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7 the State of California, and all others similarly situated

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 SALLY FONSECA, an individual, on behalf
12 of herself, the State of California as a private
13 attorney general, and all others similarly
situated,

14 Plaintiff,

15 v.

16 O'REILLY AUTO ENTERPRISES, LLC, a
17 Delaware limited liability company; and
DOES 1 through 100, inclusive,

18 Defendants.
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Case No.: STK-CV-UOE-2024-354

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

- 1) **FAILURE TO PAY MINIMUM WAGES;**
- 2) **FAILURE TO PAY OVERTIME WAGES;**
- 3) **MEAL PERIOD LIABILITY (LAB. CODE, § 226.7);**
- 4) **REST BREAK LIABILITY (LAB. CODE, § 226.7);**
- 5) **FAILURE TO PROVIDE ACCURATE ITEMIZED EMPLOYEE WAGE STATEMENTS;**
- 6) **VIOLATION OF LABOR CODE § 1174;**
- 7) **VIOLATION OF LABOR CODE §§ 2102 & 2103;**
- 8) **FAILURE TO PAY WAGES TIMELY AND UPON SEPARATION OF EMPLOYMENT;**
- 9) **VIOLATION OF UNFAIR COMPETITION LAW (BUS. & PROF. CODE, §§ 17200, *ET SEQ.*); AND**
- 10) **PENALTIES PURSUANT TO PAGA, (LAB. CODE, §§ 2698, *ET SEQ.*)**

DEMAND FOR JURY TRIAL

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

FILE BY FAX

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JESSICA CAYO
BY _____
DEPUTY

1 Plaintiff Sally Fonseca (“Plaintiff” or “Fonseca”), on behalf of herself, the State of
2 California, and all others similarly situated warehouse and/or distribution center employees, alleges
3 and complains of Defendants O’Reilly Auto Enterprises, LLC (“O’Reilly” or “Defendant”) and
4 DOES 1 to 100, inclusive (collectively, “Defendants”), as follows:

5 **I. INTRODUCTION**

6 1. This is a class action under California Code of Civil Procedure section 382 on behalf
7 of Plaintiff and the following class: *all current and former hourly paid or non-exempt employees*
8 *who worked for Defendants in the State of California at warehouses or distribution centers within*
9 *the longest applicable limitations period* (the “Class” or “Class Members”).

10 2. The Judicial Council of California’s amended Emergency Rule 9 (effective May 29,
11 2020) provides that “[n]otwithstanding any other law, the statutes of limitations and repose for civil
12 causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” The
13 Advisory Committee Comment notes that “Emergency rule 9 is intended to apply broadly to toll
14 any statute of limitations on the filing of a pleading in court asserting a civil cause of action. The
15 term ‘civil causes of action’ includes special proceedings. (See Code Civ. Proc., §§ 312, 363
16 [‘action,’ as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed ‘as
17 including a special proceeding of a civil nature’)) . . . The rule also applies to statutes of
18 limitations on filing of causes of action in court found in codes other than the Code of Civil
19 Procedure” Accordingly, the relevant time period for claims under the PAGA discussed herein
20 is one year prior to the date Plaintiff filed his PAGA Notice online with the California Labor and
21 Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants plus
22 the additional time during which the statute of limitations was tolled (pursuant to Emergency Rule
23 9 of the California Rules of Court) and ongoing.

24 3. Throughout the relevant period, Defendants willfully maintained a policy, practice,
25 or protocol of failing to pay all wages, including minimum and overtime wages, for all hours
26 worked; failing to provide compliant duty-free meal periods; failing to authorize and permit
27 compliant duty-free rest breaks; failing to maintain and provide accurate itemized wage statements;
28 and failing to pay all wages owed timely and upon separation of employment. Defendants’ unlawful

1 conduct included requiring the Class to submit to off-the-clock work including, *inter alia*,
2 participation in security screenings and COVID-19 testing.

3 4. Furthermore, Defendants have become increasingly strict with employee time
4 efficiency and employ a productivity scanner to monitor Plaintiff and the Class. The productivity
5 scanner tracked employees from the moment they were permitted to clock in, and each time they
6 left their station. The Class Members were scrutinized and monitored for efficiency pursuant to
7 Defendants' productivity and efficiency protocol.

8 5. Through the imposition of quotas and a strict adherence to so-called efficiency
9 measures, and use of the productivity scanner, Defendants also prevented and discouraged Plaintiff
10 and the Class from exercising their statutory rights and complying with health and safety standards,
11 including taking bathroom breaks and full rest and meal periods. These policies and practices
12 violated Labor Code section 2102.

13 6. Defendants also misclassified the time Plaintiff and the Class spent on breaks as
14 unproductive in their monitoring system. For example, Plaintiff and the Class received fifteen (15)
15 minute rest breaks, but they had to walk five (5) minutes each way to get to the restroom. The walk
16 was arduous and required climbing stairs. Plaintiff and Class Members' time walking to and from
17 the restroom—which consumed two-thirds of each fifteen-minute break—was wrongfully classified
18 as unproductive break time. This is a clear violation of Labor Code section 2103.

19 7. Defendants' illegal conduct has also given rise to derivative claims for unfair
20 business practices and violation of the Private Attorneys General Act of 2004 ("PAGA").

21 8. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant to
22 Business and Professions Code sections 17200 through 17208, also seeks all monies owed but
23 withheld and retained by Defendants to which Plaintiff and Class Members are entitled. Plaintiff
24 seeks an order by the Court awarding restitution, injunctive relief, and all other legal and equitable
25 relief allowed, plus interest, attorneys' fees and costs.

26 9. Plaintiff, on behalf of herself and all other similarly situated aggrieved employees
27 (the "Aggrieved Employees"), also brings this representative action against Defendants to recover
28 wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled to retain

1 the services of counsel to file this action to protect her interests and those of Aggrieved Employees,
2 and has thereby incurred attorneys' fees and costs, which she is entitled to recover under Labor Code
3 section 2699.

4 10. For purposes of the allegations set forth herein, Class Members, along with
5 Aggrieved Employees comprising the PAGA representative action, are collectively referred to as
6 "Employees" except as otherwise specified.

7 **II. JURISDICTION AND VENUE**

8 11. This Court has jurisdiction over this action pursuant to article VI, section 10 of the
9 California Constitution, which grants the superior court "original jurisdiction in all other causes"
10 except those given by statute to other courts. The statutes under which this action is brought do not
11 specify any other basis for jurisdiction.

