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12 and on behalf of all others similarly situated.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF RIVERSIDE**

15 ASHLEY SOLIS, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 MCMANGA FOODS, INC.; and DOES 1
20 through 20, inclusive,

21 Defendants.

Case No. RIC2001656

Assigned for all purposes to:

Hon. David M. Chapman

Dept. PS2

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment;
6. Failure to Reimburse Necessary Business Expenses;
7. Violation of Business and Professions Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Ashley Solis, individually, and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Ashley Solis (“Plaintiff”) brings this putative class and representative
5 action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*,
6 on against defendants McManga Foods, Inc., and DOES 1 through 20, inclusive (collectively,
7 “Defendants”), on behalf of herself individually and on behalf of California citizens who are
8 and were employed by Defendants as non-exempt employees throughout California.

9 2. Defendants provides fast food services in California.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages;
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation
19 in lieu thereof;
- 20 (d) failing to provide accurate itemized wage statements;
- 21 (e) failing to reimburse necessary business expenses; and
- 22 (f) failing to pay all wages due upon separation of employment.

23 5. Plaintiff seeks monetary relief against Defendants on behalf of herself and all
24 others similarly situated in California to recover, among other things, unpaid wages and
25 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§
26 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2,
27 1197, 1198, 2800, 2802, 2698, *et seq.*, Code of California Civil Procedure § 1021.5.

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JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, or the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a resident of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

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1 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
2 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
3 at all relevant times.

4 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
5 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
6 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
7 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
8 the employer and/or joint employer of Plaintiff and the class members.

9 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
10 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
11 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
12 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
13 the official policy of Defendants.

14 16. At all relevant times, Defendants, and each of them, acted within the scope of
15 such agency or employment, or ratified each and every act or omission complained of herein.
16 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
17 each and all the other Defendants in proximately causing the damages herein alleged.

18 17. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 **CLASS ACTION ALLEGATIONS**

22 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
23 herself and all others similarly situated who were affected by Defendants' Labor Code,
24 Business and Professions Code §§ 17200, and IWC Wage Order violations.

25 19. All claims alleged herein arise under California law for which Plaintiff seeks
26 relief authorized by California law.

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1 20. Plaintiff's proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between April 6, 2016¹
5 and the date of class certification ("Class").

6 21. Plaintiff also seeks to certify the following subclass of employees:

7 Waiting Time Subclass

8 All Class Members who separated their employment with Defendants at any time
9 between April 6, 2017 and the date of class certification ("Subclass" or "Waiting
10 Time Subclass").

11 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Subclass described above will be collectively
15 referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants fail to pay Plaintiff and Class Members all wages
20 for all hours worked by Plaintiff and Class Members.

21 (b) Whether Defendants required Plaintiff and Class Members to call in to
22 report for work and did not pay them reporting time.

23 (c) Whether Defendants deprived Plaintiff and Class Members of timely
24 meal periods without proper compensation.

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27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

- 1 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks
2 or required Plaintiff and Class Members to work through rest breaks
3 without proper compensation.
- 4 (e) Whether Defendants failed to provide Plaintiff and Class Members
5 accurate itemized wage statements.
- 6 (f) Whether Defendants failed to timely pay the Waiting Time Subclass all
7 wages due upon termination or within seventy-two (72) hours of
8 resignation.
- 9 (g) Whether Defendants required Plaintiff and Class Members to incur
10 business expenses without reimbursing them.
- 11 (h) Whether Defendants' conduct was willful or reckless.
- 12 (i) Whether Defendants engaged in unfair business practices in violation of
13 Business and Professions Code §§ 17200, *et seq.*

14 25. There is a well-defined community of interest in this litigation and the proposed
15 Class and Subclass are readily ascertainable:

16 (a) Numerosity: The Class Members are so numerous that joinder of all
17 members is impractical. Although the members of the entire Class and Subclass are unknown
18 to Plaintiff at this time, on information and belief, the class is estimated to be greater than
19 twenty-five (25) individuals. The identities of the Class Members are readily ascertainable by
20 inspection of Defendants' employment and payroll records.

21 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
22 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
23 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
24 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
25 sustained by the Class Members because they arise out of and are caused by Defendants'
26 common course of conduct as alleged herein.

