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E-FILED
9/4/2020 11:47 AM
Superior Court of California
County of Fresno
By: A. Ramos, Deputy

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

MARIA E. HERRERA DE QUILO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

YERGAT PACKING COMPANY, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 20CECG01425

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (6) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Maria E. Herrera De Quilo ("Plaintiff"), on behalf of herself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("SAC") against Yergat Packing Company, Inc., a California corporation and DOES 1 to 100,
4 inclusive (collectively "Defendants"), and on information and belief alleges as follows:

5 JURISDICTION

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et seq.*, Labor Code §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 551-552, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*; and Industrial Welfare Commission Wage
10 Order 14 ("Wage Order 14"), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants' violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 VENUE

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Fresno. One or more of the Defendants own, maintain offices, transact business, have
18 agent(s) within the County of Fresno, and/or otherwise are found within the County of Fresno,
19 and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 PARTIES

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-205, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802,
28 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition

1 Law”); and Wage Order 14, which sets employment standards for Agricultural Occupations.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by employing seasonal farm labor employees to harvest agricultural
5 commodities in the United States, and employed Plaintiff and other, similarly-situated non-
6 exempt employees within Fresno County and the state of California and, therefore, were (and are)
7 doing business in Fresno County and the State of California.

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

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

18 7. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
22 were acting within the course and scope of said agency and employment. Defendants, and each
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
24 omissions complained of herein.

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Defendants are in the agricultural business and employ seasonal farm labor
4 employees to harvest agricultural goods. Plaintiff commenced employment with Defendants as a
5 non-exempt farm labor employee on a seasonal basis around April 2019 in the position of
6 “Picker.” Plaintiff would generally work about five to six weeks at a time during her employment
7 with Defendants. Plaintiff was tasked with harvesting grapes and grape leaves for the benefit of
8 the Defendants. Defendants’ credited Plaintiff with working approximately 6.5 to 9.0 hours per
9 day, six days a week. However, in practice, on information and belief, Plaintiff alleges that
10 Defendant did not employ any actual timekeeping practices and at no point was Plaintiff made to
11 confirm or sign off on her hours. As discussed below, Plaintiff usually worked considerably more
12 hours per shift. Defendants have not boarded or lodged Plaintiff during her employment.

13 10. During Plaintiff’s employment with Defendants, Plaintiff was in most workweeks
14 paid on a piece-rate basis, whereby she was paid a set rate of \$1.20 per pound of grapes and grape
15 leaves. Defendants’ foreperson allegedly recorded the hours Plaintiff worked; however, Plaintiff
16 was only paid an hourly minimum wage if her earned piece-rate compensation did not exceed her
17 minimum wages earned in a pay period. Plaintiff’s shift was generally between the hours of 5:30
18 a.m. and 3:30 p.m., meaning that she worked at least approximately 10.0 hours per day.

19 11. Plaintiff and other non-exempt employees were not provided all legally required
20 rest periods regardless of whether they were working on a piece-rate or hourly basis. Specifically,
21 when Plaintiff and other non-exempt employees were able to exercise their statutorily authorized
22 rest periods each shift, they were not provided with any remuneration for the time spent on their
23 rest periods at any point during their employment with Defendants. Wage Order 14, § 12 and
24 California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and
25 permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour
26 period worked, or major fraction thereof. Defendants seemingly acknowledge their duty to
27 provide paid rest periods as evidenced by Plaintiff’s paycheck numbered 149533 issued on June
28 1, 2019 where there is a section on the paystub labeled “Brk TM Bo” on each day that Plaintiff

1 worked. However, the paycheck provides for no compensation for these rest periods and only
2 reflects payments for Plaintiff's "hourly" and piece rate wages. Despite Defendants' failure to
3 authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest periods,
4 due to their uniform and unlawful practices, Defendants never provided Plaintiff and other non-
5 exempt employees with an hour of pay at their regular rate for each rest period violation as
6 required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
7 class period, Defendants maintained no payroll code or another mechanism for the payment of
8 rest period premiums in the event Plaintiff and other non-exempt employees were not authorized
9 to take lawful rest periods.

