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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 06 2022

BY


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SOLIS, individually, and on behalf of other individuals similarly situated
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JESSICA GARCIA, RUDY JIMENEZ,
individually and on behalf of other
individuals similarly situated,

Plaintiffs,

vs.

THE MERCHANT OF TENNIS, INC.,
a California Corporation, dba U.S.
Merchants, and DOES 1 through 100,

Defendants.

Case No. CIV DS 2005614

**THIRD AMENDED CONSOLIDATED CLASS
ACTION COMPLAINT FOR:**

1. Failure To Pay All Wages;
2. Missed/Late Meal Breaks in Violation of California Labor Code §§ 200, 226.7, 512
3. Missed/Late Rest Breaks in Violation of California Labor Code §§ 200, 226.7, 512;
4. Failure to Pay All Wages Owed at Termination of California Labor Code §203;
5. Failure to Furnish an Accurate, Itemized Wage Statement upon Payment of Wages in Violation of California Labor Code § 226;
6. Failure to Adopt Standards that Minimize Excessive Indoor Heat in Violation of California Labor Code to Adopt Standards that in Violation of California Labor Code §§ 6720, 226.7;
7. Violations of California Business & Professions Code §§ 17200, et seq.
8. Penalties Pursuant to Labor Code § 2699, et seq.
9. Fair Labor Standards Act (29 U.S.C. § 201, et seq.)

UNLIMITED CIVIL CASE

RECEIVED

MAR 06 2022

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT**

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1 Plaintiffs Jessica Garcia, Rudy Jimenez, and Jose Hernandez Solis (hereinafter
2 referred to as "Plaintiffs"), hereby submit this Third Amended Consolidated Class Action
3 Complaint against Defendant THE MERCHANT OF TENNIS, INC., a California
4 corporation dba U.S. MERCHANTS; and DOES 1-100 (hereinafter collectively referred
5 to as "Defendants") on behalf of themselves and the class of all other similarly situated current
6 and former employees of Defendant as follows:

7 **INTRODUCTORY FACTUAL ALLEGATIONS**

8 1. This class action is within the Court's jurisdiction under California *Labor Code*
9 §§ 200, 201-203, 204, 210, 216, 226, 226(a), 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
10 1197, 1198, 2698, *et seq.*, 6720, California *Business and Professions Code* § 17200, *et seq.*,
11 (Unfair Practices Act), Industrial Welfare Commission Wage Order No. 7 ("Wage Order 7"),
12 and the Fair Labor Standards Act ("FLSA").

13 2. This complaint challenges systemic illegal employment practices resulting in
14 Violations of the California *Labor Code*, and California *Business and Professions Code* against
15 employees of Defendants.

16 3. This is also an enforcement action under the Labor Code Private Attorneys
17 General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA") to recover civil penalties
18 and any other available relief on behalf of Plaintiff, the State of California, and former and
19 current non-exempt employees of Defendant THE MERCHANT OF TENNIS, INC., doing
20 business and employing individuals in California.

21 4. Plaintiffs seek relief on behalf of themselves and other non-exempt employees as
22 a result of employment policies, practices and procedures more specifically described below,
23 which violate the California *Labor Code*, and the orders and standards promulgated by the
24 California Department of Industrial Relations, Industrial Welfare Commission, and Division of
25 Labor Standards, and which have resulted in the failure of Defendants to pay Plaintiffs and
26 members of the Classes all wages due to them. Said employment policies, practices and
27 procedures are generally described as follows:

28 a. Defendant subjected Plaintiffs and other aggrieved employees to security

- 1 checks at meal breaks and at the end of work shifts without proper
2 compensations;
- 3 b. Failure to pay Plaintiffs and other aggrieved employees for all hours worked
4 due to rounding;
- 5 c. Failure to provide Plaintiffs and other aggrieved employees with timely meal
6 and rest breaks;
- 7 d. Failure to provide proper meal and rest periods to Plaintiffs and other
8 aggrieved employees;
- 9 e. Failure to adopt standards that minimize excessive indoor heat in violation of
10 California *Labor Code* §§ 6720, 226.7;
- 11 f. Failure to provide accurate itemized wage statements; and
- 12 g. Failure to timely pay all wages due to Plaintiffs and other aggrieved employees
13 upon termination or within 72 hours of resignation.

14 5. Plaintiffs are informed and believe, and based thereon allege, that Defendants
15 have engaged in, among other things a system of willful violations of the California *Labor Code*,
16 California *Business and Professions Code*, and applicable IWC wage orders by creating and
17 maintaining policies, practices and customs that knowingly deny employees the above stated
18 rights and benefits.

19 6. The policies, practices and customs of Defendants described above and below
20 have resulted in unjust enrichment of Defendants and an unfair business advantage over
21 businesses that routinely adhere to the structures of the California *Labor Code*, and California
22 *Business and Professions Code*.

23 7. For purposes of Plaintiffs' PAGA allegations, "aggrieved employees" shall mean
24 all employees who were or are employed by Defendants in California as "non-exempt
25 employees" against whom one or more violations of any provision in Division 2 Part 2 Chapter
26 1 of the *Labor Code* or any provision regulating hours and days of work in the applicable
27 Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this
28 complaint, at any time between one year prior to the filing of this complaint until judgment. As

1 used in this definition, the term “non-exempt employee” refers to those who Defendants have
2 classified as non-exempt from the overtime wage provisions of the California *Labor Code*.

3 8. The actions of Defendants are in violation of the California *Labor Code* as well
4 as the wage orders of the Industrial Wage Commission of the State of California and, as a result,
5 are unlawful and unfair acts, thus constituting a violation of California Business & Professions
6 Code § 17200, *et seq.* (Unfair Practices Act).

7 9. The policies, practices and customs of Defendants described above and herein
8 have resulted in unjust enrichment of Defendants and an unfair business advantage over
9 businesses that routinely adhere to the requirements of the California *Labor Code* and of the
10 *Business & Professions Code*.

11 **JURISDICTION AND VENUE**

12 10. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring
13 this Complaint for the recovery of unpaid wages and penalties under California *Labor Code* §§
14 200, 201-203, 204, 210, 216, 226, 226(a), 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
15 1197, 1198, 2698, *et seq.*, 6720, Unfair Practices Act, Wage Order 7, and the FLSA. This
16 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
17 jurisdiction over Defendants’ violations of the California *Labor Code*, Unfair Practices Act, and
18 FLSA because the amount in controversy exceeds this Court’s jurisdictional minimum.

19 11. On information and belief, Defendants are either citizens of California, have
20 sufficient minimum contacts in California, or otherwise intentionally avail themselves of the
21 California market so as to render the exercise of jurisdiction over them by the California courts
22 consistent with traditional notions of fair play and substantial justice. There is no basis for federal
23 diversity jurisdiction in this action given that the State of California, as the real party in interest
24 in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction *Urbino v. Orkin*
25 *Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties
26 cannot be aggregated to satisfy the amount in controversy requirement for federal diversity
27 jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiff’s
28 share of the civil penalties attributable to violations personally suffered are less than \$75,000. *Id.*

1 at 1122.

2 12. Venue is proper in San Bernardino County because the acts which give rise to this
3 litigation occurred in this county and Defendant does business in San Bernardino County.

4 **THE PARTIES**

5 13. Plaintiffs are individuals over the age of 18. At all relevant times herein, Plaintiffs
6 were, and currently are, residents of California. Within the statute of limitations periods applicable
7 to each cause of action pled herein, Plaintiffs were employed by Defendants. Plaintiffs were, and
8 are, victims of Defendants' policies and/or practices complained of herein, lost money and/or
9 property, and have been deprived of the rights guaranteed by *Labor Code* §§ §§ 200, 201-203,
10 204, 210, 216, 226, 226(a), 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698,
11 *et seq.*, 6720, Business & Professions Code § 17200, *et. seq.*, Wage Order No. 7, and the FLSA.

