

BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, CA Bar No. 285256
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

MELMED LAW GROUP P.C.
Jonathan Melmed, CA Bar No. 290218
jm@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Tel: (310) 824-3828; Fax: (310) 862-6851

Attorneys for Plaintiff, the Class and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MARTHA CUEVAS, on behalf of herself and
all others similarly situated;

Plaintiff,

v.

ACTION EMBROIDERY CORP., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

CASE NO.:

CIV DS 2012230

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PROVIDE COMPLIANT REST PERIODS AND/OR PAY MISSED REST PERIOD PREMIUMS;
3. FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND/OR PAY MISSED MEAL PERIOD PREMIUMS;
4. FAILURE TO REIMBURSE BUSINESS EXPENSES;
5. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS;
6. WAITING TIME PENALTIES;
7. FAILURE TO PAY TIMELY WAGES;
8. UCL VIOLATIONS; and
9. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT

DEMAND FOR JURY TRIAL

\$435⁰⁰ 200117-0147
\$1000⁰⁰ 200117-0151 E11

CLASS ACTION AND PAGA COMPLAINT

1 Plaintiff MARTHA CUEVAS ("Plaintiff"), on behalf of herself and all others similarly
2 situated, complains and alleges of Defendants ACTION EMBROIDERY CORP. and DOES 1
3 through 20, as follows.

4 **I. INTRODUCTION**

5 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
6 on behalf of Plaintiff and all other current and former similarly situated employees employed by
7 Defendants Action Embroidery Corp., and DOES 1 through 20, (referred to collectively as
8 "Defendants"), within the State of California.

9 2. Through this class action, Plaintiff seeks to represent the following Class Members:
10 *all individuals who are or were employed as hourly, non-exempt, employees by Defendants in*
11 *California from four years prior to the filing of this Complaint through the date of trial.*

12 3. The "Class Period" as used herein, is defined as the period from four years prior to
13 the filing of this Complaint and continuing into the present and ongoing.

14 4. This is also a PAGA representative action brought pursuant to Labor Code § 2698, *et*
15 *seq.*, on behalf of the State of California and *all individuals who were employed as hourly, non-*
16 *exempt, employees by Defendants in California from February 21, 2020 and ongoing* ("Aggrieved
17 Employees") and *all Aggrieved Employees who are no longer employed by Defendants* ("Waiting
18 Time Aggrieved Employees").

19 5. The "PAGA Period" as used herein is defined as the period from February 21, 2020
20 and continuing into the present and ongoing.

21 6. From at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendants have had a consistent policy of failing to properly pay its employees by failing
23 to properly pay overtime wages, failing to authorize or permit compliant rest periods, failing to pay
24 missed rest period premiums, failing to provide compliant meal periods, failing to pay missed meal
25 period premiums, failing to reimburse for business expenses, failing to issue accurate/complete
26 wage statements, failing to provide written notice of sick leave, and failing to pay all wages due
27 upon termination and/or resignation from employment.

7. Plaintiff on behalf of herself and all other similarly situated employees, pursuant to California Business and Professions Code sections 17200 through 17208, also seeks all monies owed but withheld and retained by Defendants to which Plaintiff and the Class are entitled.

II. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, section 10 of the California Constitution and California Code of Civil Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the law of the State of California or is subject to adjudication in the courts of the State of California.

9. This Court has personal jurisdiction over Defendants because each has caused injuries in San Bernardino County and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code sections 17200, *et seq.* Defendants also transact business throughout California and have obtained the benefits of law of the United States and the State of California and are therefore subject to the personal jurisdiction of this Court.

10. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil Procedure § 395(a). Defendants operate within California and do business within San Bernardino. The unlawful acts alleged herein have a direct effect on Plaintiff, the Class Members, and the Aggrieved Employees within the State of California and San Bernardino County.

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

III. PARTIES

12. Plaintiff is a resident of California and was employed by Defendants during the Class Period as a non exempt hourly employee in San Bernardino County, California.

1 13. Plaintiff seeks to represent the Class, as defined above.

2 14. Plaintiff is informed and believes and thereon alleges that Defendant Action
3 Embroidery Corp. is a California Corporation authorized to and doing business in San Bernardino
4 County, California, and is and/or was the legal employer of Plaintiff, the Class Members, and the
5 Aggrieved Employees during the applicable statutory periods.

6 15. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
7 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
8 inclusive, but on information and belief allege that those Defendants are legally responsible for the
9 payment of wages and penalties and damages to Plaintiff and all Class Members by virtue of
10 Defendants' unlawful actions and practices and therefore sues these Defendants by such fictitious
11 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
12 Defendants when ascertained.

