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Clerk of the Napa Superior Court
By: Kelly Rose, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

MARIA GARCIA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FLORA SPRINGS WINE COMPANY, a
California corporation; and DOES 1 through
20, inclusive,

Defendants.

Case No. 17CV001275

Assigned to: Hon. Monique Langhorne
Dept.: B

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Within the Required Time and Upon Separation of Employment;
7. Violation of Business and Professions Code §§ 17200, *et seq.*
8. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiff Maria Garcia, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Maria Garcia (“Plaintiff”) brings this putative class and representative
5 action against Defendant Flora Springs Wine Company and DOES 1 through 20, inclusive
6 (collectively, “Defendants”), on behalf of herself individually and a class of non-exempt
7 employees employed by Defendants throughout California.

8 2. Defendants operate a winery in Napa County, California with its principal place of
9 business located at 1978 W. Zinfandel Lane, St. Helena, California 94572. Defendants’ operations
10 include producing, bottling, and packaging wine. Defendants also operate tasting rooms and
11 lounges that serve food and wine to the general public.

12 3. Defendants employed non-exempt hourly employees, including Plaintiff during the
13 last four years, and continue to employ non-exempt employees to operate its business.

14 4. Plaintiff was employed by Defendants from approximately September 2013 to
15 April 15, 2016.

16 5. Through this action, Plaintiff alleges Defendants engaged in a systematic pattern of
17 wage and hour violations under the California Labor Code and Industrial Welfare Commission
18 (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair competition.

19 6. Plaintiff is informed and believes, and thereon alleges, that Defendants have
20 violated state wage and hour laws by, among other things:

- 21 (a) Failing to pay all wages, including minimum and overtime wages;
- 22 (b) Failing to provide meal periods;
- 23 (c) Failing to authorize or permit rest breaks;
- 24 (d) Failing to provide accurate itemized wage statements; and
- 25 (e) Failing to pay all wages due upon separation of employment.

26 7. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf
27 of herself and all others similarly situated in California to recover, among other things, unpaid
28 wages and benefits, interest, attorney’s fees, costs and expenses and penalties pursuant to Labor

Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2698, *et seq.*

JURISDICTION AND VENUE

8. This is a class action, pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

9. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

10. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

12. Plaintiff Maria Garcia is a citizen of California.

13. Defendants operate a winery in Napa County, California and have its principal place of business located at 1978 W. Zinfandel Lane, St. Helena, California 94572.

14. From around September 2013 to April 15, 2016, Plaintiff worked for Defendants as a non-exempt hourly employee.

15. Plaintiff is informed and believes, and thereon alleges, that Flora Springs Wine Company is a California corporation doing business in Napa County, California, and, at all times hereinafter mentioned, was and is an employer as defined in and subject to the Labor Code and

1 IWC Wage Orders, whose employees are engaged throughout this county and the State of
2 California.

3 16. Although Plaintiff is unaware of the formal title of her job position, her duties
4 included, among other things, washing dishes, setting up tables prior to guest arrivals at the winery,
5 preparing food and other appetizers for guests, maintaining the tasting room, and cleaning the
6 tasting room. Throughout her employment, Plaintiff was occasionally required to assist
7 Defendants' other employees by helping to bottle and package wine, among other duties.

8 17. During her employment with Defendants, Plaintiff worked alongside other
9 employees in and around Defendants' business premises, including, but not limited to, in the
10 tasting room and wine bottling and packing areas.

11 18. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
12 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
13 Complaint and serve such fictitiously named Defendants once their names and capacities become
14 known.

15 19. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are
16 the partners, agents, owners, shareholders, managers or employees of Flora Springs Wine
17 Company at all relevant times.

18 20. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
19 and omissions alleged herein were performed by, or are attributable to, Flora Springs Wine
20 Company, and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal
21 authority to act on the other's behalf. The acts of any and all Defendants were in accordance with,
22 and represent, the official policy of Defendants.

23 21. At all relevant times, Defendants, and each of them, acted within the scope of such
24 agency or employment, or ratified each and every act or omission complained of herein. At all
25 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
26 and all the other Defendants in proximately causing the damages herein alleged.

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22. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself and all other putative class members similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

24. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

25. Plaintiff's proposed class consists of and is defined as follows:

Class

All California citizens currently or formerly employed as non-exempt employees by Defendants in the State of California within four years prior to the filing of this action to the date of class certification ("Class").

