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ALAMEDA COUNTY

July 21, 2020

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:

RG20068286

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

CINTHIA MENDOZA and DELISHIA
HYDE, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

PRIME NOW LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (2) VIOLATION OF LABOR CODE §§ 201-
203;**
- (3) VIOLATION OF LABOR CODE § 226.7;**
- (4) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, ET SEQ.;
AND**
- (5) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

Plaintiffs Cinthia Mendoza and Delishia Hyde ("Plaintiffs"), hereby submit this Class Action Complaint against Defendant Prime Now LLC ("Defendant"), and Does 1-50 (hereinafter collectively referred to as "Defendants"), as individuals and on behalf of the Class of all other similarly situated current and former employees of Defendants for penalties and/or damages for failure to properly calculate the regular rate of pay for purposes of paying meal period premiums and sick pay, provide off-duty rest periods, and pay all wages owed upon

1 separation of employment under California Labor Code statutes, and restitution for unfair
2 business practices in violation of Business and Professions Code § 17200, *et seq.*, as follows:

3 **INTRODUCTION**

4 1. This class action is within the Court’s jurisdiction under California Labor Code
5 §§ 201-203, 226.7, 246, 512, and 2698 *et seq.*, the California Industrial Welfare Commission’s
6 (“IWC”) Wage Orders, and the California Unfair Competition Law (the “UCL”), codified at
7 California Business and Professions Code § 17200, *et seq.*

8 2. This Complaint challenges systemic illegal employment practices resulting in
9 violations of the California Labor Code and Business and Professions Code against employees of
10 Defendants.

11 3. Plaintiffs are informed and believe and based thereon allege that Defendants
12 jointly and severally have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
14 purposes of paying meal period premiums and sick pay, provide off-duty rest breaks, and pay all
15 wages owed upon separation of employment to Plaintiffs and the Class.

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

21 5. The policies, practices and customs of defendants described above and below
22 have resulted in unjust enrichment of Defendants and an unfair business advantage over
23 businesses that routinely adhere to the strictures of the California Labor Code and the California
24 Business and Professions Code.

25 **JURISDICTION AND VENUE**

26 6. The Court has jurisdiction over the violations of the California Labor Code §§
27 201-203, 226.7, 246, 512, and 2698 *et seq.*, and the UCL.

28 7. Venue is proper in Alameda County because Defendants maintain business

1 locations in Alameda County, and Plaintiffs performed work for Defendants in Berkeley,
2 California.

3 **PARTIES**

4 8. Plaintiff Cinthia Mendoza (“Mendoza”) was hired by Defendants as an Amazon
5 Whole Foods Shopper and worked as a non-exempt employee. On or about January 16, 2020,
6 Ms. Mendoza separated from employment.

7 9. Plaintiff Delishia Hyde (“Hyde”) was hired by Defendants as an Amazon Whole
8 Foods Shopper in about August 2019. Ms. Hyde worked as a non-exempt employee. On or
9 about February 21, 2020, Ms. Hyde separated from employment.

10 10. Plaintiffs were and are the victims of the policies, practices, and customs of
11 Defendants complained of in this action in ways that have deprived them of the rights guaranteed
12 by California Labor Code §§ 201-203, 226.7, 246, 512, and 2698 *et seq.*, and the applicable IWC
13 Wage Orders, and the UCL.

14 11. Plaintiffs are informed and believe and based thereon allege that Defendant Prime
15 Now LLC was and is a Delaware limited liability company doing business in the State of
16 California and County of Alameda as an online retailer and delivery service for groceries and
17 other goods.

18 12. Plaintiffs are informed and believe and based thereon allege that at all times
19 herein mentioned Defendant and Does 1 through 50 are and were business entities, individuals,
20 and partnerships, licensed to do business and actually doing business in the State of California.

21 13. As such, and based upon all the facts and circumstances incident to Defendants’
22 business in California, Defendants are subject to California Labor Code §§ 201-203, 226.7, 246,
23 512, and 2698 *et seq.*, the IWC Wage Orders, and the UCL.

24 14. Plaintiffs do not know the true names or capacities, whether individual, partner or
25 corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
26 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
27 complaint when the true names and capacities are known. Plaintiffs are informed and believe
28 and based thereon allege that each of said fictitious Defendants were responsible in some way for

1 the matters alleged herein and proximately caused Plaintiffs and members of the general public
2 and class to be subject to the illegal employment practices, wrongs and injuries complained of
3 herein.

