or at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days,
12 the maker or drawer did not have sufficient funds in, or credit, arrangement, or understanding with
13 the drawee for its payment and/or (2) any scrip, coupon, or other thing redeemable, in merchandise,
14 or purporting to be payable or redeemable otherwise than in money. Plaintiff is further informed
15 and believes, and based thereon alleges that such wages were not compensated at the “regular rate”
16 of compensation as provided under Labor Code sections 226.7 and 510, subsection (a).

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

25 41. At all relevant times mentioned herein, Defendants had and have a policy or practice
26 of failing to comply with Labor Code section 226, subdivision (a), by intentionally failing to furnish
27 Aggrieved Employees with documents signed to obtain or hold employment under Labor Code
28 section 432, personnel records under Labor Code section 1198.5, and time records under Labor

1 Code section 1174, making it difficult for Aggrieved Employees to calculate their unpaid wages
2 and/or premium payments, to the detriment of Aggrieved Employees.

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

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

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

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

1 46. At all relevant times mentioned herein, Defendants failed to provide Aggrieved
2 Employees with the amount of paid sick leave required to be provided pursuant to California law
3 (including, without limitation Labor Code section 245, *et seq.*), and also did not permit its use upon
4 request as contemplated under California laws, to the detriment of Aggrieved Employees.

5 47. At all relevant times mentioned herein, Defendants had or have a policy or practice of
6 failing to reimburse deposits made, including uniform deposits, together with all interest owed at the
7 separation of employment in violation of Labor Code section 404.

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

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

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

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

28 52. At all times mentioned herein, Defendants have had, and continue to have, a policy

1 of conducting unlawful background checks on prospective and current employees prior to making a
2 conditional offer. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 violated applicable laws by, without limitation: requiring job applicants and employees to disclose
4 their conviction history before Defendants made a conditional offer of employment; inquiring into
5 or considering the conviction history of applicants before Defendants made any conditional offers of
6 employment; considering, distributing, or disseminating information about arrests not followed by
7 conviction, referrals to or participation in a pretrial or posttrial diversion program, convictions that
8 have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction
9 for which the convicted person has received a full pardon or has been issued a certificate of
10 rehabilitation, while conducting conviction history background checks in connection with any
11 applications for employment; intending to deny an applicant a position of employment solely or in
12 part because of the applicant's conviction history; and asking applicants for employment to disclose,
13 through any written form or verbally, information concerning or related to an arrest, detention,
14 processing, diversion, supervision, adjudication, or court disposition that occurred while the person
15 was subject to the process and jurisdiction of the juvenile court, to the detriment of Aggrieved
16 Employees.

17 53. At all times mentioned herein, Defendants have had, and continue to have, a practice
18 or policy of relying on the salary history information of an applicant for employment as a factor in
19 determining whether to offer employment to an applicant or what salary to offer the applicant in
20 violation of Labor Code section 432.3 by including, on Defendants' application for employment, an
21 inquiry regarding current and/or former salary history information, including, without limitation,
22 compensation and benefits of the applicant for employment.

23 54. At all times mentioned herein, Defendants have had, and continue to have, a practice
24 or policy of requiring Aggrieved Employees to agree in writing to confidentiality policies that
25 unlawfully restrain trade by prohibiting Aggrieved Employees from speaking with prospective
26 employers about their work with Defendants, including, but not limited to, their wages and working
27 conditions. Defendants also required Aggrieved Employees to inform prospective employers of
28 Defendants' restrictions of Aggrieved Employees' freedom to work.

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

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

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

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

CLASS ACTION ALLEGATIONS

59. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action

1 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all persons
2 employed by Defendants as a non-exempt, hourly-paid employee in California in Defendants' Pak
3 West division at any time commencing four (4) years preceding the filing of Plaintiff's complaint up
4 until the time that notice of the class action is provided to the class (collectively referred to as "Class
5 Members").

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

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

12 ///

13 **A. Numerosity**

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

18 63. Accounting for employee turnover during the relevant periods necessarily increases
19 this number. Plaintiff alleges Defendants' employment records would provide information as to the
20 number and location of all Class Members. Joinder of all members of the proposed Class is not
21 practicable.

22 **B. Commonality**

23 64. There are questions of law and fact common to Class Members. These common
24 questions include, but are not limited to:

25 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
26 worked at a proper overtime rate of pay?

27 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay for
28 all other time worked at the employee's regular rate of pay and a rate of pay that is

greater than the applicable minimum wage?

C. Did Defendants violate Labor Code section 512 by not authorizing or permitting Class Members to take compliant meal periods?

