

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (Cal. Bar No. 287811)

david@tomorrowlaw.com

Jeffrey D. Klein (Cal. Bar No. 297296)

jeff@tomorrowlaw.com

Calyn V. Hadlock (Cal. Bar No. 352401)

calyn@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

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

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/28/2024 7:16 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Gnade, Deputy Clerk

Attorneys for Plaintiff, GERSON CASTELLANOS and
on behalf of all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

GERSON CASTELLANOS, an individual
and on behalf of all others similarly situated,

Plaintiff,

v.

KING'S HAWAIIAN BAKERY WEST,
INC., a California corporation; KING'S
HAWAIIAN LLC, a Delaware limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **24STCV16318**

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

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$35,000.00]

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

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against King's
6 Hawaiian Bakery West, Inc., including any of its respective subsidiaries or affiliated companies within
7 the State of California; and King's Hawaiian LLC, including any of its respective subsidiaries or
8 affiliated companies within the State of California (and collectively, with King's Hawaiian Bakery
9 West, Inc. and DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff
10 and all other current and former non-exempt California employees employed by or formerly employed
11 by Defendants ("Class Members").

12 2. This is also a representative action, pursuant to the Labor Code Private Attorneys
13 General Act of 2004, codified at Labor Code section 2698, et seq. ("PAGA"), against Defendants and
14 any of their respective subsidiaries or affiliated companies within the State of California, as a proxy
15 of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of
16 all other current and former non-exempt employees of Defendants working within the Civil Penalty
17 Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with
18 Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 227.3, 232, 232.5, 245, 246,
19 432, 432.3, 432.5, 432.7, 432.8, 1102.5, 1197.5, 1198.5, 1527, 3366, 3457, and 8397.4, on behalf of
20 all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved
21 Employees").

22 **PARTIES**

23 **A. Plaintiff**

24 3. Plaintiff Gerson Castellanos is a resident of the State of California. At all relevant
25 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed
26 Plaintiff as a non-exempt employee, with duties that included, but were not limited to, quality control
27 and production. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff Gerson
28

1 Castellanos worked for Defendants from approximately August of 2016 through approximately July
2 of 2023.

3 **B. Defendants**

4 4. Plaintiff is informed and believes and based thereon alleges that defendant King's
5 Hawaiian Bakery West, Inc. is, and at all times relevant hereto was, a corporation organized and
6 existing under and by virtue of the laws of the State of California and doing business in the County of
7 Los Angeles, State of California.

8 5. Plaintiff is informed and believes and based thereon alleges that defendant King's
9 Hawaiian LLC is, and at all times relevant hereto was, a limited liability company organized and
10 existing under and by virtue of the laws of the State of Delaware and doing business in the County of
11 Los Angeles, State of California.

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

25 **JOINT LIABILITY ALLEGATIONS**

26 7. Plaintiff is informed and believes and based thereon alleges that all the times
27 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
28

1 representative, joint venture or co-conspirator of each of the other defendants, either actually or
2 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
3 employment, joint venture, and conspiracy.

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

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

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

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

24 c. Plaintiff is informed and believes, and thereon alleges, that the Individual Defendants
25 and the Alter Ego Defendants, while really one and the same, were segregated to appear as though
26 separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing
27 some other wrongful or inequitable purpose;

28

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

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

14 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
15 Defendants (and vice versa), and the fiction of their separate corporate existence must be disregarded.

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

18 JURISDICTION

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

21 12. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure
22 sections 392, et seq. because, among other things, **Los Angeles** County is where the causes of action
23 complained of herein arose; the county in which the employment relationship began; the county in
24 which performance of the employment contract, or part of it, between Plaintiff and Defendants was
25 due to be performed; the county in which the employment contract, or part of it, between Plaintiff and
26 Defendants was actually performed; and the county in which Defendants, or some of them, reside.
27 Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in Los
28

1 Angeles County, and because Defendants employ numerous Class Members in Los Angeles County.

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

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

15 15. During the period beginning one (1) year preceding the provision of notice to
16 the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
17 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204,
18 210, 212, 213, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 404, 432, 432.3,
19 432.5, 432.7, 432.8, 510, 512, 558, 1102.5, 1174, 1174.5, 11821.12, 1194, 1197, 1197.1,
20 1197.5, 1198.5, 1527, 2699, 2802, 2810.3, 2810.5, 3366, 3457, and 8397.4, among others,
21 California Code of Regulations, Title 8, Section 3395, Business and Professions Code sections
22 16600, 16700, and 17200, Government Code section 12952, as well as applicable Wage
23 Orders.