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

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

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

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

26 **CLASS ACTION ALLEGATIONS**

27 19. **Definition:** The named individual Plaintiffs seek class certification, pursuant to
28 California Code of Civil Procedure § 382, of the following classes (collectively, "Class"):

- 1 a. All current and former non-exempt employees of Defendants in the State
2 of California at any time during April 6, 2016, to the present, who were
3 paid non-discretionary wages and “Ca Meal Prem” pay during the same
4 workweek (“Meal Period Class”);
- 5 b. All current and former non-exempt employees of Defendant in the State of
6 California who were paid sick pay wages during their employment and
7 whose employment ended at any time between April 6, 2017, through the
8 present; (“Sick Pay Class”)
- 9 c. All non-exempt employees of Defendant in the State of California who
10 were paid sick pay wages and non-discretionary wages in the same
11 workweek during their employment and whose employment ended at any
12 time between April 6, 2017, through the present (“Sick Pay Subclass 1”);
13 and
- 14 d. All non-exempt employees of Defendant in the State of California who
15 were paid non-discretionary incentive wages, including, but not limited to,
16 shift differential wages, within 90 days prior to the payment of sick pay
17 wages during their employment and whose employment ended at any
18 time between April 6, 2017, through the present (“Sick Pay Subclass 2”);
19 and
- 20 e. All current and former non-exempt employees of Defendants in the State
21 of California at any time from April 6, 2016, through the present, who
22 worked 3.5 hours or more in any shift (“Rest Period Class”).

23 20. **Numerosity and Ascertainability:** The members of the Class are so numerous
24 that joinder of all members would be impractical, if not impossible. The identity of the members
25 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
26 Plaintiffs allege that Defendants: (a) failed to pay employees meal period premiums at the
27 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
28 Code §§ 201-203, 226.7, and 512; (b) failed to pay employees sick pay at the correct regular rate

of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (c) failed to provide off-duty rest breaks in violation of Labor Code § 226.7; and (d) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

21. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiffs' attorneys are ready, willing, and able to fully and adequately represent the Class and individual Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

22. Defendants uniformly administered a corporate policy, practice of: (a) failing to pay employees meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (c) failing to provide off-duty rest breaks in violation of Labor Code § 226.7; and (d) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

23. Plaintiffs are informed and believe, and based thereon allege, that Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code §§ 201-203, 226.7, 246, and 512, the UCL, and applicable IWC Wage Orders.

24. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiffs and the claims of the Class concerning Defendants: (a) failing to pay employees meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (c) failing to provide off-duty rest breaks in violation of Labor Code § 226.7; and (d) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and

1 the applicable IWC Wage Orders.

2 25. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of
3 the Class in that Plaintiffs have suffered the harm alleged in this Complaint in a similar and
4 typical manner as the Class members. As with other California employees, Mendoza earned
5 non-discretionary remuneration, including without limitation, Surge Premiums. Plaintiffs also
6 regularly worked more than 5 hours in a shift but were not provided timely and off-duty meal
7 breaks of at least 30 minutes. In lieu of receiving these meal breaks, Defendants paid Plaintiffs
8 meal period premiums calculated at one hour of Plaintiffs' base rate of pay for each missed or
9 late meal break. The meal period premiums should have been calculated at Plaintiffs' regular
10 rate of pay, however, and should have incorporated non-discretionary remuneration earned into
11 the calculation of the regular rate. Thus, Plaintiffs are owed additional meal period premium pay
12 based on the correct, higher regular rate of pay. Similarly, when Mendoza and the Class
13 received sick pay, it was disbursed at the base rate of pay, rather than the correct, higher regular
14 rate of pay. Furthermore, Mendoza regularly worked shifts of 3.5 hours or more without being
15 provided off-duty rest breaks. Mendoza was not allowed to go home during rest breaks and
16 remained subject to Defendants' control. As such, Mendoza and the Class are owed rest period
17 premium pay. To date, Hyde and/or Mendoza have yet to receive the underpaid meal period
18 premium wages, sick pay, and rest period premium wages owed to them. Thus, Defendants are
19 liable for waiting time penalties under Labor Code § 203. As such, Plaintiffs are members of the
20 Class and/or sub-classes and have suffered the alleged violations of California Labor Code §§
21 201-203, 226.7, 246, and 512, and the applicable IWC Wage Orders.

