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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

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

Plaintiff,

vs.

GAFE PIZZA, INC., a California corporation;
and DOES 1 through 100,

Defendants.

Case No.: CIV-DS-2013279

**SECOND 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, 558, 1194, AND
1198);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (4) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *ET SEQ.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*)**

**(9) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Veronica Graham (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this Second Amended Class and Representative Action Complaint
3 (“Complaint”) against Gafe Pizza, Inc.; and DOES 1 to 100, inclusive (collectively
4 “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 Second Amended Class and Representative Action Complaint for recovery of unpaid wages and
8 penalties under California Business & Professions Code § 17200 *et. seq.*, Labor Code §§ 201-
9 204, 221, 226 *et seq.*, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and 2698
10 *et seq.*; and Industrial Welfare Commission Wage Order 7 (“Wage Order 7”), in addition to
11 seeking declaratory relief and restitution. This Complaint is brought pursuant to California Code
12 of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California
13 Labor Code because the amount in 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 San Bernardino. Defendants own, maintain offices, transact business, have agent(s)
18 within the County of San Bernardino, and/or otherwise are found within the County of San
19 Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of
20 process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-204, 221, 226 *et seq.*, 226.7, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2802;

California Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 7, which sets employment standards for the Mercantile Industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by operating franchised “Domino’s Pizza” stores in the United States, and employed Plaintiff and other, similarly-situated non-exempt employees within San Bernardino County and the state of California and, therefore, were (and are) doing business in San Bernardino County and the State of California.

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

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

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

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

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff commenced employment with Defendants as a non-exempt employee, in
5 the position of “Delivery Driver” from approximately October 2017 until her wrongful
6 termination on approximately May 20, 2020. Plaintiff typically worked five days a week with a
7 varied schedule that ultimately equated to 40-60 hours of work per week. Plaintiff’s job duties
8 including taking orders and delivering them to customers on the Marine Corps Air Ground
9 Combat Center Twentynine Palms.

10 **Missed Rest Periods**

11 10. Plaintiff and the other aggrieved employees were also not authorized and permitted
12 to take all required rest periods due to Defendants’ rest period policies/practices, which fail to
13 authorize and permit all rest periods for every four hours worked, or major fraction thereof.
14 Rarely, if ever, were Plaintiff and the other aggrieved employees permitted to exercise legally
15 compliant rest periods during their employment with Defendants. Plaintiff and the other
16 aggrieved employees would be made to falsify documents at the direction of their supervisors
17 indicating that they took their rest periods in an apparent attempt to escape liability for failing to
18 provide them. Plaintiff and the other aggrieved employees were not informed at any point of their
19 legal right to take rest periods and instead would be presented with papers by management who
20 would instruct them to sign off on them having exercised them. Furthermore, even if Plaintiff
21 and the other aggrieved employees wanted to take a rest period, there was no opportunity for them
22 to do so as the store was woefully understaffed and any attempts by employees to take breaks
23 would be met with immediate reprimand. For example, on one occasion when Plaintiff attempted
24 to take a rest period, her supervisor, Keith Maple, snapped at her and said, “What are you doing!?”
25 Why are you standing there?” The prevailing attitude in the store was that employees were not to
26 take any breaks under any circumstances outside of their thirty-minute meal periods. As a result
27 of these policies/practices, Defendants failed to authorize and permit Plaintiff and the other
28 aggrieved employees off-duty rest periods that were completely free of employer control, in

1 violation of California law. On those occasions when Plaintiff and the other aggrieved employees
2 were not authorized and permitted to take all legally-compliant rest periods to which they were
3 entitled, Defendants failed to compensate Plaintiff and the other aggrieved employees with the
4 required rest period premium for each workday in which they experienced a rest period violation
5 as mandated by Labor Code § 226.7. Furthermore, upon information and belief during at least a
6 portion of the class period, Defendants maintained no payroll code or other mechanism for the
7 payment of rest period premium payments under Labor Code § 226.7 in the event that a legally
8 compliant rest period was not provided to their non-exempt employees.

