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ALEX PINEDA

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

JOSEPH HERNANDEZ and ALEX
PINEDA, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

PAVEWEST, INC., PAVEWEST
TRANSPORT, INC. and DOES 1 through
50, inclusive,

Defendants.

Case No. 2024CUOE033533

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

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods or
Compensation in Lieu Thereof;
3. Failure to Permit Rest Periods or Provide
Compensation in Lieu Thereof;
4. Failure to Provide Accurate Itemized Wage
Statements;
5. Waiting Time Penalties;
6. Failure to Provide Recovery Periods;
7. Failure to Reimburse Business Expenses;
8. Failure to Indemnify;
9. Failure to Pay Interest on Deposits;
10. Violation of Labor Code § 227.3;
11. Violations of the Unfair Competition Law;
and
12. Violation of Private Attorneys General Act
of 2024

JURY TRIAL DEMANDED

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1 Plaintiffs JOSEPH HERNANDEZ and ALEX PINEDA (“Plaintiffs”), individually, and on
2 behalf of all others similarly situated, hereby brings this First Amended Class and Representative
3 Action Complaint (“FAC”) against Defendants PAVEWEST, INC., PAVEWEST TRANSPORT,
4 INC., and DOES 1 through 50, inclusive (collectively, “Defendants”), and allege with knowledge
5 with respect to his their acts and on information and belief as to other matters as follows:

6 **INTRODUCTION**

7 1. This proposed class action, pursuant to California Code of Civil Procedure section
8 382, is brought by Plaintiffs individually and on behalf of all current and former non-exempt
9 employees employed by Defendants in California during the Class Period (collectively the “Class”
10 or “Class Members”). The term Class Period is defined as four (4) years prior to the filing of this
11 action to the date of class certification.

12 2. Plaintiffs also bring this representative action pursuant to the PAGA, Labor Code
13 sections 2698 *et seq.*, against Defendants, on behalf of themselves individually and other aggrieved
14 employees who are and were employed by Defendants throughout California during the PAGA
15 Period. The term PAGA Period is defined as one (1) year prior to Plaintiffs’ notice of Labor Code
16 violations to the Labor and Workforce Development Agency (“LWDA”) and Defendants until
17 judgment.

18 3. This proposed class and representative action seeks, *inter alia*, unpaid wages
19 (including sick pay, vacation pay, prevailing wage pay, minimum, regular, overtime, and double
20 time wages), compensation for non-compliant meal periods, rest periods, waiting time penalties,
21 itemized wage statement penalties, civil penalties, business expense reimbursements, liquidated
22 damages, treble damages, interest, reasonable attorneys’ fees, and costs. Plaintiffs’ action is brought
23 under, *inter alia*, the California Industrial Welfare Commission (“IWC”) Wage Orders and
24 applicable provisions of the California Code of Regulations, California Business & Professions
25 Code sections 17200 *et seq.*, California Civil Code section 3289, California Code of Civil
26 Procedure section 1021.5, and California Labor Code (“Labor Code”) sections 96, 98.6, 200, 201,
27 201.5, 201.7, 202, 203, 203.5, 204, 204a, 205, 205.5, 206, 210, 221, 222.5, 223, 226, 226.2, 226.3,
28 226.7, 227.3, 232, 232.5, 233, 234, 246, 432, 432.3, 432.5, 432.8, 510, 512, 558, 558.1, 1171, 1174,

1 1174.5, 1811, 1815, 1194, 1194.2, 1197, 1197.5(k), 1198, 1199, 2800, and 2802.

2 4. Under the California Unfair Competition Law, Business and Professions Code
3 sections 17200 *et seq.* (“UCL”), and pursuant to the class action procedures provided for in this
4 statute, Plaintiffs, on behalf of himself and the proposed Class, seeks declaratory relief, injunctive
5 relief, and restitution of all benefits Defendants have received from their employees due to their
6 unlawful business practices, including but not limited to, their failure to timely provide minimum,
7 regular, overtime, and double time compensation due for all hours worked during and upon
8 separation of employment, failure to reimburse business expenses, failure to provide compliant
9 meal periods and rest breaks to their employees or compensation in lieu thereof, and failure to
10 provide accurate itemized wage statements.

11 **JURISDICTION AND VENUE**

12 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
13 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
14 in all cases except those given to other trial courts. All claims alleged herein arise under California
15 law for which Plaintiffs seeks relief authorized by California law. Further, this is a class action
16 pursuant to California Code of Civil Procedure section 382 and representative action pursuant to
17 Labor Code Sections 2698 *et seq.* (“PAGA”). As such, the monetary damages, restitution,
18 penalties, and other amounts sought by Plaintiffs exceeds the minimal jurisdictional limits of the
19 Superior Court and will be established according to proof at trial. The Court also has jurisdiction
20 over certain causes of action pursuant to California Business & Professions Code sections 17203
21 and 17204, which provide for exclusive jurisdiction for enforcement of this statute in any court of
22 competent jurisdiction.

23 6. This Court has jurisdiction over all Defendants because each Defendant is a citizen
24 of California, a corporation or association organized under the laws of the State of California, an
25 association authorized to do business in California and registered with the California Secretary of
26 State, does sufficient business in California, has sufficient minimum contacts with California,
27 and/or intentionally avails itself of the laws and markets of California through the promotion, sale,
28 marketing and distribution of its products and/or services in California to render the exercise of

jurisdiction by the California courts permissible.

7. Venue in this County is proper under California Business & Professions Code section 17203 and California Code of Civil Procedure section 395.5 because a substantial part of Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County, Defendants conduct substantial business in this County, Defendants' liability arose in this County, and/or Defendants reside, transact business, maintain offices, and/or have an agent or agents in this County. The relief requested is within the jurisdiction of this Court.

PARTIES

8. Plaintiffs JOSEPH HERNANDEZ is an individual who resides in California. Defendants employed Plaintiffs as a non-exempt hourly employee from approximately August 2016 to October 21, 2024. Specifically, Defendants employed Plaintiffs an administrator whose job duties included but were not limited to processing invoices, accounting, and general office and reception duties.

9. Plaintiffs ALEX PINEDA is a resident of the State of California. At all relevant times herein, Plaintiffs is informed and believes, and based thereon alleges, that Defendants employed Plaintiffs as a non-exempt employee, with duties that included, but were not limited to, driving trucks. Plaintiffs is informed and believes, and based thereon alleges, that Plaintiffs ALEX PINEDA worked for Defendants from approximately June of 2024 through approximately June of 2024

10. Plaintiffs are informed, believe and thereon allege that, at all relevant times, Defendants are in the business of commercial paving and construction with projects throughout California, including but not limited to Simi Valley, Sacramento and Los Angeles.

11. Plaintiffs are informed, believe and thereon allege Plaintiffs that, at all relevant times, PAVEWEST, INC. ("PAVEWEST") was and is a California corporation. Plaintiffs are informed, believe and thereon allege Plaintiffs that, at all relevant times, PAVEWEST was and is an employer subject to California state wage and hour laws. Defendant regularly conduct business within the State of California and derives substantial revenues from services performed in California. Plaintiffs are informed, believe and thereon allege that the practices and policies of

1 Defendant that are complained of by way of this FAC were implemented during the Class Period.

2 12. Plaintiffs are informed, believe and thereon allege that, at all relevant times,
3 PAVEWEST TRANSPORT, INC. ("PW TRANSPORT") was and is a California corporation.
4 Plaintiffs are informed, believe and thereon allege that, at all relevant times, PW TRANSPORT
5 was and is an employer subject to California state wage and hour laws. Defendant regularly conduct
6 business within the State of California and derives substantial revenues from services performed in
7 California. Plaintiffs are informed, believe and thereon allege that the practices and policies of
8 Defendant that are complained of by way of this FAC were implemented during the Class Period.