22 26. The California Labor Code and upon which Plaintiffs base these claims is broadly
23 remedial in nature. These laws and labor standards serve an important public interest in
24 establishing minimum working conditions and standards in California. These laws and labor
25 standards protect the average working employee from exploitation by employers who may seek
26 to take advantage of superior economic and bargaining power in setting onerous terms and
27 conditions of employment.

28 27. The nature of this action and the format of laws available to Plaintiffs and

1 members of the Class identified herein make the class action format a particularly efficient and
2 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
3 file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable
4 advantage since it would be able to exploit and overwhelm the limited resources of each
5 individual Plaintiff with Defendants' vastly superior financial and legal resources. Requiring
6 each Class member to pursue an individual remedy would also discourage the assertion of lawful
7 claims by employees who would be disinclined to file an action against their former and/or
8 current employer for real and justifiable fear of retaliation and permanent damage to their careers
9 at subsequent employment.

10 28. The prosecution of separate actions by the individual class members, even if
11 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
12 to individual Class members against Defendants and which would establish potentially
13 incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to
14 individual Class members which would, as a practical matter, be dispositive of the interest of the
15 other Class members not parties to the adjudications or which would substantially impair or
16 impede the ability of the Class members to protect their interests. Further, the claims of the
17 individual members of the Class are not sufficiently large to warrant vigorous individual
18 prosecution considering all of the concomitant costs and expenses.

19 29. Such a pattern, practice and uniform administration of corporate policy regarding
20 illegal employee compensation described herein is unlawful and creates an entitlement to
21 recovery by Plaintiffs and the Class identified herein, in a civil action, for unpaid wages,
22 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
23 according to the mandate of California Labor Code §§ 201-203, 218.5, and 246, the applicable
24 IWC Wage Orders, and Code of Civil Procedure § 1021.5.

25 30. Proof of a common business practice or factual pattern, which the named
26 Plaintiffs experienced and are representatives of, will establish the right of each of the members
27 of the Class to recovery on the causes of action alleged herein.

28 31. The Class is commonly entitled to a specific fund with respect to the

1 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
2 restitution of those funds being improperly withheld by Defendants. This action is brought for
3 the benefit of the entire class and will result in the creation of a common fund.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

6 **(BY PLAINTIFFS AND THE MEAL PERIOD CLASS AGAINST ALL DEFENDANTS)**

7 32. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
8 though fully set forth herein.

9 33. At all relevant times, Defendants failed in their affirmative obligation to ensure
10 that Plaintiff and Class members, had the opportunity to take and were provided with off-duty
11 meal periods in accordance with the mandates of the California Labor Code and the applicable
12 IWC Wage Order. At all relevant times, Plaintiff and Class members were suffered and
13 permitted to work through legally required meal breaks and were denied the opportunity to take
14 their off-duty meal breaks. As such, Defendants are responsible for paying premium
15 compensation for missed meal periods pursuant to Labor Code § 226.7 and the applicable IWC
16 Wage Order. Defendants, as a matter of corporate policy and procedure, failed to pay such
17 premium compensation at the correct, regular rate of pay for each meal period Plaintiffs and the
18 Class members missed.

19 34. Specifically, Labor Code § 226.7(c) states that “the employer shall pay the
20 employee one additional hour of pay at the employee’s regular rate of compensation for each
21 workday that the meal or rest or recovery period is not provided.” Throughout their
22 employment, Plaintiffs and Class members earned non-discretionary remuneration, including
23 Surge Premiums. Such non-discretionary forms of remuneration, however, were not included in
24 the regular rate of pay for purposes of paying meal period premium pay. Instead, the meal
25 period premium was paid at the base rate of pay. As such, Plaintiff and Class members are owed
26 additional meal period premium pay.

27 35. At all relevant times, Plaintiffs and Class members regularly worked in excess of
28 five (5) hours per day and accordingly had a right to take a 30-minute meal period each day

1 worked in excess of five (5) hours.

2 36. Such a pattern, practice, and uniform administration of corporate policy as
3 described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class
4 members identified herein, in a civil action, for the unpaid balance of the unpaid premium
5 compensation pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order,
6 including interest thereon, penalties, and costs of suit.

7 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants'
8 willful failure to provide all meal period premium wages due and owing to Plaintiffs and Class
9 members upon separation from employment results in a continued payment of wages up to thirty
10 (30) days from the time the wages were due. Therefore, Plaintiffs and other members of the
11 Class who have separated from employment are entitled to compensation pursuant to Labor
12 Code § 203.