13 16. Plaintiff also alleges that she and the Class Members worked under the joint
14 direction and control of Defendants and that Defendants, and each of them, acted in all respects
15 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
16 plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally attributable
17 to the other Defendants. On information and belief, a unity of interest and ownership between each
18 Defendant exists such that all Defendants acted as a single employer of Plaintiff and other similarly
19 situated employees.

20 17. Furthermore, on information and belief, Defendants are an integrated enterprise and
21 should be treated as a single employer because Defendants share an interrelation of operations, with
22 common human resources and personnel policies and shared common offices and facilities. Upon
23 information and belief, Defendants share common management, a centralized control of labor
24 operations, and common ownership or financial control.

25 18. Also, Plaintiff is informed and believes and thereon alleges that the Defendants sued
26 herein as DOES 1-20 are now and at all material times herein mentioned were the owner/owners of
27 certain Defendants and the actual employer of Plaintiff, the Class Members, and the Aggrieved
28 Employees or, in the alternative, were individuals employed by Defendants as a managerial and/or

1 supervisory employee and/or agent. In addition, Plaintiff alleges that at all relevant times herein the
2 Defendants sued herein as DOES 1-20 had the authority, in the interest of certain Defendants, to
3 exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other
4 similar actions against Plaintiff, and were in Plaintiff's chain of command at the time of and direct
5 participants in the wrongful conduct which constitutes the basis of Plaintiff's complaint herein.
6 Plaintiff also alleges that the Defendants sued herein as DOES 1-20 and certain Defendants are the
7 agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at
8 all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and
9 with the knowledge, consent and/or ratification of each other. Furthermore, in conducting
10 themselves in the manner described herein, the Defendants sued herein as DOES 1-20 and certain
11 Defendants were acting in active concert with on another such that the acts of each were fully
12 attributable to the other in all material respects. Plaintiff also alleges that certain Defendants were
13 merely the alter ego of the Defendants sued herein as DOES 1-20 in that there existed a unity of
14 interest and ownership such that any separateness between them ceased to exist and the Defendants
15 sued herein as DOES 1-20 exercised undue dominance, control, influence, and management over
16 certain Defendants. Plaintiff further alleges that, at all relevant times, certain Defendants have been
17 inadequately capitalized to conduct business, have failed to follow appropriate corporate
18 formalities, and have simply been a shell and instrumentality through which the Defendants sued
19 herein as DOES 1-20 have conducted their personal affairs. Accordingly, the corporate veil should
20 be pierced, and any liability attached to certain Defendants should be imposed jointly and severally
21 against the Defendants sued herein as DOES 1-20. Adherence to the fiction of the separate
22 existence of these corporate entities would permit abuse of the corporate privilege, thereby
23 sanctioning fraud and promoting injustice.

24 **IV. SUMMARY OF FACTS**

25 19. Throughout the Class Period, Plaintiff, the Class Members, and the Aggrieved
26 Employees were not paid all overtime wages at the proper rates.

27 20. Labor Code § 510 requires an employer to compensate an employee who works
28 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)

1 hours worked on the seventh consecutive day no less than one and one-half times the regular rate of
2 pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at
3 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
4 day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor
5 Code § 1194, Plaintiff, the Class Members, and the Aggrieved Employees could not then agree and
6 cannot now agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and
7 1194.

8 21. Defendants have had a consistent policy of failing to pay overtime wages at the
9 proper amounts to Plaintiff, the Class Members, and the Aggrieved Employees. When Plaintiff, the
10 Class Members, and the other Aggrieved Employees worked overtime, Defendants failed to include
11 all compensation when calculating the regular rate of pay used in overtime calculations and when
12 paying overtime. For example, although Defendants regularly paid employees various
13 nondiscretionary bonuses, Defendants omitted such bonuses when calculating the regular rate of
14 pay used in overtime calculations and when paying overtime to Plaintiff, the Class Members, and
15 the other Aggrieved Employees. By its common policy of requiring Plaintiff, the Class Members,
16 and the Aggrieved Employees to work in excess of eight (8) hours in a workday and/or forty (40)
17 hours in a workweek without compensating them at the rate of one-half (1 1/2) their regular rate of
18 pay, Defendants willfully violated the provisions of Labor Code § 510 and the Wage Order.

19 22. Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to
20 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
21 applicable regulation, standard, or order of the Industrial Welfare Commission ...”

22 23. IWC Wage Order No. 1 states in pertinent part: “Every employer shall authorize and
23 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
24 work period. The authorized rest period time shall be based on the total hours worked daily at the
25 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

26 24. Here, Defendants failed to authorize or permit Plaintiff, the Class Members, and the
27 Aggrieved Employees to take duty-free rest periods of not less than ten (10) minutes for every
28 major fraction of four (4) hours worked as required by Labor Code § 226.7 and IWC Wage Order

1 No. 1. Plaintiff, the Class Members, and the Aggrieved Employees are and were not relieved of all
2 duties during their rest periods in violation of Labor Code § 226.7, IWC Wage Order No. 1, and
3 *Augustus*, 2 Cal. 5th at 269.