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

E. Did Defendants violate applicable Wage Orders by not authorizing or permitting Class Members to take compliant rest periods?

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

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

///

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

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

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

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

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

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

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

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

1 P. Are Class Members entitled to interest?

2 C. **Typicality**

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

8 D. **Adequacy of Representation**

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

12 ///

13 E. **Superiority of Class Action**

14 67. 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 68. 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 69. Plaintiff realleges and incorporates by reference all of the allegations contained in the
27 preceding paragraphs as though fully set forth hereat.

28 70. At all relevant times, Plaintiff and Class Members were employees or former

1 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
2 Wage Orders.

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

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

12 73. Four (4) years prior to the filing of the Complaint in this Action through the present,
13 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
14 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
15 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
16 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
17 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to
18 work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to come
19 early to work and leave late work without being able to clock in for all that time, to complete pre-
20 shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods
21 and continue working, to clock out for rest periods, to attend company meetings off the clock, to
22 make phone calls off the clock, to drive off the clock, and/or go through security screenings and/or
23 temperature checks off the clock; failing to include all forms of remuneration, including non-
24 discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards and other forms
25 of remuneration into the regular rate of pay for the pay periods where overtime was worked and the
26 additional compensation was earned for the purpose of calculating the overtime rate of pay;
27 detrimental rounding of employee time entries, editing and/or manipulation of time entries; and by
28 attempting but failing to properly implement an alternative workweek schedule (“AWS”) (including,

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

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

13 ///

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

18 **SECOND CAUSE OF ACTION**

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

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

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

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

27 79. For four (4) years prior to the filing of the Complaint in this Action through the
28 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at

1 their regular rate of pay that is above the minimum wage; engaged, suffered, or permitted employees
2 to work off the clock, including, without limitation, by requiring Plaintiff and Class Members: to
3 come early to work and leave late work without being able to clock in for all that time, to complete
4 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal
5 periods and continue working, to clock out for rest periods, to attend company meetings off the
6 clock, to make phone calls off the clock; to drive off the clock; detrimental rounding of employee
7 time entries; editing and/or manipulation of time entries to show less hours than actually worked;
8 failing to pay split shift premiums; and failing to pay reporting time pay to the detriment of Plaintiff
9 and Class Members.

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

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

17 **THIRD CAUSE OF ACTION**

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

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

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

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

85. 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.

86. 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 provided compliant meal periods.

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

88. 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 missed, untimely, interrupted, incomplete and/or on-duty meal periods.

89. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal 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.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

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

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

92. California law and applicable Wage Orders require that employers “authorize and

1 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
2 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
3 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
4 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
5 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
6 thirty (30) minutes of paid rest period.

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

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

17 95. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
18 rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s
19 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
20 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

21 96. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
22 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
23 owed for rest periods that they were not authorized or permitted to take.

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

28 **FIFTH CAUSE OF ACTION**

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

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

99. 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.

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

///

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

102. 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.

103. 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

1 resignation, until paid, up to a maximum of thirty (30) days.

2 104. 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 for all wages
4 earned prior to termination or resignation.

5 105. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 waiting time penalties, interest, and their costs of suit, as well.

8 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

26 110. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
27 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
28 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully

1 provided wage statements that Defendants knew were not accurate.

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

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

13 113. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
14 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
15 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
16 attorneys' fees, and costs of suit.

17 **SEVENTH CAUSE OF ACTION**

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

19 114. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
20 incorporate each by reference as though fully set forth hereat.

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

23 116. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
24 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
25 during which the labor was performed, and labor performed between the 16th and the last day,
26 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
27 month.”
28

1 117. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
2 independent and apart from, any other penalty provided in this article, every person who fails to pay
3 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
4 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
5 dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any
6 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
7 plus 25 percent of the amount unlawfully withheld.”

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

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

17 120. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
18 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of
19 penalties, interest, and their costs of suit, as well.

20 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

13 127. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
14 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
15 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
16 costs of suit.

17 ///

18 **NINTH CAUSE OF ACTION**

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

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

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

27 130. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant
28 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and

1 that Plaintiff's employment contract with Defendants included paid vacations.

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

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

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

14 **TENTH CAUSE OF ACTION**

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

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

18 ///

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

1 with their obligations to compensate employees in accordance with the Labor Code.

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

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

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

14 **ELEVENTH CAUSE OF ACTION**

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

16 139. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
17 preceding paragraphs as though fully set forth hereat.

18 ///

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

20 140. 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.”

25 141. At all relevant times herein, Labor Code section 210, subdivision (a), states and
26 stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in
27 this 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.”