12 12. This Court has jurisdiction over Defendants because Defendants do business in
13 California, have sufficient minimum contacts in California, or otherwise intentionally avail
14 themselves of the California market so as to render the exercise of jurisdiction over them by
15 California courts consistent with traditional notions of fair play and substantial justice.

16 13. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
17 Procedure section 395.5 because, upon information and belief, Defendants transact business in San
18 Joaquin County, California. Plaintiff worked at Defendant's distribution center located at 3412
19 Perlman Drive, Stockton, California 95206.

20 14. Though Defendant O'Reilly is a Delaware limited liability company, Defendants
21 regularly transact business in this forum and have availed themselves of the benefits of this forum.

22 15. This case should be classified as complex according to California Rules of Court,
23 Rule 3.400, and assigned to a complex litigation judge and department because it is a class action
24 that will involve substantial documentary evidence and a large number of witnesses, is likely to
25 involve extensive motion practice raising difficult or novel issues that will be time-consuming to
26 resolve, and will require substantial post-judgment judicial supervision.

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III. PARTIES

16. Defendant O'Reilly is an automotive parts supplier. Plaintiff Sally Fonseca is employed as a Materials Handler at Defendant's distribution center in Stockton, California, earning an hourly rate of \$23.14.

17. Defendants employed Plaintiff Fonseca as an hourly, non-exempt employee in California and subjected her to the same employment policies, protocols or practices that impacted Employees. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a Delaware limited liability company with its principal place of business in Missouri.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendants do business in the State of California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the California Labor Code and California Industrial Welfare Commission ("IWC") Occupational Wage Orders. During the relevant period, Defendants employed Plaintiff and Employees within the State of California.

19. The true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues those defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE defendant is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES 1 through 100 when such identities become known.

20. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include DOES 1 through 100 identified herein.

21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes, and based thereon

1 alleges, that Defendants are joint employers in that they employed Plaintiff and Employees at the
2 same time and were operating as a joint enterprise and single entity during the relevant time periods.

3 22. California courts have recognized that the definition of “employer” for purposes of
4 enforcement of the California Labor Code goes beyond the concept of traditional employment and
5 reaches irregular working arrangements for the purpose of preventing evasion and subterfuge of
6 California’s labor laws. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 65.) As such, anyone who directly
7 or indirectly, or through an agent or any other person, engages, suffers, or permits any person to
8 work or exercises control over the wages, hours, or working conditions of any person may be liable
9 for violations of the California Labor Code as to that person. Defendants are so liable here.

10 23. California law permits and recognizes the piercing of a corporate veil between sister
11 companies under the single enterprise rule. (*See Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 155;
12 *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512.) The single enterprise rule applies
13 where “there are two or more personalities, there is but one enterprise; and that this enterprise has
14 been so handled that it should respond, as a whole, for the debts of certain component elements of
15 it.” (*Hasso, supra*, at p. 155; *see also Greenspan, supra*, at p. 512.)

16 24. At all times throughout their employment, Plaintiff and Employees were regularly
17 and consistently subject to the common policies, practices, or protocols utilized by Defendants.
18 Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and Employees to perform
19 services from which they benefitted. Moreover, the aforementioned entities had the right to exercise
20 control over the wages, hours, and/or working conditions over Plaintiff and Employees at all
21 relevant times herein, so as to be considered joint employers.

22 IV. FACTUAL BACKGROUND

23 Defendants Systematically Violated State Wage and Hour Laws

24 25. Defendant O’Reilly is an automotive parts supplier and operates warehouses and
25 distribution centers throughout California. Plaintiff Fonseca was employed as a Materials Handler
26 at Defendants’ distribution center in Stockton, California, earning an hourly rate of \$23.14.

27 26. While the precise number of Employees has not been determined at this time,
28 Plaintiff is informed and believes that there are more than one hundred Employees employed by

1 Defendants within the State of California at any given time. Accounting for employee turnover
2 during the relevant periods substantially increases this number.

3 27. Upon information and belief, Plaintiff and Employees are covered by IWC Wage
4 Order No. 4-2001.¹

5 28. Throughout the applicable time period, Defendants did not pay Plaintiff and
6 Employees at least the California minimum wage for all hours worked. Defendants did not fully
7 compensate Plaintiff and Employees because they were required to perform pre- and post-shift
8 activities that were off the clock, as well as during meal and rest breaks. These activities include,
9 but were not limited to, submitting to security screenings and COVID-19 testing.

10 29. Importantly, Plaintiff and Employees were monitored by a productivity scanner from
11 the moment they were permitted to clock into work. The scanner imposed severe time restrictions
12 on its assessments of employee productivity. For example, employees were given three (3) minutes
13 to open a shipment box and scan all the products inside it. If the employee exceeded this time limit,
14 their productivity score was negatively impacted, and they could face consequences. Employees
15 were given fifteen (15) minutes for breaks, and if they were late returning to their stations, they were
16 penalized by the scanner with a lower productivity score. Employees were often pressured by
17 supervisors to hurry up and “walk faster” to and from the bathroom to avoid breaching the fifteen-
18 minute limit. The five-minute walk to the restroom each way was long, arduous and required
19 climbing stairs. Plaintiff and Employees were told to hurry so they could return to their stations and
20 be productive. The time spent on this walk was classified as unproductive time by the productivity
21 scanner, and Plaintiff and Employees were penalized for being late upon their return.

22 30. Labor Code section 2102 prohibits practices or the imposition of quotas that prevent
23 compliance with meal or rest periods, use of bathroom facilities (including reasonable travel time)
24 and occupational health and safety laws. This conduct also violates Labor Code section 2103, which
25 considers actions taken by employees to comply with occupational health and safety standards as
26 productive time for quotas and monitoring systems. Defendants tracked the productivity levels of

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28 ¹ While Plaintiff and Employees allege that IWC Wage Order No. 4-2001 is applicable here, they
reserve the right to amend and/or allege any other applicable Wage Order(s).

1 Plaintiff and Employees during working hours, and incorrectly classified time spent travelling to
2 and from far flung restroom facilities as unproductive. Defendants also generally discouraged breaks
3 by scrutinizing Plaintiff and Employees for productivity concerns during breaks. This policy and
4 practice prevented Plaintiff and Employees from taking breaks and using the bathroom.

5 31. Labor Code section 223 makes it unlawful for employers to pay their employees
6 wages lower than required by contract or statute while purporting to pay them legal wages.

