

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
Brittaney D. de la Torre (SBN 318150)
bdelatorre@haineslawgroup.com
222 N. Sepulveda Blvd., Suite 1550
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

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

VERONICA GONZALEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

PRECISION HOSPITALITY &
DEVELOPMENT, LLC, a California limited
liability company; and DOES 1 through 100,

Defendants.

Case No.: 30-2020-01127597-CU-OE-CXC

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (3) **FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802, 2804);**
- (4) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (5) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

CX-105

**(9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Veronica Gonzalez (“Plaintiff”) on behalf of herself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint (“Complaint”) against Defendants Precision Hospitality & Development, LLC, a California limited liability company; and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804 and 2698 *et seq.*, and Business and Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare Commission Wage Order 5-2001 (“Wage Order 5”), in addition to seeking declaratory relief and restitution. This action is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Orange. Defendants own, maintain offices, transact business, have an agent or agents within the County of Orange, and/or otherwise are found within the County of Orange, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident living within Orange County. During the four years immediately preceding the filing of this action and within the statute of limitations periods

1 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
2 exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
3 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
4 by Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197,
5 1198, 2802, 2804 and 2698 *et seq.*, California's Unfair Competition Law, and Wage Order 5,
6 which sets employment standards for the public housekeeping industry which includes businesses
7 that prepare and serve food for consumption.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing this action and continuing to the present, Defendants did (and continue
10 to do) business within the County of Orange and the State of California by operating a chain of
11 "Dunkin' Donuts" restaurants which prepare and serve donuts, and therefore, were (and are)
12 doing business in the County of Orange and the State of California.

13 5. Plaintiff does not know the true names or capacities, whether individual, partner,
14 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
15 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
16 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
17 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
18 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
19 and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful
20 employment practices, wrongs, injuries and damages complained of herein.

21 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
23 Classes.

24 7. At all times herein mentioned, each of said Defendants participated in the doing
25 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants, and employees of each and every one of
27 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
28 were acting within the course and scope of said agency and employment. Defendants, and each

1 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
2 omissions complained of herein.

3 8. At all times mentioned herein, Defendants, and each of them, were members of
4 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
5 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
6 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
7 members of the Classes.

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants operate a chain of “Dunkin’ Donuts” restaurants. Plaintiff was
10 employed by Defendants as a non-exempt employee from approximately August 1, 2018 to
11 August 16, 2019. Plaintiff began her employment with Defendants as a “Crew Member,” then
12 was later promoted to “Shift Leader” in or around April 25, 2019 and was also being trained to
13 be an “Assistant Manager.”

14 10. Defendants’ timekeeping policies and/or practices resulted in Plaintiff and other
15 Manager, Assistant Manager, and Shift Leader non-exempt employees not being compensated for
16 all hours actually worked. Specifically, after promoting Plaintiff to Shift Leader, Defendants
17 required Plaintiff to complete work duties at home without compensation, such as creating labels,
18 and “Production Lists” that consisted of listing the number of food items that needed to be
19 prepared for each shift. Defendants also expected Plaintiff to remain on-call throughout the day,
20 even on days that she was not scheduled to work, and would at times contact Plaintiff while she
21 was not working to ask her to assist with various tasks off-the-clock. As a result of Defendants’
22 unlawful policy and/or practice, Plaintiff and other non-exempt Manager, Assistant Manager,
23 and/or Shift Leader employees were not compensated for all hours that they actually worked and
24 were deprived of all minimum and overtime wages owed.

25 11. Despite requiring Plaintiff and other non-exempt Manager, Assistant Manager, or
26 Shift Leader employees to remain on-call and utilize their personal cell phones for work purposes,
27 Defendants failed to reimburse these non-exempt employees for all necessary business expenses
28 associated with using their personal cell phones, in violation of Labor Code § 2802.

1 12. Throughout Plaintiff's employment with Defendants, Defendants maintained an
2 unlawful meal period policy and/or practice that failed to provide Plaintiff and other non-exempt
3 employees with timely, uninterrupted, duty-free 30-minute meal periods commencing before the
4 end of the fifth hour of work. Instead, Defendants' meal period policy provided meal periods
5 prior to the end of the *sixth* hour of work, in violation of California law. *See* Labor Code § 512,
6 and Wage Order 5 § 11. Defendants also prohibited Plaintiff and other non-exempt employees
7 from taking their meal periods until they were approved by a Manager, Assistant Manager, or
8 Shift Leader. Similarly, Managers, Assistant Managers, and Shift Leaders could not take meal
9 periods unless another Manager, Assistant Manager, or Shift Leader was present at the restaurant
10 to relieve them of their work duties. Because of this policy and/or practice, Plaintiff and other
11 non-exempt employees were often forced to take late meal periods if a Manager, Assistant
12 Manager, or Shift Leader was not available to relieve them of their duties, or whenever the
13 restaurant became busy with high customer traffic. Additionally, since Defendants' meal period
14 policy only provided a single meal period per shift, regardless of the length of the shift,
15 Defendants denied their non-exempt employees a second meal period for shifts worked in excess
16 of 10 hours in violation of Labor Code § 512, and Wage Order 5 § 11.