26. Plaintiff also seeks to certify the following subclass of employees:

Waiting Time Subclass

All members of the Class who separated their employment from Defendants within three years prior to the filing of this action to the date of class certification ("Subclass" or "Waiting Time Subclass").

27. Plaintiff reserves the right to establish other or additional subclasses, or modify any class or subclass definition, as appropriate.

28. Members of the Class and the Waiting Time Subclass described above will be collectively referred to as "Class Members." Plaintiff reserves the right to re-define the above class and subclass and add additional subclasses as appropriate based on investigation, discovery and specific theories of liability.

29. There are common questions of law and fact as to the class and subclass that predominate over any questions affecting only individual members including, but not limited to:

- (a) Whether Defendants failed to pay all wages, including overtime wages and minimum wages, for all hours worked by Plaintiff and Class Members;
- (b) Whether Defendants failed to pay overtime wages at the proper rate;

- (c) Whether Defendants deprived Plaintiff and Class Members of timely meal periods without compensation;
- (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or required Plaintiffs and Class Members to work through rest breaks without compensation;
- (e) Whether Defendants failed to provide accurate itemized wage statements to Plaintiff and Class Members;
- (f) Whether Defendants failed to timely pay all wages due to Plaintiff and the Waiting Time Subclass upon termination or within 72 hours of resignation;
- (g) Whether Defendants' conduct was willful or reckless; and
- (h) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

30. There is a well-defined community of interest in this litigation and the proposed class and subclass are readily ascertainable:

- (a) Numerosity: The members of the class and subclass are so numerous that joinder of all members is impractical. Although the members of the entire Class and Waiting Time Subclass are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than one hundred (100) individuals. The identities of members of the Class and Waiting Time Subclass are readily ascertainable by inspection of Defendants' employment and payroll records.
- (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each Class Member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class and the Waiting Time Subclass because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

- 1 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
2 interests of all members of the Class and the Waiting Time Subclass because
3 it is in her best interests to prosecute the claims alleged herein to obtain full
4 compensation and penalties due her and the Class Members. Plaintiff's
5 attorneys, as proposed class counsel, are competent and experienced in
6 litigating large employment class actions and versed in the rules governing
7 class action discovery, certification and settlement. Plaintiff has incurred
8 and, throughout the duration of this action, will continue to incur attorney's
9 fees and costs that have been and will be necessarily expended for the
10 prosecution of this action for the substantial benefit of each class member.
- 11 (d) Superiority: The nature of this action makes use of class action adjudication
12 superior to other methods. A class action will achieve economies of time,
13 effort and expense as compared with separate lawsuits, and will avoid
14 inconsistent outcomes because the same issues can be adjudicated in the
15 same manner and at the same time for the Class Members. If appropriate
16 this Court can, and is empowered to, fashion methods to efficiently manage
17 this case as a class action.
- 18 (e) Public Policy Considerations: Employers in the State of California violate
19 employment and labor laws every day. Current employees are often afraid
20 to assert their rights out of fear of direct or indirect retaliation. Former
21 employees are fearful of bringing actions because they believe their former
22 employers might damage their future endeavors through negative references
23 and/or other means. Class actions provide the class members who are not
24 named in the complaint with a type of anonymity that allows for the
25 vindication of their rights at the same time as affording them privacy
26 protections.

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GENERAL ALLEGATIONS

31. During the relevant times mentioned herein, Defendants employed Plaintiff and other California citizens as non-exempt employees.

32. Plaintiff is informed and believes, and thereon alleges, that Defendants continue to employ non-exempt employees within California.

33. Plaintiff worked as a non-exempt employee for Defendants from approximately September 2013 to April 15, 2016. Plaintiff's last pay period in which she worked prior to the end of her employment was for the period of April 1, 2016, to April 15, 2016.

34. Throughout her employment, Plaintiff's duties included, among other things, washing dishes, setting up tables prior to guest arrivals at the winery, preparing food and other appetizers for guests, maintaining the tasting room, and cleaning the tasting room. Throughout her employment, Plaintiff was occasionally required to assist Defendants' other employees by helping to bottle and package wine, among other duties.

35. Defendants operated, and upon information and belief, continue to operate their business seven (7) days a week, including their tasting room.