12 14. Plaintiff Jessica Garcia is a resident of Los Angeles County, in the State of
13 California. Plaintiff was employed by Defendant, The Merchant Of Tennis, Inc., in Ontario,
14 California from approximately July 18, 2019 through December 31, 2019.

15 15. Plaintiff Rudy Jimenez is a resident of San Bernardino County, in the State of
16 California. Plaintiff was employed by Defendant, The Merchant Of Tennis, Inc., in Ontario,
17 California as a forklift driver for approximately nine months through March 13, 2020.

18 16. Plaintiff Jose Hernandez Solis was employed by Defendant, The Merchant Of
19 Tennis, Inc., in Ontario, California as a production employee from approximately April 2020 to
20 June 2020.

21 17. Defendant The Merchant Of Tennis, Inc., is a California corporation that conducts
22 business in California.

23 18. Plaintiffs do not know the true names or capacities, whether individual, partner or
24 corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason,
25 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
26 complaint when the true names and capacities are known. Plaintiffs are informed and believes,
27 and based thereon alleges, that each of said fictitious Defendants were responsible in some way
28 for the matters alleged herein and proximately caused Plaintiffs and members of the general public

1 and class to be subject to the illegal employment practices, wrongs and injuries complained of
2 herein.

3 19. At all times herein mentioned, Defendants participated in the doing of the acts
4 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
5 and each of them, were the agents, servants and employees of each of the other Defendants, as
6 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
7 course and scope of said agency and employment.

8 20. Plaintiffs are informed and believe, and based thereon allege, that at all times
9 material hereto, each of the Defendants named herein were the agent, employee, alter ego and/or
10 joint venturer of, or working in concert with each of the other co-Defendants and were acting
11 within the course and scope of such agency, employment, joint venture, or concerted activity. To
12 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
13 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
14 Defendants.

15 21. At all times herein mentioned, Defendants, and each of them, were members of,
16 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
17 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

18 22. At all times herein mentioned, the acts and omissions of various Defendants, and
19 each of them, concurred and contributed to the various acts and omissions of each and all of the
20 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
21 herein mentioned, Defendants, and each of them, ratified each and every act or omission
22 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
23 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
24 damages as herein alleged.

25 23. The members of the Classes identified in Paragraph 78, including the
26 representative Plaintiffs named herein, have been employed during the Class Period in California.
27 The practices and policies which are complained of by way of this Complaint are enforced
28 throughout the State of California and the United States.

FACTUAL ALLEGATIONS

24. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

25. Plaintiffs and all other Class members and aggrieved employees seek compensation from Defendants for the relevant time period because Defendants:

- a. Failed to pay Plaintiffs and all other Class members aggrieved employees all wages owed, by subjecting them to security checks, and lengthy walk times;
- b. Failed to pay Plaintiffs and all other Class members aggrieved employees for all hours worked due consistent rounding;
- c. Failed to pay Plaintiffs and all other Class members and aggrieved employees for all hours worked due off-the-clock COVID-19 temperature checks;
- d. Failed to provide Plaintiffs and all other Class members aggrieved employees with timely rest and meal periods as mandated by California law;
- e. Failed to timely pay Plaintiffs and all other Class members and aggrieved employees with all wages owed at time of termination or within 72 hours;
- f. Failed to provide Plaintiffs and all other Class members aggrieved employees with accurate itemized wage statements; and
- g. Failed to adopt standards that minimize excessive indoor heat in violation of California *Labor Code* §§ 6720, 226.7.

26. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

27. Defendants' utilization of such unfair business practices deprives Plaintiffs and other Class members and aggrieved employees of the general minimum working standards and entitlements due to them under California law and the Industrial Welfare Commission wage orders as described herein.

28. Plaintiffs and all other Class members and aggrieved employees were and are classified by Defendant as non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders and standards promulgated by the California Department of Industrial

Relations, Industrial Welfare Commission, and Division of Labor Standards. As non-exempt employees, Plaintiffs and all other Class members and aggrieved employees are entitled to certain benefits, including mandated meal and rest breaks. In addition, said statutory provisions, wage orders, regulations and standards obligate the employer to maintain accurate records of the hours worked by employees.

29. As a direct result of the wage and hour violations herein alleged, Plaintiffs and all other Class members and aggrieved employees have suffered, and continue to suffer substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law, all to Plaintiffs' respective damage in amounts according to proof at the time of trial.

Defendants' Failure to Pay for All Hours Worked

30. Defendants did not compensate their hourly non-exempt employees for all the minutes that they worked as described above, including but not limited to the time that the employees were subject to the control and direction of Defendants; and/or the time that the employees were suffered or permitted to work. This includes the time spent "off the clock" for security checks. Defendants, at all times relevant herein, failed to compensate for all actual hours worked by non-exempt employees. As a result, Defendants have failed and refused to compensate Plaintiffs and aggrieved employees Class all wages due to them for actual hours worked.

31. During Plaintiff Solis' employment with Defendants, he received overtime pay for work in excess of 8 hours per workday and in excess of 40 hours of work in the workweek. However, Defendants failed to pay Plaintiff Solis at the correct rate of pay for all overtime hours worked resulting in Plaintiff Solis being underpaid on overtime wages. By way of example, Plaintiff Solis worked overtime but was not paid at the proper overtime rate, which resulted in him being underpaid all overtime wages, as follows: for the workweek of 05/10/20 to 05/23/20 Plaintiff's regular rate of pay was \$13.25 and his overtime rate of pay was \$19.75, when it should have been \$19.875, resulting in Plaintiff being underpaid approximately \$0.06 in overtime wages; and for the workweek of 05/24/20 to 06/06/20 Plaintiff's regular rate of pay was \$13.25 and his overtime rate of pay was \$19.75, when it should have been \$19.875, resulting in Plaintiff Solis

1 being underpaid approximately \$0.05 in overtime wages.

2 ***Off-the-Clock COVID-19 Temperature Checks***

3 32. Defendants also did not compensate their hourly non-exempt employees for all the
4 minutes that they worked as described above, including but not limited to the time that the
5 employees were subject to the control and direction of Defendants; and/or the time that the
6 employees were suffered or permitted to work. This includes the time spent “off the clock” for
7 COVID-19 temperature checks.

8 33. Defendants required Plaintiff Solis and other non-exempt employees to undergo
9 COVID-19 temperature checks at the beginning of the workday. But Defendants failed to
10 compensate Plaintiff Solis and other non-exempt employees for the time spent undergoing
11 temperature checks because the checks were performed off-the-clock. Thus, Defendants failed
12 to pay Plaintiff Solis and other non-exempt employees minimum and overtime wages for all hours
13 worked. By way of example, Plaintiff Solis underwent Covid-19 temperature checks off-the-
14 clock but was not paid for his time spent undergoing testing, which resulted in Plaintiff Solis’
15 hours being underreported and underpaid in the workweeks of 05/10/20 to 05/23/20 and 05/24/20
16 to 06/06/20.

17 ***Security Checks***

18 34. Pursuant to a uniform policy originated by Defendants, all hourly employees are
19 subject to a security check before leaving for their meal break and at the end of their shift after
20 they had already clocked out. Hourly employees were and are required to wait in line and be
21 searched for potential or possible items or merchandise taken Without permission and/or other
22 contraband. Thus, at the discretion and control of the Defendants and solely for their benefit,
23 Plaintiffs and other all other Class members and aggrieved employees were and are required to
24 leave their work station and walk to the security check, approximately a three-minute wait. This
25 daily uncompensated waiting time during security checks was done in order to undergo searches
26 for possible contraband and/or pilferage of inventory. Because such screening is designed to
27 prevent and deter employee theft, a concern that stems from the nature of the employee’s work,
28 the security checks and consequential wait time are necessary to the employee’s primary work

1 and done solely for Defendants' benefit.