9 13. Plaintiffs are informed, believe and thereon allege that Defendants suffered and
10 permitted Plaintiffs and Class Members to work, and/or jointly exercised control over the wages,
11 hours, and/or working conditions of Plaintiffs and the Class Members.

12 14. Defendants continue to employ non-exempt employees within California.

13 15. Plaintiffs is unaware of the true names and capacities of those defendants identified
14 as DOES 1 through 50. Therefore, Plaintiffs identify those defendants fictitiously. Plaintiffs are
15 informed, believe and thereon allege that at all relevant times each DOE defendant was a parent,
16 sister, or related corporate entity of defendants, or an owner, employee or agent of defendants, and
17 each related entity, and was acting with the knowledge and authorization of each of the other
18 defendants. Plaintiffs will seek to amend this FAC to allege the true names and capacities of each
19 DOE defendant when their names have been ascertained and identified. Plaintiffs are informed,
20 believe and thereon allege that each of the defendants sued as DOES 1 through 50 participated in,
21 received the benefit of, or was in some way responsible for one or more of the wrongful acts and
22 omissions and some portion of the damages alleged herein.

23 16. Plaintiffs are informed, believe and thereon allege that at all times material hereto,
24 each defendant acted in all respects pertinent to this action as the agent of the other defendant,
25 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
26 each defendant are legally attributable to the other defendant. Furthermore, defendants in all
27 respects acted as the employer and/or joint employer of Plaintiffs and the Class Members.

28 17. Plaintiffs are informed, believe and thereon allege that Defendants, each and all of

1 them, at all times material hereto, were the joint employers, parent companies, successor
2 companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers,
3 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining defendants.
4 Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions
5 alleged herein within the course and scope of said relationship(s), and are a proximate cause of
6 Plaintiffs' damages as herein alleged.

7 18. Plaintiffs are informed, believe and thereon allege, that there exists a unity of interest
8 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality
9 and separateness between the individual and the corporation does not exist, as Defendants, and
10 DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
11 herein were mere shells, instrumentalities and conduits through which DOES 1 through 50,
12 inclusive, carried out their business in the business name, exercising complete control and
13 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1
14 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES
15 1 through 50, inclusive, and were without the financial solvency and responsibility required by law;
16 and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50,
17 inclusive, or some other individual or entity which he or she owns or controls, with the intent to
18 hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,
19 Plaintiffs are informed, believe and thereon allege, that there exists a principal-agency relationship
20 between and among Defendants.

21 19. At all relevant times herein, Defendants were agents of each other and acting within
22 the course and scope of their agency.

23 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

24 20. Pursuant to California Code of Civil Procedure section 382, Plaintiffs bring this
25 action individually and as a class action on behalf of a proposed Class defined as follows:

26 Class:

27 All current and former non-exempt employees employed by Defendants in the State
28 of California within four (4) years prior to the commencement of this action, plus

the tolled statutory period under Emergency Rule 9, to the date of class certification.

21. The Class is also comprised of the following Subclasses:

Waiting Time Sub-Class:

Those members of the Class who separated from their employment with Defendants within three (3) years prior to the commencement of this action to the date of class certification.

22. Plaintiffs reserve the right pursuant to California Rules of Court, Rule 3.764 and 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide greater specificity and/or further division into subclasses or limitation to particular issues based on further investigation and discovery.

23. This action is brought, and may properly be maintained, as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation, and the proposed class is easily ascertainable. This action presents questions of common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of this provision.

24. Through this action, Plaintiffs allege Defendants have consistently maintained and enforced against Plaintiffs and Class Members unlawful employment practices and policies which violate the Labor Code and IWC Wage Orders.

25. Plaintiffs are informed, believe and thereon allege that during the Class Period, Defendants failed to pay Plaintiffs and Class Members all sick pay, vacation pay, minimum, regular, overtime, and double time wages for all hours worked in violation of the Labor Code and IWC Wage Orders. During the PAGA Period, Plaintiffs and Class Members regularly worked more than eight (8) hours and/or 10 hours per workday, over 40 hours per workweek, and/or over eight (8) hours per workday on the seventh consecutive day of work. Defendants' practices and policies deprived Plaintiffs and Class Members of minimum, regular, overtime, and/or double time wages for work they performed off the clock. Defendants required Plaintiffs and Class Members to complete work-related tasks off the clock, such as communicating with Defendants, working through meal periods and time spent waiting to clock in and enter Defendants' premises. In

1 addition, Defendants prohibited Plaintiffs and Class Members from clocking in until near the
2 beginning of their scheduled start time despite being subject to Defendants' control. Further,
3 Defendants failed to provide Plaintiffs and Class Members with potable water. Defendants did not
4 compensate Plaintiffs and Class Members for all hours worked because Plaintiffs and Class
5 Members were regularly on-duty during their meal and/or rest periods. For example, Defendants
6 required Plaintiffs and Class Members to use and maintain on person a cell phone, pager, or walkie-
7 talkie for work related purposes during meal and rest periods. Defendants also rounded Plaintiffs
8 and Class Members hours worked, thereby depriving them of wages for all hours worked at the
9 legally mandated rates. Defendants also regularly required Plaintiffs and Class Members to remain
10 on the premises and complete work related duties after Plaintiffs and Class Members had clocked
11 out of their shifts. On public works projects, Defendants also failed to compensate Plaintiffs and
12 Class Members at the prevailing wage rate classification for the type of work performed by
13 Plaintiffs and Class Members on that project. Finally, Defendants failed to accurately calculate the
14 regular rate of pay by, among other things, failing to include a remuneration when calculating the
15 rate of pay for overtime, double time, meal and rest period premiums, vacation pay, and sick pay.

16 26. Plaintiffs are informed, believe and thereon allege that during the Class Period,
17 Defendants deprived Plaintiffs and Class Members of the opportunity to take all of their statutorily
18 entitled meal periods within the appropriate time intervals or provide compensation in lieu thereof
19 in violation of the Labor Code and IWC Wage Orders. During the Class Period, Defendants failed
20 to provide timely off-duty 30-minute meal periods within the appropriate time intervals to Plaintiffs
21 and other Class Members as required by Labor Code section 512 and section 11 of the applicable
22 Wage Order. Specifically, Plaintiffs and Class Members frequently had their meal periods
23 shortened, interrupted, late, and/or missed altogether due to Defendants' practice of understaffing
24 and prioritizing work demands over taking compliant breaks. For example, Defendants also
25 required Plaintiffs and Class Members to carry a cell phone, pager and/or walkie-talkie for work
26 purposes during meal periods and while they were off-the-clock. Defendants also failed to authorize
27 and permit and/or make available to Plaintiffs and Class Members second meal periods when they
28 worked more than 10 hours. Moreover, Defendants rounded Plaintiffs and Class Members' time

1 punches for meal periods. Further, Defendants failed to provide Plaintiffs and Class Members with
2 potable water, causing Claimant and/or aggrieved employees to spend time obtaining potable water
3 during their meal period. Accordingly, Defendants failed to authorize and permit and/or make
4 available to Plaintiffs and Class Members timely, uninterrupted off-duty meal periods for at least
5 30 minutes when they worked more than five (5) hours and/or 10 hours in a workday, and failed to
6 compensate Plaintiffs and Class Members with an additional hour of pay at their regular rate of pay
7 for every day in which they were denied a compliant meal period, in violation of the Labor Code
8 and the applicable IWC Wage Orders.