36. Throughout her employment, Plaintiff was scheduled to work at least eight and one-half (8½) hours per workday. Plaintiff's typical shifts would last from 6:00 a.m. to 2:30 p.m. or 7:00 a.m. to 3:30 p.m.

37. Defendants paid Plaintiff an hourly wage of \$13.00 per hour at the start of her employment. Throughout her employment, Defendants increased Plaintiff's hourly wage, and her wage at the end of her employment was \$14.50 per hour.

38. Plaintiff does not remember ever receiving any written policy documents, employee handbooks, or instructions informing Plaintiff that she was entitled to meal and rest breaks at certain intervals throughout her work shift.

39. From the start of her employment to around September 2015, Defendants required Plaintiff to handwrite the hours she worked on a timesheet. Plaintiff gave these handwritten timesheets to management so that Defendants could process Plaintiff's payroll.

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1 40. From September 2013 through 2015, Plaintiff sometimes worked all seven (7) days
2 in a week.

3 41. Despite having a designated work schedule, Plaintiff was required to work longer
4 than her scheduled hours when Defendants had special events or Plaintiff had to finish cleaning or
5 setting the tasting room before she could end her work day in accordance with her job duties.

6 42. From the start of her employment to around September 2015, Plaintiff noticed that
7 her paystubs and paychecks were missing hours from the hours Plaintiff recorded on her timesheet.
8 Throughout this time, Plaintiff complained to management about not being paid the correct amount
9 of hours worked.

10 43. From the start of her employment to around September 2015, Plaintiff worked shifts
11 of at least eight (8) hours without receiving 30-minute meal or rest breaks. Throughout this time,
12 Plaintiff worked in excess of 10 hours on several occasions, but she never received any 30-minute
13 meal breaks or 10-minute rest breaks. Defendants did not pay Plaintiff an additional hour of pay
14 for missed meal or rests breaks. Until around September 2015, Plaintiff complained to
15 management about not receiving any meal or rest breaks during her shifts.

16 44. Despite working through meal breaks, Plaintiff is informed and believes and based
17 thereon alleges that Defendants deducted 30 minutes from her timesheets for each shift she
18 worked, even when she did not receive 30-minute meal breaks.

19 45. Plaintiff is informed and believes, and thereon alleges, that Defendants manipulated
20 her hours to pay Plaintiff less than she was owed.

21 46. After September 2015, Defendants required Plaintiff to keep track of her work
22 hours by using a time-punch clock. Defendants issued Plaintiff a weekly timecard on which she
23 would punch in and out for her shifts for that workweek.

24 47. Defendants did not inform Plaintiff that she was required to punch in and out for
25 any of her breaks, including a 30-minute lunch break.

26 48. Pursuant to Defendants' instructions, Plaintiff only punched in at the start of her
27 shift and punched out at the end of her shift.

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1 49. During the times Plaintiff was required to use a time-punch clock, Plaintiff alleges
2 that she began to receive some meal breaks, but that on average, she did not receive meal breaks
3 two times a week and did not receive rest breaks approximately two to three times a week.

4 50. Plaintiff continued to work in excess of 10 hours per day on several occasions, but
5 she was not entitled to and could not take more breaks than when she would work less than 10
6 hours.

7 51. Plaintiff alleges that she was denied meal and rest breaks when the schedule of wine
8 tasting events and the job duties Plaintiff was required to perform precluded Plaintiff from taking
9 her meal and rest breaks. Plaintiff would write on her time-punch cards to inform Defendants that
10 she missed her breaks.

11 52. When Plaintiff missed meal or rest breaks, Defendants did not pay Plaintiff
12 additional amounts to compensate her for the time worked or pay an additional hour at her hourly
13 rate. For example, one of Plaintiff's time-punch cards shows that she worked on a particular
14 Saturday in September (no exact date is shown), and Plaintiff wrote on her time-punch card that
15 she did not receive a meal break that particular day. Plaintiff's corresponding wage statement for
16 that pay period does not show that she was paid an additional hour of pay at her regular rate for a
17 missed break.

18 53. During the times Plaintiff was required to use a time-punch clock, Plaintiff alleges
19 that when she was able to take a meal break or rest break, they would be interrupted or cut short,
20 on average, five minutes because she had to return to her working area and be ready to work before
21 the end of her break times.