2 35. A large number of hourly employees leave for meal breaks at the same time and/or
3 end their shift at the same time. This creates lengthy lines and backups for employees authorized
4 to conduct security screenings who are often times engaged in other job-related duties. As a result,
5 employees are forced to wait in these lines and undergo lengthy off-the-clock security screenings
6 before they are allowed to leave the premises. This work, done solely for the employer's benefit,
7 is time which employees should be, but are not, compensated for both straight hours and overtime
8 hours worked in excess of 40 in a week or, in California, in excess of 8 in a day.

9 36. Specifically, Plaintiffs Garcia and Jimenez allege that the wait in the security line
10 is approximately three (3) minutes and there are approximately four (4) to five (5) other
11 employees in line ahead of both Plaintiffs. Plaintiffs Garcia and Jimenez also allege that the
12 security guard checks bags by hand. As a result of the line and manual searches, Plaintiffs Garcia
13 and Jimenez were required to wait for a substantial period of time, each shift, which was not
14 compensated.

15 37. Supervisors employed by Defendants had knowledge of and required Plaintiffs
16 Garcia and Jimenez to undergo these uncompensated security screenings in accordance with
17 Defendant's corporate policy. Supervisors required and enforced the corporately derived and
18 mandated security checks and requested that Plaintiffs perform these integral and indispensable
19 duties without proper wages or overtime compensation.

20 ***Rounding***

21 38. Defendants did not compensate their hourly non-exempt employees for all the
22 minutes that they worked as described above, including but not limited to the time that the
23 employees were subject to the control and direction of Defendants; and/or the time that the
24 employees were suffered or permitted to work.

25 39. Defendants rounded Plaintiffs' and aggrieved employees' time to their detriment.
26 Defendants used a timekeeping software to record its employee work hours. Employees are
27 required to "punch" into the system at the beginning and end of their shifts, as well as for meal
28 breaks. A punch shows the actual time (to the minute) when the employee punched into the

1 system, Defendants calculated an employee's pay based on his or her punch times subject to a
2 rounding policy where in and out punches are rounded up or down to the nearest tenth of an hour.
3 For example, if an employee punches in at 2:57, it would round up to 3:00 and if an employee
4 punched out at 7:03, it would round down to 7:00.

5 40. Defendants' routine policy of rounding all hours deprived Plaintiffs and other
6 Class Members of the compensation they should have received for all actual hours worked.
7 Defendants' rounding policy continued until September 9, 2019. Plaintiff Garcia alleges that she
8 had uneven and non-rounded punches, but end results are the time being rounded by Defendant.
9 As a result, Defendants failed and refused to compensate Plaintiff Garcia and other non-exempt
10 employees all wages due to them for actual hours worked, in violation of California *Labor Code*
11 § 1194. Defendant owes each of their hourly employees for the unpaid time each day.

12 41. Plaintiff Jimenez alleges that he also was subject to rounded times, and alleges he
13 was not compensated for actual hours worked.

14 ***Defendants' Failure to Provide Legally Compliant Meal Breaks***

15 42. As detailed above under "Security Checks," Plaintiffs allege that meal breaks were
16 short as a result of the security checks thereby depriving Plaintiffs and Class members and
17 aggrieved employees of the full meal break as required. Plaintiffs also allege that meal breaks
18 were only provided when time permitted, and were usually taken after the fifth hour.

19 43. Plaintiffs allege that throughout the Relevant Time Period, Defendants regularly:

- 20 a. Failed to provide Plaintiffs and Class members and aggrieved employees with
21 a first meal period of not less than thirty (30) minutes during which they are
22 relieved of all duty before working more than five (5) hours;
23 b. Failed to provide Plaintiffs and Class members and aggrieved employees with
24 a second meal period of not less than thirty (30) minutes during which they are
25 relieved of all duty before working more than ten (10) hours per day;
26 c. Failed to pay Plaintiffs and Class members and aggrieved employees one hour
27 of pay at their regular rate of compensation for each workday that a meal period
28 was not provided; and

1 d. Failed to accurately record all meal periods.

2 44. Plaintiff Jimenez alleges he was denied meal breaks or given a late meal break on
3 a regular basis, sometimes only being permitted to take one fifteen-minute break a day. His time
4 records and wage statements evidence that he was given late meals or missed meal periods and
5 not paid a meal premium.

6 45. Plaintiff Solis also alleges that at time he was not provided with legally compliant
7 meal breaks.

8 ***Defendants' Failure to Provide Legally Compliant Rest Breaks***

9 46. At all times, relevant hereto, California *Labor Code* § 226.7 and IWC Wage Order,
10 section 12, required employers to authorize, permit, and provide a ten (10) minute paid rest for
11 each four (4) hours of work, during which employees are relieved of all duty.

12 47. At all times, relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage
13 Order, section 12 required employers to pay one hour of additional pay at the regular rate of
14 compensation for each employee and each workday that a proper rest period is not provided.

15 48. Plaintiffs are informed and believes, and based thereon alleges, that Defendants
16 failed to effectively communicate California rest period requirements to Plaintiffs and other Class
17 members and aggrieved employees. Plaintiffs are further informed and believe and based thereon
18 allege that throughout the relevant time period Defendants failed to provide rest periods.

19 49. Plaintiff Garcia alleges the walk time to break rooms was lengthy. Specifically,
20 the break room in the Mira Lorna warehouse was a three (3) minute walk each way, and the break
21 room at the Ontario warehouses was even farther and required even more walking time.

22 50. Plaintiff Garcia alleges that herself, along with other Class members and aggrieved
23 employees would remain at their worksites because if they went to the break rooms, the majority
24 of their rest break would be spent walking.

25 51. Plaintiff Jimenez alleges that he was denied rest breaks on a regular basis,
26 sometimes only being permitted to take one fifteen-minute break a day.

27 52. Plaintiff Solis also alleges that he was not authorized and permitted to take legally
28 compliant rest breaks on a regular basis.

1 53. Defendants also failed to authorize and permit Plaintiffs and other Class members
2 and aggrieved employees to take all required duty-free rest periods because they do not provide
3 second rest periods for every second 4-hour period worked or major fraction thereof, or third rest
4 periods for shifts in excess of 10.0 hours. Despite Defendants' failure to authorize and permit
5 Plaintiffs and other non-exempt employees to take all rest periods to which they are legally
6 entitled, Defendants do not provide Plaintiff and other Class members and aggrieved employees
7 with an hour of pay at their regular rate for each rest period violation as required by *Labor Code*
8 226.7, and upon information and belief, have no mechanism for compensating employees for rest
9 period violations.

10 54. Throughout the Relevant Time Period, Plaintiffs and Class members and
11 aggrieved employees were routinely denied the rest breaks they were entitled to under California
12 law.

13 55. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 14 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiffs
15 and aggrieved employees were relieved of all duty for each four (4) hours of
16 work and able to take rest periods within the middle of the shift; and
17 b. Failed to pay Plaintiffs and aggrieved employees one (1) hour of pay at their
18 regular rate of compensation for each workday that a rest period was not
19 permitted.

20 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

21 56. At all times, relevant hereto, California *Labor Code* § 201 requires an employer
22 that discharges an employee to pay compensation due and owing to said employee immediately
23 upon discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits
24 any compensation due and owing to said employee within seventy-two (72) hours of an
25 employee's resignation. California *Labor Code* § 203 provides that if an employer willfully fails
26 to pay compensation promptly upon discharge or resignation, as required under Sections 201 and
27 202, then the employer is liable for waiting time penalties in the form of continued compensation
28 for up to thirty (30) work-days.

1 57. Defendants willfully and knowingly failed to pay Plaintiff and other Class
2 members and aggrieved employees, upon termination of employment, all accrued compensation.

3 58. Specifically, Plaintiff Garcia received two checks post-termination. One was
4 received a week after being terminated, and the second was received two weeks after termination.

5 59. Plaintiff Jimenez requested a month off on March 6, 2020 due to exhaustion and
6 was seemingly terminated on March 13, 2020 for failure to report his return date. Plaintiff Jimenez
7 was given a final paycheck on March 21, 2020, well after seventy-two hours after his termination.