9 27. Plaintiffs are informed, believe and thereon allege that during the Class Period,
10 Defendants failed to permit Plaintiffs and Class Members to take all of their statutorily entitled 10-
11 minute rest periods for every four (4) hours worked or major fraction thereof or provide
12 compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders. Plaintiffs and
13 Class Members missed their rest breaks or had them interrupted or governed by Defendants'
14 unlawful practices and policies. Defendants also required Plaintiffs and Class Members to carry a
15 cell phone, pager and/or walkie-talkie for work purposes during rest periods and while they were
16 off-the-clock. Further, Defendants failed to provide Plaintiffs and Class Members with potable
17 water, causing Claimant and/or aggrieved employees to spend time obtaining potable water during
18 their rest period. Defendants also failed to adopt and implement a practice of providing third rest
19 breaks when Plaintiffs and Class Members worked over 10 hours. Notwithstanding the above rest
20 break violations, Defendants failed to compensate Plaintiffs and Class Members with an additional
21 hour of pay at their regular rate of pay for every day in which they suffered a rest period violation.
22 Accordingly, Employer violated the Labor Code and the applicable IWC Wage Orders.

23 28. Plaintiffs are informed, believe and thereon allege that during the Class Period,
24 Defendants failed to authorize or permit Plaintiffs and Class Members from taking recovery
25 periods. Specifically, Plaintiffs and Class Members were required to work outdoors at various
26 construction sites during hot days, including during summer, without access to shade or recovery
27 periods to cool down and prevent heat illness. Defendants also failed to provide Plaintiffs and Class
28 Members with access to potable water at jobsites and suitable seating in violation of the Labor

1 Code, IWC Wage Orders, and/or the California Occupational Safety and Health Act of 1973
2 (“OSHA”).

3 29. Plaintiffs are informed, believe and thereon allege that during the Class Period,
4 Defendants failed to reimburse Plaintiffs and Class Members for necessary business expenses
5 incurred in the performance of their duties in violation of the Labor Code and IWC Wage Orders.
6 During the Class Period, Defendants failed to reimburse Plaintiffs and Class Members for all
7 business expenses incurred for Defendants’ benefit. For example, Plaintiffs and Class Members
8 were required to use their personal cell phones to discuss work-related matters with Defendants’
9 representatives and clients and for other work purposes without any reimbursement. Accordingly,
10 Defendants violated the Labor Code and applicable IWC Wage Orders.

11 30. Plaintiffs are informed, believe and thereon allege that during the Class Period,
12 Defendants willfully failed to timely pay all wages due to Plaintiffs and the Waiting Time Subclass
13 upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiffs
14 and Waiting Time Subclass Members were not paid all wages (including minimum, regular,
15 overtime, double time wages, sick pay, and vacation pay), gratuities, reimbursements, meal period
16 premiums, and/or rest period premiums within the required time period in violation of the Labor
17 Code and applicable IWC Wage Orders.

18 31. Plaintiffs are informed, believe and thereon allege that during the Class Period,
19 Defendants failed to furnish Plaintiffs and Class Members with accurate and complete wage
20 statements in violation of the Labor Code and IWC Wage Orders. Plaintiffs and Class Members
21 received wage statements which did not accurately reflect the gross and net wages earned, total
22 hours worked, all applicable rates of pay and the corresponding number of hours worked at each
23 pay rate, and correct entity name and address on wage statements issued to Plaintiffs and Class
24 Members, among other things in violation of the Labor Code and IWC Wage Orders.

25 32. Plaintiffs are informed, believe and thereon allege that during the Class Period,
26 Defendants implemented policies, practices, and rules to restrict Plaintiffs and Class Members’
27 speech, protected activity, and the disclosure of information beyond the limited categories of
28 information protected by law. Several provisions of California law, taken together, “establish as a

1 minimum employment standard an employee anti-gag rule.” *Doe v. Google Inc.*, 54 Cal.App.5th
2 948, 961 (2020). For example, California law protects whistleblowers. Labor Code Section
3 1102.5(a) makes it unlawful for an employer to adopt or enforce a policy or rule that prevents
4 employees from disclosing information about reasonably suspected violations of the law to persons
5 with the power to address the problem, *e.g.*, another employee who has the authority to investigate,
6 discover, or correct the legal violation. *Doe*, 54 Cal.App.5th at 958. A contractual provision that
7 restricts an employee's ability to disclose information related to conditions in the workplace shall
8 include, in substantial form, the following language: “Nothing in this agreement prevents you from
9 discussing or disclosing information about unlawful acts in the workplace, such as harassment or
10 discrimination or any other conduct that you have reason to believe is unlawful.” Government Code
11 section 12964.5(a)(2)(b)(1)(B). California law also protects a broad array of employee speech and
12 activity unrelated to whistleblowing. Subdivision (k) of Labor Code Section 96 prohibits employer
13 retaliation for “‘lawful conduct occurring during nonworking hours away from the employer’s
14 premises,’ so employers do not seek to control the non-work aspects of their employees’ lives.”
15 *Doe*, 54 Cal.App.5th at 958 (citations omitted). Labor Code section 232.5 outlaws employer
16 prohibitions on the disclosure or discussion of working conditions. Business & Professions Code
17 section 16600 states that any agreement in restraint of trade is void. The Cartwright Act provides
18 that any combination in restraint of trade is “unlawful, against public policy and void.” Cal. Bus.
19 & Prof. Code § 16726. Here, Defendants’ unwritten policies, practices, and rules restrict Plaintiffs
20 and Class Members’ speech, protected activity, and the disclosure of information of Plaintiffs and
21 Class Members’ working conditions.

22 33. Plaintiffs are informed, believe and thereon allege that Defendants’ actions as
23 described throughout this FAC were willful.

24 NUMEROSITY

25 34. The Class is so numerous that joinder of all of its members is impracticable. While
26 the exact number and identities of Class Members are unknown to Plaintiffs at this time and can
27 only be ascertained through appropriate discovery, Plaintiffs are informed, believe and thereon
28 allege that the Class consists of more than 100 persons.

35. A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Class are so numerous that joinder of all members is impractical, if not impossible. The identity of Class Members can be ascertained by analysis of Defendants' employee and payroll records.

COMMONALITY

36. Common questions of fact and law exist as to all members of the Class that predominate over any questions affecting only individual Class Members. These common legal and factual questions include, but are not limited to, the following:

(a) Whether Defendants failed to pay Plaintiffs and Class Members all minimum, regular, overtime, and double time wages for all hours worked by Plaintiffs and Class Members.

(b) Whether Defendants failed to pay Plaintiffs and Class Members the proper prevailing wage rate classification for the type of work performed by Plaintiffs and Class Members.

(c) Whether Defendants rounded the time worked by Plaintiffs and Class Members to Defendants' advantage.

(d) Whether Defendants failed to pay Plaintiffs and Class Members all sick pay and vacation pay for all hours worked by Plaintiffs and Class Members;

(e) Whether Defendants failed to provide timely, uninterrupted, off-duty 30-minute meal periods to Plaintiffs and Class Members without compensation in lieu thereof;

(f) Whether Defendants auto-deducted 30-minute meal periods for missed or short meal periods;

(g) Whether Defendants failed to permit timely, uninterrupted, off-duty 10-minute rest breaks for every four (4) hours or major fraction thereof worked by Plaintiffs and Class Members without compensation in lieu thereof;

(h) Whether Defendants failed pay premium wages to class members when they have not been provided with required meal and/or rest periods;

(i) Whether Defendants failed to timely pay Plaintiffs and Waiting Time Subclass Members all wages due either immediately upon termination or within 72 hours after resignation;

- 1 (j) Whether Defendants' conduct was willful;
- 2 (k) Whether Defendants failed to issue accurate itemized wage statements to
- 3 Plaintiffs and Class Members;
- 4 (l) Whether Defendants failed to reimburse Plaintiffs and Class Members for
- 5 necessary business expenditures;
- 6 (m) Whether Defendants engaged in unfair business practices in violation of
- 7 California Business & Professions Code sections 17200 *et seq.*;
- 8 (n) Additional common questions of law and fact that may develop as the
- 9 litigation progresses.