22 54. Upon information and belief, Plaintiff alleges that Defendants deducted 30 minutes
23 from her time-punch records when she did not receive 30-minute meal breaks because Plaintiff
24 was not required to clock out and in for her lunch breaks.

25 55. Defendants shaved off time when totaling the hours worked reflected on Plaintiff's
26 time punches. For example, Plaintiff's time punch records show that she worked on a particular
27 Thursday in February (no exact date is shown) clocking in at 5:49 a.m. and clocking out at 3:22
28 p.m. for a total of 9.55 hours. Defendants, however, paid Plaintiff for only 9.05 hours. In another

1 example, Defendants shaved more than 30-minutes off Plaintiff's time punch records for a
2 particular Wednesday in October (no exact date is shown) when Plaintiff clocked in at 5:44 a.m.
3 and clocked out at 2:36 p.m., for a total of 8.86 hours, but Defendants credited her for only 8.25
4 hours.

5 56. Due to Defendants' policy and practice of deducting time for meal breaks and
6 shaving time off Plaintiff's time-punch records, Plaintiff was not paid all wages owed. To the
7 extent the reduced hours qualify for the payment of wages at the overtime rate, Plaintiff was not
8 paid all overtime wages.

9 57. Plaintiff does not remember receiving policy documents or meal or rest period
10 policies, and therefore, upon information and belief, alleges that Defendants failed to advise
11 Plaintiff and other employees that they were entitled to take meal and rest breaks.

12 58. Upon information and belief, Plaintiff alleges that other employees used the same
13 or similar timekeeping methods pursuant to Defendants' timekeeping policies, and therefore, were
14 subject to the same timekeeping policies and practices, including missed meal and rest breaks,
15 unpaid time worked, and Defendant's failure to pay premiums for missed meal and rest breaks.

16 59. At the end of Plaintiff's final pay period, she received checks for work performed
17 during this pay period and upon information and belief, for payment of accrued paid time off.
18 However, Plaintiff's final checks did not include payment for all earned wages during Plaintiff's
19 employment, including, payment for time deducted from Plaintiff's hours, time worked through
20 meal periods, and payment of an additional hour for missed, late, or interrupted meal or rest breaks.

21 60. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
23 were knowledgeable about California wage and hour laws, employment and personnel practices
24 and the requirements of California law.

25 61. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Class Members were entitled to receive all wages and that
27 they were not receiving all wages for work that was required to be performed. In violation of the
28 Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid all wages for hours

1 worked, including overtime wages and minimum wages. This failure to pay for all time worked
2 included failure to pay for the correct amount of hours worked.

3 62. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to receive all required meal
5 periods or payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate
6 of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor
7 Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal periods or
8 payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate of pay when
9 they did not receive a timely, uninterrupted meal period.

10 63. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
12 payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate of pay when
13 a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class
14 Members did not receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff
15 and Class Members regular rate of pay when a rest break was missed.

16 64. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Class Members were entitled to receive itemized wage
18 statements that accurately showed their gross and net wages earned, all applicable hourly rates in
19 effect, and the number of hours worked at each hourly rate in accordance with California law. In
20 violation of the Labor Code, Plaintiff and Class Members were not provided with accurate itemized
21 wage statements.

22 65. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and the Waiting Time Subclass were entitled to timely payment
24 of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and the
25 Waiting Time Subclass did not receive payment of all wages including, but not limited to, unpaid
26 minimum wage compensation, overtime compensation, meal period premiums, and rest break
27 premiums within permissible time periods.

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66. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §§ 3-4)

67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

68. Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . . compensation, including interest thereon, reasonably attorney’s fees, and costs of suit.”

69. Labor Code § 1197 provides that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

70. During the relevant time period, Defendants employed Plaintiff and Class Members, and therefore, were entitled to the protections of Labor Code §§ 1194 and 1197 and the applicable IWC Wage Order.

71. During the relevant time period, Defendants failed to pay Plaintiff at least minimum wages owed for all hours worked as herein alleged, including, but not limited to, the hours Defendants deducted or shaved off from Plaintiff's recorded hours and time spent working through missed and/or interrupted meal periods. To the extent these hours do not qualify for the payment of overtime wages, Plaintiff was not being paid at least the lawful minimum wage for her work.

