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County of Fresno
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16 VICTOR CARRANZA, YARITZA BEJARANO, MAYRA SILVA, JESSICA
17 DANIELS, and NEPTALI MONTEZ

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF FRESNO, UNLIMITED CIVIL DIVISION

20 PEDRO GARZA, ROSA SALDANA)
21 LEMUS, TRENTON LIVELY, VICTOR)
22 CARRANZA, YARITZA BEJARANO,)
23 MAYRA SILVA, JESSICA DANIELS, and)
24 NEPTALI MONTEZ on behalf of)
25 themselves, and the general public,)

26 Plaintiffs,

27 v.

28 BW INDUSTRIES, INC.,BITWISE)
INDUSTRIES, INC., ALPHA WORKS)
TECHNOLOGIES, LLC, JAKE)
SOBERAL, IRMA L. OLGUIN,)
MITCHELL KAPOR, PAULA PRETLOW,)
OLLEN DOUGLASS, JOSEPH PROIETTI;)
and DOES 1 through 100, inclusive,)

Defendants.

Case No. **23CECG02098**

CLASS ACTION AND INDIVIDUAL
COMPLAINT

1. Violation of the California WARN ACT (Cal. Labor Code § 1400, et seq.);
2. Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, et seq);
3. Violation of Penal Code Section 496;
4. Failure to Pay Wages;
5. Failure to Maintain Accurate Records;
6. Failure to Furnish Wage Statements;
7. Failure to Timely Pay Wages;
8. Failure to Pay Minimum Wages;and
9. Negligence

1 Plaintiffs PEDRO GARZA, ROSA SALDANA LEMUS, TRENTON LIVELY,
2 VICTOR CARRANZA, YARITZA BEJARANO, MAYRA SILVA, JESSICA DANIELS, and
3 NEPTALI MONTEZ ("Plaintiffs" collectively), on behalf of themselves and all others similarly
4 situated, bring this complaint against their former employers, Defendant BW INDUSTRIES,
5 INC., BITWISE INDUSTRIES, INC., ALPHA WORKS TECHNOLOGIES, LLC (collectively
6 "BITWISE"), JAKE SOBERAL, IRMA L. OLGUIN, MITCHELL KAPOR, PAULA
7 PRETLOW, OLLEN DOUGLASS, JOSEPH PROIETTI (collectively "Individual Defendants"),
8 and DOES 1-100, inclusive ("Doe Defendants") (all collectively "Defendants"), and hereby
9 demands a jury trial on all causes of action. Plaintiffs' allegations are as follows:

10 **PLAINTIFFS**

11 1. At all times material herein, Mr. PEDRO GARZA was and is a competent adult
12 and resident of the State of California, Fresno County. MR. PEDRO GARZA's last job title while
13 working for Defendants was as a Security Guard. His employment with Defendants began in or
14 about October of 2020, and his employment was terminated by Defendants on May 29, 2023.

15 2. At all times material herein, Ms. ROSA SALDANA LEMUS was and is a
16 competent adult and resident of the State of California, Fresno County. Ms. ROSA SALDANA
17 LEMUS' last job involved working in BITWISE marketing. She began working for Defendants
18 in or about March of 2021 and her employment was terminated by Defendants on May 29, 2023.

19 3. At all times material herein, Mr. TRENTON LIVELY was and is a competent
20 adult and resident of the State of California, Fresno County. MR. TRENTON LIVELY's last job
21 title while working for Defendants was as a Junior Copywriter. His employment began in or
22 about August of 2020, and his employment was terminated by Defendants on May 29, 2023.

23 4. At all times material herein, Mr. VICTOR CARRANZA was and is a competent
24 adult and resident of the State of California, Fresno County. Mr. VICTOR CARRANZA's last
25 job title while working for Defendants was as Business Analyst/Administrator. His employment
26 began on in or about March of 2020 and his employment was terminated by Defendants on May
27 29, 2023.

1 5. At all times material herein, Ms. YARITZA BEJARANO was and is a competent
2 adult and resident of the State of California, Fresno County. Ms. YARITZA BEJARANO's last
3 job group was in the Call Center. She began working for Defendants in or about June of 2022
4 and her employment was terminated by Defendants on May 29, 2023.

5 6. At all times material herein, Ms. MAYRA SILVA was and is a competent adult
6 and resident of the State of California, Fresno County. Ms. MAYRA SILVA's last job group was
7 in Workforce Training. She began working for Defendants in or about May of 2022 and her
8 employment was terminated by Defendants on May 29, 2023.

9 7. At all times material herein, Ms. JESSICA DANIELS was and is a competent
10 adult and resident of the State of California, Fresno County. Ms. JESSICA DANIELS' last job
11 was as a quality assurance technician. She began working for Defendants in or about August of
12 2021 and her employment was terminated by Defendants on May 29, 2023.

13 8. At all times material herein, Ms. NEPTALI MONTEZ was and is a competent
14 adult and resident of the State of California, Fresno County. Ms. NEPTALI MONTEZ's last job
15 title was Web Designer / Instructor. She began working for Defendants in or about December of
16 2019 and her employment was terminated by Defendants on May 29, 2023.

17 **DEFENDANTS**

18 9. At all times material herein, Defendant BW INDUSTRIES, INC., was and is
19 a Delaware corporation with its principal place of business in Fresno County, California and at
20 all relevant times was registered to do business in the State of California with its corporate
21 headquarters located in Fresno, California.

22 10. At all times material herein, Defendant BITWISE INDUSTRIES, INC., was and is
23 a California corporation with its principal place of business in Fresno County, California and at
24 all relevant times was registered to do business in the State of California with its corporate
25 headquarters located in Fresno, California.