4 25. The California Supreme Court explained in the context of rest breaks that employer
5 liability attaches from adopting an unlawful policy: “An employer is required to authorize and
6 permit the amount of rest break time called for under the wage order for its industry. If it does not—
7 if, for example, it adopts a uniform policy authorizing and permitting only one rest break for
8 employees working a seven-hour shift when two are required—*it has violated the wage order and*
9 *is liable.*” *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033 [emphasis added].

10 26. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
11 breaks arises when an employer adopts a uniform policy that fails to provide off-duty breaks. For
12 example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal
13 applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break
14 policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
15 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a
16 determination that [defendant]’s uniform on-duty meal break policy was unlawful.” (*Faulkinbury v.*
17 *Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220). The Court further explained: “the employer’s
18 liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not
19 the employee was able to take the required break goes to damages...” (*Ibid.* [citations omitted]; *see*
20 *also Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal. App. 4th 701, 728.)

21 27. Because Defendants, through its policies of requiring Plaintiff, the Class Members,
22 and the Aggrieved Employees to stay on-site during rest periods, did not offer the Plaintiff, the
23 Class Members, and the Aggrieved Employees the opportunity to receive a compliant off-duty rest
24 period, “the court may not conclude employees voluntarily chose to skip...breaks.” *Alberts v.*
25 *Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015) (“[i]f an employer fails to
26 provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily
27 chose to skip those breaks.”); accord *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises
28 for a rest break that was required by law but never authorized; if a break is not authorized, an

1 employee has no opportunity to decline to take it.”).

2 28. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
3 Class Members, and the Aggrieved Employees were not compensated with one (1) hour’s premium
4 pay at their regular rate of compensation when they were not provided with a compliant rest period
5 in accordance with Labor Code § 226.7(b).

6 29. Labor Code § 512 requires employers to provide employees with thirty (30) minute
7 uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee
8 who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute
9 uninterrupted and duty-free meal period.

10 30. At all times, Defendants failed to provide duty-free thirty-minute meal periods on or
11 before the fifth hour of work, and frequently required that Plaintiff, the Class Members, and all
12 Aggrieved Employees to work through their meal periods, take short meal periods, and/or forego
13 them altogether. Defendants further violated Labor Code § 512 by failing to advise Plaintiff, the
14 Class Members, and Aggrieved Employees of their right to receive a second thirty (30) minute
15 uninterrupted meal period where they worked more than ten (10) hours a day. Defendants failed to
16 provide Plaintiff, the Class Members, and Aggrieved Employees second meal periods for workdays
17 in excess of 10 hours at any time during the course of their employment.

18 31. Defendants also failed to pay Plaintiff, the Class Members, and the Aggrieved
19 Employees meal period premiums for each workday that the employees did not receive a compliant
20 meal period.

21 32. Pursuant to Labor Code § 2802, “[a]n employer shall indemnify his or her employee
22 for all necessary expenditures or losses incurred by the employee in direct consequence of the
23 discharge of his or her duties, or of his or her obedience to the directions of the employer...” and
24 pursuant to Labor Code 2802(c) “[f]or purposes of this section, the term “necessary expenditures or
25 losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by
26 the employee enforcing the rights granted by this section.”

27 33. Defendants are aware or should have been aware that Plaintiff, the Class Members,
28 and the Aggrieved Employees regularly incur business expenses in the discharge of their duties as

1 employees by virtue of Defendants' instructions to Plaintiff, the Class Members, and the Aggrieved
2 Employees. Defendants nevertheless has, throughout the Class Period, failed and refused to
3 reimburse Plaintiff, the Class Members, and the Aggrieved Employees for such business expenses
4 incurred by them in connection with their work. For example, Defendants require and mandate
5 Plaintiff, the Class Members, and the Aggrieved Employees to purchase and pay for their own
6 "work tools," these work tools are essential to the work being performed on behalf of Defendants.
7 Such work tools include, but are not limited to, screwdrivers and scissors. In fact, Defendants
8 operate their own internal "stores" where they sell these work tools to Plaintiff, the Class Members,
9 and the Aggrieved Employees. Plaintiff, the Class Members, and the Aggrieved Employees are
10 often required to purchase these work tools directly from Defendants.

11 34. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating (1) gross wages earned, (2) total hours worked by the employee,
13 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
14 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
15 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
16 of the period for which the employee is paid, (7) the name of the employee and only the last four
17 digits of his or her social security number or an employee identification number other than a social
18 security number, (8) the name and address of the legal entity that is the employer, and (9) all
19 applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee.