8 60. As a result of Defendants' failure to pay all minimum and overtime wages, failure
9 to pay rest period premiums, and failure to pay meal period premiums, Defendants failed to timely
10 pay Plaintiffs and other non-exempt employees' final wages owed.

11 ***Defendants' Failure to Provide Accurate Wage Statements***

12 61. Defendants failed to comply with California *Labor Code* Section 226(a) because
13 the hours worked, meal and rest breaks were incorrect.

14 ***Defendants' Failure to Minimize Excessive Indoor Heat***

15 62. Defendants failed to comply with California *Labor Code* §§ 6720, 226.7, and the
16 applicable Wage Order section 15, because they provided warehouse employees with an
17 excessively hot indoor working environment. Defendants failed to implement indoor heat-related
18 standards and increased employees' risk of heat illnesses. Plaintiff Garcia and other Class
19 members and aggrieved employees who worked in the warehouse had limited areas to get relief
20 from the heat.

21 63. Plaintiff Garcia alleges that the Ontario and Mira Loma warehouses were
22 excessively hot in the summer months, with temperatures often reaching over 100 degrees
23 Fahrenheit.

24 ***Facts Regarding Willfulness***

25 64. Plaintiffs are informed and believe, and based thereon alleges, that Defendants are
26 and were advised by skilled lawyers, other professionals, employees with human resources
27 background and advisers with knowledge of the requirements of California wage and hour laws.

28 65. Plaintiffs are informed and believes and based thereon alleges that at all relevant

1 times, Defendant had a consistent policy or practice of failing to compensate Class members and
2 aggrieved employees, including Plaintiff.

3 66. Plaintiffs are informed and believe, and based thereon alleges, that at all relevant
4 times, Defendants knew or should have known, that Class members and aggrieved employees,
5 including Plaintiff, were entitled to receive duty-free meal periods within the first five (5) hours
6 of any shift of six (6) or more hours worked, and that any failure to do so requires Defendant to
7 pay Plaintiffs and aggrieved employees one (1) hour of wages per day for untimely, missed, or
8 on-duty meal periods.

9 67. Plaintiffs are informed and believes, and based thereon alleges, that at all relevant
10 times, Defendant knew or should have known, that Class members and aggrieved employees,
11 including Plaintiffs, were and are entitled to one (1) ten (10) minute rest break for each four (4)
12 hours or major fraction thereof, and that any failure to allow said breaks requires Defendants to
13 pay Class members aggrieved employees, including Plaintiffs, one (1) hour of wages per day for
14 missed or on-duty rest breaks.

15 ***Plaintiffs' Exhaustion of Administrative Remedies***

16 68. Plaintiffs have complied with the procedures for bringing suit specified in
17 California *Labor Code* § 2699.3.

18 69. By letter dated February 25, 2020, Plaintiff Garcia submitted her required notice
19 letter to Labor and Workforce Development Agency ("LWDA") and sent notice to Defendants of
20 the specific provisions of the California *Labor Code* alleged to have been violated, including the
21 facts and theories to support the alleged violations.

22 70. On December 9, 2020, Plaintiff Garcia sent her amended notice letter to the
23 LWDA and Defendants.

24 71. On March 22, 2021, Plaintiff Solis submitted his required notice letter to the
25 LWDA and sent notice to Defendants of the specific provisions of the California *Labor Code*
26 alleged to have been violated, including the facts and theories to support the alleged violations.

27 72. More than 65 days have passed since the date Plaintiffs' notices were mailed to
28 Defendants and submitted to the LWDA, and the LWDA has not responded.

1 ***Unfair Business Practices***

2 73. Defendants have engaged in, and continue to engage in, unfair business practices
3 in California by practicing, employing and utilizing the employment practices and policies
4 outlined above.

5 74. Defendants' utilization of such unfair business practices constitutes unfair
6 competition and provides an unfair advantage over Defendants' competitors.

7 75. Defendants' utilization of such unfair business practices deprive Plaintiffs and
8 other Class members and aggrieved employees of the general minimum working standards and
9 entitlements due them under California law and the Industrial Welfare Commission wage orders
10 as described herein.

11 76. As a direct result of the wage and hour violations herein alleged, Plaintiffs and all
12 other Class members and aggrieved employees have suffered, and continue to suffer substantial
13 losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and
14 attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law,
15 all to Plaintiffs' respective damage in amounts according to proof at the time of trial.

16 **CLASS ACTION ALLEGATIONS**

17 77. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

18 78. Plaintiffs bring this action on behalf of themselves and all others similarly situated
19 as a class action, pursuant to California *Code of Civil Procedure* § 382. The classes which
20 Plaintiffs seek to represent are composed of, and defined as follows:

21 **Plaintiff Class**

22 All persons who have been, or currently are, employed by Defendants and who
23 held, or hold job positions which Defendants have classified as "non-exempt"
24 employees in the State of California. (The Class Period causes of action one
25 through six is defined as the period from May 29, 2019 through and including the
26 date of judgment is rendered in this matter). (collectively "Plaintiff Class" or
27 "Class Members")
28

1 Minimum Wage Class

2 All of Defendants' current and former non-exempt employees in California who
3 underwent CoVID-19 temperature checks and security checks during the Class
4 Period.

5 Overtime Class

6 All of Defendants' current and former non-exempt employees in California who
7 have worked over 8 hours in a workday and/or 40 hours in a workweek, and (i)
8 who were not paid at an overtime rate of 1.5x their base rate of pay; and/or (ii)
9 who underwent COVID-19 temperature checks and/or security checks, during the
10 Class Period.

11 Meal Period Class

12 All of Defendants' current and former non-exempt employees in California who:
13 (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one
14 shift in excess of 10.0 hours, during the Class Period.

15 Rest Period Class

16 All of Defendants' current and former non-exempt employees in California who
17 worked at least one shift of 3.5 hours or more, during the Class Period.

18 Wage Statement Class

19 All members of the Plaintiff Class, Minimum Wage Class, Overtime Class, Meal
20 Period Class, and/or Rest Period Class, who received a wage statement from
21 Defendants at any time during the one year immediately preceding the filing of
22 this action through the present.

23 Terminated Sub Class

24 All members of the Plaintiff Class whose employment ended during the Class
25 Period (The Class Period is defined as the period from May 29, 2019 through and
26 including the date judgment is rendered in this matter).

27
28 Warehouse Sub Class

1 All persons who have been, or currently are warehouse employees of Defendant
2 and who held, or hold, job positions which Defendant has classified as “non-
3 exempt” employees in the State of California. (The Class Period is defined as the
4 period May 29, 2019 through and including the date judgment is rendered in this
5 matter).

6 FLSA Collective Action Overtime Class

7 All current and former non-exempt employees of Defendant nationwide who have
8 worked over 40 hours in a workweek and (1) who were not paid an overtime rate
9 of 1.5x their base rate of pay; and/or (2) who underwent Covid-19 temperature
10 checks, during the three years immediately preceding the filing of their opt-in form
11 through the present.

12 79. **Numerosity/Ascertainability.** Plaintiffs are informed and believe, and on that
13 basis alleges, that during the class period thousands of class members have been employed by
14 Defendants as non-exempt employees in the State of California. Because so many persons have
15 been employed by Defendants in this capacity, the members of the Classes are so numerous that
16 joinder of all members is impossible and/or impracticable.