10 12. Defendants have failed to accurately record and compensate Plaintiff and other
11 non-exempt employees who are compensated on a piece-rate basis for non-productive time. *See*
12 *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (holding that a piece-rate
13 compensation structure that does not separately compensate employees for non-productive time
14 violates California minimum wage laws). Plaintiff and other non-exempt employees were
15 required to perform work duties and activities that were not directly compensated on a piece-rate
16 basis. Specifically, employees would arrive for work generally around 5:00 a.m., thirty minutes
17 before the scheduled start of their shifts, so they could fill out all of the necessary pre-shift
18 paperwork and receive their row assignments for the day. Equipment would subsequently be
19 provided to Plaintiff and other non-exempt employees after they had completed this process,
20 which could take approximately thirty minutes to complete, all time that was not recorded and
21 was not compensated by Defendants. Plaintiff alleges that all this wait time constitutes
22 unproductive worktime which must be compensated under California law. Additionally, Plaintiff
23 and the other non-exempt employees would frequently be required to change fields in the middle
24 of their shifts. This was a common occurrence for employees on occasions when they were
25 assigned to smaller fields at the beginning of the day that they could complete more rapidly than
26 the larger fields. Once Plaintiff and the other non-exempt employees would finish picking the
27 smaller fields, they would have to all gather into their own vehicles and drive to a new field to
28 complete the rest of their shifts. The time spent traveling from field to field would take anywhere

1 from approximately 10-15 minutes every instance. Plaintiff alleges that this happened at least
2 three times per week. At no point were Plaintiff and other non-exempt employees ever provided
3 any compensation for the time spent traveling between fields. Furthermore, employees were not
4 compensated for bathroom and water breaks, waiting in lines, and/or other mandatory duties that
5 were not directly compensated on a piece-rate basis. Specifically, Plaintiff and other non-exempt
6 employees were never provided any sort of compensation for time spent waiting to check and
7 weigh their boxes of grapes in-between filling them up. This practice would take anywhere from
8 five to ten minutes each time they went to drop off their boxes, time that was wholly
9 uncompensated. Finally, on days in which it rained during the shifts of Plaintiff and other non-
10 exempt employees; they would be made to wait until the rain stopped before they could go back
11 to work. Plaintiff estimates that this happened at least three times during the 2019 harvesting
12 season. Plaintiff alleges that he and other non-exempt employees would be made to wait as long
13 as an hour before recommencing their work. Once again, at no point were Plaintiff and non-
14 exempt employees compensated for this time spent waiting for the rain to stop. Accordingly,
15 Plaintiff and other non-exempt employees worked at least an additional one hour per shift of non-
16 productive time. However, as evidenced by Plaintiff's check numbered 149533 issued on June
17 01, 2019, Defendants did not compensate Plaintiff for any non-productive time at all.
18 Consequently, Plaintiff alleges that Defendants have not accurately tracked and compensated
19 employees' non-productive time in compliance with Labor Code § 226.2.

20 13. Defendants have also failed to record employees' total hours worked each
21 workday accurately. Specifically, Defendants' forepersons would maintain timecards for all non-
22 exempt employees, but on information and belief, such timecards did not accurately reflect the
23 times that employees began and ended each workday. For example, although Plaintiff would
24 typically work at least 10.0 hours per workday, Plaintiff's wage statements indicated that she
25 typically only worked between approximately 6.5 hours and 9.0 hours per workday, presumably
26 because Plaintiff's wage statements were based on time records that were prepared by
27 Defendants' forepersons, which inaccurately listed she only worked 6.5 hours to 9.0 hours per
28 workday. As a result, Defendants failed to ensure that Plaintiff and other non-exempt employees

1 were being paid at least the minimum wage for all hours actually worked, and failed to ensure
2 that Plaintiff and other non-exempt employees received proper overtime wages for all overtime
3 hours worked, in compliance with Wage Order 14.