21 35. Labor Code section 246(i) states that "[a]n employer shall provide an employee with
22 written notice that sets forth the amount of paid sick leave available, or paid time off leave an
23 employer provides in lieu of sick leave, for use on either the employee's itemized wage statement
24 described in Section 226 or in a separate writing provided on the designated pay date with the
25 employee's payment of wages."

26 36. Labor Code section 248.5(e) provides that "any person or entity enforcing this article
27 on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled
28 only to equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs."

1 37. Here, based on Defendants' failure to pay Plaintiff, the Class Members, and the
2 Aggrieved Employees all overtime wages, and pay meal and rest period premiums for
3 noncompliant meal and rest periods, Defendants issued wage statements which failed to accurately
4 identify the gross wages earned, the total hours worked, the net wages earned, and all applicable
5 hourly rates in effect during the pay period and the correct corresponding number of hours worked
6 at each hourly rate by the employee, in violation of Labor Code Section 226(a) (1, 2, 5, and 9).
7 Defendants also failed to include the accrued sick hours on Plaintiff's, the Class Members, and
8 Aggrieved Employees' wage statements as required by Labor Code section 246(i).

9 38. In addition to violating Labor Code § 226(a), Defendants also knowingly and
10 intentionally failed to provide Plaintiff, the Class Members, and the Aggrieved Employees with
11 accurate itemized wage statements in violation of Labor Code § 226(e). Defendants undeniably
12 knew that it was not providing Plaintiff, the Class Members, and the Aggrieved Employees with
13 wage statements required by California law. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131
14 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor
15 Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff
16 or other employees paid on commission" even though it believed that employees paid solely on
17 commission or commission and salary "are exempt and therefore we do not record hours on a wage
18 statement.").

19 39. Labor Code § 201(a) provides in pertinent part: "If an employer discharges an
20 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."
21 Labor Code § 202(a) states in pertinent part "If an employee not having a written contract for a
22 definite period quits his or her employment, his or her wages shall become due and payable not
23 later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her
24 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."
25 Labor Code § 203(a) states "If an employer willfully fails to pay, without abatement or reduction, in
26 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who
27 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
28 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not

1 continue for more than 30 days.”

2 40. Here, Defendants failed to pay Plaintiff, the Class Members, and the Aggrieved
3 Employees all wages that were due and owing (including all overtime wages owed, all meal and
4 rest period premiums owed, etc.) within the required time following the end of their employment in
5 accordance with Labor Code §§ 201-202. As a result, all such Class Members are entitled to 30
6 days of wages as a “waiting time penalty.”

7 41. Labor Code § 204 expressly requires employers who pay employees on a weekly,
8 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
9 close of the payroll period.” Due to Defendants’ failure to pay to Plaintiff, the Class Members, and
10 the Aggrieved Employees all overtime wage compensation and meal and rest period premiums as
11 described above, Defendants failed to timely pay its employees within seven calendar days
12 following the close of payroll in accordance with Labor Code § 204 on a regular and consistent
13 basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at
14 *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling vs. P.F. Chang’s China Bistro, Inc.* that a failure
15 to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

16 **V. CLASS ACTION ALLEGATIONS**

17 42. Plaintiff brings this action on behalf of herself and all others similarly situated as a
18 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent the following
19 Class and Subclasses:

20 **The Class:** *all hourly non-exempt individuals who are or were employed by*
21 *Defendants in California from four years prior to the filing of this Complaint*
22 *through the date of trial (“Class Members”)*

23 43. Plaintiff reserves the right to amend or modify the class descriptions with greater
24 specificity or further division into subclasses or limitation to particular issues as appropriate.

25 44. Plaintiff, as Class Representative, is a member of the Class that she seeks to
26 represent.

27 45. This action has been brought and may properly be maintained as a class action under
28 Code of Civil Procedure § 382 because there is a well-defined community of interest in the

litigation and the proposed Class is easily ascertainable from Defendants' personnel and payroll records.

46. **Numerosity:** The potential members of the Class as defined are so numerous that a joinder of all Class Members is impracticable. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

47. **Commonality:** There are questions of law and fact common to the class which predominate over any questions affecting only individual members of the Class, including without limitation:

i. Whether Defendants violated the California Labor Code and IWC Wage Order No. 1 by failing to pay overtime wages at the proper rates to Plaintiff and the Class for all overtime hours worked;

ii. Whether Defendants violated the California Labor Code and IWC Wage Order No. 1 by failing to provide compliant rest periods to Plaintiff and the Class and whether Defendants failed to compensate Plaintiff and the Class with one additional hour of premium pay for each instance when a compliant rest break was not provided;

iii. Whether Defendants violated the California Labor Code and IWC Wage Order No. 1 by failing to provide compliant meal periods to Plaintiff and the Class and whether Defendants failed to compensate Plaintiff and the Class with one additional hour of premium pay for each instance when a compliant meal break was not provided;

iv. Whether Defendants violated the California Labor Code by failing to reimburse Plaintiff and the Class Members for necessary business expenses;

v. Whether Defendants violated the California Labor Code by failing to pay all wages due upon separation of employment between Defendants and Plaintiff and the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

vi. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and the Class with complete, accurate, itemized wage statements;

vii. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and the Class with written notice of sick leave;

viii. Whether Defendants violated the California Labor Code by failing to pay timely wages;

ix. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay minimum wages; failure to pay overtime wages; failure to authorize or permit mandated paid rest periods; and failure to timely pay final wages;

x. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code; and

xi. Whether Plaintiff and the Class are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200, *et seq.*

48. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of the Class and the Subclasses. Plaintiff, like other members of the Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay overtime wages, failure to authorize or permit compliant rest periods, failure to provide compliant meal periods, failure to reimburse for business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

49. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Plaintiff's counsel are competent and experienced in litigating wage and hour class actions in state and federal courts as well as other complex litigation matters.

50. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

[Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 1]

Plaintiff and Class Members Against All Defendants

51. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

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

53. Labor Code § 1194 provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

54. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

55. Defendants have had a consistent policy of failing to pay overtime wages at the proper amounts to Plaintiff and the Class Members. When Plaintiff and the Class Members worked overtime, Defendants failed to include all compensation when calculating the regular rate of pay used in overtime calculations and when paying overtime. For instance, although Defendants consistently and regularly paid employees various nondiscretionary bonuses, Defendants omitted such bonuses when calculating the regular rate of pay used in overtime calculations and when paying overtime to Plaintiff and the Class Members. By its common policy of requiring Plaintiff and the Class Members to work in excess of eight (8) hours in a workday and/or forty (40) hours in

1 a workweek without compensating them at the rate of one-half (1 1/2) their regular rate of pay,
2 Defendants willfully violated the provisions of Labor Code § 510 and the Wage Order.

3 56. Plaintiff and the Class Members suffered and continue to suffer losses related to the
4 use and enjoyment of compensation due and owing to them as a direct result of Defendants'
5 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
6 within the jurisdictional limitations of this Court.

7 57. Plaintiff seeks all available remedies for Defendants' violations including, but not
8 limited to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted
9 by law.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST PERIODS**

12 [Labor Code § 226.7 and 512; IWC Wage Order No. 1]

13 *Plaintiff and the Class Members Against All Defendants*

14 58. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
15 in the preceding paragraphs.

16 59. Plaintiff and Class Members are and/or were "non-exempt" employees of
17 Defendants who did not receive proper protections and benefits of the laws governing mandatory
18 rest periods.

19 60. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks
20 to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.

21 61. IWC Wage Order No. 1 states, in part, that every employer shall authorize and
22 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
23 work period. Employees shall receive a 10-minute rest period every four hours or major fraction
24 thereof that they are required to work. Authorized rest period time shall be counted, as hours
25 worked, for which there shall be no deduction from wages.

26 62. Pursuant to Labor Code § 226.7(b) and the IWC Wage Order, Defendants shall pay
27 Plaintiff and Class Members one additional hour of pay at her regular rate of compensation for each
28 day that the rest period is not provided.

63. At all relevant times, Plaintiff and the Class Members were and are not relieved of all duties during their rest periods, as they are required to remain on premises during all rest periods in violation of Labor Code § 226.7, IWC Wage Order No. 1, and *Augustus*, 2 Cal. 5th at 269.

64. Defendants failed to authorize or permit Plaintiff and the Class Members to take duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked as required by Labor Code § 226.7 and IWC Wage Order No. 1. Plaintiff and the Class Members are not relieved of all duties during their rest periods in violation of Labor Code § 226.7, IWC Wage Order No. 1, and *Augustus*, 2 Cal. 5th at 269.

65. By their failure to authorize or permit Plaintiff and Class Members with rest periods as required by California law, and failing to pay one hour of additional wages in lieu of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7, and IWC Wage Order No. 1. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each work day that a paid rest period was not lawfully provided in an amount to be proven at time of trial.

66. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and IWC Wage Order No. 1, Defendants, and each of them, are liable to Plaintiff and Class Members for unpaid wage premiums, penalties, costs, and interest.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

[Labor Code § 226.7 and 512; IWC Wage Order No. 1]

Plaintiff and the Class Members Against All Defendants

67. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

68. Plaintiff and the Class Members are and/or were "non-exempt" employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

69. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an

1 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
2 that if the total work period per day of the employee is no more than six hours, the meal period may
3 be waived by mutual consent of both the employer and the employee. Employers may not employ
4 an employee for a work period more than 10 hours per day without providing the employee with a
5 second meal period of not less than 30 minutes.