17 80. **Common Questions of Law and Fact Predominate/Well Defined Community**
18 **of Interest.** Common questions of law, in fact, exist as to all members of the Classes and
19 predominate over any questions affecting solely individual members of the Classes. Among the
20 questions of law and fact, that are relevant to the adjudication of Class Members’ claims are as
21 follows:

- 22 a. Whether Plaintiffs and Class Members are subject to and entitled to the benefits
23 of California wage and hour statutes;
24 b. Whether Defendant maintained accurate records of the hours worked by
25 employees;
26 c. Whether Defendant had a standard policy of not providing meal and rest breaks
27 to Plaintiffs and members of the Plaintiff Class;
28 d. Whether Defendant unlawfully and/or willfully deprived Plaintiffs and Class

Members of meal and rest breaks and failed to pay for missed breaks pursuant to California *Labor Code*;

- e. Whether Defendant unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of California *Labor Code* §226;
- f. Whether Defendant unlawfully and/or willfully failed to compensate employees for all hours worked;
- g. Whether Defendant unlawfully/or willingly failed to timely pay Plaintiffs and the Terminated Sub Class upon termination;
- h. Whether Plaintiffs and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;
- i. Whether Defendant failed to minimize indoor heat and failed to adopt standards that minimize heat-related illness and injury among Plaintiffs and the Excessive Heat Subclass; and
- j. Whether Defendant's conduct as alleged herein violates the Unfair Business Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

81. **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' timekeeping policies and practices, minimum and overtime wage policies and practices, and meal and rest period policies and 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.

82. **Typicality.** The claims of the named Plaintiffs are typical of the claims of the members of the Classes. Plaintiffs and the members of the Classes sustained losses, injuries and damages arising from Defendants' common policies, practices, procedures, protocols, routines,

1 and rules which were applied to other class members as well as Plaintiffs. Plaintiffs seek recovery
2 for the same type of losses, injuries, and damages as were suffered by other members of the
3 proposed classes.

4 **83. Adequacy of Representation.** Plaintiffs are adequate representatives of the
5 proposed Classes because they are members of the class, and their interests do not conflict with
6 the interests of the members they seeks to represent. Plaintiffs have retained competent counsel,
7 experienced in the prosecution of complex class actions, and together Plaintiffs and their counsel
8 intend to prosecute this action vigorously for the benefit of the classes. The interests of the Class
9 Members will be fairly and adequately protected by Plaintiffs and their attorneys.

10 **84. Superiority.** A class action is superior to other available methods for the fair and
11 efficient adjudication of this litigation since individual litigation of the claims of all Class
12 Members is impracticable. It would be unduly burdensome to the courts if these matters were to
13 proceed on an individual basis, because this would potentially result in hundreds of individuals,
14 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
15 contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable
16 allocation of recovery among those with equally meritorious claims. By contrast, the class action
17 device presents far fewer management difficulties, and provides the benefit of a single
18 adjudication, economics of scale, and comprehensive supervision by a single court.

19 **85.** The various claims asserted in this action are additionally or alternatively
20 certifiable under the provisions of the California *Code of Civil Procedure* § 382 because:

- 21 a. The prosecution of separate actions by hundreds of individual class members
22 would create a risk of varying adjudications with respect to individual class
23 members, thus establishing incompatible standards of conduct for Defendants,
24 and
25 b. The prosecution of separate actions by individual class members would also
26 create the risk of adjudications with respect to them that, as a practical matter,
27 would be dispositive of the interest of the other class members who are not a
28 party to such adjudications and would substantially impair or impede the ability

of such non-party class members to protect their interests.

FIRST CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED

**(By Plaintiffs and the Members of the Plaintiff Class, Minimum Wage Class, and
Overtime Class Against Defendant)**

86. Plaintiffs incorporates herein by reference the allegations set forth above.

87. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant to the Industrial Welfare Commission Orders and California *Labor Code* §§ 200, 226, 1197, and 1198.

88. For at least the four (4) years preceding the filing of this action, Defendants failed to compensate employees for all hours worked. Defendants implemented policies that actively prevented employees from being compensated for all time worked by subjecting employees to security checks at meal breaks and upon completion of the shift.

89. Under the above-mentioned wage order and state regulations, Plaintiffs and aggrieved employees are entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in accordance With California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code* § 203 and 206.

90. Pursuant to a uniform policy originated by Defendants, all hourly employees are subject to a security check before leaving for their meal break and at the end of their shift after they had already clocked out. Hourly employees were and are required to wait in line and be searched for potential or possible items or merchandise taken without permission and/or other contraband. Thus, at the discretion and control of the Defendants and solely for their benefit, Plaintiffs and other Class members and aggrieved employees were and are required to leave their work station and walk to the security check, approximately a three-minute wait. This daily uncompensated waiting time during security checks was done in order to undergo searches for

1 possible contraband and/or pilferage of inventory. Because such screening is designed to prevent
2 and deter employee theft, a concern that stems from the nature of the employee's work, the
3 security checks and consequential wait time are necessary to the employee's primary work and
4 done solely for Defendants' benefit.

5 91. A large number of hourly employees leave for meal breaks at the same time and/or
6 end their shift at the same time. This creates lengthy lines and backups for employees authorized
7 to conduct security screenings who are often times engaged in other job-related duties. As a result,
8 employees are forced to wait in these lines and undergo lengthy off-the-clock security screenings
9 before they are allowed to leave the premises. This work, done solely for the employer's benefit,
10 is time which employees should be, but are not, compensated for both straight hours and overtime
11 hours worked in excess of 40 in a week or, in California, in excess of 8 in a day.

12 92. Specifically, Plaintiffs Garcia and Jimenez allege that the wait in the security line
13 is approximately three (3) minutes and there are approximately four (4) to five (5) other
14 employees in line ahead of both Plaintiffs. Plaintiff also alleges that the security guard checks
15 bags by hand. As a result of the line and manual searches, Plaintiffs waited for a substantial period
16 of times, each shift, and were not compensated.

17 93. Defendants also required Plaintiff Solis and other Class members to undergo
18 COVID-19 temperature checks at the beginning of the workday. But Defendants failed to
19 compensate Plaintiff Solis and other Class members employees for the time spent undergoing
20 temperature checks because the checks were performed off-the-clock. Thus, Defendants failed
21 to pay Plaintiff Solis and other non-exempt employees minimum and overtime wages for all hours
22 worked. By way of example, Plaintiff Solis underwent Covid-19 temperature checks off-the-
23 clock but was not paid for his time spent undergoing testing, which resulted in Plaintiff Solis'
24 hours being underreported and underpaid in the workweeks of 05/10/20 to 05/23/20 and 05/24/20
25 to 06/06/20.

26 94. Defendants did not compensate their hourly non-exempt employees for all the
27 minutes that they worked as described above, including but not limited to the time that the
28 employees were subject to the control and direction of Defendants; and/or the time that the

1 employees were suffered or permitted to work.

2 95. Defendants rounded Plaintiffs and aggrieved employees' time to their detriment.
3 Defendants used a timekeeping software to record its employee work hours. Employees are
4 required to "punch" into the system at the beginning and end of their shifts, as well as for meal
5 breaks. A punch shows the actual time (to the minute) when the employee punched into the
6 system, Defendants calculated an employee's pay based on his or her punch times subject to a
7 rounding policy where in and out punches are rounded up or down to the nearest tenth of an hour.
8 For example, if an employee punches in at 2:57, it would round up to 3:00 and if an employee
9 punched out at 7:03, it would round down to 7:00.

10 96. Defendants' routine policy of rounding all hours deprived Plaintiffs and other
11 Class Members of the compensation they should have received for all actual hours worked.
12 Defendants' rounding policy continued until September 9, 2019.

13 97. Defendants has knowingly and wilfully refused to perform their obligations to
14 compensate Plaintiffs and aggrieved employees for all wages earned and all hours worked, in
15 violation of state law. As a direct result, Plaintiffs and the Plaintiff Class have suffered, and
16 continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest
17 on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform
18 their obligation under state law, in accordance with Plaintiffs and Class members' respective
19 damage amounts according to proof at time of trial.

20 98. Defendants committed such actions alleged knowingly and wilfully, with the
21 wrongful and deliberate intention of injuring Plaintiffs and Class members, from improper
22 motives amounting to malice, and in conscious disregard of Plaintiffs and Class members; rights.

23 99. Plaintiffs and other Class members and aggrieved employees are thus entitled to
24 recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according
25 to proof at the time of trial.