27 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
28 interests of all Class Members because it is in her best interest to prosecute the claims alleged

1 herein to obtain full compensation and penalties due to her and the Class Members. Plaintiff's
2 attorneys, as proposed class counsel, are competent and experienced in litigating large
3 employment class actions and versed in the rules governing class action discovery,
4 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
5 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
6 for the prosecution of this action for the substantial benefit of the Class Members.

7 (d) Superiority: The nature of this action makes use of class action
8 adjudication superior to other methods. A class action will achieve economies of time, effort,
9 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
10 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
11 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
12 manage this case as a class action.

13 (e) Public Policy Considerations: Employers in the State of California
14 violate employment and labor laws every day. Current employees are often afraid to assert their
15 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
16 actions because they believe their former employers might damage their future endeavors
17 through negative references and/or other means. Class actions provide class members who are
18 not named in the complaint with a type of anonymity that allows for the vindication of their
19 rights while affording them privacy protections.

20 **GENERAL ALLEGATIONS**

21 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
22 California residents as non-exempt employees at Defendants' California business location(s).

23 27. Defendant employed Plaintiff as a non-exempt employee at Defendants'
24 California business location(s).

25 28. Defendants continue to employ non-exempt employees within California.

26 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
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1 who were knowledgeable about California's wage and hour laws, employment and personnel
2 practices, and the requirements of California law.

3 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to receive wages for all time
5 worked and that they were not receiving all wages earned for work that was required to be
6 performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members
7 were not paid all wages for all hours worked, including but not limited to reporting time wages.

8 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Class Members were entitled to receive all required meal
10 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
11 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
12 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
13 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
14 rate of pay when they did not receive a timely, uninterrupted meal period.

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
17 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
18 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
19 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
20 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and Class Members were entitled to receive itemized wage
23 statements that accurately showed the following information pursuant to the Labor Code: (1)
24 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
25 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
26 deductions, provided that all deductions made on written orders of the employee may be
27 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
28 for which the employee is paid; (7) the name of the employee and only the last four digits of his

1 or her social security number or an employee identification number other than a social security
2 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
3 hourly rates in effect during the pay period and the corresponding number of hours worked at
4 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
5 were not provided with accurate itemized wage statements.

6 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that the Waiting Time Subclass was entitled to timely payment of wages
8 due upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass
9 did not receive payment of all wages within permissible time periods.

10 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to reimbursement for
12 necessary expenditures incurred in connection with the performance and execution of their job
13 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
14 adequate reimbursement for necessary business expenses, including but not limited to
15 reimbursement for use of their personal cell phones.

16 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known they had a duty to compensate Plaintiff and Class Members, and
18 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
19 intentionally failed to do so in order to increase Defendants' profits.

20 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
21 against Defendants on behalf of herself and all Class Members to recover, among other things,
22 unpaid wages (including minimum wages and overtime wages), unpaid meal period premium
23 payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and
24 expenses.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES**

3 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

4 Violation of IWC Wage Order)

5 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 39. During the relevant time period, Defendants paid Plaintiff and Class Members
8 less than minimum wages when they failed to pay proper compensation for all hours worked,
9 including time worked during missed and/or interrupted meal periods and other off-the-clock
10 work. To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class
11 Members were not being paid at least the lawful minimum wage for their work.

12 40. During the relevant time period, Defendants regularly failed to pay at least
13 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
14 §§ 1194 and 1197.

15 41. Defendants' failure to pay Plaintiff and Class Members the required minimum
16 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
17 Members are entitled to recover the unpaid balance of their minimum wage compensation as
18 well as interest, costs, and attorneys' fees.

19 42. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
20 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
21 interest thereon.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

25 43. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
26 though fully set forth herein

27 44. During the relevant time period, Plaintiff and Class Members did not receive
28 compliant meal periods for working more than five (5) and/or ten (10) hours per day because

1 their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
2 second meal period.

3 45. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
4 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
5 § 226.7(b) and section 11 of the applicable IWC Wage Order.

6 46. As a result of Defendants' failure to pay Plaintiff and Class Members an
7 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
8 Class Members suffered and continue to suffer a loss of wages and compensation.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PERMIT REST BREAKS**

11 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

12 47. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 48. During the relevant time period, Plaintiff and Class Members did not receive a
15 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
16 they were required to work through their daily rest periods, were not permitted to take timely
17 rest periods, and/or were not authorized to take their rest periods.