9 **Off-The-Clock Work**

10 11. Plaintiff and the other aggrieved employees regularly performed work off-the-
11 clock for the benefit of Defendants. Specifically, Plaintiff and the other aggrieved employees
12 would be clocked out by the manager towards the end of their shifts in order for the manager to
13 complete the end of shift reports. After clocking Plaintiff and the other aggrieved employees out
14 for the day, management would then instruct them to complete their closing “chores” off-the-
15 clock. These chores included things like washing dishes, taking out the trash, mopping the floors,
16 etc. Depending on how busy the store was on a given day, this process could take Plaintiff and
17 the other aggrieved employees anywhere from ten to thirty minutes to complete before they were
18 released for the night, all time that was unrecorded and uncompensated by Defendants. Plaintiff
19 personally complained to General Manager, Keith Maple, about these practices on no less than
20 three occasions, however the policy never changed. Additionally, Plaintiff is aware of other
21 employees complaining about the fact that they were being made to clean the store at the end of
22 their shifts off-the-clock, however Defendants persisted in the practice. On one occasion after a
23 long shift, Plaintiff left the store after she was clocked out for the day without doing her chores
24 as she expressed to Keith Maple that she was not going to work for free. Maple responded by
25 issuing Plaintiff a write up for leaving without doing her chores which Plaintiff refused to sign.
26 Defendants personally made sure that Plaintiff and the other aggrieved employees were
27 performing numerous hours of work off-the-clock on a monthly basis and at no point provided
28 any sort of compensation for this time.

1 **Meal Period Violations**

2 12. Defendants also failed to provide Plaintiff and other non-exempt employees with
3 a duty-free first meal period when they worked shifts in excess of 6.0 hours. Instead, Plaintiff and
4 other non-exempt employees would be required to clock out while continuing to work, usually
5 while delivering pizzas, and to clock back in after thirty minutes had elapsed. Defendants were
6 aware, or reasonably should have been aware, that this off-the-clock work was being performed
7 during their meal periods but failed to compensate Plaintiff and the putative class for such off-
8 the-clock work, most of which constituted overtime hours worked. In addition to Defendants'
9 failure to provide Plaintiff and other non-exempt employees with all legally required first meal
10 periods, Defendants also failed to provide second meal periods to Plaintiff and other non-exempt
11 employees when they worked shifts in excess of 10.0 hours. Despite Defendants' failure to
12 provide Plaintiff and other non-exempt employees with all lawful meal periods due to their
13 uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
14 employees with an hour of pay at their regular rate for each meal period violation as required by
15 Labor Code § 226.7.

16 **Failure to Reimburse for All Necessary Business Expenses**

17 13. Defendants failed to adequately reimburse Plaintiff for all reasonable and
18 necessary work expenditures. Specifically, Plaintiff and the other aggrieved employees were
19 made to utilize their personal cellular phones for business purposes on a daily basis in order to
20 communicate with customers to whom they were making deliveries. Plaintiff and the other
21 aggrieved employees were not provided any sort of compensation at any point for the use of their
22 personal cellular phones for business purposes. Additionally, Plaintiff and the other aggrieved
23 employees were made to purchase dress code compliant black pants, a "Dominoes" jacket, and
24 non-slip shoes at their own expense as a necessary precondition of employment. At no point were
25 Plaintiff and the other aggrieved employees provided any reimbursement for these expenses.

26 **Inaccurate Wage Statements**

27 14. As a result of Defendants' failure to pay all minimum wages, overtime wages, and
28 meal/rest period premium wages, Defendants maintained inaccurate payroll records, and issued

1 inaccurate and facially deficient wage statements. Furthermore, for at least a portion of the
2 Plaintiff's employment, Defendants issued facially deficient wage statements that failed to
3 include the full address of the employer entity in violation of Labor Code § 226(a)(8) did not
4 include the overtime rate of pay in violation of Labor Code § 226(a), which requires that all
5 applicable hourly rate in effect during a pay period be included on wage statement.

6 **Regular Rate of Pay**

7 15. The regular rate of pay under California law includes all remuneration for
8 employment paid to, on behalf of, the employee. This requirement includes, but is not limited to,
9 commissions, meal and rest period premiums, and non-discretionary bonuses.

10 16. Defendants paid Plaintiff and other non-exempt employees commission earnings,
11 non-discretionary bonuses, and other forms of non-discretionary pay that are not excludable from
12 the regular rate of pay (hereinafter the aforementioned forms of pay are referred to as "Incentive
13 Pay"). Despite Defendants' payment of Incentive Pay to Plaintiff and other non-exempt
14 employees, Defendants failed to properly calculate the regular rate of pay, thereby causing
15 Plaintiff and other non-exempt employees to be underpaid all required overtime wages.

16 **Failure to Timely Pay All Final Wages**

17 17. As a further result of Defendants' failure to pay all minimum wages, overtime
18 wages, and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon
19 her separation of employment from Defendants.