4 14. Defendants further failed to pay non-exempt employees all overtime wages,
5 because non-exempt employees worked at least 10.0 hours per day 6 days a week for a total of
6 60.0 hours per week, entitling them to at least 5.0 hours of overtime pay per week pursuant to
7 Wage Order 14.

8 15. Defendants also did not provide Plaintiff and other non-exempt employees with a
9 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Plaintiff and
10 other non-exempt employees would be entitled to take their lunch at 11:00 a.m. when the
11 “checkers”, who were paid on an hourly basis, would take their lunch. However due to the
12 pressures to complete all of their work within narrow time frames set by Defendants, Plaintiff and
13 other non-exempt employees would only take 15-20 minutes maximum for their meal periods, if
14 at all. Defendants were not only aware of, but actively encouraged this practice. Further,
15 Defendants failed to provide second meal periods when non-exempt employees worked shifts in
16 excess of 10.0 hours. Upon information and belief, Defendants’ forepersons did not accurately
17 record the beginning and ending of each meal period on the timecards. Despite Defendants’
18 failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to
19 their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
20 employees with an hour of pay at their regular rate for each meal period violation as required by
21 Labor Code § 226.7.

22 16. Defendants failed to adequately reimburse Plaintiff for all reasonable and
23 necessary work expenditures, including but not limited to, gas and mileage incurred on the
24 instances they would have to drive to new fields in the middle of their shifts.

25 17. As a result of Defendants’ failure to accurately compensate Plaintiff and other
26 non-exempt employees for non-productive time, failure to pay all minimum and overtime wages,
27 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
28 in lieu thereof, Defendants have maintained inaccurate payroll records, and issued inaccurate

1 wage statements.

2 18. As a further result of Defendants' failure to pay all minimum and overtime wages,
3 meal and failure to provide all required meal periods and authorize all rest periods or pay premium
4 pay in lieu thereof, Defendants failed to pay all wages owed to Plaintiff upon her separation of
5 employment from Defendants.

6 19. Additionally, Yergat Packing Co, Inc. is a farm labor contractor subject to the
7 requirements of Labor Code § 205, which requires that employees be paid weekly, on a business
8 day designated in advance, for all wages earned up to and including the fourth day before the
9 scheduled payday. However, Defendants pay their employees on a delay of five days or more, in
10 violation of the "fourth day" requirement found in Labor Code § 205. For example, Plaintiff's
11 check numbered 149533 that represented the pay period between May 20, 2019 and May 26, 2019
12 was not issued to Plaintiff until five days afterwards on June 1, 2019.

13 **CLASS ACTION ALLEGATIONS**

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

- 16 a. The Rest Period Class consists of all current and former non-exempt employees of
17 Defendants in California who worked at least one shift in excess of 3.5 hours
18 during the four years immediately preceding the filing of this lawsuit through the
19 present.
- 20 b. The Minimum Wage Class consists of all current and former non-exempt
21 employees of Defendants in California that were compensated on a piece-rate or
22 hourly basis during the four years immediately preceding the filing of this lawsuit
23 through the present.
- 24 c. The Overtime Wage Class consists of all current and former non-exempt
25 employees of Defendant Yergat Packing Co., Inc. in California who worked
26 overtime hours (based on criteria set forth in Wage Order 14) during the four years
27 immediately preceding the filing of this lawsuit through the present.
28

1 d. The Meal Period Class consists of all current and former non-exempt employees
2 of Defendant Yergat Packing Co., Inc. in California who: (i) worked at least one
3 shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration
4 commencing prior to the conclusion of the fifth hour of work, and who do not have
5 a corresponding meal period premium payment made for such shifts and/or (ii)
6 worked at least one shift in excess of 10.0 hours without a second meal period of
7 at least 30 minutes in duration commencing prior to the conclusion of the tenth
8 hour of work, and who do not have a corresponding meal period premium payment
9 made for such shifts during the four years preceding the filing of this lawsuit
10 through the present.