17 13. Defendants also failed to authorize and permit Plaintiff to take all duty-free 10-
18 minute rest periods for every four hours worked, or major fraction thereof, due to Defendants'
19 unlawful rest period policies/practices. Defendants only authorized and permitted one rest period
20 per shift, regardless of the length of the shift. As a result of this policy and/or practice, Defendants
21 did not authorize and permit Plaintiff and other non-exempt employees to take a second rest period
22 on occasions when they worked shifts in excess of 6 hours, or a third rest period on occasions
23 when they worked shifts in excess of 10 hours. Much like Defendants' meal period policy and/or
24 practice, Plaintiff and other non-exempt employees were not permitted to take a rest period unless
25 a Manager, Assistant Manager, or Shift Leader approved it. As a result of this policy and/or
26 practice, Defendants deprived Plaintiff and other non-exempt employees of timely rest periods
27 whenever the restaurant became busy. Despite Defendants' failure to authorize and permit
28 Plaintiff and other non-exempt employees to take all legally-required rest periods to which they

are entitled, Defendants failed to compensate Plaintiff and other non-exempt employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

14. Upon information and belief, during at least a portion of the relevant time period, Defendants failed to maintain pay codes for the payment of rest period premium payments as required by Labor Code § 226.7.

15. As a result of Defendants' failure to pay all minimum wages owed, overtime wages owed, and meal and rest period premium wages owed, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees. Defendants also failed to timely pay Plaintiff and other non-exempt employees all wages owed at the time of their respective separations from employment.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who worked in the position of "Manager," "Assistant Manager," and/or "Shift Leader" and were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked in the position of "Manager," "Assistant Manager," and/or "Shift Leader" and: (i) were subject to Defendants' timekeeping policies and/or practices for "Manager," "Assistant Manager," and/or "Shift Leader" non-exempt employees; and (ii) did not receive overtime wages equal to one and one-half times the employee's regular rate of pay for hours worked in excess of 8 hours per day and/or 40 hours per workweek, during the four years immediately preceding the filing of this action through the present.
- c. The Reimbursement Class consists of all Defendants' current and former non-

1 exempt employees in California who were not reimbursed for necessary business
2 expenses incurred, during the four years immediately preceding the filing of this
3 action through the present.

4 d. The Meal Period Class consists of all Defendants' current and former non-exempt
5 employees in California who: (i) worked at least one shift in excess of 5 hours
6 without their timekeeping records reflecting a meal period of at least 30 minutes
7 in duration commencing prior to the conclusion of the fifth hour of work, and who
8 did not have a corresponding meal period premium payment made for such shifts
9 during the four years preceding the filing of the lawsuit through the present; and/or
10 (ii) worked at least one shift in excess of 10 hours without their timekeeping
11 records reflecting a meal period of at least 30 minutes in duration commencing
12 prior to the conclusion of the tenth hour of work, and who did not have a
13 corresponding meal period premium payment made for such shifts during the four
14 years preceding the filing of this action through the present.

15 e. The Rest Period Class consists of all of Defendants' current and former non-
16 exempt employees in California who worked at least one shift in excess of 6.0
17 hours, during the four years immediately preceding the filing of this action through
18 the present.

19 f. The Wage Statement Class consists of all members of the Minimum Wage Class,
20 Overtime Class, Meal Period Class and/or Rest Period Class who received a wage
21 statement from Defendants during the one year immediately preceding the filing
22 of this action through the present.

23 g. The Waiting Time Class consists of all members of the Minimum Wage Class,
24 Overtime Class, Meal Period Class and/or Rest Period Class who separated their
25 employment with Defendants during the three years immediately preceding the
26 filing of this action through the present.