7 32. Labor Code section 1197 mandates that employees must be paid at least the minimum
8 wage fixed by the Commission, and any payment of less than the minimum wage is unlawful.
9 Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum
10 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.”
11 IWC Wage Order No. 4-2001 also obligates employers to pay each employee minimum wages for
12 all hours worked.

13 33. These minimum wage standards apply to each hour employees work for which they
14 are unpaid. An employer’s failure to pay for any hour of time worked by an employee is unlawful,
15 even if averaging an employee’s total pay over all hours worked, paid or not, results in an average
16 hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

17 34. Labor Code section 1194.2 authorizes employees to recover liquidated damages for
18 violations of Labor Code section 1194. Where an employee, like Plaintiff, is not paid for all hours
19 worked under Labor Code section 1194, the employee may recover minimum wages and liquidated
20 damages. (*See Sillah v. Command Int’l Sec. Servs.* (N.D.Cal. 2015) 154 F.Supp.3d 891; *Andrade v.*
21 *Arby’s Rest. Grp., Inc.* (N.D.Cal. Dec. 12, 2016; No. 15-cv-03175 NC) 2016 U.S.Dist.LEXIS
22 172319, at *20-21).)

23 35. Labor Code section 1197.1 entitles employees who are paid less than the minimum
24 wage fixed by state or local law, or by an order of the commission, to a civil penalty, restitution of
25 wages, and liquidated damages: “(1) [f]or any initial violation that is intentionally committed, one
26 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
27 underpaid [and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty
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1 dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
2 regardless of whether the initial violation is intentionally committed.”

3 36. Labor Code section 510 requires an employer to compensate an employee who works
4 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
5 hours worked on the seventh consecutive day no less than one and one-half times the employee’s
6 regular rate of pay. Further, Labor Code section 510 obligates an employer to compensate an
7 employee at no less than twice the regular rate of pay when the employee works more than twelve
8 (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

9 37. Throughout the applicable time period, Defendants have had a policy, practice or
10 protocol of failing to pay overtime wages to Plaintiff and Employees for all overtime hours they
11 worked. The work times of Plaintiff and Employees have been, and continue to be, greater than
12 eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay
13 Plaintiff and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiff and
14 Employees were deprived wages at overtime premium amounts attributable to overtime hours.
15 Moreover, the overtime that was paid, as well as PTO, to the extent there was any, was short, as
16 Defendants incorrectly calculated the regular rate of pay for overtime by failing to (1) include non-
17 discretionary forms of pay in regular rate calculations and/or (2) factor in wage premiums or shift
18 differential pay in regular rate calculations.

19 38. Defendants failed to provide Plaintiff and Employees with timely duty-free meal
20 periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 4-2001 require employers to
21 provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first
22 five (5) hours of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
23 [“Accordingly, first meal periods must start after no more than five hours.”].) Moreover, an
24 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
25 minute uninterrupted and duty-free meal period. (*See* Lab. Code, § 512.)

26 39. Defendants denied Plaintiff and Employees meal periods that comply with Labor
27 Code sections 226.7 and 512, and IWC Wage Order No. 4-2001. Plaintiff and Employees suffered
28 late, short, interrupted, and/or missed first and second meal periods. (*See Donohue v. AMN Services*,

1 *LLC* (2021) 11 Cal.5th 58 [California Supreme Court reversed the Fourth District and set forth two
2 clear rules: (1) employers are not permitted to round time records when determining if employees
3 are entitled to meal premium pay, and (2) it is the employer’s burden to show that compliant meal
4 periods were provided to employees if the time records show otherwise.]) Plaintiff and Employees
5 did not receive compliant meal periods within the first five (5) hours of their work and did not
6 receive compliant second meal periods when working shifts of ten (10) hours or more.

7 40. Defendants were also obligated but failed to provide Plaintiff and Employees with
8 net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
9 worked as required by Labor Code section 226.7 and IWC Wage Order No. 4-2001.

10 41. The California Supreme Court held in *Augustus v. ABM Security Services Inc.*,
11 (2016) 2 Cal.5th 257, that employees must be relieved of all duties during rest breaks pursuant to
12 Labor Code section 226.7 and IWC Wage Order No. 5-2001, subdivision 12(A). The Court found
13 that the Wage Orders and the Labor Code require employers to “relinquish control over how
14 employees spend their time” and “relieve employees of all duties” during employees’ ten-minute
15 rest periods. Plaintiff and Employees did not receive compliant rest breaks.

16 42. In addition to failing to authorize and permit compliant meal and rest breaks, Plaintiff
17 and Employees were not compensated with one (1) hour’s worth of pay at their regular rates of pay
18 when they were not provided with compliant meal and rest breaks in accordance with Labor Code
19 section 226.7(b). (*See Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858.)

20 43. Labor Code section 203 provides “if an employer willfully fails to pay ... any wages
21 of an employee who is discharged or who quits, the wages of the employee shall continue as a
22 penalty...” for up to 30 days. (Lab. Code, § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

23 44. Due to Defendants’ non-compliant policies and/or practices described herein,
24 Plaintiff and Employees whose employment with Defendants concluded were not compensated for,
25 *inter alia*, minimum and overtime wages for all hours worked, PTO and vacation pay, and meal and
26 rest break premiums at their regular rates of pay. Thus, Defendants have failed to pay Plaintiff and
27 Employees all wages, whose sums were certain, at the time of termination or within seventy-two
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1 (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in
2 violation of Labor Code section 203.

3 45. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person
4 in any employment are due and payable twice during each calendar month, on days designated in
5 advance by the employer as the regular paydays.” Under Labor Code section 204, subdivision (d),
6 these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or
7 semimonthly payroll if the wages are paid not more than seven calendar days following the close of
8 the payroll period.” Due to Defendants’ failure to pay Plaintiff and Employees for, *inter alia*, wages
9 and premiums, Defendants also failed to timely pay them within seven (7) days of the close of the
10 payroll period in accordance with Labor Code section 204 on a regular and consistent basis.

11 46. Under Labor Code section 210 and the PAGA, and to the extent permitted by law,
12 Plaintiff and Aggrieved Employees are entitled to recover civil penalties for violations of Labor
13 Code section 204.