11 e. The Employee Expense Class consists of all of Defendants' current and former
12 non-exempt employees in California who were not reimbursed for the purchase
13 and maintenance of tools and/or mileage expense incurred necessary for the
14 performance of their job duties during the four years immediately preceding the
15 filing of this lawsuit to the present.

16 f. The Wage Statement Class consists of all members of the Rest Period Class,
17 Minimum Wage Class, Overtime Class, Meal Period Class, and/or Employee
18 Expense Class who received a wage statement from Defendants during the one
19 year immediately preceding the filing of this lawsuit through the present.

20 g. The Waiting Time Class consists of all Defendants' formerly employed members
21 of the Rest Period Class, Minimum Wage Class, Overtime Class, Meal Period
22 Class, and/or Expense Reimbursement Class who separated from employment
23 during the three years immediately preceding the filing of this lawsuit through the
24 present.

25 21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
26 joinder of all members would be unfeasible and not practicable. The membership of the Classes
27 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
28 number greater than one hundred (100) individuals. The identity of such membership is readily

ascertainable via inspection of Defendants' employment records.

22. **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 employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants correctly compensated employees for rest periods pursuant to Labor Code § 226.2;
- ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- iii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 14 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iv. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Minimum Wage Class;
- v. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vii. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- viii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- ix. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

23. **Predominance of Common Questions:** Common questions of law and fact

1 predominate over questions that affect only individual members of the Classes. The common
2 questions of law set forth above are numerous and substantial and stem from Defendants' policies
3 and/or practices applicable to each individual class member, such as Defendants' uniform piece-
4 rate pay structure, meal and rest period policies and practices, timekeeping policies and practices,
5 non-reimbursement, wage statement, and payment of final wages policies and practices. As such,
6 the common questions predominate over individual questions concerning each individual class
7 member's showing as to her or her eligibility for recovery or as to the amount of her or her
8 damages.

9 24. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
10 Plaintiff was employed by Defendants as a non-exempt employee in California during the
11 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
12 herein, Plaintiff, like the members of the Classes, was paid on a piece-rate and hourly basis, was
13 subject to Defendants' meal and rest period and timekeeping policies and practices, was subjected
14 to Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate
15 and incomplete wage statements, and was not paid all wages earned at the time of her separation
16 of employment.

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

23 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves
24 an important public interest in establishing minimum working conditions and standards in
25 California. These laws and labor standards protect the average working employee from
26 exploitation by employers who have the responsibility to follow the laws and who may seek to
27 take advantage of superior economic and bargaining power in setting onerous terms and
28 conditions of employment. The nature of this action and the format of laws available to Plaintiff

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

20 **FIRST CAUSE OF ACTION**

21 **MINIMUM WAGE VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

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

24 28. Wage Order 14, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
25 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
26 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
27 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
28 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid

1 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
2 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
3 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
4 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
5 and Wage Order 14.

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

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

16 31. Defendants' practice and uniform administration of corporate policy regarding
17 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
18 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
19 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
20 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
21 Civil Procedure § 1021.5.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY ALL OVERTIME WAGE**

24 **(AGAINST ALL DEFENDANTS)**

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

26 33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
27 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
28 overtime hours worked, and provide a private right of action for the failure to pay all overtime

1 compensation for overtime work performed.

2 34. At all times relevant herein, Defendants were required to properly compensate
3 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
4 Labor Code § 1194 and Wage Order 14. Wage Order 14, § 3 requires an employer to pay overtime
5 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
6 in the Wage Order.

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

10 36. The foregoing policies and practices are unlawful and create entitlement to
11 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
12 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and
13 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
14 14, and Code of Civil Procedure § 1021.5.