26 100. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
27 Class have been damaged in an amount according to proof at time of trial.
28

MISSED MEAL AND REST BREAKS IN VIOLATION OF

(By Plaintiffs and the Members of the Plaintiff Class, Meal Period Class, and Rest Period Class Against Defendant)

102. For at least the four (4) years preceding the filing of this action, Defendants failed to provide meal breaks as required by law.

104. California *Labor Code* § 512 provides that: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

106. Throughout the Class Period, Plaintiffs and Class members consistently worked over five (5) hours per work period, and therefore, were entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

108. At all times relevant to this Complaint, each Defendant failed, and have continued to fail, to timely provide Plaintiffs and the members of the Plaintiff Class with meal periods.

25

- 1 a. Failed to provide timely, 30-minute uninterrupted meal periods during which
2 Plaintiffs and the Class members were relieved of all duty for each five (5)
3 hours of work;
- 4 b. Failed to pay Plaintiffs and Class members one (1) hour of pay at their regular
5 rate of compensation for each workday that a meal period was not permitted;
6 and
- 7 c. Failed to provide Plaintiffs and Class members with a second meal period of
8 not less than thirty (30) minutes during which they are relieved of all duty
9 before working more than ten (10) hours per day

10 110. Specifically, Plaintiffs and Class members' meal breaks were routinely cut short,
11 as Plaintiffs and Class members had to walk five (5) minutes to clock-in after their meal break.
12 Plaintiff and Class members were also denied second meal periods.

13 111. Plaintiff Jimenez alleges he was denied meal breaks or given a late meal break on
14 a regular basis, sometimes only being permitted to take one fifteen-minute break a day. His time
15 records and wage statements evidence that he was given late meals or missed meal periods and
16 not paid a meal premium.

17 112. Plaintiff Solis also alleges that at times he was not provided with legally compliant
18 meal breaks.

19 113. As a direct and proximate result of the acts and/or omissions of Defendants,
20 Plaintiffs and Class members have been deprived of meal period wages due in amounts to be
21 determined at trial.

22 114. Defendants' conduct described herein violates the Industrial Welfare Commission
23 Order and California *Labor Code* §§ 226, 226.7, 512, and 1198.

24 ///

25 ///

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION
MISSED BREAKS IN VIOLATION OF
CAL. LABOR CODE §§ 200, 226.7, 512

**(By Plaintiffs and the Members of the Plaintiff Class, Meal Period Class, and Rest Period
Class Against Defendant)**

115. Plaintiffs incorporate herein by reference the allegations set forth above.

116. For at least the four (4) years preceding the filing of this action, Defendants failed to provide meal breaks as required by law.

117. The applicable Wage Order Section 12(A) states "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof."

118. The applicable Wage Order Section 12(B) states "If an Employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided."

119. Plaintiffs and the Class members are entitled to recover additional compensation for all rest periods that were missed, but not paid for, during the four (4) years preceding the filing of this Complaint, plus reasonable attorneys' fees and costs of suit pursuant to California *Labor Code* § 218. and penalties pursuant to California *Labor Code* § 226.7.

120. Defendant failed to provide Plaintiffs and Class members the full ten (10) minutes of rest time prescribed by law. To reach the break area, Plaintiffs and Class Members must walk a long distance. This time reduces the amount of rest time.

121. As a proximate result of the aforementioned violations, Plaintiffs and the Class members have been damaged in an amount according to proof at time of trial and have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on such monies, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law. Plaintiffs and the Class Members are thus entitled

1 to recover nominal, actual, compensatory and exemplary damages in amount according to proof
2 at time of trial.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES AT TIME OF**

5 **TERMINATION IN VIOLATION OF CAL. LABOR CODE §§ 201-203**

6 **(By Plaintiffs and the Members of the Terminated Sub Class Against Defendants)**

7 122. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set
8 forth herein.

9 123. At all times, relevant herein, Defendants were required to pay their employees all
10 wages owed in a timely fashion during and at the end of their employment, pursuant to California
11 *Labor Code* §§ 201-203.

12 124. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and the
13 members of the Terminated Sub Class their final wages pursuant to California *Labor Code* §§
14 201-203, and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

15 125. The conduct of Defendants and its agents and managerial employees as described
16 herein was wilful, and in violation of the rights of Plaintiffs and the individual members of the
17 Terminated Sub Class.

18 126. Plaintiffs are informed and believes, and based thereon alleges, that Defendants'
19 wilful failure to pay wages due and owing them upon separation from employment results in a
20 continued payment of wages up to thirty (30) days from the time the wages were due. Therefore,
21 Plaintiffs and Class members who have separated from employment are entitled to compensation
22 pursuant to California *Labor Code* § 203.

23 ///

24 ///

25 //

26 ///

27 ///

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH AN ACCURATE ITEMIZED WAGE STATEMENT IN**
3 **VIOLATION OF CAL. LABOR CODE § 226**

4 **(By Plaintiffs and the Members of the Plaintiff Class and Wage Statement Class Against**
5 **Defendants)**

6 127. Plaintiffs hereby re-allege, and incorporate by reference as though set fully forth
7 herein, the allegations contained above.

8 128. California *Labor Code* § 226(a) sets forth reporting requirements for employers
9 when they pay wages, as follows: “[e]very employer shall at the time of each payment of wages,
10 furnish his or her employees an accurate itemized statement in writing showing (1) gross wages
11 earned; (2) total hours worked by the employee.... (5) net wages earned (8) the name and address
12 of the legal entity that is the employer... (9) all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours worked at each hourly rate by the employee.”
14 (Emphasis added.) Section (e) provides: “An employee suffering injury as a result of a knowing
15 and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover
16 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
17 occurs and one hundred dollars (\$ 100) per employee for each violation in a subsequent pay
18 period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall be entitled
19 to an award of costs and reasonable attorney’s fees.”

20 129. Defendants failed to accurately report the gross wages earned and the net wages
21 earned by Plaintiffs and the Class Members on their wage statements.

22 130. Defendants failed to accurately represent the total hours worked by Plaintiffs and
23 Class members in that all hours worked are not accurately reflected on their wage statements.

24 131. These wage statement violations are due to Defendant’s failure to accurately
25 compensate Plaintiffs and other Class members for all time worked, and for meal and rest break
26 violations.

27 132. Plaintiffs and Class members were damaged by these failures because, among
28 other things, the failures hindered Plaintiff and Class members from determining the amounts of

1 wages actually owed to them.

2 133. Plaintiffs and Class Members request recovery of California *Labor Code* § 226(6)
3 penalties according to proof, as well as interest, attorneys' fees and costs pursuant to California
4 *Labor Code* § 226(6), in a sum as provided by the *Labor Code* and/or other statutes.

5 134. WHEREFORE, Plaintiffs request relief as hereinafter provided.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR HEAT**
8 **IN VIOLATION OF CAL. LABOR CODE §§ 6720, 227.3**

9 **(By Plaintiff GARCIA and the Members of the Warehouse Sub Class Against Defendants)**

10 135. Plaintiffs re-allege and incorporates all preceding paragraphs as though fully set
11 forth herein.

12 136. California *Labor Code* § 6720 sets forth requirements for adapting a standard that
13 minimizes heat-related illness and injury among workers working in indoor places by January 1,
14 2019. The provision states the following: "[t]he standard shall be based on environmental
15 temperatures, work activity levels, and other factors."

16 137. California *Labor Code* § 227.3(a) states "As used in this section, "recovery period"
17 means a cooldown period afforded an employee to prevent heat illness." Section 227.3(0) states
18 "If an employer fails to provide an employee a meal or rest or recovery period in accordance with
19 a state law, including, but not limited to, an applicable statute or applicable regulation, standard,
20 or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards
21 Board, or the Division of Occupational Safety and Health, the employer shall pay the employee
22 one additional hour of pay at the employee's regular rate of compensation for each workday that
23 the meal or rest or recovery period is not provided."