14 47. Defendants failed to provide accurate itemized wage statements to Plaintiff and
15 Employees in accordance with Labor Code section 226, subdivisions (a)(1), (2), (5), and 9). Due to
16 Defendants’ failure to, *inter alia*, provide Plaintiff and Employees the proper minimum and overtime
17 wages and PTO, failure to provide lawful meal and rest breaks or premium payments in lieu thereof,
18 and failure to indicate the total hours worked, the wage statements issued by Defendants, at a
19 minimum, do not indicate the correct amount of gross wages earned, the hours worked, the correct
20 net wages earned, PTO, or the applicable and/or correct hourly rates in effect during the pay period
21 and the corresponding number of hours worked at each hourly rate, in violation of Labor Code
22 section 226, subdivisions (a)(1), (2), (5), and (9). Hence, the wage statements issued by Defendants
23 are fatally noncompliant.

24 48. During the relevant period, Defendants knowingly and intentionally failed to provide
25 Plaintiff and Employees with the above-described writing through actions alleged herein in violation
26 of Labor Code section 226. Plaintiff and Employees have been injured by Defendants’ intentional
27 violation of Labor Code section 226, subdivision (a), because they were denied both their legal right
28 to receive, and their protected interest in receiving, accurate itemized wage statements.

1 49. In addition, because Defendants failed to provide the accurate and mandated
2 information on the itemized wage statements, Plaintiff and Employees have been prevented by
3 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
4 underpayment. Plaintiff had to file this lawsuit and perform computations in order to analyze
5 whether, and to what extent, Plaintiff and Employees suffered underpayment, thereby causing
6 Plaintiff and Employees to incur expenses and lost time.

7 50. Plaintiff and Employees are owed the greater of all actual damages or fifty dollars
8 (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per
9 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
10 thousand dollars (\$4,000.00), as provided for in Labor Code section 226, subdivision (e).

11 51. Plaintiff and Aggrieved Employees may also recover civil penalties pursuant to
12 Labor Code section 226.3 and the PAGA for Defendants' violations of Labor Code section 226,
13 subdivision (a).

14 52. Further, Plaintiff and Employees have been denied their legal right and protected
15 interest in having available at a central location at the facility (plant or establishment) where they
16 are employed accurate and complete payroll records showing the hours worked daily by, and the
17 wages paid to, Plaintiff and Employees at those respective locations pursuant to Labor Code section
18 1174. Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiff and the Class may also
19 recover civil penalties for violation of Labor Code section 1174, subdivision (d).

20 53. Based on the foregoing, Defendants have also engaged in unfair and unlawful
21 business practices in violation of Business and Professions Code §§ 17200, *et seq.*, thereby entitling
22 Plaintiff and Class Members to restitution, disgorgement of profits, or other equitable remedies.

23 V. CLASS ACTION ALLEGATIONS

24 54. Plaintiff brings this action on behalf of herself, and all others similarly situated as a
25 class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a proposed
26 class comprised of and defined as follows:

27 *All current and former hourly paid or non-exempt employees who worked for*
28 *Defendants in the State of California at warehouses or distribution centers within*
 the longest applicable limitations period (again, the "Class" or "Class Members").

1 55. Plaintiff reserves the right under California Rule of Court, Rule 3.765, subdivision
2 (b), to amend or modify the class description identified herein with greater specificity or further
3 division into subclasses or limitation to particular issues.

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

7 **A. Numerosity**

8 57. The potential members of the Class as defined are so numerous that joinder of all the
9 members of the Class is not practicable. Plaintiff is informed and believes that there are more than
10 one hundred Class Members employed by Defendants within the State of California during the
11 relevant period. Plaintiff alleges Defendants' employment records would provide information as to
12 the number and location of all Class Members.

13 **B. Commonality**

14 58. There are questions of law and fact common to the Class that predominate over any
15 questions affecting only individual Class Members. These common questions of law and fact
16 include, without limitation:

17 a. Whether Defendants' failure to pay wages, without abatement or reduction,
18 in accordance with the California Labor Code, was willful;

19 b. Whether Defendants had a corporate policy, practice or protocol of failing to
20 pay the Class for all hours worked in violation of California law;

21 c. Whether Defendants failed to pay at least the minimum wage to the Class for
22 all hours worked;

23 d. Whether Defendants required the Class to work over eight (8) hours per day
24 and/or over forty (40) hours per week and failed to pay the legally required overtime compensation
25 to Class Members;

26 e. Whether Defendants correctly calculated the regular rate of pay for purposes
27 of determining overtime, PTO, and vacation time/pay;

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1 f. Whether Defendants deprived the Class of legally compliant meal periods
2 and rest breaks;

3 g. Whether Defendants had a corporate policy, practice or protocol of failing to
4 pay the Class required premium payments for non-compliant (e.g., short, late, interrupted, and/or
5 missed altogether) meal periods and rest breaks in violation of California law;

6 h. Whether Defendants failed to timely pay all wages due to the Class during
7 their employment;

8 i. Whether Defendants complied with wage reporting as required by the Labor
9 Code, including, *inter alia*, section 226;

10 j. Whether Defendants kept complete and accurate payroll records as required
11 by the Labor Code, including, *inter alia*, section 1174, subdivision (d);

12 k. Whether Defendants violated section 2102 by preventing Plaintiff and the
13 Class from exercising their statutory rights to meal and rest breaks, or complying with health and
14 safety standards, through the imposition of quotas;

15 l. Whether Defendants utilized quotas or monitoring systems that considered
16 time spent on rest or meal breaks, or actions taken to comply with occupational health and safety
17 laws as unproductive time in violation of Labor Code section 2103;

18 m. Whether Defendants' conduct was willful or reckless;

19 n. Whether the Class is entitled to compensatory damages pursuant to the Labor
20 Code;

21 o. The appropriate amount of damages, restitution, and/or monetary penalties
22 resulting from Defendants' violation of California law;

23 p. Whether Class Members are entitled to attorneys' fees and costs; and

24 q. Whether Class Members are entitled to interest.

25 **C. Typicality**

26 59. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
27 Members sustained injuries and damages arising out of and caused by Defendants' common course
28 of conduct in violation of laws and regulations that have the force and effect of law, as alleged.

1 **D. Adequacy of Representation**

2 60. Plaintiff will fairly and adequately represent and protect the interests of the Class.
3 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
4 wage and hour class and representative actions and have the financial resources to litigate the claims
5 at issue.