10 **TYPICALITY**

11 37. Plaintiffs are informed, believe and thereon allege that Plaintiffs' claims are typical

12 of the claims of the Class because: Plaintiffs and the Class sustained injuries and damages arising

13 out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same

14 course of conduct by Defendants; Plaintiffs' claims are based upon the same legal theories as the

15 claims of the Class; and the legal issues raised under California state law as a result of Defendants'

16 conduct apply equally to Plaintiffs and the Class Members.

17 **ADEQUACY OF REPRESENTATION**

18 38. Plaintiffs are adequate representatives of the Class, in that Plaintiffs' claims (and

19 defenses, if any) are typical of those of the Class. Plaintiffs have no conflicts of interest with

20 Plaintiffs' fellow Class Members and will be able to fairly and adequately protect the interests of

21 the Class. Plaintiffs have the same interests in the litigation of this case as the Class Members; and

22 is committed to vigorous prosecution of this case and have retained competent counsel experienced

23 in class action and wage and hour litigation of this nature.

24 **PREDOMINANCE**

25 39. Defendants have engaged in a common course of wage and hour abuse toward

26 Plaintiffs and Class Members. The common issues arising from this conduct that affect Plaintiffs

27 and Class Members predominate over any individual issues. Adjudication of these common issues

28 in a single action has important and desirable advantages of judicial economy.

1 **SUPERIORITY OF CLASS ACTION**

2 40. A class action is superior to other available methods for the fair and efficient
3 adjudication of this controversy because individual litigation of the claims of all Class Members is
4 impracticable. Even if every Class Member could afford individual litigation, the court system
5 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
6 cases would proceed. Individualized litigation would also present the potential for varying,
7 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
8 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
9 individual actions by Class Members may establish inconsistent standards of conduct for
10 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
11 the issues presented herein, presents fewer management difficulties, conserves the resources of the
12 parties and the court system, and protects the rights of each Class Member.

13 41. Defendants have acted or refused to act in respects generally applicable to the Class,
14 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
15 herein.

16 **PUBLIC POLICY CONSIDERATIONS**

17 42. Employers in the State of California violate employment and labor laws every day.
18 Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation.
19 Former employees are fearful of bringing actions because they believe their former employers
20 might damage their future endeavors through negative references and/or other means. Class actions
21 provide Class Members who are not named in the action with a type of anonymity that allows for
22 the vindication of their rights while affording them privacy protections.

23 **FIRST CAUSE OF ACTION**

24 **(FAILURE TO PAY ALL WAGES)**

25 **(Against All Defendants)**

26 43. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
27 though fully set forth herein.

28 44. At all relevant times, Defendants had a duty to comply with Labor Code sections

204, 206, 210, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, 1199, 1811, 1815 and the applicable IWC Wage Orders and California Code of Regulations.

45. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages owed on regularly scheduled paydays at least twice during each calendar month, on days designated in advance by the employer as the regular paydays. All wages in earned in excess of the normal work period must be paid no later than the payday for the next regular payroll period.

46. Labor Code section 206 provides that in case of a dispute over wages, the employer shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

47. Labor Code section 210 provides:

every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3.

48. Labor Code section 221 provides “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

49. Labor Code section 223 provides “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

50. Labor Code section 224 prohibits any deduction from an employee’s wages which is not either authorized by the employee in writing or permitted by law.

51. Labor Code section 246 requires employers to provide and allow employees to use at least 24 hours, or three days, of paid sick leave per year.

52. Labor Code section 227.3 requires employers to pay terminated employees for their unused paid vacation time at their final rate of pay.

53. At all times relevant, Labor Code section 510, and applicable sections of the

1 California Code of Regulations and the IWC Wage Orders applied to Plaintiffs' work with
2 Defendants and continue to apply to Class Members' employment with Defendants. Labor Code
3 section 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders
4 state that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek
5 must be paid at one and one-half times the employee's regular rate of pay. Any work performed in
6 excess of 12 hours in a workday must be compensated at the rate of no less than twice the regular
7 rate of pay for an employee.

8 54. Labor Code section 558 provides "[a]ny employer or other person acting on behalf
9 of an employer who violates, or causes to be violated, a section of this chapter or any provision
10 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
11 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
12 underpaid employee for each pay period for which the employee was underpaid in addition to an
13 amount to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
14 for each underpaid employee for each pay period for which the employee was underpaid in addition
15 to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section
16 shall be paid to the affected employee."

17 55. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid
18 to all employees in California for all hours worked. Local minimum wage ordinances may provide
19 for higher minimum wage rates that must be paid to employees for all hours worked in those locales
20 where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay
21 less than the state or local minimum wage, whichever is higher, for any hour of work.

22 56. Labor Code section 1194 provides that any employee receiving less than the legal
23 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
24 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
25 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

26 57. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an
27 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

28 58. Labor Code section 1197 provides that the minimum wage for employees fixed by

1 the commission is the minimum wage to be paid to the employees, and the payment of a less wage
2 than minimum so fixed is unlawful.

3 59. Labor Code section 1198 prohibits employers from employing for longer hours or
4 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
5 set by the Labor Commissioner.

6 60. Labor Code Section 1811 provides: “The time of service of any workman employed
7 upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours
8 during any one calendar week, except as hereinafter provided for under Section 1815.”

9 61. Labor Code Section 1815 provides in relevant part: “work performed by employees
10 of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted
11 upon public work upon compensation for all hours worked in excess of 8 hours per day at not less
12 than 1 1/2 times the basic rate of pay.”

13 62. The failure to pay at least minimum wages to Plaintiff and Class Members for each
14 and every hour worked violates Labor Code sections 1182.11-1812.12, 1194, 1194.2, and 1197;
15 the applicable IWC wage order section 4; and Business & Professions Code.

16 63. The failure to pay designated wages to Plaintiffs and Class Members for each and
17 every hour worked violates Labor Code sections 221 and 223; the applicable IWC wage order
18 section 3; and Business & Professions Code.

19 64. Plaintiffs are informed, believe and thereon allege that during the Class Period,
20 Plaintiffs and Class Members regularly worked in excess of eight (8), 10, and/or 12 hours per
21 workday and over 40 hours per workweek and were not paid all wages at their proper rate of pay
22 for overtime, double time, sick pay, vacation pay, and meal and rest period premiums, and off-the-
23 clock work including due to rounding, among other things.

24 65. Plaintiffs are informed, believe and thereon allege that during the Class Period,
25 Defendants failed to pay Plaintiffs and Class Members all wages for hours worked (including sick
26 pay, vacation pay, prevailing wage pay, and minimum, regular, overtime, and double time wages)
27 by failing to accurately record all time worked, time shaving, auto-deducting missed or short meal
28 periods, rounding time and meal period punches, and requiring off-the-clock work without

1 compensation, among other things.