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

28

17. On or around March 28, 2024, both Plaintiff provided written notice under Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the Labor and Workforce Development Agency ("LWDA"), as well as by certified mail, with return receipt requested to Defendants, and each of them.

18. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the March 28, 2024 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

FACTUAL BACKGROUND

19. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members. In addition, Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

20. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other things, at times, failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members. Defendants would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

21. For at least four (4) years prior to the filing of this Action and continuing to the present,

1 Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them, full, timely
2 thirty (30) minute uninterrupted meal period for days on which they worked more than five (5) hours
3 in a work day and a second thirty (30) minute uninterrupted meal period for days on which they
4 worked in excess of ten (10) hours in a work day, and failing to provide compensation for such
5 unprovided meal periods as required by California wage and hour laws. Defendants would also be
6 liable for civil penalties pursuant to Labor Code sections 558 and 2699

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

13 23. For at least three (3) years prior to the filing of this action and continuing to the present,
14 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full amount
15 of their wages owed to them upon termination and/or resignation as required by Labor Code sections
16 201 and 202, including for, without limitation, failing to pay overtime wages, minimum wages,
17 premium wages, and vacation pay pursuant to Labor Code section 227.3.

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

26 25. For at least one (1) year prior to the filing of this action and continuing to the present,
27 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full amount
28

1 of their wages for labor performed in a timely fashion as required under Labor Code section 204.

2 26. For at least three (3) years prior to the filing of this action and continuing to the present,
3 Defendants have, at times, failed to indemnify Class Members, or some of them, for the costs incurred
4 in purchasing mandatory work uniforms; laundering mandatory work uniforms; and using cellular
5 phones for work-related purposes.

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

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

14 29. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
15 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
16 227.3, 245, *et seq.*, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, and California Code of Regulations,
17 Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for
18 missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement
19 penalties, requiring an agreement in writing to terms and/or conditions which Defendants know is
20 prohibited by law; failing to pay vested vacation time at the proper rate of pay, other such provisions
21 of California law, and reasonable attorneys' fees and costs.

22 30. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
23 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
24 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
25 appropriate and effective means to prevent further violations, as well as all monies owed but withheld
26 and retained by Defendants to which Plaintiff and Class Members are entitled, as well as restitution
27 of amounts owed.

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

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

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

CLASS ACTION ALLEGATIONS

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

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

36. This action has been brought and may properly be maintained as a class action under

1 the provisions of Code of Civil Procedure section 382 because there is a well-defined community of
2 interest in the litigation and the proposed Class is easily ascertainable.

3 **A. Numerosity**

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

8 38. Accounting for employee turnover during the relevant periods necessarily increases
9 this number. Plaintiff alleges Defendants' employment records would provide information as to the
10 number and location of all Class Members. Joinder of all members of the proposed Class is not
11 practicable.

12 **B. Commonality**

13 39. There are questions of law and fact common to Class Members. These common
14 questions include, but are not limited to:

- 15 a. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
16 worked at a proper overtime rate of pay?
- 17 b. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay for
18 all other time worked at the employee's regular rate of pay and a rate of pay that is
19 greater than the applicable minimum wage?
- 20 c. Did Defendants violate Labor Code section 512 by not authorizing or permitting Class
21 Members to take compliant meal periods?
- 22 d. Did Defendants violate Labor Code section 226.7 by not providing Class Members
23 with additional wages for missed or interrupted meal periods?
- 24 e. Did Defendants violate applicable Wage Orders by not authorizing or permitting Class
25 Members to take compliant rest periods?
- 26 f. Did Defendants violate Labor Code section 226.7 by not providing Class Members
27 with additional wages for missed rest periods?