6 **E. Superiority of Class Action**

7 61. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
9 questions of law and fact common to the Class predominate over any questions affecting only
10 individual members of the Class. Each member of the Class has been damaged and is entitled to
11 recovery by reason of Defendants' policy, practice or protocol of failing to pay minimum and
12 overtime wages, failing to provide compliant duty-free meal periods and/or pay premiums owed
13 thereon, failing to authorize and permit compliant duty-free rest breaks and/or pay premiums owed
14 thereon, failing to maintain and provide accurate itemized wage statements, failing to reimburse
15 necessary business expenses incurred, failing to pay all wages owed in a timely manner, failing to
16 pay all wages due upon termination and/or resignation, and engaging in unfair business practices.

17 62. Class action treatment will allow those similarly situated persons to litigate their
18 claims in a manner that is most efficient and economical for the parties and the judicial system.
19 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
20 action that would preclude its maintenance as a class action.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(Lab. Code, §§ 1182.12, 1194, 1194.2, 1197, and 1197.1, and the Relevant IWC Wage Orders)**

24 **[On Behalf of Plaintiff and the Class against All Defendants]**

25 63. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference
26 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
27 forth herein.

28 64. Throughout the relevant period, Defendants failed to pay Plaintiff and the Class at

1 least the California minimum wage for all hours worked, thereby violating Labor Code section 1194
2 and the relevant IWC Wage Order(s), as a result of, but not limited to, Defendants' failure to pay
3 for work performed off the clock, including, *inter alia*, security screenings and COVID tests.

4 65. Defendants' failure to pay Plaintiff and the Class the minimum wage as required is
5 unlawful and violates Labor Code sections 1182.12, 1194, 1194.2, 1197, and 1197.1. As a result,
6 Plaintiff and the Class are entitled to recover the unpaid balance of their minimum wage
7 compensation, as well as interest, costs, and attorney's fees, and liquidated damages in an amount
8 equal to the wages unlawfully unpaid and interest thereon.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY OVERTIME WAGES**

11 **(Lab. Code, §§ 223, 510, and 1198, and the Relevant IWC Wage Orders)**

12 **[On Behalf of Plaintiff and the Class against All Defendants]**

13 66. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference
14 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
15 forth herein.

16 67. At all times relevant to this Complaint, Labor Code section 510, subdivision (a), was
17 in effect and provided: "[e]ight hours of labor constitutes a day's work. Any work in excess of eight
18 hours in one workday and any work in excess of forty hours in any one workweek...shall be
19 compensated at the rate of no less than one and one-half times the regular rate of pay for an
20 employee."

21 68. At all times relevant to this Complaint, Labor Code section 223 was in effect and
22 makes it unlawful for employers to pay their employees wages lower than required by contract or
23 statute while purporting to pay them legal wages.

24 69. Pursuant to the relevant IWC Wage Order(s), an employee shall not be employed
25 more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless
26 the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours
27 worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek.
28 Further, an employer must compensate an employee at no less than twice the employee's regular

1 rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8)
2 hours on the seventh consecutive day of work.

3 70. At all relevant times, Plaintiff and the Class regularly worked shifts that consisted of
4 more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and were
5 not paid proper overtime wages for all overtime hours worked as a result of, but not limited to,
6 Defendants' failure to pay for work performed off the clock, including pre- and post-shift, during
7 meal and rest breaks (i.e., submitting to security screens or COVID tests). The overtime that was
8 paid to Plaintiff and the Class was short, as Defendants incorrectly calculated the regular rate of pay
9 for overtime by, *inter alia*, failing to (1) include non-discretionary forms of pay in regular rate
10 calculations and/or (2) factor in wage premiums or shift differential pay in regular rate calculations.

11 71. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8) hours
12 per day and/or forty (40) hours per week without properly compensating them overtime wages, as
13 described above, Defendants willfully violated the provisions of Labor Code section 1194.

14 72. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been
15 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such
16 amounts, plus interest and penalties thereon, costs, and attorneys' fees.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS**

19 **(Lab. Code, §§ 226.7 and 512, and the Relevant IWC Wage Orders)**

20 **[On Behalf of Plaintiff and the Class against All Defendants]**

21 73. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference
22 all the allegations contained in the preceding paragraphs of this Complaint as though fully set forth
23 herein.

24 74. Labor Code section 226.7 provides "an employer shall not require an employee to
25 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
26 applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Similarly,
27 Labor Code section 512 and the IWC Wage Orders require employers to provide employees with
28 thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work.

1 (*See Brinker, supra*, 53 Cal.4th at p. 1042 [“Accordingly, first meal periods must start after no more
2 than five hours.”].) Moreover, an employee who works more than ten (10) hours per day is entitled
3 to receive a second thirty (30) minute uninterrupted and duty-free meal period. (*See* Lab. Code, §
4 512).)

5 75. Despite these legal requirements, Defendants failed to always provide meal periods
6 that comply with Labor Code sections 226.7 and 512, and IWC Wage Order No. 4-2001. Plaintiff
7 and the Class experienced short, untimely, and interrupted meal periods, and on occasion, the job
8 demands were such that they were prevented from having a meal period altogether. Having been
9 thus subjected to late, short, interrupted, and missed meal periods, Plaintiff and the Class did not
10 receive their statutorily mandated meal periods.

11 76. Under Labor Code section 226.7 and the relevant IWC Wage Order(s), Plaintiff and
12 the Class are entitled to be paid one (1) hour of additional wages at their regular rates of pay for
13 each day they were not provided with all required meal periods. (*See Ferra, supra*, 11 Cal.5th 858.)
14 Defendants failed to pay Plaintiff and the Class the additional wages to which they were entitled for
15 non-compliant meal periods.

16 77. As a result, Defendants are liable to Plaintiff and each Class Member for one (1) hour
17 of additional wages at their regular rates of pay for each workday a compliant meal period was not
18 provided, in a sum to be proven at trial.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

21 **(Lab. Code, § 226.7 and the Relevant IWC Wage Orders)**

22 **[On Behalf of Plaintiff and the Class against All Defendants]**

23 78. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference
24 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
25 forth herein.

26 79. Under the applicable IWC Wage Order(s), an employer must authorize and permit
27 all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours
28 worked. Labor Code section 226.7 provides “an employer shall not require an employee to work

1 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
2 regulation, standard, or order of the Industrial Welfare Commission.”