26 11. At all times material herein, Defendant ALPHA WORKS TECHNOLOGIES,
27 LLC, was and is a California Limited Liability Company with its principal place of business in
28 Fresno County, California and at all relevant times was registered to do business in the State of

1 California with its headquarters located in Fresno, California. Per the California Secretary of
2 State, ALPHA WORKS TECHNOLOGIES, LLC amended its name and was formerly known as
3 “GEEKWISE ACADEMY, LLC.” Plaintiffs are informed and believe and thereon allege that
4 ALPHA WORKS TECHNOLOGIES, LLC was managed, controlled and operated by BITWISE
5 INDUSTRIES, INC. as a single enterprise making payroll payments from accounts standing in
6 the name of either BW INDUSTRIES, INC. and/or BITWISE INDUSTRIES, INC. Defendant
7 JAKE SOBERAL represented ALPHA WORKS TECHNOLOGIES, LLC as an extension
8 and/or division of BW INDUSTRIES, INC. and would use employees interchangeably across the
9 entities for the same or similar tasks. Hereafter, the three entity Defendants will be referred to
10 collectively as BITWISE. According to its marketing, BITWISE built scalable digital solutions
11 and was an expert in development using a representative workforce in what it described as
12 underestimated cities, such as Fresno, CA and Bakersfield, CA. Among other things, BITWISE
13 was in the business of providing professional training, consulting, and workforce development
14 services. Upon information and belief, BITWISE had at least one hundred (100) employees in
15 the state of California at all relevant times to this Class Action Complaint.

16 12. Individual Defendants JAKE SOBERAL, IRMA L. OLGUIN, MITCHELL
17 KAPOR, PAULA PRETLOW, OLLEN DOUGLASS, JOSEPH PROIETTI all served on the
18 BITWISE board during the relevant times. For BITWISE, JAKE SOBERAL and IRMA L.
19 OLGUIN were the co-chief executive officers at all times relevant. Plaintiffs are informed and
20 believe and thereon allege that ultimately and over the objections of JAKE SOBERAL AND
21 IRMA L. OLGUIN, board members MITCHELL KAPOR, PAULA PRETLOW, OLLEN
22 DOUGLASS, and JOSEPH PROIETTI made the decision to terminate all 900 BITWISE
23 employees at a meeting convened in Oakland, California on or about May 28, 2023. On or about
24 June 2, 2023, and following the termination of all 900 BITWISE employees on or about May 29,
25 2023, BITWISE announced it had replaced JAKE SOBERAL and IRMA L. OLGUIN with
26 OLLEN DOUGLASS as its Interim President.

27 13. Plaintiffs are informed and believe, and thereon allege, that individually named
28

1 Defendants JAKE SOBERAL, IRMA L. OLGUIN, MITCHELL KAPOR, PAULA PRETLOW,
2 OLLEN DOUGLASS, JOSEPH PROIETTI (Collectively hereafter "Individual Defendants") are
3 all California residents. Individual Defendants caused to be violated provisions regulating
4 minimum wages along with Sections 203, 226, 226.7, 1193.6, 1194, and/or 2802, and pursuant to
5 Labor Code Section 558.1 may be held liable as the employer for such violation. The Individual
6 Defendants paid their workforce a payroll check drawn on an account standing in the name of
7 BW INDUSTRIES, INC. All of these checks bounced.

8 14. Under the California WARN Act, California Labor Code section 1400(b),
9 an "Employer" means any person, who directly or indirectly owns and operates a covered
10 establishment. A parent corporation is an employer as to any covered establishment directly
11 owned and operated by its corporate subsidiary.

12 15. Upon information and belief, Defendants, and each of them maintained control,
13 oversight, and direction over the operations, including the decision to order the mass layoff that
14 began on or about May 29, 2023. During all relevant times, Defendants, and each of them, were
15 Plaintiffs' employer within the meaning of the California WARN Act.

16 16. The true names and capacities of the Defendants named herein as DOES 1
17 through 100, inclusive, whether an individual, corporation or otherwise are unknown to the
18 Plaintiffs who, therefore, sue such Defendants by fictitious names pursuant to Code of Civil
19 Procedure §474. Alternatively, such DOE Defendants are persons whose identities are known to
20 Plaintiffs, but about whom sufficient facts are not known that would support the assertion by
21 Plaintiffs of a civil claim at this time. When Plaintiffs obtain information supporting a claim
22 against any DOE Defendant, Plaintiffs will seek leave to amend this Complaint and will allege
23 appropriate charging allegations.

24 17. Plaintiffs are informed and believe, and thereon allege, that the Defendants, and
25 each of them, are agents and/or employees and/or parents, subsidiaries or sister corporations of
26 each other, and are responsible for the acts complained of herein, unless otherwise alleged in this
27 Complaint.

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18. Plaintiffs bring this representative action on behalf of themselves and all other similarly situated employees who worked at, reported to, or received assignments from BITWISE and who were terminated without cause, as part of, or as a result of, a layoff/mass layoff ordered by Defendants, and each of them, and DOES 1 through 50 (collectively, hereinafter "Defendants"). The layoff/mass layoff was carried out on or around May 29, 2023, and within thirty (30) days of that date, and the pertinent employees, including Plaintiffs, were not provided sixty (60) days advance written notice of their terminations by Defendants, as required by California Labor Code section 1400 et seq. (California WARN Act).

19. Defendants, and each of them, are an employer under the California WARN Act, and accordingly, are liable to Plaintiffs and the putative class members for damages arising from their terminations without proper notice.