27 17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
28 joinder of all members would be unfeasible and not practicable. The membership of the Classes

are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants failed to pay members of the Minimum Wage Class at least the statutory minimum wage for all hours worked, pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 by requiring members of the Overtime Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage and/or Overtime Class Class;
- iv. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and 2804;
- v. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vi. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vii. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- viii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and

ix. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies/practices, reimbursement policies/practices, and meal and rest period policies/practices. As such, common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all minimum and overtime wages owed, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, was not reimbursed for her necessary business expenses incurred, was not provided with accurate, itemized wage statements, and did not receive all final wages owed at the time of her separation of employment.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to

1 take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment. The nature of this action and the format of laws available to Plaintiff
3 and members of the Classes make the class action format a particularly efficient and appropriate
4 procedure to redress the violations alleged herein. If each employee were required to file an
5 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
6 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
7 their vastly superior financial and legal resources. Moreover, requiring each member of the
8 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
9 employees who would be disinclined to file an action against their former and/or current employer
10 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
11 employment. Further, the prosecution of separate actions by the individual class members, even
12 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
13 with respect to the individual class members against Defendants herein; and which would
14 establish potentially incompatible standards of conduct for Defendants; and/or legal
15 determinations with respect to individual class members which would, as a practical matter, be
16 dispositive of the interest of the other class members not parties to adjudications or which would
17 substantially impair or impede the ability of the class members to protect their interests. Further,
18 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
19 individual prosecution considering all of the concomitant costs and expenses attending thereto.
20 As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil
21 Procedure.

22 **FIRST CAUSE OF ACTION**
23 **MINIMUM WAGE VIOLATIONS**
24 **(AGAINST ALL DEFENDANTS)**

25 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 24. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
27 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
28 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal

1 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
2 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
3 wages and interest accrued thereon.

4 25. At all relevant times herein, Defendants failed to conform their pay practices to
5 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
6 for all hours worked including, but not limited to, all hours they were subject to the control of
7 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
8 Order 5.

9 26. California Labor Code § 1198 makes unlawful the employment of an employee
10 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
11 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
12 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
13 amount equal to the wages due and interest thereon.

14 27. As a direct and proximate result of Defendants' unlawful conduct as alleged
15 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
16 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
17 entitled to recover economic and statutory damages and penalties and other appropriate relief as
18 a result of Defendants' violations of the California Labor Code and Wage Order 5.

19 28. The foregoing practices and policies are unlawful and create an entitlement to
20 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
21 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
22 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
23 1194, 1197, and 1198, Wage Order 5, and Code of Civil Procedure § 1021.5.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY ALL OVERTIME WAGES**

26 **(AGAINST ALL DEFENDANTS)**

27 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,

1 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
2 overtime hours worked and provide a private right of action for the failure to pay all overtime
3 compensation for overtime work performed.

4 31. At all times relevant herein, Defendants were required to properly pay Plaintiff
5 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
6 Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee one
7 and one-half (1½) times the employee's regular rate of pay for the first 8 hours worked on the
8 seventh consecutive day of work in a workweek. Wage Order 5, § 3 also requires an employer to
9 pay an employee double the employee's regular rate of pay for work in excess of 8 hours on the
10 seventh consecutive day of work in a workweek.

11 32. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
12 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
13 Class at one and one-half times their regular rate of pay for such hours.

14 33. The foregoing policies and practices are unlawful and create entitlement to
15 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
16 premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and
17 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
18 5, and Code of Civil Procedure § 1021.5.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

21 **(AGAINST ALL DEFENDANTS)**

22 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 35. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
24 states that "an employer shall indemnify his or her employees for all necessary expenditures or
25 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
26 his or obedience to the directions of the employer."

27 36. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
28 states that "any contract or agreement, express or implied, made by any employee to waive the

benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

37. As alleged herein, due to Defendants’ unlawful reimbursement practices, Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all necessary business expenses incurred, including, among other things, personal cell phone usage.

38. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

FOURTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants’ violations, Defendants did not always pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

41. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 5, and Code of Civil Procedure § 1021.5.

FIFTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

1 **(AGAINST ALL DEFENDANTS)**

2 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

3 43. Wage Order 5, § 12 and Labor Code §§ 226.7 and 516 establish the right of
4 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
5 period worked, or major fraction thereof.

6 44. As alleged herein, and due to Defendants' unlawful rest period policies and/or
7 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
8 Class to take all lawful rest periods to which they were legally entitled. Despite Defendants'
9 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
10 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
11 California Labor Code § 226.7.

12 45. The foregoing violations create an entitlement to recovery by Plaintiff and
13 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
14 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
15 to Labor Code §§ 226.7, 516, and 558, Wage Order 5, and Code of Civil Procedure § 1021.5.