3 80. Defendants are required by California law to authorize and permit breaks of ten (10)
4 uninterrupted minutes for each four hours of work or major fraction thereof (*i.e.*, more than two
5 hours). That is, the required number of rest breaks is equal to the number of work hours divided by
6 four, and if the work time is not evenly divisible by four, any remainder of two hours or less is
7 rounded down and that which exceeds two hours is rounded up. For example, if a Class Member’s
8 work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the work time is
9 nine hours, the employee is still entitled to only two rest breaks. (There is an exception: if the shift
10 is under three and one-half hours, no rest break is required.) Each failure to authorize rest breaks as
11 so required is itself a violation of California’s rest break laws.

12 81. Despite these legal requirements, Defendants failed to authorize and permit Plaintiff
13 and Class Members to take timely, duty-free rest breaks. Plaintiff and Class Members were subject
14 to policies and/or practices that prevented them from taking legally compliant rest breaks.
15 Defendants did not relieve Plaintiff and Class Members of all duties during their rest breaks and
16 required them to be available to continue working—or, in fact, interrupted them—during their rest
17 breaks. Defendants pressured Class Members to perform their duties in a way that omitted breaks,
18 including, but not limited to, scheduling a heavy workload that made taking breaks extremely
19 difficult, maintaining an informal anti-rest break policy enforced through ridicule or reprimand, and
20 exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the
21 skipping of legally protected breaks.

22 82. Here, as a companywide practice and in fact, Defendants did not offer Plaintiff and
23 Class Members the opportunity to receive compliant off-duty rest breaks and, thus, “the court may
24 not conclude employees voluntarily chose to skip...breaks.” (*Alberts v. Aurora Behavioral Health*
25 *Care* (2015) 241 Cal.App.4th 388, 410 [holding that “[i]f an employer fails to provide legally
26 compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those
27 breaks”]; *accord, Brinker, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest
28

1 break that was required by law but never authorized; if a break is not authorized, an employee has
2 no opportunity to decline to take it.”].)

3 83. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the court expressly
4 rejected the employer’s assertion that it could provide an on-duty rest break to employees who
5 worked as security guards and further explained “that employers [must] relinquish any control over
6 how employees spend their break time and relieve their employees of all duties.” (*Id.* at p. 273.)
7 However, Defendants did not relieve Plaintiff and Class Members of all duties and relinquish control
8 over how Plaintiff and Class Members spend their time.

9 84. Plaintiff and Class Members were not compensated with one (1) hour’s worth of pay
10 at their regular rates of pay when they were not provided with compliant rest breaks in accordance
11 with Labor Code section 226.7, subdivision (b). (*See Ferra, supra*, 11 Cal.5th 858.)

12 85. Consequently, Defendants are liable to Plaintiff and Class Members for one (1) hour
13 of additional pay at their regular rates of pay for each workday when a compliant rest break was not
14 provided, in a sum to be proven at trial.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

17 **(Lab. Code, §§ 226 and 226.3)**

18 **[On Behalf of Plaintiff and the Class against All Defendants]**

19 86. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference
20 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
21 forth herein.

22 87. Labor Code section 226, subdivision (a), requires employers, semi-monthly or at the
23 time of each payment of wages, to furnish employees an accurate itemized statement in writing
24 showing:

- 25 (1) gross wages earned;
- 26 (2) total hours worked by the employee;
- 27 (3) the number of piece-rate units earned and any applicable piece rate if the
28 employee is paid on a piece rate;

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

(5) net wages earned;

(6) the inclusive dates of the period for which the employee is paid;

(7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;

(8) the name and address of the legal entity that is the employer...; and

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....

88. During the relevant time period, due to Defendants' failure to, *inter alia*, provide Plaintiff and the Class the proper minimum and overtime wages and PTO, failure to provide lawful meal and rest breaks or premium payments in lieu thereof, and failure to indicate the total hours worked, the wage statements issued by Defendant, at a minimum, do not indicate the correct amount of gross wages earned, the hours worked, the correct net wages earned, PTO, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

89. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable attorneys' fees.

90. The absence of accurate information on their wage statements has delayed challenge to Defendants' unlawful pay practices, requires discovery and mathematical computations to determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct time and pay records, and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not have had to

engage in these efforts and incur these costs had Defendants provided accurate wage statements. This delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

91. Thus, Plaintiff and the Class have been injured by Defendants' violation of Labor Code section 226, subdivision (a), because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

92. Plaintiff and the Class are entitled to recover the greater of (a) the actual damages caused by Defendants' failure to comply with Labor Code section 226, subdivision (a); or (b) an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee pursuant to Labor Code section 226, subdivision (e); and (c) any other allowable penalties including those pursuant to Labor Code section 226.3. Plaintiff and the Class seek damages and penalties from Defendants to the full extent of the law.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 1174, SUBDIVISION (d)

[On Behalf of Plaintiff and the Class against All Defendants]

93. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

94. Pursuant to Labor Code section 1174, subdivision(d), an employer shall keep at a central location in the state or at the distribution centers (plants or establishments) at which employees are employed payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.

95. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by and the wages paid to Plaintiff and Class Members. As a result of Defendants' violation of Labor Code section 1174, subdivision (d), Plaintiff and Class Members have suffered injury and damage to their statutorily protected rights.

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96. Plaintiff and Class Members have been injured by Defendants' intentional and willful violation of Labor Code section 1174, subdivision (d) because they were denied both their legal right and protected interest in having available, accurate, and complete payroll records pursuant to Labor Code section 1174(d).

SEVENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 2102 AND 2103

[On Behalf of Plaintiff and the Class against All Defendants]

97. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

98. Under Labor Code section 2102, warehouse and distribution center employees shall not be required to meet a quota that “prevents compliance with meal and rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards.” (Lab. Code, § 2102.)

99. Under Labor Code section 2103(a), any action by an employee “to comply with occupational health and safety laws in the Labor Code or division standards shall be considered on task and productive time for purposes of any quota or monitoring system.” (Lab. Code, § 2103, subd. (a).) Furthermore, “consistent with existing law, meal and rest breaks are not considered productive time unless the employee is required to remain on call.” (Lab. Code, § 2103, subd. (b).)

100. Defendants have intentionally and willfully violated Labor Code sections 2102 and 2103 as alleged above. (*See infra* ¶¶ 3-6). As a result, Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER AND UPON

SEPARATION OF EMPLOYMENT

(Lab. Code, §§ 201, 202, 203, 204, 210, and 227.3)

[On Behalf of Plaintiff and the Class against All Defendants]

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1 101. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference
2 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
3 forth herein.