- 1 g. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
2 Members upon termination or resignation all wages earned?
- 3 h. Are Defendants liable to Class Members for waiting time penalties under Labor Code
4 section 203?
- 5 i. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
6 Class Members with accurate wage statements?
- 7 j. Did Defendants fail to pay Class Members in a timely fashion as required under Labor
8 Code section 204?
- 9 k. Did Defendants fail to indemnify Class Members for all necessary expenditures or
10 losses incurred in direct consequence of the discharge of their duties or by obedience
11 to the directions of Defendants as required under Labor Code section 2802?
- 12 l. Did Defendants violate Labor Code section 227.3 by not providing Class Members
13 with compensation at their final rate of pay for vested paid vacation time?
- 14 m. Did Defendants violate the Unfair Competition Law, Business and Professions Code
15 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 16 n. Are Class Members entitled to restitution of wages under Business and Professions
17 Code section 17203?
- 18 o. Are Class Members entitled to costs and attorneys' fees?
- 19 p. Are Class Members entitled to interest?

20 **C. Typicality**

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

26 **D. Adequacy of Representation**

27 41. Plaintiff will fairly and adequately represent and protect the interest of Class Members.
28

1 Counsel who represents Plaintiff is competent and experienced in litigating wage and hour class
2 actions.

3 **E. Superiority of Class Action**

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

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

14 **FIRST CAUSE OF ACTION**

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

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

18 45. At all relevant times, Plaintiff and Class Members were employees or former
19 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
20 Wage Orders.

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

25 47. At all times relevant to this Complaint, Labor Code section 510 further provided that
26 "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
27 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh
28

1 day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay.”

2 48. Four (4) years prior to the filing of the Complaint in this Action through the present,
3 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
4 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
5 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
6 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
7 actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

8 49. 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 50. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been
14 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus
15 interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194 and
16 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

17 **SECOND CAUSE OF ACTION**

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

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

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

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

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

1 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

2 55. 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 minimum wages for
4 all hours worked or otherwise due.

5 56. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages,
8 reasonable attorneys' fees and costs of suit.

9 **THIRD CAUSE OF ACTION**

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

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

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

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

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

25 61. For four (4) years prior to the filing of the Complaint in this Action through the present,
26 Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-free
27 uninterrupted meal periods every five hours of work without waiving the right to take them, as
28

1 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
2 Member's regular rate of compensation on the occasions that Class Members were not provided
3 compliant meal periods.

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

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

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

15 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

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

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

74. 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

1 Wage Orders.

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

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

13 77. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
14 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
15 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and
16 Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but
17 intentionally adopted policies or practices incompatible with the requirements of Labor Code sections
18 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or
19 resignation.

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

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

26 80. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
27 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
28

1 waiting time penalties, interest, and their costs of suit, as well.

2 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

24 86. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
25 suffered injury. The absence of accurate information on Class Members' wage statements at times
26 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
27 mathematical computations to determine the amount of wages owed; causes difficulty and expense in
28

1 attempting to reconstruct time and pay records; and led to submission of inaccurate information about
2 wages and amounts deducted from wages to state and federal governmental agencies, among other
3 things.

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

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

12 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

1 percent of the amount unlawfully withheld.”

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

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

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

14 **EIGHTH CAUSE OF ACTION**

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

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

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

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

23 99. For three (3) years prior to the filing of the Complaint in this Action through the
24 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
25 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
26 obedience to the directions of Defendants that included, without limitation: purchasing mandatory
27 work uniforms; laundering mandatory work uniforms; and using cellular phones for work-related
28

1 purposes.

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

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

8 102. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
9 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover reimbursement
10 for their herein-described losses and/or expenditures, reasonable attorneys' fees and costs of suit.

11 **NINTH CAUSE OF ACTION**

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

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

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

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

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

26 107. As a proximate result of Defendants' failure to pay vested vacation at the final rate of
27 Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor Code
28

1 section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at their
2 final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and
3 Class Members, on the one hand, and Defendants, on the other hand.

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

7 **TENTH CAUSE OF ACTION**

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

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

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

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

24 112. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members
25 are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and
26 requiring the establishment of appropriate and effective means to prevent further violations, as well
27 as restitution of all wages and other monies owed to them under the Labor Code, including interest
28

1 thereon, in which they had a property interest and which Defendants nevertheless failed to pay them
2 and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff and
3 Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure
4 to comply with the Labor Code.