13 **SECOND CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 201-203**

15 **(BY MENDOZA AND THE SICK PAY CLASS, SICK PAY SUBCLASS 1, AND SICK**
16 **PAY SUBCLASS 2 AGAINST ALL DEFENDANTS)**

17 38. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
18 though fully set forth herein.

19 39. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
20 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue
21 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
22 for more than thirty (30) days.

23 40. Labor Code § 201 provides if an employer discharges an employee, the wages
24 earned and unpaid at the time of discharge are due and payable immediately.

25 41. Labor Code § 202 provides that an employee is entitled to receive all unpaid
26 wages no later than 72 hours after an employee quits his or her employment, unless the employee
27 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
28 employee is entitled to his or her wages at the time of quitting.

1 42. Labor Code § 246 provides that an employee is entitled to receive sick time pay.
2 The employer shall calculate paid sick leave by using one of two calculations: (1) “Paid sick
3 time for nonexempt employees shall be calculated in the same manner as the regular rate of pay
4 for the workweek in which the employee uses paid sick time, whether or not the employee
5 actually works overtime in that workweek;” or (2) “Paid sick time for nonexempt employees
6 shall be calculated by dividing the employee’s total wages, not including overtime premium pay,
7 by the employee’s total hours worked in the full pay periods of the prior 90 days of
8 employment.”

9 43. Whenever Defendants paid Mendoza and the Class members sick time pursuant to
10 California Labor Code § 246, Defendants did so at the incorrect rate of pay. Defendants paid
11 Mendoza and Class members at the base hourly rate of pay, as opposed to the regular rate of pay,
12 which would take into account all non-discretionary wages such as Surge Premiums, or by
13 dividing the employees’ total wages by the employees’ total hours worked in the full pay periods
14 of the prior 90 days of employment, as required by Labor Code § 246. This resulted in the
15 employees being underpaid for sick time, and resulted in violations of California Labor Code
16 §§ 201, 202, and 203, and other derivative Labor Code violations, because Defendants did not
17 pay, or timely pay, Mendoza and Class members all owing and unpaid wages for work
18 performed by them during their employment and at the end of their employment.

19 44. Defendants willfully failed to pay Plaintiffs and Class members all their wages
20 due, as alleged hereinabove and hereinafter, upon the termination of their employment within the
21 times prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting time
22 penalty. Plaintiffs and the Class members are entitled to recover from Defendants the statutory
23 penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day
24 maximum pursuant to California Labor Code § 203.

25 **THIRD CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 226.7**

27 **(BY MENDOZA AND THE REST PERIOD CLASS AGAINST ALL DEFENDANTS)**

28 45. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as

1 though fully set forth herein.

2 46. Mendoza and other members of Class regularly worked shifts of three and one-
3 half hours (3.5) hours or more per day, and accordingly had a right to take a 10-minute rest
4 period each day. Furthermore, Mendoza and other members of Class who worked shifts of seven
5 and one-half (7.5) hours or more per day had a right to take a second 10-minute rest period.

6 47. Defendants failed in their affirmative obligation to provide all of their employees,
7 including Mendoza and other members of Class, the opportunity to take rest periods in
8 accordance with the mandates of the California Labor Code and the applicable IWC Wage
9 Order. Mendoza and other members of Class were suffered and permitted to work through
10 legally required rest breaks and were denied the opportunity to take their rest breaks. Again,
11 Defendants did not allow Mendoza and Class members to go home during rest breaks and
12 remained subject to Defendants' control. As such, Defendants are responsible for paying
13 premium compensation for missed rest periods pursuant to Labor Code § 226.7.

14 48. As a pattern and practice, Defendants regularly required employees to remain on
15 premises during rest periods without proper compensation and denied Mendoza and other
16 employees the right to take proper rest periods as required by law.

17 49. Such a pattern, practice and uniform administration of corporate policy as
18 described herein is unlawful and creates an entitlement to recovery by Mendoza and the Class
19 members identified herein, in a civil action, for the unpaid balance of the unpaid premium
20 compensation pursuant to Labor Code § 226.7, including interest thereon, penalties and costs of
21 suit.

22 50. Plaintiffs are informed and believe, and based thereon allege, that Defendants'
23 willful failure to provide all rest period premium wages due and owing to Plaintiffs and Class
24 Members upon separation from employment results in a continued payment of wages up to thirty
25 (30) days from the time the wages were due. Therefore, Plaintiffs and other members of the
26 Class who have separated from employment are entitled to compensation pursuant to Labor
27 Code § 203.