15 **THIRD CAUSE OF ACTION**

16 **MEAL PERIOD VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

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

19 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed in their affirmative obligation to provide all of their non-exempt employees in California,
21 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
22 in accordance with the mandates of the California Labor Code and Wage Order 14, § 11. Despite
23 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
24 of the Meal Period Class at their respective regular rates of compensation, in accordance with
25 California Labor Code §§ 226.7, and 512.

26 39. As a result, Defendants are responsible for paying premium compensation for meal
27 period violations including interest thereon, as well as statutory penalties, civil penalties, and
28 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 14, and Civil Code §§

1 3287(b) and 3289.

2 **FOURTH CAUSE OF ACTION**

3 **REST PERIOD VIOLATIONS**

4 **(AGAINST ALL DEFENDANTS)**

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

6 41. Wage Order 14, § 12 and California Labor Code §§ 226.7 and 516 establish the
7 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
8 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

9 42. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
10 of the Rest Period Class to take all legally compliant rest periods.

11 43. The foregoing violations create an entitlement to recovery by Plaintiff and
12 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
13 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
14 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

17 **(AGAINST ALL DEFENDANTS)**

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

19 45. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
20 states that “an employer shall indemnify her or her employees for all necessary expenditures or
21 losses incurred by the employee in direct consequence of the discharge of her or her duties, or of
22 her or her obedience to the directions of the employer...”

23 46. Due to Defendants’ unlawful policy and practice of requiring employees to incur
24 costs associated with gas and mileage in the performance of their job duties, Defendants have
25 violated Labor Code § 2802.

26 47. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
27 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

28 48. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of

1 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
2 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
3 from the date on which they incurred the initial necessary expenditure.

4 **SIXTH CAUSE OF ACTION**

5 **WAGE STATEMENT VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

8 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
10 and the Wage Statement Class with accurate, itemized wage statements that included, among
11 other requirements, accurate total gross wages earned, meal and rest period premiums, and total
12 net wages earned in violation of Labor Code §226 *et seq.*

13 51. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
14 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
15 failures led to, among other things, the non-payment of all of their meal and rest period
16 premiums, and deprived them of the information necessary to identify discrepancies in
17 Defendants' reported data.

18 52. Defendants' failures created an entitlement to Plaintiff and members of the Wage
19 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
20 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
21 suit pursuant to Labor Code § 226 *et seq.*

22 **SEVENTH CAUSE OF ACTION**

23 **WAITING TIME PENALTIES**

24 **(AGAINST ALL DEFENDANTS)**

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

26 54. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
27 an employer to pay all wages immediately at the time of termination of employment in the event
28 the employer discharges the employee or the employee provides at least 72 hours of notice of

1 her/her intent to quit. In the event the employee provides less than 72 hours of notice of her/her
2 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
3 employee's last date of employment.

4 55. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class
5 all final wages due to them at the time of their separation including, among other things, unpaid
6 amounts for rest and recovery periods and non-productive time, underpaid overtime and
7 minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed
8 and believes, and based thereon alleges, that as a matter of uniform policy and practice,
9 Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the
10 end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
11 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

12 56. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
13 Time Class their earned wages upon separation from employment results in a continued payment
14 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
15 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
16 plus reasonable attorneys' fees and costs of suit.

17 **EIGHTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(AGAINST ALL DEFENDANTS)**

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

21 58. Defendants have engaged and continue to engage in unfair and/or unlawful
22 business practices in California in violation of California Business and Professions Code § 17200
23 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, failing to
24 provide all required meal periods, failing to authorize and permit all required rest periods, failing
25 to pay meal and rest period premium wage payments, failing to reimburse for necessary business
26 expenditures, failing to furnish accurate, itemized wage statements, and willfully failing to
27 timely pay Plaintiff and members of the Waiting Time Class all final wages upon separation of
28 employment.

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

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

10 61. The acts complained of herein occurred within the last four years immediately
11 preceding the filing of the Complaint in this action.