6 70. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order, Defendants
7 shall pay an employee one additional hour of pay at the employee's regular rate of compensation
8 for each meal period that is missed.

9 71. Defendants failed to provide duty-free thirty minute meal periods on or before the
10 fifth hour of work, and frequently required that Plaintiff and the Class Members to work through
11 their meal periods, take short meal periods, and/or forego them altogether. Defendants further
12 violated Labor Code § 512 by failing to advise Plaintiff and the Class Members of their right to
13 receive a second thirty (30) minute uninterrupted meal period where they worked more than ten
14 (10) hours a day. Defendants failed to provide Plaintiff and the Class Members second meal periods
15 for workdays in excess of 10 hours at any time during the course of their employment.

16 72. Defendants also failed to pay Plaintiff and the Class Members meal period premiums
17 for each workday that the employees did not receive a compliant meal period.

18 73. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order
19 every pay period with respect to Plaintiff and the Class Members because Plaintiff and the Class
20 Members were not provided with all mandatory meal periods and Defendants failed to pay Plaintiff
21 and the Class Members one additional hour of compensation in lieu thereof.

22 74. On information and belief, Plaintiff and the Class Members did not voluntarily or
23 willfully waive the mandated meal periods. Any expressed or implied waivers obtained from
24 Plaintiff and the Class Members were not willfully obtained, were not voluntarily agreed to, were a
25 condition of employment, or were a part of a contract of unlawful adhesion. Defendants did not
26 provide Plaintiff and the Class Members meal periods in accordance with California law.

27 75. By their failure to provide Plaintiff and the Class Members with meal periods as
28 required by California law, and failing to pay one hour of additional wages in lieu of each meal

1 period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and the IWC
2 Wage Order. Accordingly, Defendants are liable for one hour of additional wages at the employee's
3 regular rate of compensation for each work day that a meal period was not lawfully provided in an
4 amount to be proven at time of trial.

5 76. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
6 and the IWC Wage Order, Defendants, and each of them, are liable to Plaintiff and the Class
7 Members for unpaid wage premiums, penalties, costs, and interest.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 [Cal. Labor Code § 2802]

11 *Plaintiff and the Class Members Against All Defendants*

12 77. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
13 in the preceding paragraphs.

14 78. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct consequence
16 of the discharge of his or her duties." "Necessary" business expenses is defined to include all
17 "reasonable expenses." See, Labor Code § 2802 (c).

18 79. Defendants are aware or should have been aware that Plaintiff and the Class
19 Members regularly incur business expenses in the discharge of their duties as employees by virtue
20 of Defendants' instructions to Plaintiff and the Class Members. Defendants nevertheless has,
21 throughout the Class Period, failed and refused to reimburse Plaintiff and the Class Members for
22 such business expenses incurred by them in connection with their work. For example, Defendants
23 require and mandate Plaintiff and the Class Members to purchase and pay for their own "work
24 tools"; these work tools are essential to the work being performed on behalf of Defendants. Such
25 work tools include screwdrivers, scissors, and other tools. In fact, Defendants operate their own
26 internal "store" where they sell these work tools to Plaintiff and the Class Members. Plaintiff and
27 the Class Members are often required to purchase these work tools directly from Defendants.
28 Although Defendants required Plaintiff and the Class Members to purchase these tools for work-

1 related purposes, Defendants failed to reimburse Plaintiff and the Class Members for the costs
2 incurred for this necessary business expense.

3 80. Plaintiff and Class Members are entitled to reimbursement for these necessary
4 expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

5 81. As a result of Defendants' violations of Labor Code § 2802, Defendants are also
6 liable for attorneys' fees and costs under Labor Code § 2802(c).

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS AND**
9 **WRITTEN NOTICE OF SICK LEAVE**

10 [Labor Code §§ 226, 246]

11 *Plaintiff and the Class Against All Defendants*

12 82. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
13 in the preceding paragraphs.

14 83. The actionable period for this cause of action is one year prior to the filing of this
15 Complaint through the present, and on-going until the violations are corrected, or the class is
16 certified.

17 84. Section 226(a) of the California Labor Code provides, in relevant part:

18 Every employer shall...furnish each of his or her employees...an accurate
19 itemized statement in writing showing (1) gross wages earned, (2) total hours
20 worked by the employee, except for any employee whose compensation is solely
21 based on a salary who is exempt from payment of overtime under subdivision (a)
22 of Section 515 or any applicable order of the Industrial Welfare Commission, (3)
23 the number of piece-rate units earned and any applicable piece rate if the
24 employee is paid on a piece-rate basis, (4) all deductions, provided that all –
25 deductions made on written orders of the employee may be aggregated and shown
26 as one item, (5) net wages earned, (6) the inclusive dates of the period for which
27 the employee is paid, (7) the name of the employee and only the last four digits of
28 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

1 85. Labor Code section 246(i) states that “[a]n employer shall provide an employee with
2 written notice that sets forth the amount of paid sick leave available, or paid time off leave an
3 employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement
4 described in Section 226 or in a separate writing provided on the designated pay date with the
5 employee’s payment of wages.”