20. Defendants, and each of them, are liable to Plaintiffs and the putative class members for damages arising from the failure to properly pay wages at the time of termination, the failure to pay wages during employment and the failure to issue and maintain compliant wage statements. Defendants, and each of them, are liable to Plaintiffs and the putative class members for passing checks that bounced and for engaging in wage theft.

8

21. This Class Action is brought pursuant to California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court of California and will be established according to proof at trial.

22. This Court has original jurisdiction over this Class Action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court of California "original jurisdiction in all other causes" except those causes given by statute to other courts. The statutes under which this Class Action are brought do not specify any other basis for jurisdiction.

23. Upon information and belief, this Court has personal jurisdiction over all Defendants because each party is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of

1 jurisdiction over it by California courts consistent with traditional notions of fair play and substantial
2 justice.

3 24. Venue is proper in the County of Fresno pursuant to California Code of Civil
4 Procedure section 395.5. Plaintiffs were employed and performed work for Defendants in the County
5 of Fresno, California, during the time period relevant to this Class Action. Moreover, Defendants
6 maintain offices, have agents, and/or transact business in the County of Fresno which is BITWISE's
7 headquarters and main office.

8 **FACTUAL BACKGROUND**

9 25. This case arises out of the events leading up to and including the mass BITWISE
10 layoff that occurred on or about May 29, 2023. Immediately prior to the mass layoffs, BITWISE,
11 IRMA OLGUIN, and JAKE SOBERAL had come under media scrutiny for non-payment of
12 BITWISE property taxes and other business practices. In response, JAKE SOBERAL represented
13 to the public and to BITWISE employees that the non-payment was an innocent oversight, and that
14 BITWISE remained financially healthy. This message was reinforced internally to BITWISE
15 employees by BITWISE and IRMA OLGUIN.

16 26. Indeed, both Defendants Jake Soberal and Irma Olguin had represented to potential
17 lenders and investors in May 2023 that BITWISE was solvent and well-funded. In fact, in March
18 2023, under oath, Jake Soberal and Irma Olguin stated that BITWISE had at least 80 million dollars
19 in the bank:

20 "Through its Chief Executive Officer, Jake Alexander Soberal, BW Industries, Inc.
21 warranted and represented that it had \$81,221,940.32 in available funds in its Central Valley
22 Community Bank ("CVCB") account as of March 9, 2023. This information and
23 representation was material to Lenders to induce Lenders to provide this loan. Lenders would
24 not have entered into any loan agreement with Borrower but for this information being
truthful and accurate as to the exact number on the exact date. BW Industries, Inc., Jake
Alexander Soberal and Irma Lopez Olguin, Jr. warrant and declare that the CVCB bank
information they collectively provided, as indicated in this paragraph, is true and correct
under penalty of perjury."

25 27. Despite the amounts of money in the accounts, from March through May, BITWISE
26 discontinued its direct payroll deposit and began issuing paper checks to its employees. The checks
27 were drawn on BW Industries, Inc. accounts. During this time, Plaintiffs and Putative Class members
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1 are informed and believe that BITWISE failed to make agreed upon payroll payments despite
2 accounting for payroll deductions.

3 28. On or about May 28, 2023, Individual Defendants convened a meeting whereby and
4 in large response to the barrage of negative press, Individual Defendants decided to terminate all 900
5 employees absent notice of any kind. Plaintiffs are informed and believe and thereupon allege that
6 all 900 employees were written bad payroll checks which ultimately bounced.

7 29. Following the mass layoff, Jake Soberal privately admitted to investors “BITWISE
8 is done” and “we [the board] have been meeting twice a day to manage the situation.” Jake Soberal
9 admitted and acknowledged, a few days after the mass termination, that the Individual Defendants
10 were “mostly concerned with individual liability” arising out the “employee labor claims” with the
11 obvious suggestion that the situation had not been handled properly. Apparently, to buy time,
12 Defendants had messaged the terminations as a “furlough” to both mislead the public and the
13 BITWISE employees. On or about June 2, 2023, Defendant OLLEN DOUGLASS pronounced to
14 BITWISE employees that the board had terminated Jake Soberal and Irma Olguin. OLLEN
15 DOUGLASS also announced that he would be serving as the interim president.

16 30. On information and belief, Defendants terminated over one hundred (100)
17 full-time employees throughout California. On information and belief, Defendants did not provide
18 written notice to employees affected prior to the mass layoff, relocations or terminations. On
19 information and belief, Defendants also failed to provide written notice to the State of California
20 Economic Development Department and the chief elected official of any city or county in California
21 in which the closure of any of Defendants' California locations occurred. Indeed, the City of Fresno
22 confirmed in its own press release that it had not received notice.

23 **CLASS ACTION ALLEGATIONS**

24 31. Plaintiffs bring this action individually and on behalf of all others similarly
25 situated as a class action pursuant to Code of Civil Procedure section 382. The members of the
26 Class and Subclass are defined as follows:

27 a. All persons who have been employed by Defendants throughout California and
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1 who were terminated pursuant to mass layoffs, relocations, or terminations (as
2 those terms are defined in California Labor Code section 1404) by Defendants on
3 or around May 29, 2023, and within thirty (30) days of that date, or were
4 terminated without cause as a result of the mass layoff ordered by Defendants
5 beginning on or about May 29, 2023, and who were affected employees
6 within the meaning of California Labor Code section 1400(h) ("WARN
7 Class").