72. Upon information and belief, Plaintiff alleges that Class Members used the same or similar timekeeping methods as Plaintiff pursuant to Defendants' timekeeping policies, and therefore, were subject to the same timekeeping policies and practices, including deducting and

1 shaving time off of Class Members' time records and failing to pay for hours worked through
2 missed and/or interrupted meal periods.

3 73. Due to Defendants' timekeeping policies and practices applicable to non-exempt
4 employees, Plaintiff alleges that Class Members were similarly not paid at least minimum wages
5 for all hours worked.

6 74. Defendants' failure to pay Plaintiff and Class Members the required wages violates
7 Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class Members are entitled
8 to recover the unpaid balance of their wages, including minimum wages for all hours worked, as
9 well as interest, costs and attorneys' fees.

10 75. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
11 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
12 thereon.

13 SECOND CAUSE OF ACTION

14 FAILURE TO PAY OVERTIME WAGES

15 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

16 76. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein.

18 77. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
19 to employ persons without compensating them at a rate of pay either one and one-half (1½) or two
20 (2) times the person's regular rate of pay, depending on the number of hours or days worked by
21 the person on a daily or weekly basis.

22 78. Specifically, the applicable IWC Wage Orders provide that Defendants are and
23 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and
24 one-half (1½) times their regular rate of pay for all hours worked in excess of eight (8) hours in a
25 day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the
26 seventh day of work in a workweek.

27 79. The applicable IWC Wage Orders further provide that Defendants are and were
28 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their

1 regular rate of pay for all hours worked in excess of twelve (12) hours in a day or in excess of eight
2 (8) hours on the seventh day of work in a workweek.

3 80. California Labor Code § 510 codifies the right to overtime compensation at one and
4 one-half (1½) times the regular hourly rate of pay for hours worked in excess of eight (8) hours in
5 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
6 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
7 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
8 seventh day of work in a workweek.

9 81. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
10 of more than six days in a workweek is only permissible if the employer pays proper overtime
11 compensation as set forth herein.

12 82. Labor Code § 1194 provides that “any employee receiving less than . . . the legal
13 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
14 balance of the full amount of this . . . overtime compensation, including interest thereon, reasonably
15 attorney’s fees, and costs of suit.

16 83. During the relevant time period, Defendants employed Plaintiff and Class
17 Members, and therefore, were entitled to the protections of Labor Code §§ 510, 1194, and 1198.

18 84. During the relevant time period, Defendants required Plaintiff to work seven days
19 in a row, in excess of eight hours in a day, and/or 40 hours in a week without paying Plaintiff
20 proper overtime wages for her work.

21 85. Defendants failed to pay Plaintiff proper overtime wages for all overtime hours
22 worked as herein alleged, including, but not limited to, the hours Defendants deducted or shaved
23 off from Plaintiff’s recorded hours and the time spent working through missed and/or interrupted
24 meal periods. To the extent these hours qualify for the payment of overtime wages, Plaintiff was
25 not being paid proper overtime wage for her work.

26 86. Plaintiff’s pay records reflect that Defendants paid Plaintiff bonuses throughout her
27 employment, and such bonuses should have been included in calculating Plaintiff’s regular rate of
28 pay for purposes of calculating the correct overtime pay rate. However, these bonuses were not

1 factored into Plaintiff's overtime rate of pay because Plaintiff's overtime rate of pay reflected on
2 her wage statements is exactly one and one-half times her regular rate of pay, i.e., her regular rate
3 of pay is \$14.50, and her overtime rate of pay is \$21.75. Therefore, Plaintiff was not paid all
4 overtime wages at the proper rate.

5 87. Upon information and belief, Plaintiff alleges that Class Members used the same or
6 similar scheduling and timekeeping methods as Plaintiff pursuant to Defendants' scheduling and
7 timekeeping policies, and therefore, were subject to the same policies and practices, including, but
8 not limited to, scheduling Class Members to work seven days in a row, scheduling Class Members
9 to work at least eight-hour shifts, having Class Members work in excess of eight hours in a
10 workday or 40 hours in a work week, deducting and shaving time off of Class Members' time
11 records, and failing to pay for hours worked through missed and/or interrupted meal periods.

12 88. Upon information and belief, Plaintiff alleges that Class Members were paid
13 bonuses, but such bonuses were similarly not factored into Class Members' calculation of their
14 overtime rates of pay.