2 66. As a direct and proximate result of Defendants' unlawful conduct, as set forth
3 herein, Plaintiffs and Class Members have sustained and continue to sustain damages, including
4 loss of earnings from minimum, regular, overtime, and double time compensation due, in an amount
5 to be established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

6 67. Plaintiffs are informed, believe and thereon allege that Defendants, through their
7 conduct described herein, have committed an "intentional theft of wages in an amount greater than
8 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
9 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
10 period" within the meaning of California Penal Code section 487m. Specifically, Defendants have
11 intentionally deprived Plaintiffs and Class Members of wages, as defined in Labor Code section
12 200, gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful
13 means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to
14 Plaintiffs and Class Members under the law. Plaintiffs and the Class Members they seek to represent
15 are thus entitled to recover from Defendants treble damages and costs, including reasonable
16 attorneys' fees, pursuant to California Penal Code section 496(c).

17 68. WHEREFORE, Plaintiffs and the Class Members Plaintiffs seek to represent request
18 relief as described herein and below.

19 **SECOND CAUSE OF ACTION**

20 **(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU**

21 **THEREOF)**

22 **(Against All Defendants)**

23 69. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
24 though fully set forth herein.

25 70. At all relevant times, Defendants had a duty to comply with Labor Code sections
26 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

27 71. Labor Code section 512 and Section 11 of the IWC Wage Orders prohibit an
28 employer from employing any person for a work period of more than 5 hours per day without

1 providing the employee with a meal period of not less than 30 minutes (commencing before the
2 employee's fifth hour of work), except that if the total work period per day is no more than 6 hours,
3 the meal period may be waived by mutual consent of the employer and employee. A second meal
4 period of not less than 30 minutes is required if an employee works more than 10 hours per day and
5 must begin before the employee's tenth hour of work, except if the total hours worked is no more
6 than 12 hours, the second meal period may be waived by mutual consent of the employer and
7 employee, but only if the first meal period was not waived.

8 72. Section 11 of the applicable IWC Wage Orders state that "[u]nless the employee is
9 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
10 duty' meal period and counted as time worked."

11 73. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
12 requiring any employee to work during a meal period mandated by any California statute,
13 regulation, standard or order. If an employer fails to provide an employee with a meal period in
14 accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the
15 employer pay the employee one additional hour of pay at the employee's regular rate of
16 compensation for each workday that the meal period is noncompliant.

17 74. Throughout the Class Period, Plaintiffs and Class Members did not receive
18 compliant meal periods when working more than five (5) hours and/or 10 hours per workday
19 because their first and second meal periods were missed, late, interrupted, short, and/or not free of
20 all duties.

21 75. During the Class Period, Defendants failed to pay Plaintiffs and Class Members
22 meal period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and
23 the applicable IWC Wage Order and California Code of Regulations.

24 76. Plaintiffs are informed, believe and thereon allege that Class Members did not
25 voluntarily waive their meal periods.

26 77. As a direct and proximate result of Defendants' unlawful conduct, as set forth
27 herein, Plaintiffs and Class Members have sustained and continue to sustain damages, including
28 loss of premium pay for meal period violations and earnings, in an amount to be established at trial,

1 plus prejudgment interest pursuant to statute. To the extent such unpaid premiums or meal period
2 violations are deemed unpaid wages, Plaintiffs will also seek attorneys' fees and costs pursuant to
3 statute.

4 78. Plaintiffs are informed, believe and thereon allege that Defendants, through their
5 conduct described herein, have committed an "intentional theft of wages in an amount greater than
6 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
7 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
8 period" within the meaning of California Penal Code section 487m. Specifically, Defendants have
9 intentionally deprived Plaintiffs and Class Members of wages, as defined in Labor Code section
10 200, gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful
11 means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to
12 Plaintiffs and Class Members under the law Plaintiffs are informed, believe and thereon allege that
13 meal period premiums are wages, gratuities, benefits, or other compensation within the meaning of
14 California Penal Code section 487m. Plaintiffs and the Class Members they seek to represent are
15 thus entitled to recover from Defendants treble damages and costs, including reasonable attorneys'
16 fees, pursuant to California Penal Code section 496(c).

17 79. WHEREFORE, Plaintiffs and the Class Members Plaintiffs seek to represent request
18 relief as described herein and below.

19 **THIRD CAUSE OF ACTION**

20 **(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU**
21 **THEREOF)**

22 **(Against All Defendants)**

23 80. Plaintiffs hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein.

25 81. At all relevant times, Defendants had a duty to comply with Labor Code section
26 226.7 and the applicable IWC Wage Orders and California Code of Regulations.

27 82. Labor Code section 226.7(a) states "No employer shall require any employee to
28 work during any meal or rest period mandated by an applicable order of the Industrial Welfare

Commission.”

83. Section 12 of the applicable IWC Wage Order provides in relevant part that:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

84. Plaintiffs are informed, believe and thereon allege that during the Class Period, Plaintiffs and Class Members worked in excess of three-and-a-half (3.5) hours, six (6) hours, and/or 10 hours per workday.

85. During the Class Period, Plaintiffs and Class Members did not receive compliant 10-minute rest periods for every four hours worked or major fraction thereof because rest breaks were missed, interrupted, shortened, restricted to the worksite, and/or not free of all duties.

86. During the Class Period, Defendants failed to pay Plaintiffs and Class Members rest period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the applicable IWC Wage Order.

87. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Plaintiffs and Class Members have sustained and continue to sustain damages, including loss of earnings, in an amount to be established at trial plus prejudgment interest pursuant to statute. To the extent such unpaid premiums or rest period violations are deemed unpaid wages, Plaintiffs will also seek attorneys’ fees and costs pursuant to statute.

88. Plaintiffs are informed, believe and thereon allege that Defendants, through their conduct described herein, have committed an “intentional theft of wages in an amount greater than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty

dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period” within the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally deprived Plaintiffs and Class Members of wages, as defined in Labor Code section 200, gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiffs and Class Members under the law Plaintiffs are informed, believe and thereon allege that rest period premiums are wages, gratuities, benefits, or other compensation within the meaning of California Penal Code section 487m. Plaintiffs and the Class Members she seeks to represent are thus entitled to recover from Defendants treble damages and costs, including reasonable attorneys’ fees, pursuant to California Penal Code section 496(c).

89. WHEREFORE, Plaintiffs and the Class Members Plaintiffs seek to represent request relief as described herein and below.

FOURTH CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)

(Against All Defendants)

90. Plaintiffs hereby re-allege and incorporates by reference all paragraphs above as though fully set forth herein.

91. At all relevant times, Defendants had a duty to comply with Labor Code section 226 and the applicable IWC Wage Orders and California Code of Regulations.

92. Labor Code section 226(a) requires that, semimonthly or at the time of each payment of wages, employers must furnish each employee with an accurate itemized wage statement in writing that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment identification number of the employee, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked at each hourly rate.

93. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of

1 a knowing and intentional failure by an employer to provide an accurate itemized wage statement
2 to recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each
3 violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee,
4 in addition to an award of costs and attorneys' fees.

5 94. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
6 showing, among other things, when the employee begins and ends each work period, meal periods
7 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
8 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs
9 and Class Members. Plaintiffs are informed, believe and thereon allege that Defendants have
10 knowingly and intentionally failed to comply with the IWC Wage Orders.