8 29. Plaintiffs also seek to represent the subclass composed of and defined as follows:

- 9 A. All Class Members who were employed by Defendants and subject to
10 Defendants' Unfair Business Practices ("UCL" Subclass).
- 11 B. All Class Members who were employed by Defendants and whose
12 paychecks could not be cashed due to Defendants passing checks on accounts
13 with insufficient funds, and/or whose "fringe benefits" were unpaid at the
14 relevant times and who are thus entitled to penalties under Labor Code Section
15 203.1. ("Labor Code Section 203.1" Subclass).
- 16 C. All Class Members who were employed by Defendants and who were not
17 compensated their regular wages or even minimum wages during employment.
18 ("Labor Code Sections 1194 and 1194.2" Subclass).
- 19 D. All Class Members who were employed by Defendants and who were not
20 paid their wages due and owing upon termination. ("Labor Code Sections 203"
21 Subclass).

22 32. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
23 applicable laws to amend or modify the class definition with respect to issues or in any other
24 ways. Plaintiff is a member of the Class as well as a member of the Sub-Class.

25 33. The persons in the WARN Class identified above ("WARN Class Members") are so
26 numerous that joinder of all members is impracticable. Although the precise number of such
27 persons is unknown, the facts on which the calculation of that number can be based are presently
28 within the sole control of Defendants.

1 34. On information and belief, the identity of the members of the class and the recent
2 residence address of each of the WARN Act Class Members is contained in the books and
3 records of Defendants.

4 35. On information and belief, the rate of pay and benefits that were being paid
5 by Defendants to each WARN Class Member at the time of his/her termination is contained in
6 the books and records of the Defendants.

7 36. Common questions of law and fact exist as to members of the WARN Class,
8 including, but not limited to, the following:

- 9 a. Whether the members of the WARN Class were employees of the Defendants
10 who worked or reported to Defendants' worksite;
- 11 b. Whether Defendants unlawfully terminated the employment of the members of
12 the WARN Class without cause on their part and without giving them sixty (60) days
13 advance written notice in violation of the California WARN Act;
- 14 c. Whether Defendants can prove that any exemptions under the California
15 WARN Act applies; and
- 16 d. Whether Defendants unlawfully failed to pay the WARN Class members sixty
17 (60) days wages and benefits as required by the California WARN Act.

18 37. Plaintiffs' claims are typical of those of the WARN Class. Plaintiffs, like other
19 WARN Class Members, worked at Defendants' worksite and were terminated without cause
20 beginning on or about May 29, 2023, due to a mass layoff ordered by Defendants.

21 38. Further the Class and subclasses defined herein satisfy all class action requirements:

22 a. Numerosity: A class action is the only available method for the fair and
23 efficient adjudication of this controversy. The members of the Plaintiff Classes
24 are so numerous that joinder of all members is impractical, if not impossible,
25 insofar as Plaintiff is informed and believes and, on that basis, alleges that the
total number of Class Members is, at least, in the hundreds, if not thousands of
individuals. Membership in the Classes will be determined by and upon analysis
of employee and payroll records, among other records maintained by Defendants.

26 b. Commonality: Plaintiff and Class Members share a community of interests in
27 that there are numerous common questions and issues of fact and law which
28 predominate over any questions and issues solely affecting individual members,
including, but not necessarily limited to:

- 1) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code §§ 17200 et seq. by failing to pay all wages due to Plaintiff and Class Members;
- 2) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code §§ 17200 et seq. and/or Penal Code Section 496 by failing to pay wages and benefits due to Plaintiff and Class Members;
- 3) Whether Defendants violated and/or continues to violate, California Labor Code § 1174 by failing to keep accurate records of Plaintiffs and Class Members' hours of work;
- 4) Whether Defendants violated, and continues to violate California Labor Code §§ 201-204 by failing to pay all wages due and owing at the time particular Class Members' employment with Defendants terminated;
- 5) Whether Defendants violated and/or continues to violate California Labor Code § 226 by failing to provide semi-monthly itemized wage statements to Plaintiffs and Class Members of total hours worked and all applicable hourly rates in effect during each relevant pay period;
- 6) Whether Defendants violated and/or continue to violate California Labor Code § 1194 by failing to pay minimum wages;
- 7) Whether Defendants violated and/or continue to violate California Labor Code § 203.1 by failing to pay ;

c. Typicality: Plaintiffs' claims are typical of the claims of the Plaintiff Classes. Plaintiffs and all members of the Plaintiff Classes sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of state law, as alleged herein.

d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

e. Adequacy of Representation: Plaintiffs are adequate representatives of the Classes, in that Plaintiffs' claims are typical of those of the Classes and Plaintiffs have the same interests in the litigation of this case as Class Members. Plaintiffs are committed to vigorous prosecution of this case and has retained competent counsel experienced in litigation of this nature. Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the Classes as a whole. Plaintiffs anticipate no management difficulties in this litigation.

1 39. This action is appropriate and practical as a class action because the prosecution
2 of individual actions for each Class Member would likely result in inconsistent and varying
3 rulings that could and likely would impede the interests of other Class Members in protecting
4 their rights, as well as potentially establishing incompatible patterns of conduct for Defendants

5 **FIRST CAUSE OF ACTION**
6 **Violation of the California WARN Act**
7 **[Cal. Labor Code, §1400 et seq]**
8 ***(On behalf of Plaintiffs and all Class Members against all Defendants)***

9 40. Plaintiffs, collectively, and Class Members incorporate in this cause of action each
10 and every allegation of the preceding paragraphs, with the same force and effect as though fully
11 set forth herein.

12 41. At all relevant times, Defendants, and each of the, were an "employer" because they
13 directly or indirectly owned and operated a covered establishment in Fresno, California that
14 employed, within the preceding twelve months, seventy-five (75) or more employees, pursuant to
15 California Labor Code sections 1400(a) and (b).

16 42. On or about May 29, 2023, Defendants ordered a mass layoff or termination,
17 relocation, or termination, as those terms are defined by California Labor Code sections 1400 (c) -(f).