15 89. Due to Defendants' scheduling, timekeeping, and bonus pay policies and practices
16 applicable to non-exempt employees, Plaintiff alleges that Class Members were similarly not paid
17 proper overtime wages for all hours worked.

18 90. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
19 overtime and double time compensation, as required by California law, violates the provisions of
20 Labor Code §§ 510 and 1198, and is therefore unlawful.

21 91. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover
22 their unpaid overtime and double time compensation, as well as interest, costs, and attorneys' fees.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

26 92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.
28

1 93. Labor Code § 226.7 provides that no employer shall require an employee to work
2 during any meal period mandated by the IWC Wage Orders.

3 94. Section 11 of the applicable IWC Wage Order states, “no employer shall employ
4 any person for a work period of more than five (5) hours without a meal period of not less than 30
5 minutes, except that when a work period of not more than six (6) hours will complete the day’s
6 work the meal period may be waived by mutual consent of the employer and the employee.”

7 95. Labor Code § 512(a) provides that an employer may not require, cause or permit
8 an employee to work for a period of more than five (5) hours per day without providing the
9 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
10 total work period per day of the employee is not more than six (6) hours, the meal period may be
11 waived by mutual consent of both the employer and the employee.

12 96. Labor Code § 512(a) also provides that an employer may not employ an employee
13 for a work period of more than ten (10) hours per day without providing the employee with a
14 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
15 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
16 employer and the employee only if the first meal period was not waived.

17 97. During the relevant time period, Defendants employed Plaintiff and Class
18 Members, and therefore, were entitled to the protections of Labor Code §§ 226.7 and 512.

19 98. During the relevant time period, Plaintiff was scheduled to work at least eight and
20 one-half (8½) hour days and worked more than 10 hours on several occasions, and therefore, was
21 entitled to one or more meal periods throughout her shifts.

22 99. Plaintiff did not receive compliant meal periods for working more than five (5)
23 and/or ten (10) hours per day because Defendants did not provide Plaintiff an opportunity to take
24 her meal periods, and/or Defendants required Plaintiff to work through their meal periods, and
25 therefore, Plaintiff’s meal periods were missed altogether, late, or cut short.

26 100. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
27 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
28 compensation for each work day that a meal period is not provided.

1 101. At all relevant times, Defendants failed to pay Plaintiff all meal period premiums
2 for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and section 11 of the
3 applicable IWC Wage Order.

4 102. Upon information and belief, Plaintiff alleges that she and Class Members were not
5 provided written policy documents, employee handbooks, or instructions regarding meal periods.
6 Plaintiff alleges that Defendants failed to advise Plaintiff and Class Members that they were
7 entitled to take meal breaks at certain intervals throughout their shifts based on the number of
8 hours worked.

9 103. Upon information and belief, Plaintiff alleges that Class Members similarly worked
10 more than five hours per day, and therefore, were entitled to receive at least one meal period.

11 104. Upon information and belief, Plaintiff alleges that Defendants similarly did not
12 provide Class Members an opportunity to take timely, uninterrupted meal periods, and/or
13 Defendants required Class Members to work through their meal periods, and therefore, Class
14 Members' meal periods were missed altogether, late, or cut short.

15 105. Upon information and belief, Plaintiff alleges that Defendants similarly did not pay
16 Class Members meal period premiums for each day a meal period was missed, late, and/or
17 interrupted.

18 106. As a result of Defendants' failure to pay Plaintiff and Class Members an additional
19 hour of pay for each day a meal period was not provided, Plaintiff and Class Members suffered
20 and continue to suffer a loss of wages and compensation.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PERMIT REST BREAKS**

23 (Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

24 107. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
25 though fully set forth herein.

26 108. Labor Code § 226.7(a) provides that no employer shall require an employee to
27 work during any rest period mandated by the IWC Wage Orders.
28

1 109. Section 12 of the applicable IWC Wage Order states “every employer shall
2 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
3 middle of each work period” and the “authorized rest period time shall be based on the total hours
4 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
5 thereof” unless the total daily work time is less than three and one-half (3½) hours.

6 110. During the relevant time period, Defendants employed Plaintiff and Class
7 Members, and therefore, were entitled to the protections of Labor Code § 226.7.

8 111. During the relevant time period, Plaintiff was scheduled to work and worked at
9 least eight (8) hours in a workday and worked more than 10 hours on several occasions, and
10 therefore, was entitled to at least two (2) or more rest breaks throughout her shifts.