16 **SIXTH CAUSE OF ACTION**

17 **WAGE STATEMENT VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

19 46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
22 and members of the Wage Statement Class with complete and accurate wage statements that
23 included, among other requirements, all overtime and minimum wages earned, and all meal and
24 rest period premium wages owed, in violation of Labor Code § 226 *et seq.*

25 48. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
26 with complete and accurate, itemized wage statements resulted in actual injury, as said failures
27 led to, among other things, the non-payment of all minimum and overtime wages owed, all meal
28 and rest period premium wages owed, and deprived them of the information necessary to identify

1 the discrepancies in Defendants' reported data.

2 49. Defendants' failures create an entitlement to recovery by Plaintiff and members of
3 the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code
4 § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs
5 of suit according to California Labor Code § 226 *et seq.*

6 **SEVENTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(AGAINST ALL DEFENDANTS)**

9 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 51. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
11 an employer to pay all wages earned immediately at the time of separation of employment in the
12 event the employer discharges the employee, or if the employee provides at least 72 hours of
13 notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of
14 his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon
15 said employee's last date of employment.

16 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
18 at the time of their separation including, among other things, underpaid minimum and overtime
19 wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and
20 believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants
21 continue to fail to pay members of the Waiting Time Class all earned wages at the end of
22 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
23 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

24 53. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
25 Time Class all earned wages upon separation from employment results in a continued payment
26 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
27 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
28 plus reasonable attorneys' fees and costs of suit.

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

4 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 55. Defendants have engaged and continue to engage in unfair and/or unlawful
6 business practices in California in violation of California Business and Professions Code § 17200
7 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all minimum and overtime
8 wages owed; failing to pay all required meal and rest period premium wages owed; failing to
9 reimburse all necessary business expenses incurred; knowingly failing to furnish complete and
10 accurate, itemized wage statements; and failing to pay all final wages at the time of separation
11 from employment.

12 56. Defendants' utilization of these unfair and/or unlawful business practices deprived
13 Plaintiff, and continues to deprive members of the Classes, of compensation to which they are
14 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
15 over Defendants' competitors who have been and/or are currently employing workers and
16 attempting to do so in honest compliance with applicable wage and hour laws.

17 57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
18 herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of
19 monies as necessary and according to proof to restore any and all monies withheld, acquired
20 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

21 58. The acts complained of herein occurred within the last four years immediately
22 preceding the filing this action.

23 59. Plaintiff was compelled to retain the services of counsel to file this court action to
24 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
25 of Defendants' current non-exempt employees, and to enforce important rights affecting the
26 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
27 which she is entitled to recover under Code of Civil Procedure § 1021.5.

28 ///

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

60. Plaintiff re-allege and incorporate by reference all previous paragraphs.

61. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff as an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, bring this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to reimburse Plaintiff and other aggrieved employees for all necessary expenditures incurred in violation of Labor Code §§ 2802 and 2804;

- d. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;
- e. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, 558;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements in violation of Labor Code § 226, *et seq.*;
- g. Failing to timely pay Plaintiff and other aggrieved employees all final wages due upon their respective separations from employment in violation of Labor Code §§ 201-203;
- h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1174 and 1198.

62. On or around February 3, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 61 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

63. Based on the foregoing, Plaintiff seeks to represent herself and all Aggrieved

1 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
2 exempt employees who worked for Defendants in California between February 3, 2019 and the
3 present.

4 64. Plaintiff was compelled to retain the services of counsel to file this court action to
5 protect her interests and the interests of other aggrieved employees, and to assess and collect the
6 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
7 she is entitled to recover under California Labor Code § 2699.

8 **PRAYER**

9 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
10 this suit is brought against Defendants, as follows:

- 11 1. For an order certifying the proposed Classes;
- 12 2. For an order appointing Plaintiff as representative of the Classes;
- 13 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 14 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
15 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
16 1194.2 and 1197;
- 17 5. Upon the Second Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 19 6. For the Third Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 21 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
- 23 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 25 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
26 226 *et. seq.*;
- 27 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
28 to Labor Code §§ 201-203;

1 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
2 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
3 practices declared by this Court to be in violation of California Business and Professions Code §
4 17200 *et seq.*;

5 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
6 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
7 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
8 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
9 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
10 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
11 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
12 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
13 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
14 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
15 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
16 period for those violations of the Labor Code for which no civil penalty is specifically provided,
17 based on the violations of Labor Code sections identified in Paragraph 61 (a)-(i) above;

18 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
19 Code § 218.6 and Civil Code §§ 3287 and 3289;

20 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
21 §§ 218.5, 226, 1194 *et seq.*, 2802 and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

22 15. For such other and further relief the Court may deem just and proper.
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24 Dated: April 8, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

26 By:



27 Fletcher W. Schmidt
28 Attorneys for Plaintiff

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Dated: April 8, 2020

By:

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