18 43. Plaintiffs and the Class Members are "employees" of Defendants, within the meaning
19 of California Labor Code section 1400(h).

20 44. Defendants were required by the California WARN Act to give Plaintiffs and the
21 Class Members at least sixty (60) days advance written notice of their terminations.

22 45. Defendants failed to give the Plaintiffs and the Class Members sixty (60) days written
23 notice that complied with the requirements of the California WARN Act, in violation of California
24 Labor Code section 1402(a).

25 46. Defendants failed to pay Plaintiffs and each of the Class Members their respective
26 wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for sixty (60) days
27 following their respective terminations, and failed to make the benefit contributions and provide
28 employee benefits under COBRA for sixty (60) days from and after the dates of respective
terminations.

SECOND CAUSE OF ACTION
Unfair Business Practices
[Cal. Bus. & Prof. Code, § 17200 et seq.]
(On behalf of Plaintiffs and all Class Members against all Defendants)

47. Plaintiffs, collectively, and Class Members incorporate in this cause of action each and every allegation of the preceding paragraphs, and those paragraph 55 through 86 below, with the same force and effect as though fully set forth herein.

48. The Unlawful Business Practices Act, California Business & Professions Code sections 17200 et seq., allows any person or group to seek, on behalf of the general public, relief for unlawful or unfair business acts or practices. Defendants' policies and practices are, and at all relevant time have been, to unlawfully fail to give adequate notices before a mass layoff or relocations or terminations, in violation of the California WARN Act. Defendants' violations of California law, including Defendants' violations of the Employment Laws and Regulations as alleged herein and hereafter including, inter alia, Defendants' failure to pay for all hours worked, Defendants' failure to provide accurate itemized wage statements, and Defendants' failure to timely pay all wages, including upon termination, constitute unfair business practices in violation of California Business & Professions Code Section 17200 et seq because they were done repeatedly, over a significant period of time, and in a systematic manner to the detriment of Plaintiffs and Class Members.

49. Plaintiffs bring this cause of action on behalf of themselves, the general public and the Class and Sub-Class defined above. As a direct and proximate result of Defendants' unlawful business practices as alleged herein, Plaintiffs and members of the Class and Sub-Class have suffered injury in fact, and lost money or property, as detailed herein.

50. Defendants, and each of them, also caused to be issued certain checks to Plaintiffs, collectively, and Class Members, that were represented to be Plaintiffs' net pay for work performed while under Defendants' employ. Defendants issued the checks to Plaintiffs with full knowledge that the checks would be dishonored or otherwise "bounce" when Plaintiffs would attempt to negotiate them.

51. Defendants knew that Plaintiffs would deposit the checks, without questioning if they would in fact clear, and continue to show up for work-thereby preserving the façade that Defendants' enterprise was solvent and in operation, and without regard for the known and imminent harm to

1 Plaintiffs which would result. Plaintiffs, collectively, and Class Members thereafter suffered a wave
2 of losses and life interruptions as a result of Defendants' issuance of checks drawn on Plaintiffs'
3 accounts, as Plaintiffs' checks would be returned or otherwise "bounce," and subjecting Plaintiffs to
4 bounced check fees, overdraft fees, bank penalties and assessments, otherwise monetary loss, and
5 the inability to conduct normal life and meet their financial obligations.

6 52. Penal Code section 476c provides that: "(a) Any person who, for himself or herself, as
7 the agent or representative of another, or as an officer of a corporation, willfully, with intent to
8 defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depository, a
9 person, a firm, or a corporation, for the payment of money, knowing at the time of that making,
10 drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds
11 in, or credit with the bank or depository, person, firm, or corporation, for the payment of that check,
12 draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its
13 presentation, although no express representation is made with reference thereto, is punishable by
14 imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section
15 1170."

16 53. Defendants, and each of them, violated Penal Code §476c when they issued Plaintiffs,
17 collectively, and Class Members, what Defendants represented were good and valid paychecks,
18 reflecting Plaintiffs' net earnings for the preceding pay period. Defendants willfully, with intent to
19 defraud Plaintiffs, made, drew and uttered checks for the payment of money, knowing at the time
20 of that making, uttering and delivering, that they did not have sufficient funds in, or credit with
21 Defendants' bank, for the payment of said payroll checks.

22 54. Plaintiffs and the Class are entitled to restitution of unpaid wages and benefits alleged
23 herein that Defendants failed to pay them and wrongfully retained by means of their unlawful and
24 unfair business practices. Plaintiffs also seeks an injunction against Defendants on behalf of the
25 Class, enjoining Defendants and all persons acting in concert with them from engaging in
26 each of the unlawful practices.

27 ///

THIRD CAUSE OF ACTION
[Violation of Penal Code Section 496 Against DEFENDANTS]
(On behalf of Plaintiffs and all Class Members against all Defendants)

55. Plaintiffs, collectively, and Class Members incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

56. Penal Code Section 496(a) provides that “[e]very person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids on concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year.”

57. Penal Code section 496(c) expressly affords a person who is a victim of such theft to bring a civil action for recover of said money or property, and further affords the victim the right to treble damages and attorneys’ fees. Neither criminal charges nor a criminal conviction under Penal Code Section 496 is are prerequisites to recovery for a violation of this Section.

58. A criminal conviction under Penal Code Section 496(a) is not a prerequisite to recovery of treble damages under Section 496(e). The phrase “any manner constituting theft” under Section 496(a) includes theft by false pretense. Bell v. Feibush (2013) 212 Cal.App.4th 1041, 1043. Indeed, “Any manner constituting theft” includes theft by false pretenses, including circumstances such that the victim of financial loss was misled by the defendant to give, lend, or otherwise part with money.