11 112. During the relevant time period, Plaintiff did not receive a ten (10) minute rest
12 period for every four (4) hours or major fraction thereof worked because Defendants required
13 Plaintiff to work through her daily rest periods and/or Defendants failed to authorize or permit her
14 to take their rest periods, and therefore, Plaintiff’s rest periods were missed altogether, late, or cut
15 short.

16 113. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
17 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
18 compensation for each work day that the rest period is not provided.

19 114. At all relevant times, Defendants failed to pay Plaintiff rest period premiums for
20 missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the
21 applicable IWC Wage Order.

22 115. Upon information and belief, Plaintiff alleges that she and Class Members were not
23 provided written policy documents, employee handbooks, or instructions regarding rest periods.
24 Plaintiff alleges that Defendants failed to advise Plaintiff and Class Members that they were
25 entitled to take rest breaks at certain intervals throughout their shifts based on the number of hours
26 worked.

27 116. Upon information and belief, Plaintiff alleges that Class Members similarly worked
28 shifts entitling them to at least one rest period.

117. Upon information and belief, Plaintiff alleges that Defendants similarly did not provide Class Members an opportunity to take timely, uninterrupted rest breaks, and/or Defendants required Class Members to work through their rest breaks, and therefore, Class Members' rest breaks were missed altogether, late, or cut short.

118. Upon information and belief, Plaintiff alleges that Defendants similarly did not pay Class Members rest break premiums for each day a rest period was missed, late, and/or interrupted.

119. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a rest period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code §§ 226)

120. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

121. Labor Code § 226(a) requires employers to furnish their employees with an accurate itemized wage statement that shows gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, the name and address of the legal entity that is the employer and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

122. During the relevant time period, Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a) on wage statements provided to Plaintiff and Class Members. The deficiencies include, among other things, the failure to correctly state the gross and net wages earned, all applicable hourly rates in effect, and the number of hours worked at each hourly rate by Plaintiff and Class Members.

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123. As a result of Defendants' knowing and intentional failure to comply with Labor Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-protected rights. Specifically, Plaintiff and Class Members have been injured by Defendants' intentional violation of Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In addition, Defendants have made it difficult to calculate the amount of wages and compensation owed to Plaintiff and Class Members. Plaintiff has had to file this lawsuit and will be required to conduct discovery and perform computations in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had Defendants provided wage statements accurately showing the hours worked and wages earned, among other things. This has also delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

124. Plaintiff and Class Members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, in an amount not exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violations of Labor Code §§ 201, 202 and 203)

125. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

126. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves her employment, her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours

1 previous notice of her intention to quit, in which case the employee is entitled to her wages at the
2 time of quitting.

3 127. During the relevant time period, Defendants willfully failed to pay Plaintiff all her
4 earned wages upon separation of her employment, including, but not limited to, unpaid minimum
5 wages, overtime wages, meal period premiums, and rest period premiums either at the time of
6 discharge or within seventy-two (72) hours of her leaving Defendants' employ.

7 128. Upon information and belief, Plaintiff alleges that the Waiting Time Subclass
8 similarly were due minimum wages, overtime wages, meal period premiums, and rest period
9 premiums at the time of their separation of employment with Defendants.

10 129. Upon information and belief, Plaintiff alleges that the Waiting Time Subclass
11 similarly were not paid all their earned wages upon separation of their employment with
12 Defendants either at the time of discharge or within seventy-two (72) hours of leaving Defendants'
13 employ.

14 130. Defendants' failure to pay Plaintiff and the Waiting Time Subclass all their earned
15 wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
16 employ violates Labor Code §§ 201 and 202.

17 131. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
18 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
19 the wages of the employee shall continue as a penalty from the due date at the same rate until paid
20 or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

21 132. Plaintiff and the Waiting Time Subclass are entitled to recover from Defendants the
22 statutory penalty which is defined as Plaintiff and Class Members' regular daily wages for each
23 day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant
24 to Labor Code § 203.

25 SEVENTH CAUSE OF ACTION

26 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

27 133. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

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

5 135. Defendants' activities, as alleged herein, violate California law and constitute
6 unlawful business acts or practices in violation of California Business and Professions Code §§
7 17200, *et seq.*

8 136. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated
9 on the violation of any state or federal law.