24 138. The applicable Wage Order section 15(A) provides the following: "The
25 temperature maintained in each work area shall provide reasonable comfort consistent with
26 industry-wide standards for the nature of the process and the work performed." Section 15(B)
27 states "If excessive heat or humidity is created by the work process, the employer shall take all
28 feasible means to reduce such excessive heat or humidity to a degree providing reasonable

1 comfort.”

2 139. Defendants failed to comply with California *Labor Code* §§ 6720, 227.3(a), and
3 the applicable Wage Order, by maintaining an excessively hot working environment.

4 140. Plaintiff Garcia alleges that the Ontario and Mira Loma warehouses were
5 excessively hot in the summer months, with temperatures often reaching over 100 degrees
6 Fahrenheit.

7 141. Defendants failed to provide Plaintiff Garcia and members of the Warehouse Sub
8 Class with a recovery period and fails to adopt standards to reduce heat-related illnesses, and as
9 a result, Defendant has failed to maintain a safe indoor working environment.

10 142. Plaintiff Garcia and Warehouse Sub Class Members request recovery and
11 penalties according to proof, as well as interest, attorneys’ fees and costs pursuant to California
12 *Labor Code*.

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATIONS OF CALIFORNIA**

15 **BUSINESS AND PROFESSIONS CODE §§ 17200, *et seq.***

16 **(By Plaintiffs and the Members of the Plaintiff Class Against Defendants)**

17 143. Plaintiffs re-allege and incorporates all preceding paragraphs as though fully set
18 forth herein.

19 144. Section 17200 of the California *Business and Professions Code* prohibits any
20 unlawful, unfair or fraudulent business act or practice.

21 145. Plaintiffs bring this cause of action in a representative capacity on behalf of the
22 general public and the persons affected by the unlawful and unfair conduct described herein.
23 Plaintiffs and members of the Plaintiff Class have suffered, and continue to suffer, injury in fact
24 and monetary damages because of Defendant’s actions.

25 146. The actions by Defendants as herein alleged amount to conduct which is unlawful
26 and a violation of law. As such, said conduct amounts to unfair business practices in violation of
27 California *Business and Professions Code* § 17200, *et seq.*

1 147. Defendant's conduct as herein alleged has damaged Plaintiffs and the members of
2 the Plaintiff Class by denying them wages due and payable, by failing to provide proper meal and
3 rest breaks, and by failing to pay all wages due in a timely manner at the time of termination (for
4 the Terminated Sub Class). Defendants' actions are thus substantially injurious to Plaintiffs and
5 the members of the Plaintiff Class, causing them injury in fact and loss of money.

6 148. Because of such conduct, Defendants have unlawfully and unfairly obtained
7 monies due to the Plaintiffs and the members of the Plaintiff Class.

8 149. All members of the Plaintiff Class can be identified by reference to payroll and
9 related records in the possession of the Defendants. The amount of wages due to Plaintiffs and
10 members of the Plaintiff Class can be readily determined from Defendants' records. The Class
11 Members are entitled to restitution of monies due and obtained by Defendant during the Class
12 Period as a result of Defendants' unlawful and unfair conduct.

13 150. During the Class Period, Defendants committed, and continues to commit, acts of
14 unfair competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and
15 among other things, engaging in the acts and practices described above.

16 151. Defendant's course of conduct, acts, and practices in violation of the California
17 law as mentioned in each paragraph above constitutes a separate and independent violation of §
18 17200, *et seq.*, of the *Business and Professions Code*.

19 152. The harm to Plaintiffs and the members of the Plaintiff Class of being wrongfully
20 denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendant's policies
21 and practices and, therefore, Defendant's actions described herein constitute an unfair business
22 practice or act within the meaning of *Business and Professions Code* § 17200.

23 153. Defendants' conduct described herein threatens an incipient violation of
24 California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise
25 significantly threatens or harms competition.

26 154. Defendants' course of conduct described herein further violates California
27 *Business and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

28 155. The unlawful, unfair, and fraudulent business practices and acts of Defendants as

1 described herein-above have injured Plaintiffs and members of the Plaintiff Class in that they
2 were wrongfully denied the timely and full payment of wages due to them.

3 **EIGHTH CAUSE OF ACTION**

4 **VIOLATIONS OF CALIFORNIA LABOR CODE §§ 2698, *et seq.* (PAGA)**
5 **(Against Defendants on behalf of Plaintiffs and All Other Aggrieved Employees)**

6 156. Plaintiffs incorporate all preceding paragraphs as though fully set for herein.

7 157. PAGA permits a Plaintiff to recover civil penalties for the Violation(s) of the
8 *Labor Code* sections enumerated in California *Labor Code* §2699.5.

9 158. PAGA provides as follows: “[n]otwithstanding any other provision of law, a
10 Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
11 under this part at any time within 60 days of the time periods specified in this part.”

12 159. Defendants’ conduct, as alleged herein, violates numerous sections of the
13 California *Labor Code* including, but not limited to, the following:

- 14 a. Failed to pay all wages due, including overtime to Plaintiffs and the members
15 of the Putative Class;
- 16 b. Failed to authorize and permit Plaintiffs and the members of the Putative Class
17 to take the requisite rest periods;
- 18 c. Failed to authorize and permit Plaintiffs and the members of the Putative Class
19 of statutorily required meal periods;
- 20 d. Failed to provide Plaintiffs and the members of the Putative Class With accurate
21 wage statements;
- 22 e. Failed to adopt standards that minimize indoor heat; and,
- 23 f. Failed to pay Plaintiffs and the members of the Putative Class all wages owed
24 at termination.

25 160. California *Labor Code* § 1198 makes it illegal to employ an employee under
26 conditions of labor that are prohibited by the applicable wage order. California *Labor Code*
27 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be
28 the . . . standard conditions of labor for employees. The employment of any employee . . . under

1 conditions of labor prohibited by the order is unlawful.”

2 161. California *Labor Code* §226(a) sets forth reporting requirements for employers
3 when they pay wages, as follows:

4 “Every employer shall . . . at the time of each payment of wages, furnish his or
5 her employees . . . an itemized statement in writing showing (1) gross wages
6 earned; (2) total hours worked by the employee . . . (3) the number of piece-rate
7 units earned and any applicable piece rate if the employee is paid on a piece-rate
8 basis. . . (8) the name and address of the legal entity that is the employer
9 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
10 1682, the name and address of the legal entity that secured the services of the employer.”

11 Section (e) provides:

12 “An employee suffering injury as a result of a knowing and intentional failure
13 by an employer to comply with subdivision (a) shall be entitled to recover the
14 greater of all actual damages or fifty dollars (\$50) for the initial pay period in
15 which a violation occurs and one hundred dollars (\$100) per employee for each
16 violation in a subsequent pay period, not exceeding an aggregate penalty of
17 four thousand dollars (\$4000), and shall be entitled to an award of costs and
18 reasonable attorneys’ fees.”

19 162. California *Labor Code* § 1174 provides that “[e]very person employing labor in
20 this state shall [k]eep a record showing the names and addresses of all employees employed and
21 the ages of all minors” and “[keep, at a central location in the state or at the plants or
22 establishments at which employees are employed, payroll records showing the hours worked daily
23 by and the wages paid to, and the number of piece-rate units earned by and any applicable piece
24 rate paid to, employees employed at the respective plants or establishments. . .”

25 163. California *Labor Code* §204 requires that all wages earned by any person in any
26 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
27 wages due upon termination of an employee, are due and payable between the 16th and the 26th
28 day of the month during which the labor was performed, and that all wages earned by any person

1 in any employment between the 16th and the last day, inclusive, of any calendar month, other
2 than those wages due upon termination of an employee, are due and payable between the 1st and
3 the 10th day of the following month. California Labor Code section 204 also requires that all
4 wages earned for labor in excess of the normal work period shall be paid no later than the payday
5 for the next regular payroll period.