59. Defendants falsely and fraudulently represented to Plaintiffs, collectively, and all Class Members that they would make deductions from Plaintiffs’ (collectively, and all Class members) paychecks certain sums of money, which would then be remitted or otherwise applied for Plaintiffs’ benefit. Defendants never remitted or otherwise applied said monies to Plaintiffs, directly or indirectly, but instead received and then absconded with said monies, and wrongfully misappropriated all said monies to Defendants’ sole and separate benefit and use.

60. Defendants never had the intent to remit or apply the monies in any manner that would benefit Plaintiffs, collectively, and Class Members, but instead had schemed, plotted and otherwise

1 stolen Plaintiffs' money and applied it for Defendants' sole and separate benefit and use. Defendants'
2 aforementioned conduct was knowingly and designedly deployed by false or fraudulent
3 representation or pretense, and resulted in Plaintiffs being defrauded of money. Said theft by false
4 pretenses by these Defendants, and each of them, is actionable under §496.

5 61. Defendants continue to conceal and withhold funds belonging to Plaintiffs, the owners
6 of those funds, knowing that the funds are being illegally withheld from Plaintiffs and members of
7 the Class.

8 62. As a direct, foreseeable, and proximate result of the violation of Penal Code Section
9 496(a) by Defendants, Plaintiffs have suffered damage in an amount to be proven at trial, including
10 interest, but in an amount not less than the jurisdictional limit of the court. Additionally, as a result
11 of the acts of Defendants, Plaintiff was forced to retain the services of legal counsel and have
12 incurred legal fees and costs. Pursuant to Penal Code Section 496(c), Plaintiffs bring this action and
13 seek three times the amount of their actual damages, interest and all reasonable attorney's fees.

14 **FOURTH CAUSE OF ACTION**

15 **Failure to Properly Compensate Employees for All Hours Worked** 16 **(Lab. Code §§ 200-204, 216, 225.5, 226, 500, 510, 558, 1197, 1198)** ***(On behalf of Plaintiffs and all Class Members against all Defendants)***

17 63. Plaintiffs, collectively, and Class Members incorporate in this cause of action each
18 and every allegation of the preceding paragraphs, with the same force and effect as though fully
19 set forth herein.

20 64. Defendants were required to compensate Plaintiffs and Class Members for all
21 hours worked pursuant to the Industrial Welfare Commission Order 1-2001, California Code of
22 Regulations, Title 8, Chapter 5, Section 11070 and Labor Code Sections 200-204, 216, 225.5,
23 500, 510, 558 1197, 1198.

24 65. Defendants refused to compensate Plaintiffs and Class Members for some and/or
25 all of the wages (including overtime wages) earned, in violation of the applicable California
26 Wage Order, Title 8 of the California Code of Regulations and the California Labor Code.

27 66. At all relevant times, Defendants were aware of, and were under a duty to comply
28 with the wage and overtime provisions of the California Labor Code, including, but not limited
to California Labor Code Sections 200-204, 216, 225.5, 500, 510, 558 1197, 1198. Plaintiffs and

1 Class Members are not exempt from the requirements of the Employment Laws and Regulations.
2 Plaintiffs and Class Members have been deprived of their rightfully earned compensation as a
3 direct and proximate result of Defendants' failure and refusal to pay said compensation. Under
4 California employment laws and regulations, Plaintiffs and Class Members are entitled to recover
5 compensation for all hours worked, in addition to reasonable attorney's fees and costs of suit.

6 67. As a direct and proximate result of Defendants' unlawful conduct, as set forth
7 herein, Plaintiffs and Class Members have sustained damages, including loss of earnings for
8 hours worked, including overtime hours worked, on behalf of Defendants, in an amount to be
9 established at trial, and are entitled to recover attorneys' fees and costs of suit.

10 **FIFTH CAUSE OF ACTION**
11 **FAILURE TO MAINTAIN ACCURATE RECORDS**
12 **(Lab. Code §§ 1174, 1174.5)**
13 **(On behalf of Plaintiffs and all Class Members against all Defendants)**

14 68. Plaintiffs, collectively, and Class Members incorporate in this cause of action each
15 and every allegation of the preceding paragraphs, with the same force and effect as though fully
16 set forth herein

17 69. California Labor Code § 1174(d) provides:

18 Every person employing labor in this state shall ... [k]eep, at a central location in
19 the state ... payroll records showing the hours worked daily by and the wages paid
20 to ... employees These records shall be kept in accordance with rules established
21 for this purpose by the commission, but in any case shall be kept on file for not
22 less than two years.

23 70. Defendants failed to maintain accurate records of the hours worked and the wages
24 paid to Plaintiffs and Class Members. Defendants did not employ policies, procedures, and
25 practices to accurately track Plaintiffs' and Class Members' hours.

26 71. Plaintiffs and Class Members were injured by Defendants' failure to maintain
27 accurate records, because, as alleged above, Plaintiffs and Class Members did not receive pay for
28 all hours worked, and thus suffered monetary damages due to Defendants' policies described
above.

72. Plaintiffs and Class Members are not exempt from the requirements of the
Employment Laws and Regulations.

73. Based on Defendants' conduct as alleged herein, Defendants are liable for damages

1 and statutory penalties pursuant to California Labor Code section 1174, 1174.5, and other
2 applicable provisions of the Employment Laws and Regulations in amounts to be established at
3 trial, as well as attorneys' fees and costs, pursuant to statute.