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

7 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

17 116. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
18 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
19 article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204,
20 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial
21 violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each
22 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
23 failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

24 117. At all relevant times herein, Defendants have had a consistent policy or practice of
25 failing to pay Aggrieved Employees during their employment on a timely basis as per Labor Code
26 section 204. Thus, pursuant to Labor Code section 210, Aggrieved Employees are entitled to recover
27 civil penalties for Defendants’ violations of Labor Code section 204, in the amount of one hundred
28

1 dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two hundred
2 dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection with each
3 payment that was made in violation of Labor Code section 204.

4 118. 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 Civil Penalties Under Labor Code § 226.3

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

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

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

22 122. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and
23 have a policy or practice of failing to furnish Aggrieved Employees with itemized wage statements
24 that accurately reflect gross wages earned; total hours worked; net wages earned; all deductions; all
25 applicable hourly rates in effect and the corresponding number of hours worked at each hourly rate in
26 effect during the pay period; the legal name of the employer and/or the name and address of the legal
27 entity securing the employer's services if the employer is a farm labor contractor; and other such
28

1 information as required by Labor Code section 226, subdivision (a).

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

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

9 Violation of Labor Code § 558

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

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

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

20 128. Wages recovered pursuant to this section shall be paid to the affected employee."

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

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

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

Violation of Labor Code § 1174.5

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

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

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

135. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully

1 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and
2 complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any member
3 of the commission or employees of the division to inspect records pursuant to subdivision (b) of
4 [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

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

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

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

16 Violation of Labor Code § 1197.1

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

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

27 141. For each subsequent violation for the same specific offense, two hundred fifty dollars
28

1 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
2 regardless of whether the initial violation is intentionally committed. This amount shall be in addition
3 to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2,
4 and any applicable penalties imposed pursuant to Section 203.

5 142. Wages, liquidated damages, and any applicable penalties imposed pursuant to Section
6 203, recovered pursuant to this section shall be paid to the affected employee.”

7 143. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
8 Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation,
9 routinely failing to pay Aggrieved Employees’ minimum wages for all hours worked or otherwise
10 under Defendants’ control due to, without limitation, routinely failing to accurately track and/or pay
11 for all hours actually worked; detrimental rounding or manipulation of time entries; paying straight
12 pay instead of overtime or otherwise failing to pay overtime hours at the proper overtime rate of pay;
13 engaging, suffering, or permitting employees to work off the clock, entitling Plaintiff and other
14 Aggrieved Employees to actual and liquidated damages.

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

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

22 Civil Penalties Under Labor Code § 2699

23 146. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
24 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and
25 collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
26 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil action
27 brought by an aggrieved employee on behalf of himself or herself and other current or former
28

1 employees pursuant to the procedures specified in Labor Code section 2699.3.

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

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

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

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

22 **DEMAND FOR JURY TRIAL**

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

24 **PRAYER**

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

27 A. An order certifying this case as a Class Action;

- 1 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
2 counsel as class counsel;
- 3 C. Damages for all wages earned and owed, including minimum and overtime wages
4 and unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,
5 1194, 1197 and 1199 and 227.3;
- 6 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 7 E. Damages for unpaid premium wages from missed meal and rest periods under,
8 among other Labor Code sections, 512, 558.1 and 226.7;
- 9 F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision
10 (e) and 558.1;
- 11 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 12 H. Penalties to timely pay wages under Labor Code section 210;
- 13 I. Damages under Labor Code sections 2802 and 558.1;
- 14 J. Preliminary and permanent injunctions prohibiting Defendants from further violating
15 the California Labor Code and requiring the establishment of appropriate and
16 effective means to prevent future violations;
- 17 K. Restitution of wages and benefits due which were acquired by means of any unfair
18 business practice, according to proof;
- 19 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 20 M. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
21 1197.1, and 2699 for all Aggrieved Employees aside from Plaintiff;
- 22 N. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
23 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 24 O. For attorneys' fees in prosecuting this action;
- 25 P. For costs of suit incurred herein; and
- 26 Q. For such other and further relief as the Court deems just and proper.
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

Dated: June 28, 2024

BIBIYAN LAW GROUP, P.C.

BY: /s/ Calyn V. Hadlock

DAVID D. BIBIYAN

JEFFREY D. KLEIN

ZACHARY T. CHRZAN

CALYN V. HADLOCK

Attorneys for Plaintiff GERSON
CASTELLANOS, and on behalf of all others
similarly situated