28 //

1 **FOURTH CAUSE OF ACTION**

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

3 **(BY PLAINTIFFS AND THE CLASSES AGAINST ALL DEFENDANTS)**

4 51. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
5 though fully set forth herein.

6 52. Defendants, and each of them, have engaged and continue to engage in unfair and
7 unlawful business practices in California by practicing, employing and utilizing the employment
8 practices outlined above, include, to wit, by: (a) failing to pay employees meal period premiums
9 at the correct regular rate of pay that included all non-discretionary remuneration, in violation of
10 Labor Code §§ 201-203, 226.7, and 512; and (b) failing to provide off-duty rest breaks in
11 violation of Labor Code § 226.7.

12 53. Defendants' utilization of such unfair and unlawful business practices constitutes
13 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

14 54. Plaintiffs seek, individually and on behalf of other members of the Class similarly
15 situated, full restitution of monies, as necessary and according to proof, to restore any and all
16 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
17 complained of herein.

18 55. Plaintiffs are informed and believe, and based thereon allege, that at all times
19 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
20 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set
21 forth herein above thereby depriving Plaintiffs and other members of the Class the minimum
22 working condition standards and conditions due to them under the California laws and the
23 applicable IWC Wage Orders as specifically described therein.

24 **FIFTH CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

26 **(BY PLAINTIFFS, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
27 **AGAINST ALL DEFENDANTS)**

28 56. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as

1 though fully set forth herein.

2 57. Plaintiffs bring this cause of action as a proxy for the State of California and in
3 this capacity, seek penalties on behalf of all Aggrieved Employees from June 11, 2019, through
4 the present, for Defendants' violations of Labor Code §§ 201-203, 226.7, 246, and 512, arising
5 from Defendants' failure to properly calculate the regular rate of pay for purposes of paying meal
6 period premiums and sick pay, provide off-duty rest periods, and pay all wages owed upon
7 separation of employment.

8 58. On or about June 11, 2020, Plaintiff Cinthia Mendoza sent written notice to the
9 California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of
10 Labor Code §§ 201-203, 226.7, 246, and 512, pursuant to Labor Code § 2698, *et seq.*, the Private
11 Attorneys General Act ("PAGA").

12 59. On or about June 16, 2020, Plaintiff Delishia Hyde sent written notice to the
13 LWDA of Defendants' violations of Labor Code §§ 201-203, 226.7, and 512.

14 60. To date, the LWDA has not responded to either Plaintiffs' written notice.

15 61. As such, pursuant to Labor Code § 2699(a), Plaintiffs seek recovery of any and all
16 applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226.7, 246, and
17 512, for the time period described above, on behalf of themselves and other Aggrieved
18 Employees.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs pray for judgment as individuals and on behalf of all others that
21 this suit is brought against Defendants, jointly and severally, as follows:

- 22 1. For an order certifying the proposed Class;
- 23 2. For an order appointing Plaintiffs as the representatives of the Class as described
24 herein;
- 25 3. For an order appointing counsel for Plaintiffs as Class counsel;
- 26 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
27 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;
- 28 5. Upon the Second Cause of Action, for unpaid wages and/or penalties pursuant

1 to California Labor Code §§ 201-203, and for costs and attorneys' fees pursuant to Labor Code
2 § 218.5;

3 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to
4 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;

5 7. Upon the Fourth Cause of Action, for restitution to Plaintiffs and other similarly
6 affected members of the general public of all funds unlawfully acquired by Defendants by means
7 of any acts or practices declared by this Court to be in violation of Business and Professions
8 Code § 17200, *et seq.*, for the time periods described above;

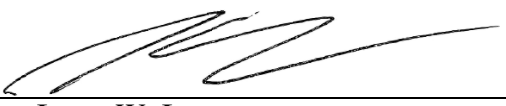
9 8. Upon the Fifth Cause of Action, for civil penalties according to proof pursuant to
10 Labor Code § 2698, *et seq.*, and for costs and attorneys' fees;

11 9. On all causes of action, for attorneys' fees and costs as provided by California
12 Labor Code § 218.5 and 2699 and Code of Civil Procedure § 1021.5; and

13 10. For such other and further relief as the Court may deem just and proper.
14

15 DATED: July 20, 2020

DIVERSITY LAW GROUP, P.C.

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17 By: 

Larry W. Lee

18 Max W. Gavron

19 Attorneys for Plaintiff and the Class
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