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

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

13 Civil Penalties Under Labor Code § 226.3

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

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

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

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

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

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

15 Violation of Labor Code § 558

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

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

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

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

27 151. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
28 each of them, violated, or caused to be violated, the Labor Code sections described herein, including

1 failing to provide written notice in the language Defendant normally uses to communicate
2 employment-related information to the employee, containing the following information: pay the
3 rates of pay and overtime rates of pay applicable to their employment; allowances claimed as part of
4 the minimum wage; the regular payday designated by Defendants; Defendants' name(s), including
5 "doing business as" names used; the name, address, and telephone number of the workers'
6 compensation insurance carrier; information regarding paid sick leave; and other pertinent
7 information required to be disclosed by Defendants.

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

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

15 Violation of Labor Code § 1174.5

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

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

26 156. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
27 every person employing labor in California to "[k]eep, at a central location in the state or at the
28 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.”

7 157. 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).

12 158. 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
16 records under Labor Code section 1174.

17 159. 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.

21 160. 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

24 161. 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 or
26 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,
28

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
4 (\$100) for each underpaid employee for each pay period for which the employee
5 is underpaid. This amount shall be in addition to an amount sufficient to recover
6 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
7 applicable penalties imposed pursuant to Section 203.

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

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

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

25 163. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 1197.1, Aggrieved Employees are entitled to recover civil penalties
27 for Defendants’ herein-described Labor Code violations in the amount one hundred dollars (\$100)
28

1 for each Aggrieved Employee per pay period for the initial violation, and two hundred and fifty
2 dollars (\$250) for each Aggrieved Employee per pay period for each subsequent violation.

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

5 Civil Penalties Under Labor Code § 2699

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

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

18 167. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
19 each of them, violated the Labor Code sections described herein, including, without limitation, for
20 the failure to provide Aggrieved Employees with the amount of paid sick leave required to be
21 provided pursuant to California and local laws and provide written notice in the language Defendant
22 normally uses to communicate employment-related information to the employee, containing the
23 following information: pay the rates of pay and overtime rates of pay applicable to their
24 employment; allowances claimed as part of the minimum wage; the regular payday designated by
25 Defendants; Defendants' name(s), including "doing business as" names used; the name, address, and
26 telephone number of the workers' compensation insurance carrier; information regarding paid sick
27 leave; and other pertinent information required to be disclosed by Defendants under Labor Code
28 section 2810.5.

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

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

6 **DEMAND FOR JURY TRIAL**

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

8 **PRAYER**

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

- 11 A. An order certifying this case as a Class Action;
- 12 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
13 counsel as class counsel;
- 14 C. Damages for all wages earned and owed, including minimum and overtime wages
15 and unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,
16 1194, 1197 and 1199 and 227.3;
- 17 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 18 E. Damages for unpaid premium wages from missed meal and rest periods under,
19 among other Labor Code sections, 512, 558.1 and 226.7;
- 20 F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision
21 (e) and 558.1;
- 22 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 23 H. Penalties to timely pay wages under Labor Code section 210;
- 24 I. Damages under Labor Code sections 2802 and 558.1;
- 25 J. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
26 1197.1, and 2699 for all Aggrieved Employees aside from Plaintiff;
- 27 K. Preliminary and permanent injunctions prohibiting Defendants from further violating
28 the California Labor Code and requiring the establishment of appropriate and

1 effective means to prevent future violations;

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

4 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;

5 N. An award of reasonable attorneys' fees and costs in prosecuting this action;

6 O. For costs of suit incurred herein; and

7 P. For such other and further relief as the Court deems just and proper.
8

9 Dated: August 8, 2025

BIBIYAN LAW GROUP, P.C.

10
11 BY: Brandon M. Chang

12 Brandon M. Chang

13 Attorneys for Plaintiff CRYSTAL ROTARU and
14 on behalf of all others similarly situated
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 1460 Westwood Boulevard, Los Angeles, California 90024.

On August 27, 2025, I caused a true and correct copy of the foregoing document described as **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** to be served by electronic transmission to the below-referenced electronic email addresses as follows:

RUTAN & TUCKER, LLP
Brian C. Sinclair (SBN 180145)
bsinclair@rutan.com
Kimberly A. Nayagam (SBN 301058)
knayagam@rutan.com
18575 Jamboree Road, 9th Floor
Irvine, California 92612
Tel: (714) 641-5100; Fax: (714) 546-9035

Attorneys for Defendant, BLOWER-DEMPSAY CORPORATION, INC.

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

Executed on August 27, 2025, at Los Angeles, California.

/s/ Araceli Marquez
Araceli Marquez