6 86. Labor Code section 248.5(e) provides that “any person or entity enforcing this article
7 on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled
8 only to equitable, injunctive, or restitutionary relief, and reasonable attorneys’ fees and costs.”

9 87. As set forth above, during the Class Period, Defendants issued continues to issue
10 wage statements to its employees including Plaintiff and the Class which are inadequate under
11 Labor Code Section 226(a). Here, by failing to pay Plaintiff and Class Members for all of their
12 overtime hours worked, and for their missed meal and rest period premiums, Defendants failed to
13 include required information on Plaintiff’s and the Class’ wage statements, including the gross
14 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
15 during the pay period, and the corresponding number of hours worked at each hourly rate in
16 violation of Labor Code section 226(a)(1, 2, 5 and 9). Defendants also failed to include the accrued
17 sick hours on Plaintiff’s and the Class Members’ wage statements as required by Labor Code
18 section 246(i).

19 88. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
20 and intentional.

21 89. As a result of Defendants’ issuance of inaccurate itemized wage statements to
22 Plaintiff and Class Members in violation of section 226(a) of the California Labor Code, Plaintiff
23 and the Class are each entitled to recover an initial penalty of \$50, and subsequent penalties of
24 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every
25 member of the Class from Defendants pursuant to section 226(e) of the Labor Code, costs and
26 reasonable attorney’s fees.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

[Cal. Labor Code §§ 201 – 203]

Plaintiff and the Waiting Time Penalties Subclass Against All Defendants

90. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

91. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, or the class is certified.

92. Sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Timeline Penalty Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

93. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

94. Defendants willfully failed to pay Plaintiff and the Waiting Timeline Penalty Subclass for their meal and rest period premiums, and unpaid overtime wages, prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

95. As a result, Defendants are liable to Plaintiff and the Waiting Timeline Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. *See, e.g.* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

SEVENTH CAUSE OF ACTION

FAILURE TO PAY TIMELY WAGES

[Labor Code §§ 204, 210]

Plaintiff and Class Members Against All Defendants

96. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

97. Cal. Labor Code § 200 provides that “‘wages’ include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation.”

98. Cal. Labor Code § 204 states that all wages earned by any person in any employment are payable twice during the calendar month, and must be paid not more than seven days following the close of the period when the wages were earned.

99. Labor Code § 204 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the close of the payroll period.” Due to Defendant’s failure to pay to Plaintiffs, Class Members, and the Aggrieved Employees all overtime wage compensation and meal period and rest period premiums as described above, Defendant failed to timely pay its employees within seven calendar days following the close of payroll in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling vs. P.F. Chang’s China Bistro, Inc.* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

100. As discussed in detail above, by failing to pay for all overtime wages owed, and failing to pay meal period premiums and rest period premiums, Defendants failed to pay Plaintiff and the Class at least twice per month in violation of Labor Code § 204. Respondents regularly and consistently failed to pay Claimant minimum and overtime wages for all of their hours worked, and for meal and rest period premiums.

101. As a result, Plaintiff and the Class are entitled to penalties pursuant to Labor Code § 210.

EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

[Cal. Business and Professions Code § 17200 *et seq.*]

Plaintiff and Class Members Against All Defendants

102. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

103. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The Class Members, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

104. Defendants, and each of them, are “persons” as defined under Business & Professions Code § 17021.

105. As alleged herein, Defendants engaged in conduct that violated California’s wage and hour laws, including failure to pay overtime wages, failure to authorize or permit mandated rest periods, failure to provide compliant meal periods, failure to reimburse for necessary business expenses, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

106. At all times relevant herein, Defendants did not pay Plaintiff and Class Members wages and monies and other financial obligations to which they were entitled.

107. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders, Class Members, including Plaintiff, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

108. Defendants’ violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices because it was done in a systematic manner over a period of time to the detriment of the Plaintiff and all others similarly-situated.

1 109. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful, and harmful to Plaintiff, Class Members, and to the general public. Plaintiff seeks to
3 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
4 § 1021.5.

5 110. A violation of California Business & Professions Code § 17200, *et seq.* may be
6 predicated on the violation of any state or federal law. All of the acts described herein as violations
7 of, among other things, the California Labor Code and IWC Wage Orders, are unlawful and in
8 violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and
9 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in
10 violation of California Business and Professions Code §§ 17200, *et seq.*

11 111. Plaintiff, individually, and on behalf of the Class Members, has no plain, speedy,
12 and/or adequate remedy at law to redress the injuries which she has suffered as a consequence of
13 Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
14 unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf
15 of the Class Members, has suffered and will continue to suffer irreparable harm unless Defendants,
16 and each of them, are restrained from continuing to engage in said unfair, unlawful and/or
17 fraudulent business practices.