20 **CLASS ACTION ALLEGATIONS**

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

- 23 a. The Off-The-Clock-Class consists of all Defendants' current and former non-
24 exempt employees in California who were not permitted to record their actual
25 hours worked, during the one year immediately preceding the filing of the
26 Complaint through January 26, 2022;
- 27 b. The Overtime Class consists of all Defendants' current and former non-exempt
28 employees in California who worked more than eight (8) hours per day and/or

forty (40) hours per week and: (i) were subject to Defendants' timekeeping systems and/or practices; and/or (ii) received Incentive Pay and worked overtime during a corresponding pay period, during the one year immediately preceding the filing of the Complaint through January 26, 2022;

c. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the one year immediately preceding the filing of the Complaint through January 26, 2022;

d. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: worked at least one shift: (i) in excess of 5.0 hours; and/or (ii) in excess of 10.0 hours, during the one year immediately preceding the filing of the Complaint through January 26, 2022;

e. The Employee Expense Class consists of all Defendants' current and former non-exempt employees in California who: (i) were not reimbursed for uniform related expenses; and/or (ii) cellular phone expenses necessarily incurred in the performance of their duties, during the one year immediately preceding the filing of the Complaint through January 26, 2022;

f. The Wage Statement Class consists of all members of the Off-The-Clock Class, Rest Period Class, Meal Period Class, Overtime Class, and the Employee Expense Class, who received a wage statement during the one year immediately preceding the filing of the Complaint through January 26, 2022; and

g. The Waiting Time Class consists of all Defendants' formerly employed members of the Off-The-Clock Class, Rest Period Class, Meal Period Class, Overtime Class, and Employee Expense Class, who separated from employment during the one year immediately preceding the filing of the Complaint through January 26, 2022.

19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes

number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

20. **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 Plaintiff and members of the Off-The-Clock Class were compensated for all hours worked;
- ii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iii. Whether Defendants failed to properly include all forms of compensation when computing the respective regular rate for members of the Overtime Class;
- iv. Whether Defendants violated the applicable Labor Code provisions including, but not limited to §§ 510 1194 by requiring work, including overtime work, and not paying for said work in accordance with the laws of the state of California;
- v. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vi. Whether Defendants failed to reimburse members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their duties;
- vii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- viii. 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.

21. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform

1 timekeeping, rest period, meal period, overtime, non-reimbursement, unlawful deductions, wage
2 statement, and payment of final wages policies/practices. As such, the common questions
3 predominate over individual questions concerning each individual class member's showing as to
4 their eligibility for recovery or as to the amount of their damages.

5 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
6 Plaintiff was employed by Defendants as a non-exempt employee in California during the
7 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
8 herein, Plaintiff, like the members of the Classes, was not paid for all hours worked, was not
9 authorized and permitted to take all required rest periods, did not receive rest period premium
10 wages when she was not provided compliant rest periods, was subject to Defendants' unlawful
11 failure to reimburse, did not receive accurate and itemized wage statements, and was not paid all
12 wages owed at time of separation of employment from Defendants.

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

19 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
20 an important public interest in establishing minimum working conditions and standards in
21 California. These laws and labor standards protect the average working employee from
22 exploitation by employers who have the responsibility to follow the laws and who may seek to
23 take advantage of superior economic and bargaining power in setting onerous terms and
24 conditions of employment. The nature of this action and the format of laws available to Plaintiff
25 and members of the Classes make the class action format a particularly efficient and appropriate
26 procedure to redress the violations alleged herein. If each employee were required to file an
27 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
28 would be able to exploit and overwhelm the limited resources of each individual plaintiff with

1 their vastly superior financial and legal resources. Moreover, requiring each member of the
2 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
3 employees who would be disinclined to file an action against their former and/or current employer
4 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
5 employment. Further, the prosecution of separate actions by the individual class members, even
6 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
7 with respect to the individual class members against Defendants herein; and which would
8 establish potentially incompatible standards of conduct for Defendants; and/or legal
9 determinations with respect to individual class members which would, as a practical matter, be
10 dispositive of the interest of the other class members not parties to adjudications or which would
11 substantially impair or impede the ability of the class members to protect their interests. Further,
12 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
13 individual prosecution considering all of the concomitant costs and expenses attending thereto.
14 As such, the Classes identified above are maintainable as a Class under § 382 of the Code of Civil
15 Procedure.