4 102. Labor Code sections 201 and 202 provide that if an employer discharges an
5 employee, the unpaid wages at the time of termination must be paid immediately. If an employee
6 quits his or her employment, his or her wages (including PTO and vacation pay) must be paid within
7 seventy-two (72) hours, unless the employee has given seventy-two (72) hours' notice of his or her
8 intention to quit, in which case the employee is entitled to his or her wages upon quitting. Labor
9 Code section 227.3 provides that if an employer provides PTO, that employer must then pay out at
10 termination that portion of an employee's paid time off that is vested but unused. Defendants did
11 not pay all wages due to Class Members at the time of their separation because they failed to pay
12 the amounts due and owing at termination or within seventy-two (72) hours of their resignation.

13 103. Labor Code section 203 provides that if an employer willfully fails to pay
14 compensation promptly upon discharge or resignation as required by Labor Code sections 201 and
15 202, then the employer is liable for penalties in the form of continued compensation of up to thirty
16 (30) days.

17 104. As alleged herein and above, Defendants' failure was willful in that Defendants knew
18 wages were owed to Plaintiff and Class Members, but failed to pay said wages at the time of
19 termination or within 72 hours of resignation, thus entitling Plaintiff and Class Members to penalties
20 under Labor Code section 203.

21 105. Labor Code section 204 requires that all wages earned by any person in any
22 employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages
23 due upon termination of an employee, are due and payable between the 16th and the 26th day of the
24 month during which the labor was performed, and that all wages earned by any person in any
25 employment between the 16th and the last day, inclusive, of any calendar month, other than those
26 wages due upon termination of an employee, are due and payable between the 1st and 10th day of
27 the following month. Section 204 also requires that all wages earned for labor in excess of the normal
28 work period shall be paid no later than the payday for the next regular payroll period.

1 106. The requirements of Labor Code section 204 shall be deemed satisfied by the
2 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
3 seven calendar days following the close of the payroll period when the wages were earned.

4 107. During the relevant period, Defendants failed to pay Plaintiff and Class Members all
5 wages due to them within the time period specified by Labor Code section 204, including but not
6 limited to minimum and overtime wages, along with meal and rest break premiums.

7 108. Labor Code section 210 imposes upon Defendants a penalty of \$100 for each
8 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
9 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
10 failure to pay the wages of each employee a penalty of \$200, plus 25 percent of the amount
11 unlawfully withheld.

12 109. Pursuant to Labor Code sections 218.5 and 218.6, along with Civil Code sections
13 3287, subdivision (b), and 3289, Plaintiff requests that the Court award reasonable attorneys' fees
14 and the costs incurred by them in this action, along with pre-judgment interest on all amounts
15 recovered herein, as well as any statutory penalties Defendants may owe under the California Labor
16 Code and/or any other statute.

17 **NINTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION LAW VIOLATIONS**

19 **(Bus. & Prof. Code, §§ 17200, *et seq.*)**

20 **[On Behalf of Plaintiff and the Class against All Defendants]**

21 110. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference
22 all of the allegations contained in the preceding paragraphs of this Complaint as though fully set
23 forth herein.

24 111. California's Unfair Competition Law ("UCL"), Business and Professions Code
25 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
26 and Professions Code section 17204 allows "any person who has suffered injury in fact and has lost
27 money or property" to prosecute a civil action for violation of the UCL. Such a person may bring
28

1 such an action on behalf of himself or herself and others similarly situated who are affected by the
2 unlawful, unfair, or fraudulent business practice.

3 112. Labor Code section 90.5, subdivision (a), states that it is the public policy of
4 California to vigorously enforce minimum labor standards in order to ensure employees are not
5 required to work under substandard and unlawful conditions, and to protect employers who comply
6 with the law from those who attempt to gain competitive advantage at the expense of their workers
7 by failing to comply with minimum labor standards.

8 113. A violation of Business and Professions Code sections 17200, *et seq.*, may be
9 predicated upon the violation of any state or federal law. Defendants' policies and/or practices have
10 violated state law in at least the following respects:

11 (a) Requiring Plaintiff and Class Members to work without paying them the
12 minimum wage for all hours worked in violation of Labor Code sections 1182.12, 1194, 1194.2,
13 1197, and 1197.1, and applicable IWC Wage Order(s);

14 (b) Requiring Plaintiff and Class Members to work overtime without paying
15 them the proper compensation in violation of Labor Code sections 510 and 1198, and applicable
16 IWC Wage Order(s);

17 (c) Failing to provide compliant duty-free meal periods to Plaintiff and Class
18 Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiff and Class
19 Members in violation of Labor Code sections 226.7 and 512, and applicable IWC Wage Order(s);

20 (d) Failing to timely pay all wages to Plaintiff and Class Members during their
21 employment and upon separation, violating Labor Code sections 201, 202, 203, 204, and 210; and

22 (e) Failing to maintain and provide Plaintiff and Class Members with accurate
23 itemized wage statements, in violation of Labor Code section 226, subdivision (a).

24 (f) Thus, Defendants engaged in unlawful competition in violation of sections
25 17200, *et seq.* of the California Business & Professions Code by violating, *inter alia*, sections 201,
26 202, 203, 204, 210, 223, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
27 1197.1, 1198, 2102, and 2103 of the Labor Code and applicable IWC Wage Order(s).

114. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff and the Class have suffered economic injuries. Defendants' conduct has damaged Plaintiff and the Class by, *inter alia*, wrongfully denying them all wages, including minimum and overtime wages, and failing to pay all meal and rest break premiums at the regular rate of pay, along with the corresponding interest, in a timely manner and upon separation, preventing them from exercising their statutory rights and complying with health and safety standards, all while supplying them inaccurate wage statements. Such conduct is substantially injurious to Plaintiff and the Class.

115. Additionally, Defendants intentionally avoided paying Plaintiff and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish a greater foothold in the marketplace. Through their actions alleged herein, Defendants have engaged in unfair competition within the meaning of Business and Professions Code section 17200.

116. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and practices. Plaintiff and Class Members are entitled to monetary relief pursuant to the California Business and Professions Code sections 17203 and 17208. Defendants should be required to disgorge all the profits and gains they have reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

117. Defendants' course of conduct, acts, and practices in violation of California laws mentioned above constitute independent violations of Business and Professions Code sections 17200, *et seq.*

118. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions of the California Labor Code pursuant to Business and Professions Code section 17202.

119. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of herself and the Class. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure section 1021.5.