6 164. Pursuant to PAGA, and in particular California *Labor Code* §§ 2699(a), 2699.3,
7 2699.5, Plaintiffs, acting in the public interest as a private attorney general, seeks assessment and
8 collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved employees, and
9 the State of California against Defendants, in addition to other remedies, for violations of
10 California Labor Code Sections California *Labor Code* §§ 201-203, 204, 226a, 226.3, 226.7, 510,
11 512, 516, 551, 552, 1174, 1182.12, 1194, 1197, 1197.1, 1199, 2698-2699.

12 165. During the relevant time period, Defendants failed to pay Plaintiffs and the
13 aggrieved employees all wages due to them including, but not limited to, overtime wages, all
14 wages due, and meal and rest period premium wages, within any time period specified by
15 California Labor Code § 204. During the relevant time period, Defendants failed to pay Plaintiffs
16 and other aggrieved employees all wages due to them including, but not limited to, overtime
17 wages, minimum wages, meal and rest period premium wages, within any time period specified
18 by California *Labor Code* § 204.

19 166. Plaintiffs have complied with the procedures for bringing suit specified in
20 California Labor Code § 2699.3.

21 167. By letter dated February 25, 2020, Plaintiff, Garcia behalf of herself and the other
22 aggrieved employees, pursuant to California Labor Code § 2699.3, gave written notice by
23 electronic submission to the Labor and Workforce Development Agency (“LWDA”) and certified
24 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
25 violated, including the facts and theories to support the alleged violations.

26 168. An amended letter dated December 9, 2020 on behalf of Plaintiff Jimenez was sent
27 to Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific
28 provisions of the California Labor Code alleged to have been violated, including the facts and

1 theories to support the alleged violations.

2 169. On March 22, 2021, Plaintiff Solis submitted his required notice letter to the
3 LWDA and sent notice to Defendants of the specific provisions of the California Labor Code
4 alleged to have been violated, including the facts and theories to support the alleged violations.

5 170. More than 65 days has passed since the notices were submitted to the LWDA, and
6 no responses from the LWDA have been received.

7 **TENTH CAUSE OF ACTION**

8 **FLSA VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

10 171. Plaintiffs incorporate all preceding paragraphs as though fully set for herein.

11 172. This cause of action is brought pursuant to 29 U.S.C. § 207, which requires
12 employers to pay all non-exempt employees one and one-half times the regular rate of pay for all
13 hours worked in excess of 40 per workweek.

14 173. Plaintiffs and members of the FLSA Overtime Class worked in excess of 40 hours
15 per workweek, and earned overtime compensation, but were not paid at “one and one-half (1½)
16 times the employee’s regular rate of pay.”

17 174. Plaintiffs are informed and believes, and based thereon alleges that, Defendants
18 regularly and systematically, as a policy and practice, miscalculated the overtime rate of pay paid
19 to Plaintiff and members of the FLSA Overtime Class, by not paying “one and one-half (1½)
20 times the employee’s regular rate of pay”. Moreover, Defendants failed to include time spent by
21 Plaintiff and members of the FLSA Overtime Class performing off-the-clock temperature checks
22 when calculating overtime hours. Accordingly, Plaintiffs and members of the FLSA Overtime
23 Class were not compensated at the appropriate rates of overtime pay for all hours worked.

24 175. Defendants’ policy and practice of requiring overtime work and not paying at the
25 proper overtime rate for said work violates the FLSA’s overtime requirements including, but not
26 limited to 29 U.S.C. § 207.

27 176. Defendants’ policies and practices, as alleged, constitute a wilful violation of the
28 FLSA, within the meaning of 29 U.S.C. § 255.

1 177. Defendants' policy and practice of failing to pay overtime at the correct rate to the
2 FLSA Overtime Class creates an entitlement to recovery by Plaintiffs and members of the FLSA
3 Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including
4 liquidated damages, attorneys' fees and costs, per 29 U.S.C. § 216 and interest thereon.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment for himself and for all others on whose behalf
7 this suit is brought against Defendants, jointly and severally, as follows:

- 8 1. For an order certifying the proposed Classes;
- 9 2. For an order appointing Plaintiffs as the representatives of the Classes
- 10 3. For an order appointing counsel for Plaintiffs as Counsel for the Classes;
- 11 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
12 damages, and penalties according to proof pursuant to Labor Code §§ 204, 510,
13 1182.12, 1194, 1194.2, 1197, and 1198;
- 14 5. Upon the Second and Third Cause of Action, for compensatory, consequential,
15 general and special damages according to proof pursuant to Labor Code §§ 200,
16 226.7 and 512;
- 17 6. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to
18 Labor Code § 203;
- 19 7. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
20 226;
- 21 8. Upon the Seventh Cause of Action, for restitution to Plaintiffs and Class members
22 of all money and/or property unlawfully acquired by Defendants by means of any
23 acts or practices declared by this Court to be in violation of Business and Professions
24 Code § 17200 *et seq.*;
- 25 9. Upon the Sixth and Eighth Cause of Action, for civil penalties due to Plaintiffs, other
26 aggrieved employees, and the State of California according to proof pursuant to
27 Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for
28 each initial violation for each failure to pay each employee and \$200.00 for each

1 subsequent violation or willful or intentional violation pursuant to Labor Code § 210
2 for each failure to pay each employee, plus 25% of the amount unlawfully withheld;
3 (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation
4 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each
5 initial violation and \$250.00 for each subsequent violation pursuant to Labor Code
6 § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and
7 \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
8 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00
9 for each subsequent violation per employee per pay period for those violations of
10 the Labor Code for which no civil penalty is specifically provided,

11 10. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
12 §§ 218.6, 1194, 2802, and Civil Code §§ 3287 and 3289;

13 11. On all causes of action, costs of suit and expenses incurred herein pursuant to
14 California Labor Code 218.5, 226, 1194, 2699(g), and Code of Civil Procedure §
15 1021.5;

16 12. Attorneys' fees and litigation expenses in an amount the Court determines to be
17 reasonable, pursuant to California Labor Code §§ 1194 (a), 2699 (g) (1) and Cal.
18 *Code Civil Procedure* §1021.5, and any other such provision as may be applicable;

19 13. A declaratory judgment that Defendants have knowingly and intentionally violated
20 the following provisions of law:

- 21 a. California Labor Code §§ 1194, 510, by failing to pay all wages owed;
- 22 b. California Labor Code § 226, by failing to provide the information required
23 with each payment of wages;
- 24 c. California Labor Code §§ 201-203, by failing to pay all wages when due and
25 by willfully failing to make timely payment of the full wages due to workers
26 who quit or have been discharged;
- 27 d. California Labor Code § 226.7 by failing to provide meal and rest breaks
28 mandated by law;

1 e. California Labor Code §§ 6720, 226.7 for failing to adopt standards to
2 minimize indoor heat—related illnesses; and

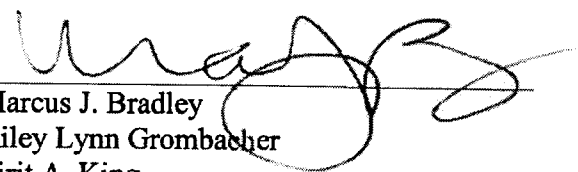
3 f. California Business & Professions Code §§ 17200-08 by violating the
4 provisions set forth herein above.

5 14. For all such other and further relief that the Court may deem just and proper.

6 Respectfully submitted,

7 Dated: May 5, 2022

8 **BRADLEY/GROMBACHER LLP**
9 **LAW OFFICES OF SAHAG MAJARIAN II**
10 **HAINES LAW GROUP, APC**

11 By: 

12 Marcus J. Bradley
13 Kiley Lynn Grombacher
14 Lirit A. King
15 Sahag Majarian II
16 Paul K. Haines
17 Tuvia Korobkin
18 Neil M. Larsen

Attorneys for Plaintiffs

19 **JURY DEMAND**

20 Plaintiffs demand a trial by jury on all issues so triable as a matter of fight.

21 Dated: May 5, 2022

22 **BRADLEY/GROMBACHER LLP**
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PROOF OF SERVICE

Garcia v. The Merchant of Tennis
San Bernardino County Superior Court
Case No.: CIV DS 2005614

Service List

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