11 95. Throughout the Class Period, Defendants provided wage statements that did not
12 accurately reflect the total number of hours worked by Plaintiffs and Class Members at each
13 corresponding pay rate, the gross and net wages earned, and the correct entity name and address on
14 wage statements, among other things, making it difficult for Plaintiffs and Class Members to
15 determine whether they were paid correctly for all hours worked, which deductions were made, and
16 the extent of any underpayment. Plaintiffs have had to file this lawsuit in order to determine the
17 extent of the underpayment of wages, thereby causing Plaintiffs to incur expenses and lost time.
18 Plaintiffs would not have had to engage in these efforts and incur these costs had Defendants
19 provided the accurate wages earned. This has also delayed Plaintiffs' ability to demand and recover
20 the underpayment of wages from Defendants. Defendants' violations of Labor Code section 226(a)
21 prevented Plaintiffs and Class Members from knowing, understanding and disputing the wages paid
22 to them, and resulted in an unjustified economic enrichment to Defendants.

23 96. Defendants knowingly and intentionally failed to provide accurate, itemized wage
24 statements to Plaintiffs and Class Members, and as such Plaintiffs and Class Members are deemed
25 to have suffered injury in accordance with Labor Code section 226. Plaintiffs and the Class are
26 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

27 97. Plaintiffs and Class Members are also entitled to injunctive relief under Labor Code
28 section 226(h), compelling Defendants to comply with Labor Code section 226, and seek the

1 recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

2 98. WHEREFORE, Plaintiffs and the Class Members Plaintiffs seek to represent request
3 relief as described herein and below.

4 **FIFTH CAUSE OF ACTION**

5 **(WAITING TIME PENALTIES)**

6 **(Against All Defendants)**

7 99. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
8 though fully set forth herein.

9 100. At all relevant times, Defendants had a duty to comply with Labor Code
10 sections 201, 202, and 203, and the applicable IWC Wage Orders and California Code of
11 Regulations. Defendants failed to comply with these final paycheck requirements with respect to
12 Plaintiffs and Waiting Time Subclass Members.

13 101. Labor Code section 201 requires that if an employer discharges an employee, the
14 wages earned and unpaid at the time of discharge are due and payable immediately.

15 102. Labor Code section 202 requires that if "an employee not having a written contract
16 for a definite period" quits, the employee's wages shall become due and payable no later than
17 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention
18 to quit, in which case the employee is entitled to his or her wages at the time of quitting.

19 103. Labor Code section 203 provides that if an employer willfully fails to pay, without
20 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
21 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
22 an action therefor is commenced, but that the wages shall not continue for more than 30 days per
23 employee.

24 104. Plaintiffs are informed, believe and thereon allege, that at all relevant times,
25 Defendants willfully failed to timely pay Plaintiffs and Waiting Time Subclass Members all of their
26 unpaid wages earned, including, but not limited to, minimum, regular, overtime, and double time
27 wages, compensation for non-compliant meal periods and rest periods, and unpaid expense
28 reimbursements upon separation of employment. Plaintiffs and Waiting Time Subclass Members

1 are entitled to timely compensation upon separation of their employment for any outstanding
2 unpaid wages, reimbursements, and premiums but to date have not received such compensation
3 from Defendants, therefore entitling them to penalties pursuant to Labor Code section 203.

4 105. As a consequence of Defendants' willful conduct in failing to pay all earned wages,
5 Plaintiffs and Waiting Time Subclass Members are entitled to up to 30 days' wages as a penalty
6 for Defendants' failure to timely pay wages upon separation of employment, in addition to
7 prejudgment interest, attorneys' fees, and costs in amounts that will be established at trial.

8 106. WHEREFORE, Plaintiffs and the Class Members Plaintiffs seek to represent request
9 relief as described herein and below.

10 **SIXTH CAUSE OF ACTION**

11 **(FAILURE TO PROVIDE RECOVERY PERIODS)**

12 **(Against All Defendants)**

13 107. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
14 though fully set forth herein.

15 108. At all relevant times, Defendants had a duty to comply with Labor Code
16 sections 226.7.

17 109. Labor Code section 226.7 requires employers to provide employees with a
18 "recovery period" which means a cooldown period afforded an employee to prevent heat illness. If
19 an employer fails to provide a recovery period, then "the employer shall pay the employee one
20 additional hour of pay at the employee's regular rate of compensation for each workday that the . .
21 . recovery period is not provided."

22 110. During the Class Period, Defendants did not implement a compliant recovery period
23 policy or practice. Specifically, access to shade and recovery periods were not provided to Plaintiffs
24 and Class Members who performed construction work outdoors for Defendants during extremely
25 hot days, especially during the summer. Consequently, Plaintiffs and Class Members did not
26 receive paid recovery periods and did not receive compensation in lieu thereof.

27 111. During the Class Period, Defendants failed to pay Plaintiffs and Class Members
28 recovery period premiums for noncompliant recovery periods pursuant to Labor Code section 226.7

1 and the applicable IWC Wage Order.

2 112. As a result of Defendants' failure to provide compliant recovery periods and pay
3 recovery period premiums to Plaintiffs and Class Members in accordance with the IWC Wage
4 Orders and Labor Code sections 226.7, Plaintiffs and Class Members suffered and continue to
5 suffer a loss of wages and compensation.

6 113. Because Plaintiffs and Class Members were and/or are entitled to such recovery
7 periods or "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount
8 according to proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiffs will
9 also seek pre- and post-judgment interest as provided by law at 10% per annum, in an amount
10 according to proof.

11 114. Plaintiffs are informed, believe and thereon allege that Defendants, through their
12 conduct described herein, have committed an "intentional theft of wages in an amount greater than
13 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
14 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
15 period" within the meaning of California Penal Code section 487m. Specifically, Defendants have
16 intentionally deprived Plaintiffs and Class Members of wages, as defined in Labor Code section
17 200, gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful
18 means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to
19 Plaintiffs and Class Members under the law. Plaintiffs and the Class Members he seeks to represent
20 are thus entitled to recover from Defendants treble damages and costs, including reasonable
21 attorneys' fees, pursuant to California Penal Code section 496(c).

22 115. Pursuant to Code of Civil Procedure section 1021.5, Plaintiffs will seek attorneys'
23 fees and costs from Defendants in an amount subject to proof and approved by the Court.

24 **SEVENTH CAUSE OF ACTION**

25 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**

26 **(Against All Defendants)**

27 116. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
28 though fully set forth herein.

117. At all relevant times, Defendants had a duty to comply with Labor Code sections 2800 and 2802 and the applicable IWC Wage Orders and California Code of Regulations.

118. Labor Code section 2800 requires employers to indemnify employees for losses caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiffs and Class Members failed to request, demand, notify or otherwise seek reimbursement for their expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiffs and Class Members due to their own negligence.

119. Labor Code section 2802(a) requires that employers indemnify and reimburse employees for all business expenses, which are defined as all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred based on the employee's obedience to the employer's directions. Labor Code section 2802(b) authorizes employees to recover in a court action interest which shall accrue from the date on which the employee incurred the necessary expenditure or loss. Labor Code section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor Code section 2802, to also recover attorneys' fees and costs.

120. During the Class Period, Defendants failed to reimburse Plaintiffs and Class Members for all business expenses incurred for Defendants' benefit. For example, Plaintiffs and Class Members were required to use their personal cell phones to discuss work-related matters with Defendants' representatives and for other work purposes without any reimbursement.

121. As a consequence of Defendants' willful conduct, Plaintiffs and Class Members have sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

122. WHEREFORE, Plaintiffs and the Class Members Plaintiffs seek to represent request relief as described herein and below.

EIGHTH CAUSE OF ACTION

(FAILURE TO INDEMNIFY)

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

123. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as

1 though fully set forth herein.