16 **FIRST CAUSE OF ACTION**

17 **MINIMUM WAGE VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

20 26. Wage Order 7, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
21 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
22 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
23 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
24 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
25 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
26 their pay practices to the requirements of the law by failing to pay Plaintiff and the Off-The-Clock
27 Class for all hours actually worked including, but not limited to, all hours they were subject to the
28 control of Defendants and/or suffered or permitted to work under the California Labor Code and

1 Wage Order 7.

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

7 28. As a direct and proximate result of Defendants' unlawful conduct as alleged
8 herein, Plaintiff and the Off-The-Clock Class have sustained economic damages, including but
9 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
10 entitled to recover economic and statutory damages and penalties and other appropriate relief as
11 a result of Defendants' violations of the California Labor Code and Wage Order 7.

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

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY ALL OVERTIME WAGES**

20 **(AGAINST ALL DEFENDANTS)**

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

22 31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
23 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
24 overtime hours worked, and provide a private right of action for the failure to pay all overtime
25 compensation for overtime work performed.

26 32. At all times relevant herein, Defendants were required to properly compensate
27 Plaintiff and members of the Off-The-Clock Class for all overtime hours worked pursuant to
28 California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to
pay an employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in

1 excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage
2 Order 7, § 3 also requires an employer to pay an employee double the employee's regular rate of
3 pay for work in excess of 12 hours each work day and/or for work in excess of 8 hours on the
4 seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime
5 hours, but did not compensate Plaintiff or members of the Off-The-Clock Class at one and one-
6 half times their regular rate of pay for such hours.

7 33. The foregoing policies and practices are unlawful and create entitlement to
8 recovery by Plaintiff and the Off-The-Clock Class in a civil action for the unpaid amount of
9 overtime premiums owing, including interest thereon, statutory penalties, and attorneys' fees and
10 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
11 7, and Code of Civil Procedure § 1021.5.

12 **THIRD CAUSE OF ACTION**

13 **REST PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

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

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

19 36. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
20 of the Rest Period Class to take all required rest periods.

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

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

27 **(AGAINST ALL DEFENDANTS)**

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

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

40. Due to Defendants’ unlawful policy and practice of requiring employees to use their personal cellular phones in the performance of their job duties and requiring employees to incur uniform related expenses at their own cost, Defendants have violated Labor Code § 2802.

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

42. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

46. Defendants’ failures created an entitlement to Plaintiff and members of the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,

including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit pursuant to Labor Code § 226 *et seq.*

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SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

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

49. Defendants failed to timely pay Plaintiff all of her final wages at the time of termination, which include, among other things, underpaid minimum and overtime wages, rest and meal period premium wages, and reimbursement for necessary business expenses. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

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

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

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

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

55. The acts complained of herein occurred within the last year immediately preceding the filing of the Complaint in this action.

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

EIGHTH CAUSE OF ACTION

PAGA CIVIL PENALTIES

(AGAINST ALL DEFENDANTS)

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

58. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum Wage Class, and other similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- b. failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Penalty Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- d. Failing to reimburse Plaintiff and the Employee Expense Class for all required

business expenses incurred in violation of Labor Code § 2802;

- e. Failing to authorize and permit all legally required rest and meal periods, and failing to pay rest and meal period premiums, to Plaintiff, the Rest Period Class, Meal Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, 516, and 558;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

59. On June 8, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 57 (a)-(h).. On February 10, 2022, Plaintiff notified Defendants, and notified the LWDA via its website of additional claims under the PAGA for meal period, overtime, and wage statement violations. The LWDA has not provided notice that it intends to investigate the violations, and therefore Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations

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

NINETH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

62. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 7, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 7, and Civil Code §§ 3287(b) and 3289

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802;
8. Upon the Fifth Cause of Action, for actual damages, statutory and civil penalties pursuant to Labor Code § 226;

1 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
2 226, *et seq.*;

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

7 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
8 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
9 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
10 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
11 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
12 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
13 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
14 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
15 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
16 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
17 each initial violation and \$200 for each subsequent violation per employee per pay period for
18 those violations of the Labor Code for which no civil penalty is specifically provided, based on
19 the following Labor Code violations;

20 12. Upon the Ninth Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

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

24 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
25 §§ 218.5, 221, 226, 1194, *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

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

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2 Dated: February 10, 2022

Respectfully submitted,
STANBURY BROWN LAW

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4 By:



5 Daniel J. Brown
6 Ethan C. Surls
7 Attorneys for Plaintiff

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9 **DEMAND FOR JURY TRIAL**

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

11 Dated: February 10, 2022

Respectfully submitted,
STANBURY BROWN LAW

12
13 By:



14 Daniel J. Brown
15 Ethan C. Surls
16 Attorneys for Plaintiff