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1 **TENTH CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 **(Lab. Code, §§ 2698, *et seq.*)**

4 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

5 119. Plaintiff, on behalf of herself and Aggrieved Employees, realleges and incorporates
6 by reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 120. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative
9 action against Defendants to recover wages and penalties pursuant to the PAGA, Labor Code
10 sections 2698, *et seq.*

11 121. Based on the above allegations, incorporated herein by reference, Defendants have
12 violated Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 226, 226.3, 226.7, 510,
13 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2102, and 2103, as well
14 as applicable IWC Wage Order(s).

15 122. Under Labor Code sections 2699, subdivision (f)(2), and 2699.5, Plaintiff and
16 Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject
17 to the following formula:

- 18
 - \$100 for the initial violation per employee per pay period; and
 - \$200 for each subsequent violation per employee per pay period.

20 These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent
21 (25%) to the affected employees.

22 123. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
23 itemized wage statements in compliance with Labor Code section 226, subdivision (a). Plaintiff
24 seeks separate PAGA penalties for Defendants' violations of Labor Code section 226, subdivisions
25 (a) and (e). (*Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot*
26 *U.S.A.* (E.D.Cal. Dec. 11, 2017; No. 2:12-cv-02499 JAM-CKD) 2017 U.S.Dist.LEXIS 204493, at
27 *5 [finding after *Friant* that "[t]o the extent the Court's Order [granting summary judgment to *Home*
28 *Depot*] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs'

1 derivative claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read
2 to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
3 226(a)."].) For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
4 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny
5 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
6 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one
7 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
8 employer fails to provide the employee a wage deduction statement or fails to keep the required
9 records in subdivision (a) of Section 226." Accordingly, through the PAGA and to the extent
10 permitted by law, Plaintiff and Aggrieved Employees are entitled to recover penalties for violations
11 of Labor Code section 226.3 and seek the default PAGA penalties for each of Defendants' numerous
12 violations of Labor Code section 226, subdivision (a).

13 124. Labor Code section 210 provides that "[i]n addition to, and entirely independent and
14 apart from, any other penalty provided in this article, every person who fails to pay the wages of
15 each employee as provided in Sections ... 204 ... shall be subject to a civil penalty as follows: (1)
16 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
17 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
18 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a
19 result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are
20 also entitled to recover penalties under Labor Code section 210 through the PAGA.

21 125. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
22 liquidated damages, in the amount of: "(1) [f]or any initial violation that is intentionally committed,
23 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
24 is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
25 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
26 underpaid regardless of whether the initial violation is intentionally committed." Accordingly,
27 through the PAGA and to the extent permitted by law, Plaintiff and Aggrieved Employees are
28 entitled to recover pursuant to Labor Code section 1197.1.

126. On January 6, 2024, Plaintiff filed her PAGA Notice with the LWDA, paid the filing fee, and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code sections 2698, *et seq.* Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA Notice. Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

127. Plaintiff, as a personal representative of the general public, on behalf of Aggrieved Employees and the State of California, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

128. Plaintiff was compelled to retain the services of counsel to file this action to protect her interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under Labor Code section 2699, subdivision (g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid wages, including minimum and overtime wages, for work performed by Plaintiff and Class Members, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the regular rate of pay made by Plaintiff and Class Members for each non-compliant meal period for which premium pay was deficient, as may be proven;

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1 5. For compensatory damages in the amount of the regular rate of pay made by Plaintiff
2 and Class Members for each day of non-compliant rest breaks for which premium pay was deficient,
3 as may be proven;

4 6. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members
5 who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may
6 be proven;

7 7. For actual damages and/or penalties pursuant to Labor Code section 226, subdivision
8 (e), for Plaintiff and Class Members, as may be proven;

9 8. For restitution for unfair competition pursuant to Business and Professions Code
10 sections 17200, *et seq.*, including disgorgement of profits, as may be proven;

11 9. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00 for
12 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the
13 representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant to the
14 PAGA;

15 10. For all civil penalties available under Labor Code section 210;

16 11. For all civil penalties available under Labor Code section 226.3;

17 12. For all civil penalties available under Labor Code section 1174.5;

18 13. For all civil penalties available under Labor Code section 1197.1;

19 14. For all civil penalties available for violations of Labor Code section 2102;

20 15. For all civil penalties available for violations of Labor Code section 2103;

21 16. For an order enjoining Defendants and their agents, servants, and employees, and all
22 persons acting under, in concert with, or for them, from acting in derogation of any rights or duties
23 adumbrated in this complaint;

24 17. For an award of pre-judgment and post-judgment interest;

25 18. For an award providing for the payment of the costs of this suit;

26 19. For an award of attorneys' fees, to the extent provided by law; and

27 20. For such other and further relief as the Court may deem proper and just.

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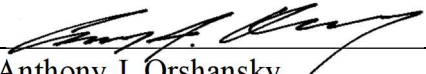
JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: May 6, 2024

COUNSELONE, PC

By 
Anthony J. Orshansky
Demetrius X. Lambrinos

Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 9465 Wilshire Boulevard, Suite 300,
Beverly Hills, California 90212, lanie@counselonegroup.com.

5 On May 7, 2024, I served the document(s) described as **FIRST AMENDED CLASS**
6 **AND REPRESENTATIVE ACTION COMPLAINT** to the entities and/or individuals listed
below:

7 Derek W. Paradis, Esq.
HIGGS FLETCHER & MACK LLP
8 401 W A Street, Suite 2600
San Diego, CA 92101

Attorneys for Defendant

9 [X] (BY MAIL) I am readily familiar with the firm's practice for collection and
10 processing correspondence for mailing. Under that practice it would be deposited
11 with the U.S. Postal Service on that same day with postage thereon fully prepaid at
Los Angeles, California in the ordinary course of business. I am aware that on
12 motion of the party served, service is presumed invalid if postal cancellation date or
postage meter date is more than one day after date of deposit for mailing in affidavit.

13 [] (PERSONAL) I caused _____ to personally serve the
14 addressee(s).

15 [] (BY ELECTRONIC SERVICE) Based on CCP 1010.6, a court order, or an
16 agreement of the parties to accept service by electronic transmission, I caused the
documents to be sent to the persons listed above by email through One Legal. I did
17 not receive, within a reasonable time after the transmission, any electronic message or
other indication that the transmission was unsuccessful.

18 Executed on May 7, 2024, in Los Angeles, California.

19 [X] (STATE) I declare under penalty of perjury under the laws of the State of
20 California that the above is true and correct.

21 
22 Lanie Lim