10 137. Defendants' policies and practices have violated state law in at least the following
11 respects:

12 (a) Failing to pay all wages earned, including overtime wages and minimum wages, to
13 Plaintiff and Class Members in violation of Labor Code §§ 200 *et seq.*, 510, 1194,
14 1197 and 1198;

15 (b) Failing to provide meal periods without paying Plaintiff and Class Members
16 premium wages for every day said meal periods were not provided in violation of
17 Labor Code §§ 226.7 and 512;

18 (c) Failing to authorize or permit rest breaks without paying Plaintiff and Class
19 Members premium wages for every day said rest breaks were not authorized or
20 permitted in violation of Labor Code § 226.7;

21 (d) Failing to provide Plaintiff and Class Members with accurate itemized wage
22 statements in violation of Labor Code § 226; and

23 (e) Failing to timely pay all earned wages to Plaintiff and the Waiting Time Subclass
24 upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

25 138. On information and belief, Defendants intentionally avoided paying Plaintiff and
26 Class Members' wages and monies, thereby creating for Defendants an artificially lower cost of
27 doing business in order to undercut their competitors and establish and gain a greater foothold in
28 the marketplace.

139. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Class Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four years prior to the filing of the Complaint; an award of attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

EIGHTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. (“PAGA”)

140. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

141. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

142. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

143. The following sections of the Labor Code include those violated by Defendants and those upon which Plaintiff seeks the recovery of civil penalties:

a. Labor Code §§ 201-203, 204, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198, for failure to timely pay all earned wages (including minimum wage and overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

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- 1 b. Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and
2 other aggrieved employees and failure to pay premium wages for missed meal
3 periods as herein alleged;
4 c. Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved
5 employees and failure to pay premium wages for missed rest periods as herein
6 alleged;
7 d. Labor Code §§ 226 and 226.3 for failure to provide accurate itemized wage
8 statements to Plaintiff and other aggrieved employees as herein alleged; and
9 e. Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete
10 records showing, among other things, the hours worked daily by and the wages paid
11 to aggrieved employees.

12 144. Further, Labor Code § 558(a) provides that “[a]ny employer or other person acting
13 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
15 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
16 for each pay period for which the employee was underpaid . . . (2) For each subsequent violation,
17 one hundred dollars (\$100) for each underpaid employee for each pay period for which the
18 employee was underpaid”

19 145. Plaintiff is an “aggrieved employee” because she was employed by the alleged
20 violation and had one or more of the violations committed against him, and therefore is properly
21 suited to represent the interests of all other aggrieved employees.

22 146. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
23 to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other
24 aggrieved employees under PAGA.

25 147. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
26 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
27 cited above.

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148. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of the proposed Class and Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;
2. For appointment of Maria Garcia as the class representative;
3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
4. For general damages;
5. For special damages;
6. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
7. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
8. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
9. For civil penalties pursuant to PAGA.
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties;
11. For pre-judgment interest;
12. For reasonable attorney's fees, costs of suit and interest to the extent permitted by law, including, but not limited to, PAGA, Code of Civil Procedure § 1021.5, and Labor Code § 226(3) and 1194.
13. For such other relief as the Court deems just and proper.

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Dated: February 1, 2021

AEGIS LAW FIRM, PC

By: _____

Alexander G.L. Davies

Attorneys for Plaintiff Maria Garcia

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: February 1, 2021

AEGIS LAW FIRM, PC

By: _____

Alexander G.L. Davies

Attorneys for Plaintiff Maria Garcia

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over the
3 age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my
business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On February 2, 2021, I served the foregoing document entitled

5 • **SECOND AMENDED CLASS ACTION COMPLAINT**
6 on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true
copy thereof enclosed in sealed envelope(s) addressed as follows:

7 James M. Hanlon, JR
8 GLYNN & FINLEY LLP
9 100 Pringle Avenue Suite 500
10 Walnut Creek, CA 94596
11 jhanlon@glynnfinley.com

12 *Attorneys for Defendant:*
13 *Flora Springs Wine Company*

14 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
15 correspondence for mailing. Under that practice it would be deposited with the U.S.
16 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
17 in the ordinary course of business. I am aware that on motion of the party served, service
18 is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed.*
R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)

19 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
20 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

21 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
22 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).)

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed on February 2, 2021, at Irvine, California.

26 
27 Andrea Drocco
28