18 112. Plaintiff, individually, and on behalf of the Class Members, is entitled to, and does
19 seek such relief as may be necessary to disgorge the profits which Defendants have acquired, or of
20 which Plaintiff and Class Members have been deprived, by means of the above-described unfair,
21 unlawful and/or fraudulent business practices. Plaintiff and Class Members are not obligated to
22 establish individual knowledge of the unfair practices of Defendants in order to recover restitution.

23 113. Plaintiff, individually, and on behalf of the Class Members, is further entitled to and
24 does seek a declaration that the above described business practices are unfair, unlawful and/or
25 fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging in any of
26 the above-described unfair, unlawful and/or fraudulent business practices in the future.

27 114. Pursuant to Business & Professions Code §§ 17200, *et seq.*, Plaintiff and Class
28 Members are entitled to restitution of the wages withheld and retained by Defendants during a

period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES FOR CIVIL PENALTIES

PURSUANT TO LABOR CODE § 2699, *ET SEQ.* FOR VIOLATIONS OF

LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1198, 2802

On Behalf of Plaintiff, the State of California, and the Aggrieved Employees Against All Defendants

115. Plaintiff, on behalf of herself and all Aggrieved Employees, re-alleges and incorporates by reference all previous paragraphs.

116. Based on the above allegations incorporated by reference, Defendants have violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1198, 2802, as well as IWC Wage Order 1.

117. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et seq.*

118. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be 'stacked,' *i.e.*, multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations."); *See Lopez v. Friant &*

1 *Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) (“hold[ing]
2 a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not
3 have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and
4 acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code
5 §§ 226(a) and 226(e)).

6 119. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and
7 all aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
8 226(a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code §§ 226(a)
9 and 226(e).

10 120. For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided
11 by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
12 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
13 dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000)
14 per employee for each violation in a subsequent citation, for which the employer fails to provide the
15 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section
16 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the Aggrieved
17 Employees are entitled to recover penalties for violations of Labor Code § 226.3 and seeks default
18 PAGA penalties for each of Defendants’ numerous violations of Labor Code § 226(e).

19 121. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
20 Defendants conduct in refusing to provide accurate and itemized wage statements was knowing,
21 intentional, or willful.

22 122. Labor Code § 210 provides that “in addition to, and entirely independent and apart
23 from, any other penalty provided in this article, every person who fails to pay the wages of each
24 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
25 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
26 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
27 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
28 faulty compensation policies and practices described in detail above, Plaintiff and the other

1 Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

2 123. Plaintiff has fully and completely exhausted her administrative remedies under
3 PAGA prior to proceeding with the PAGA claim. On February 21, 2020, Plaintiff filed her PAGA
4 Notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by
5 certified mail to Defendants setting forth the facts and theories of the violations alleged against
6 Defendant, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted
7 the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A),
8 no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within
9 sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled
10 to commence and proceed with a civil action pursuant to Labor Code § 2699.

11 **VI. PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff prays for the following relief:

- 13 1. For an order certifying this action as a class action;
- 14 2. For compensatory damages in the amount of the regular rate of compensation made
15 by Plaintiff and the Class for each day of noncompliant rest periods for which premium pay was
16 not properly paid, as may be proven;
- 17 3. For compensatory damages in the amount of the regular rate of compensation made
18 by Plaintiff and the Class for each day of noncompliant meal periods for which premium pay was
19 not properly paid, as may be proven;
- 20 4. For compensatory damages in the amount of the unpaid overtime compensation for
21 work performed by Plaintiff and the Class, as may be proven;
- 22 5. For actual damages and/or penalties pursuant to Labor Code § 226(e) for Plaintiff
23 and the Class, as may be proven;
- 24 6. For penalties pursuant to Labor Code § 203 for Plaintiff and the Class Members
25 whose employment with Defendants ended three years prior to the filing of this Complaint and
26 ongoing in an amount equal to their daily wage multiplied by thirty (30) days, as may be proven;
- 27 7. For restitution for unfair competition pursuant to Business & Professions Code §
28 17200 *et seq.*, including disgorgement of profits, as may be proven;

8. For an award of pre-judgment and post-judgment interest;
9. For an award providing for the payment of the costs of this suit;
10. For an award of attorneys' fees, to the extent provided by law; and
11. For such other and further relief as the Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: May 15, 2020

**MELMED LAW GROUP, P.C.
BOKHOUR LAW GROUP, P.C.**

DocuSigned by:

Mehrdad Bokhour

D8D3643F271940F...

By: _____

Jonathan Melmed, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Class