4 **SIXTH CAUSE OF ACTION**
5 **FAILURE TO FURNISH WAGE AND HOUR STATEMENTS**
6 **(Lab. Code §§ 226(e), 226.3)**
7 **(On behalf of Plaintiffs and all Class Members against all Defendants)**

7 74. Plaintiffs, collectively, and Class Members incorporate in this cause of action each
8 and every allegation of the preceding paragraphs, with the same force and effect as though fully
9 set forth herein.

10 75. California Labor Code § 226(a) provides:

11 Every employer shall, semimonthly or at the time of each payment of wages,
12 furnish each of his employees, either as a detachable part of the check, draft, or
13 voucher paying the employee's wages, or separately when wages are paid by
14 personal check or cash, an accurate itemized statement in writing showing (1)
15 gross wages earned, (2) total hours worked by the employee, except for any
16 employee whose compensation is solely based on a salary and who is exempt from
17 payment of overtime under subdivision (a) of Section 515 or any applicable order
18 of the Industrial Welfare Commission, (3) the number of piece-rate units earned
19 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
20 deductions, provided that all deductions made on written orders of the employee
21 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
22 dates of the period for which the employee is paid, (7) the name of the employee
23 and his social security number, except that by January 1, 2008, only the last four
24 digits of his social security number or an employee identification number other
25 than a social security number may be shown on an itemized statement, (8) the name
26 and address of the legal entity that is the employer, and (9) all applicable hourly
27 rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate by the employee. The deductions made from payment
of wages shall be recorded in ink or other indelible form, properly dated, showing
the month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at the place
of employment or at a central location within the State of California.

23 76. California Labor Code § 226(e)(1) provides:

24 An employee suffering injury as a result of a knowing and intentional failure by
25 an employer to comply with subdivision (a) is entitled to recover the greater of all
26 actual damages or fifty dollars (\$50) for the initial pay period in which a violation
27 occurs and one hundred dollars (\$100) per employee for each violation in a
28 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
(\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

27 77. 78. California Labor Code § 226(e)(2) provides:

28 (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

1 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
2 employer fails to provide accurate and complete information as required by any
3 one or more of items (1) to (9), inclusive, of subdivision (a) and the employee
4 cannot promptly and easily determine from the wage statement alone one or more
5 of the following:

6 (i) The amount of the gross wages or net wages paid to the employee during the
7 pay period or any of the other information required to be provided on the itemized
8 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
9 (a).

10 (ii) Which deductions the employer made from gross wages to determine the net
11 wages paid to the employee during the pay period. Nothing in this subdivision
12 alters the ability of the employer to aggregate deductions consistent with the
13 requirements of item (4) of subdivision (a).

14 (iii) The name and address of the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of Section 1682, the name and address of
16 the legal entity that secured the services of the employer during the pay period.

17 (iv) The name of the employee and only the last four digits of his social security
18 number or an employee identification number other than a social security number.

19 78. California Labor Code§ 1174(d) provides:

20 Every person employing labor in this state shall ... [k]eep, at a central location in
21 the state ... payroll records showing the hours worked daily by and the wages paid
22 to ... employees employed at the respective plants or establishments. These
23 records shall be kept in accordance with rules established for this purpose by the
24 commission, but in any case shall be kept on file for not less than three years. An
25 employer shall not prohibit an employee from maintaining a personal record of
26 hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

27 79. Defendants failed to provide Plaintiffs and Class Members with timely and
28 accurate wage and hour statements showing the inclusive dates of the pay period, gross wages
earned, total hours worked, all deductions made, net wages earned, the name and address of the
legal entity employing them, all applicable hourly rates in effect during each pay period, and the
corresponding number of hours worked at each hourly rate.

80. Plaintiffs and Class Members were injured by Defendants' failure to provide wage
statements, because, as alleged above, Plaintiffs and Class Members did not receive pay for all
hours worked, and thus suffered monetary damages due to Defendants' policies described above.

81. Plaintiffs and Class Members are not exempt from the requirements of the
Employment Laws and Regulations.

82. Based on Defendants' conduct as alleged herein, Defendants are liable for damages
and statutory penalties pursuant to California Labor Code section 226, and other applicable
provisions of the Employment Laws and Regulations and other applicable provisions of the
Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees

1 and costs, pursuant to statute.

2 **SEVENTH CAUSE OF ACTION**
3 **FAILURE TO PAY WAGES ON TIME**
4 **(Lab. Code §§ 201-204)**

5 **(On behalf of Plaintiffs and all Class Members against all Defendants)**

6 83. Plaintiffs, collectively, and Class Members incorporate in this cause of action each
7 and every allegation of the preceding paragraphs, with the same force and effect as though fully
8 set forth herein.

9 84. California Labor Code section 201 provides that all earned and unpaid wages of
10 an employee who is discharged are due and payable immediately at the time of discharge. Section
11 202 provides that all earned and unpaid wages of an employee who resigns are due and payable
12 immediately if the employee provided at least seventy-two hours' notice; otherwise, wages of an
13 employee who resigns are due within seventy-two hours of resignation.

14 85. At all relevant times herein, Defendants failed to implement a policy and practice
15 to pay Class Members, including Plaintiffs, accrued wages and other compensation due
16 immediately upon termination or within seventy-two hours of resignation, as required by the
17 California Labor Code. As a result, Plaintiffs and members of the Subclass were not paid all
18 compensation due immediately upon termination or within seventy-two hours of resignation, as
19 required by the California Labor Code.

20 86. Plaintiffs and the subclasses are not exempt from these requirements of the
21 Employment Laws and Regulations.

22 87. Based on Defendants' conduct as alleged herein, Defendants are liable for statutory
23 penalties pursuant to California Labor Code § § 203 and 203.1 and other applicable provision of
24 the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys'
25 fees and costs, pursuant to statute.