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

17 **NINTH CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **(AGAINST ALL DEFENDANTS)**

20 63. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
21 fully set forth herein.

22 64. Defendants have committed several Labor Code violations against Plaintiff,
23 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
24 within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and other aggrieved
25 employees, brings this representative action against Defendants to recover the civil penalties due
26 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
27 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
28 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each

1 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
2 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
3 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
4 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
5 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
6 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
7 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
8 subsequent violation per employee per pay period for those violations of the Labor Code for
9 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 10 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
11 Wage Class, and other similarly aggrieved employees in violation of Labor
12 Code §§ 1182.12, 1194, 1194.2, and 1197;
- 13 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
14 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
15 1194, and 1198;
- 16 c. Failing to provide all legally required meal periods, and failing to pay meal
17 period premium pay, to Plaintiff, the Meal Period Class, and other similarly
18 aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 19 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
20 Waiting Time Penalty Class, and other aggrieved employees at the time of
21 separation in violation of Labor Code §§ 201, 202, and 203;
- 22 e. Failing to authorize and permit all legally required rest periods, and failing to
23 pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly
24 aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- 25 f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
26 employees with complete, accurate, itemized wage statements in violation of
27 Labor Code § 226;
- 28 g. Failing to pay non-exempt employees all earned wages at least twice during
each calendar month in violation of Labor Code § 204;

- 1 h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
2 employees in violation of Labor Code § 1174;
- 3 i. Failing to compensate Plaintiff and other aggrieved employees at least once
4 every week on a business day designated in advance and including all wages
5 earned up to and including the fourth day before such payday in violation of
6 Labor Code § 205; and
- 7 j. Failing to reimburse Plaintiff, the Employee Expense Class, and other
8 aggrieved employees for all necessary work expenses incurred in violation of
9 Labor Code §§ 2802 and 2804.

10 65. On May 13, 2020, Plaintiff notified Defendants via certified mail, and notified the
11 California Labor and Workforce Development Agency (“LWDA”) via its website, of
12 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
13 civil penalties under California Labor Code § 2698 et seq. with respect to violations of the
14 California Labor Code identified in Paragraph 64 (a)-(j). Now that sixty-five days have passed
15 from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not
16 provided notice that it intends to investigate the violations, Plaintiff has exhausted her
17 administrative requirements for bringing a claim under the Private Attorneys General Act with
18 respect to these violations.

19 66. Plaintiff was compelled to retain the services of counsel to file this court action to
20 protect her interests and the interests of other similarly aggrieved employees, and to assess and
21 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and
22 costs, which he is entitled to receive under California Labor Code § 2699(g).

23 **PRAYER**

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

- 26 1. For an order certifying the proposed Classes;
- 27 2. For an order appointing Plaintiff as representative of the Classes;
- 28 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
2 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
3 1197;

4 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
5 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

6 6. Upon the Third Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

8 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

10 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
11 special damages according to proof pursuant to Labor Code § 2802;

12 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
13 226, *et seq.*;

14 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
15 to Labor Code § 201-203;

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

20 12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each
21 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
22 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
23 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
24 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
25 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
26 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
27 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
28 each initial violation and \$200 for each subsequent violation per employee per pay period for the

1 violations of the Labor Code Sections cited in Labor Code § 2699.5;

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

4 14. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
5 Procedure § 1021.5 and all other applicable statutes; and

6 15. For such other and further relief the Court may deem just and proper.

7
8 Dated: September 4, 2020

Respectfully submitted,
STANBURY BROWN LAW

9
10 By:



Daniel J. Brown
Attorneys for Plaintiff

11
12
13 **DEMAND FOR JURY TRIAL**

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

15
16 Dated: September 4, 2020

Respectfully submitted,
STANBURY BROWN LAW

17
18 By:



Daniel J. Brown
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On September 4, 2020 I served the document listed below on the parties in this action as follows:

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

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 4, 2020 at Venice, California.



Daniel J. Brown

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SERVICE LIST

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