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

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

7 126. For three (3) years prior to the filing of the FAC in this Action through the present,
8 Defendants required Plaintiffs and Class Members, or some of them, to incur, at times, necessary
9 expenditures or losses in direct consequence of the discharge of their duties or at the obedience to
10 the directions of Defendants that included, without limitation: using cellular phones for work-
11 related purposes.

12 127. During that time period, Plaintiffs are informed and believe, and based thereon
13 alleges that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiffs
14 and Class Members for those losses and/or expenditures.

15 128. As a result of Defendants’ unlawful conduct, Plaintiffs and Class Members have
16 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
17 herein-described losses and/or expenditures.

18 129. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
19 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
20 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
21 costs of suit.

22 **NINTH CAUSE OF ACTION**

23 **(FAILURE TO PAY INTEREST ON DEPOSITS)**

24 **(Against All Defendants)**

25 130. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
26 though fully set forth herein.

27 131. At all relevant times, Plaintiffs and Class Members were employees or former
28 employees of Defendants covered by Labor Code sections 400 through 410.

1 132. Pursuant to Labor Code section 404, Defendants were required to immediately
2 return amounts deposited with accrued interest when Plaintiffs and Class Members returned the
3 required uniforms to Defendants.

4 133. Plaintiffs are informed and believe, and based thereon allege that for three (3) years
5 prior to the filing of this Action through the present, due to policies and practices adopted by
6 Defendants, Defendants violated Labor Code section 404 by failing to, at times, immediately return
7 accrued interest on deposits made by Plaintiffs and Class Members.

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

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

14 **TENTH CAUSE OF ACTION**
15 **(VIOLATION OF LABOR CODE § 227.3)**
16 **(Against All Defendants)**

17 136. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
18 though fully set forth herein.

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

24 138. Plaintiff are informed and believe, and based thereon allege that, at all times relevant
25 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and
26 that Plaintiffs' employment contract with Defendants included paid vacations.

27 139. For at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated

employees or former employees within the State of California with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

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

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

ELEVENTH CAUSE OF ACTION
(VIOLATION OF THE UNFAIR COMPETITION LAW)
(Against All Defendants)

142. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

143. California Business & Professions Code Section 17200, *et seq.* prohibits unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

144. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiffs, Class Members, and Defendants' competitors. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure section 1021.5.

145. Defendants' activities, as alleged herein, violate California law and constitute unlawful business acts or practices in violation of California Business and Professions Code sections 17200, *et seq.*

146. A violation of Business and Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law.

147. Plaintiffs brings this action individually and on behalf of all members of the general public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below

1 constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of
2 the UCL. Defendants' policies and practices have violated state law in at least the following
3 respects:

4 (a) Failing to pay all sick pay, vacation pay, and minimum, regular, overtime,
5 and double time wages due to Plaintiffs and Class Members in violation of Labor Code sections
6 204, 206, 210, 218, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and
7 the applicable IWC Wage Orders and California Code of Regulations;

8 (b) Failing to provide compliant meal periods or compensation in lieu thereof in
9 violation of Labor Code sections 226.7 and 512;

10 (c) Failing to authorize or permit rest breaks and/or provide compensation in
11 lieu thereof in violation of Labor Code section 226.7;

12 (d) Intentionally failing to provide Plaintiffs and Class Members with accurate
13 itemized wage statements in violation of Labor Code section 226;

14 (e) Failing to timely pay all earned wages to Plaintiffs and Waiting Time
15 Subclass Members upon separation of employment in violation of Labor Code sections 201, 202,
16 and 203;

17 (f) Failing to reimburse Plaintiffs and Class Members all necessary business
18 expenses in violation of Labor Code sections 2800 and 2802; and

19 (g) Violations of the IWC Wage Orders for the same conduct above.

20 148. Defendants' course of conduct, acts, and practices in violation of California law
21 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
22 conduct described herein violates the policy or spirit of such laws or otherwise significantly
23 threatens or harms competition. The substantial harm to Plaintiffs and Class Members in being
24 wrongfully denied earned wages, meal and rest periods, premium pay, and reimbursements
25 outweighs the utility, if any, of Defendants' policies or practices and, therefore, Defendants' actions
26 described herein constitute an unfair business practices or acts within the meaning of the UCL.

27 149. Plaintiffs further brings this cause of action on behalf of the proposed Class, seeking
28 statutory and injunctive relief to stop the misconduct of Defendants, as complained herein, and to

1 compel restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and
2 premiums, etc.) obtained by Defendants through the unfair and unlawful business practices
3 described herein pursuant to, *inter alia*, Business and Professions Code sections 17202, 17203, and
4 17208. Under the circumstances alleged, it would be inequitable and result in a miscarriage of
5 justice for Defendants to continue to retain the property of Plaintiffs and Class Members.

6 150. Defendants' failure to adopt and implement policies in accordance with and/or
7 adhere to these laws, all of which are binding upon and burdensome to Defendants' competitors,
8 engenders an unfair competitive advantage for Defendants against its competitors, thereby
9 constituting an unfair business practice, as set forth in the UCL.

10 151. Pursuant to California Business and Professions Code section 17203, as a direct and
11 proximate result of the unfair business practices of Defendants, Plaintiffs, individually, and on
12 behalf of others similarly situated, is entitled to equitable and injunctive relief, against such
13 unlawful practices in order to prevent future damage, for which there is no adequate remedy at law,
14 and to avoid a multiplicity of lawsuits. Plaintiffs also seek an order enjoining Defendants to cease
15 and desist from engaging in the practices described herein.

16 152. Plaintiffs and Class Members also request any other such legal and equitable relief
17 from Defendants' unlawful and willful conduct as the Court deems just and proper, including an
18 injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent
19 practices alleged in this FAC.

20 153. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and
21 Class Members are entitled to and seek other appropriate relief available under California Business
22 & Professions Code sections 17200 *et seq.* Plaintiffs, on behalf of himself and the Class, also seeks
23 recovery of attorneys' fees and costs of this action to be paid by Defendants as provided by
24 California Code of Civil Procedure section 1021.5.

25 154. WHEREFORE, Plaintiffs and the Class Members Plaintiffs seek to represent request
26 relief as described herein and below.

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28 //

1 **TWELFTH CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 **(Against All Defendants)**

4 155. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 156. California Labor Code Section 2699(a) specifically provides for a private right of
7 action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision
8 of law, any provision of this code that provides for a civil penalty to be assessed and collected by
9 the Labor and Workforce Development Agency or any of its departments, divisions, commissions,
10 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered
11 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
12 current or former employees pursuant to the procedures specified in Section 2699.3."

13 157. Plaintiffs gave written notice of the specified provisions alleged to have been
14 violated by Defendants including the facts and theories to support the alleged violations, as required
15 by Labor Code section 2699.3 and paid the filing fee. This written notice was provided via certified
16 mail to Defendants and to the LWDA by electronically filing the notice via the Department of
17 Industrial Relations' website. In this civil action, Plaintiffs seek to recover penalties under Labor
18 Code Section 2699 pursuant to Section 2699.3 for the violations of the Labor Code described in
19 this FAC. These penalties include, but are not limited to, penalties under California Labor Code
20 Sections 210, 226.3, 558(a), 1197.1, and 2699(f)(2).

21 158. The statute of limitations is tolled while a laintiff exhausts his or her administrative
22 remedies with the LWDA prior to suit, which is required by Labor Code Section 2699.3(d).