26 **EIGHTH CAUSE OF ACTION**
27 **FAILURE TO PAY MINIMUM WAGE**
28 **(Lab. Code § 1194 et seq.)**

(On behalf of Plaintiffs and all Class Members against all Defendants)

88. Plaintiffs, collectively, and Class Members incorporate in this cause of action each
and every allegation of the preceding paragraphs, with the same force and effect as though fully

1 set forth herein.

2 89. At all relevant times, Defendants were aware of and was under a duty to comply
3 with California Labor Code § 1194 et seq.

4 90. California Labor Code§ 1194(a) in relevant part provides:

5 Notwithstanding any agreement to work for a lesser wage, any
6 employee receiving less than the legal minimum wage or the legal
7 overtime compensation applicable to the employee is entitled to
8 recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees, and costs of suit.

9 91. Moreover, California Labor Code§ 1197 provides:

10 The minimum wage for employees fixed by the commission is the
11 minimum wage to be paid to employees, and the payment of a less
wage than the minimum so fixed is unlawful.

12 92. Finally, California Labor Code§ 1194.2(a) provides:

13 In any action under Section 1193.6 or Section 1194 to recover
14 wages because of the payment of a wage less than the minimum
15 wage fixed by an order of the commission, an employee shall be
entitled to recover liquidated damages in an amount equal to the
wages unlawfully unpaid and interest thereon.

16 93. During the Class Period, Defendants employed Plaintiffs and Class Members, each
17 of whom did not receive the applicable minimum wage for all hours worked on Defendants'
18 behalf. Said non-payment was the direct and proximate result of a willful refusal to do so by
19 Defendants.

20 94. As a direct and proximate result of Defendants' unlawful conduct, as set forth
21 herein, Plaintiffs and Class Members have sustained damages, including loss of earnings for
22 hours worked on behalf of Defendants, in an amount to be established at trial, and are entitled to
23 recover attorneys' fees and costs of suit.

24 **NINTH CAUSE OF ACTION**
25 **NEGLIGENCE**

26 **(Civ. Code§ 1714)**

27 **(On behalf of Plaintiffs and all Class Members against all Defendants)**

28 95. Plaintiffs incorporate in this cause of action each and every allegation of the
preceding paragraphs, with the same force and effect as though fully set forth herein.

96. Defendants committed negligence by, among other things, negligently retaining

1 employees JAKE SOBERAL and IRMA OLGUIN who disregard the rights of California
2 employees.

3 97. Civil Code section 1714 (a) provides in part: "Everyone is responsible, not only for
4 the result of his or her willful acts, but also for an injury occasioned to another by his or her want
5 of ordinary care or skill in the management of his or her property or person, except so far as the
6 latter has, willfully or by want of ordinary care, brought the injury upon himself or herself."

7 98. To prove a claim for negligence, a Plaintiff must show that: (1) the Defendant acted
8 negligently with respect to a duty imposed on the Defendant by law; (2) the Plaintiff suffered
9 damages; and (3) the negligence caused the damages. See CACI Jury Instruction No. 400.
10 Damages for negligence include all reasonably foreseeable damages caused by the negligence
11 and any expenses incurred to remedy the conditions comprising the negligence. Damages can
12 also include compensation for emotional distress.

13 99. As a proximate result of Defendants' wrongful conduct, as alleged herein, Plaintiffs
14 have suffered, and continue to suffer, losses in earning and other employment benefits, to
15 his/her/their respective damage in an amount to be established at trial. As a further proximate
16 result of Defendants' wrongful conduct, as alleged herein, Plaintiff has incurred reasonable
17 attorney's fees in attempting to secure the benefits that were promised pursuant to the
18 employment contract.

19 100. Plaintiff is informed and believes and, based thereon, alleges that the fictitious
20 Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited, compelled,
21 coerced, or conspired to commit one or more of the acts alleged in this Cause of Action. As a
22 direct and proximate result of Defendants' conduct, Plaintiff sustained damages, including, but
23 not limited to, loss of earnings and earning potential, opportunities and other benefits of
24 employment and employment opportunities and harm to his/her/their reputation, mental anguish,
25 embarrassment, humiliation, and other emotional distress and/or medical and related expenses in
26 an amount to be established at trial.

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1 and any and all other provisions of the Labor Code which provide for penalties as
2 a result of the conduct alleged herein;

3 12. For statutory penalties pursuant to, among others, the Private Attorney General Act
4 (after the claim under§ 2698 et seq. has been added);

5 13. An award for attorneys' fees;

6 14. Costs of suit; and any further relief as is equitable, just and proper.
7

8 Dated: June 7, 2023

BONAKDAR LAW FIRM

9
10 By Roger Bonakdar,
11 Attorneys for Plaintiffs PEDRO GARZA,
12 ROSA SALDANA LEMUS, TRENTON
13 LIVELY, VICTOR CARRANZA,
YARITZA BEJARANO, MAYRA SILVA,
JESSICA DANIELS, and NEPTALI
MONTEZ

14 **JURY DEMAND**

15 Plaintiffs request that each and every factual issue raised by each and every cause of
16 action alleged above be tried by a jury.
17

18 Dated: June 7, 2023

BONAKDAR LAW FIRM

19
20 By Roger Bonakdar,
21 Attorneys for Plaintiffs PEDRO GARZA,
22 ROSA SALDANA LEMUS, TRENTON
23 LIVELY, VICTOR CARRANZA,
24 YARITZA BEJARANO, MAYRA SILVA,
25 JESSICA DANIELS, and NEPTALI
26 MONTEZ
27
28