23 159. In addition, Plaintiffs seeks penalties for Defendants' violation of California Labor
24 Code Section 1174(d). Pursuant to California Labor Code Section 1174.5, any person, including
25 any entity, employing labor who willfully fails to maintain accurate and complete records required
26 by California Labor Code Section 1174 is subject to a penalty under Section 1174.5. Pursuant to
27 the applicable IWC Order Section 7(A)(3), every employer shall keep time records showing when
28 the employee begins and ends each work period. Meal periods, and total hours worked daily shall

1 also be recorded. Additionally, pursuant to the applicable IWC Order Section 7(A)(5), every
2 employer shall keep total hours worked in the payroll period and applicable rates of pay.

3 160. Defendants' conduct violates numerous Labor Code sections, including, but not
4 limited to, 96, 98.6, 200, 201, 201.5, 201.7, 202, 203, 203.5, 204, 204a, 205, 205.5, 206, 210, 221,
5 222.5, 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 233, 234, 245, 246, 432, 432.3, 432.5,
6 432.8, 510, 512, 558, 558.1, 1102.5, 1171, 1174, 1174.5, 1811, 1815, 1194, 1194.2, 1197,
7 1197.5(k), 1198, 1199, 1527, 2800, 2802, 336, 3457, and 8397.4. Several of these labor code
8 violations are identified as follows:

9 (a) Violation of Labor Code Sections 201-204, 206, 210, 221, 223,
10 227.3, 246, 510, 558, 1194, 1197, 1197.1, and 1198 for failure to timely pay all sick pay, vacation
11 pay, and earned wages (including minimum, regular, overtime, and double time wages) owed to
12 Plaintiffs and other aggrieved employees during employment and upon separation of employment;

13 (b) Violation of Labor Code Sections 1811 and 1815 for failing to pay
14 the prevailing wage rate for work performed by Plaintiffs and other aggrieved employees on public
15 work projects.

16 (c) Violation of Labor Code Sections 226.7 and 512 for failure to
17 provide meal periods to Plaintiffs and other aggrieved employees and failure to pay premium wages
18 for missed meal periods as herein alleged;

19 (d) Violation of Labor Code Section 226.7 for failure to permit rest
20 breaks to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed
21 rest periods as herein alleged;

22 (e) Violation of Labor Code Sections 226 and 226.3 for failure to
23 provide accurate itemized wage statements to Plaintiffs and other aggrieved employees as herein
24 alleged;

25 (f) Violation of Labor Code sections 226, 226.3, 1174, and 1174.5 for
26 failure to calculate sick pay at the regular rate of pay for the workweek in which Plaintiffs and other
27 Aggrieved Employees used paid sick time, or by dividing the Plaintiffs and other Aggrieved
28 Employees' total wages, not including overtime premium pay, by the Plaintiffs and other Aggrieved

1 Employees' total hours worked in the full pay periods of the prior 90 days of employment, in
2 violation of Labor Code Sections 246, 246.5, 247, 247.5, and 248.5 and the Healthy Workplaces,
3 Healthy Families Act of 2014;

4 (g) Violation of Labor Code sections 233 and 234 for failure to permit
5 Plaintiffs and Aggrieved Employees to use in any calendar year the employee's accrued and
6 available sick leave entitlement;

7 (h) Violation of Labor Code sections 227.3 for failure to provide to
8 Plaintiffs and Aggrieved Employees accrual of vacation wages and failure to pay to Plaintiffs and/or
9 Aggrieved Employees vested vacation wages;

10 (i) Violation of Labor Code sections 221 and 223 for secretly paying
11 Plaintiffs and Aggrieved Employees less than the statutory or contractual rate;

12 (j) Violation of Labor Code Sections 1174 and 1174.5 for failure to
13 maintain accurate records regarding the employment of Plaintiffs and other aggrieved employees
14 as herein alleged;

15 (k) Violation of Labor Code sections 232, 232.5, 432.5 and 1197.5 for
16 using policies, practices, and rules, to restrict Plaintiffs and other aggrieved employees' speech,
17 protected activity, and the disclosure of information beyond the limited categories of information
18 protected by law.

19 (l) Violation of Labor Code sections 1198 and 1199 for failure to
20 provide suitable seating to Plaintiffs and other Aggrieved Employees during working hours and
21 when the nature of their work reasonably permitted the use of seats.

22 (m) Violation of Labor Code sections 2800 and 2802, for failure to
23 reimburse business expenses to Plaintiffs and other Aggrieved Employees;

24 (n) Violation of Labor Code Section 1198 and the applicable IWC
25 Wage Order for failure to provide to Plaintiffs and/or other Aggrieved Employees an adequate
26 supply of potable water, soap or other suitable cleansing agent, and single use towels for
27 handwashing;

1 (o) Violation of Labor Code section 1199 for the foregoing Labor Code
2 violations.

3 161. Pursuant to Labor Code Section 2699(c)(1), Plaintiffs are “aggrieved employees”
4 because they were employed by the alleged violators and personally suffered each of the alleged
5 violations committed against them, and therefore are properly suited to represent the interests of all
6 other aggrieved employees.

7 162. Pursuant to Labor Code Sections 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled
8 to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
9 cited above.

10 163. For bringing this action, Plaintiffs are entitled to attorney’s fees and costs incurred
11 herein pursuant to Labor Code Section 2699(g)(1).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, other aggrieved
14 employees, and the State of California, prays for judgment and the following specific relief against
15 Defendants, jointly and severally, as follows:

16 1. That the Court certify the proposed Class and Subclasses, and any other class or
17 subclasses as appropriate under California Code of Civil Procedure section 382;

18 2. That Plaintiffs be appointed as the Class Representative;

19 3. That TORUS LLP and BIBIYAN LAW GROUP, P.C. be appointed as Class
20 Counsel for all purposes;

21 4. For compensatory damages in an amount according to proof with interest thereon;

22 5. For such general, economic, and/or special damages in an amount according to proof
23 with interest thereon;

24 6. For damages, monetary relief, wages, premiums, reimbursements, benefits and
25 penalties, including interest thereon;

26 7. For treble damages pursuant to Penal Code section 496(c) for violation of Penal
27 Code section 487m;

28 8. For waiting time penalties pursuant to Labor Code section 203;

- 1 9. For statutory penalties to the extent permitted by law, including those pursuant to
2 the Labor Code and IWC Wage Orders;
- 3 10. For the amounts provided for in Labor Code section 226.7;
- 4 11. For attorney's fees, costs of suit, including expert fees, and interest pursuant to
5 Labor Code sections 218.6, 226, 1194, 2802 and California Code of Civil Procedure section 1021.5;
- 6 12. For restitution to Plaintiffs and Class Members of all money and property unlawfully
7 acquired by Defendants through unfair or unlawful business practices pursuant to Business and
8 Professions Code sections 17200 *et seq.*;
- 9 13. For an order requiring Defendants to restore and disgorge all funds to each employee
10 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
11 and, therefore, constituting unfair competition under Business and Professions Code sections
12 17200, *et seq.*;
- 13 14. For liquidated damages pursuant to Labor Code section 1194.2;
- 14 15. For permanent injunctive relief described in the UCL cause of action;
- 15 16. For prejudgment interest on all sums recovered pursuant to Labor Code
16 section 218.6, California Civil Code sections 3287 and 3289, and applicable law;
- 17 17. For post-judgment interest on all amounts awarded to Plaintiffs and Class Members
18 as provided by law;
- 19 18. For PAGA Penalties; and
- 20 19. A declaratory judgment that the practices complained of herein are unlawful under
21 California law.

22 Dated: August 4, 2025

TORUS LLP

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26 By: _____

David Alami
Daniel J. Hyun
Attorneys for Plaintiffs JOSEPH HERNANDEZ
and ALEX PINEDA

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Dated: August 4, 2025

By: _____

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