18 49. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
19 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
20 226.7(b) and section 12 of the applicable IWC Wage Order.

21 50. As a result of Defendants' failure to pay Plaintiff and Class Members an
22 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
23 Members suffered and continue to suffer a loss of wages and compensation.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

26 (Violation of Labor Code § 226)

27 51. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 52. During the relevant time period, Defendants have knowingly and intentionally
2 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
3 and Class Members. Defendants provided Plaintiff and Class Members with wage statements
4 that were missing or inaccurately stated one or more of the following items: (1) gross wages
5 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and
6 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
7 provided that all deductions made on written orders of the employee may be aggregated and
8 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
9 employee is paid, (7) the name of the employee and the last four digits of his or her social
10 security number or an employee identification number other than a social security number, (8)
11 the name and address of the legal entity that is the employer, and/or (9) all applicable hourly
12 rates in effect during the pay period and the corresponding number of hours worked at each
13 hourly rate by the employee.

14 53. As a result of Defendants' knowing and intentional failure to comply with Labor
15 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
16 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
17 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
18 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and
19 their protected interest in receiving, accurate itemized wage statements under Labor Code
20 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
21 statements, Defendants prevented Plaintiff and Class Members from determining if all hours
22 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had
23 to file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff
24 to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and
25 incur these costs had Defendants provided the accurate hours worked, wages earned, and rates
26 of pay. This has also delayed Plaintiff's ability to demand and recover the underpayment of
27 wages from Defendants.

54. Plaintiff and Class Members are entitled to recover from Defendants the greater of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

55. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and Class Members from knowing, understanding, and disputing the wages paid to them and resulted in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members have suffered an injury, in the exact amount of damages and/or penalties to be shown according to proof at trial.

56. Class Members that are still employed by Defendants are also entitled to injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226. Accordingly, affected Class Members seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violation of Labor Code §§ 201, 202, and 203)

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

58. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

59. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

60. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

62. During the relevant time period, Defendants required Plaintiff and class members to use their personal cellular devices for business purposes, without paying Plaintiff and class members for a reasonable percentage of their cell phone bills

63. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

64. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

SEVENTH CAUSE OF ACTION

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

(Violation of Business and Professions Code §§ 17200, *et seq.*)

65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

66. Defendants' policies and practices violated state law in at least the following respects:

(a) Failing to pay all wages earned to Plaintiff and Class Members in violation of Labor Code §§ 510, 1182.12, 11194, 1194.2, and 1197.

- 1 (b) Failing to provide compliant meal periods without paying Plaintiff and
2 Class Members premium wages for every day said meal periods were not
3 provided in violation of Labor Code §§ 226.7 and 512.
- 4 (c) Failing to authorize or permit compliant rest breaks without paying
5 Plaintiff and Class Members premium wages for every day said rest
6 breaks were not authorized or permitted in violation of Labor Code §
7 226.7.
- 8 (d) Failing to provide Plaintiff and Class Members with accurate itemized
9 wage statements in violation of Labor Code § 226.
- 10 (e) Failing to timely pay all earned wages to the members of the Waiting
11 Time Subclass upon separation of employment in violation of Labor
12 Code §§ 201, 202, and 203.
- 13 (f) Failing to provide Plaintiff and Class Members with reimbursements for
14 necessary business expenses in violation of Labor Code § 2802.

15 67. As alleged herein, Defendants systematically engaged in unlawful conduct in
16 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
17 (minimum and overtime wages), failing to provide meal periods and rest breaks or
18 compensation in lieu thereof, failing to furnish accurate wage statements, failing to pay all
19 wages due and owing upon separation of employment in a timely manner, and failing to
20 reimburse business expenses, all in order to decrease their costs of doing business and increase
21 their profits.

22 68. At all relevant times herein, Defendants held themselves out to Plaintiff and
23 Class Members as being knowledgeable concerning the labor and employment laws of
24 California.

25 69. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
26 and Class Members wages and monies, thereby creating for Defendants an artificially lower
27 cost of doing business in order to undercut their competitors and establish and/or gain a greater
28 foothold in the marketplace.

70. As a result of Defendants' intentional, willful, purposeful, and wrongful misrepresentation of their conformance with the California Labor Code and IWC Wage Orders, Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown according to proof at trial.

71. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

72. As a result of the unfair and unlawful business practices of Defendants, as alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution in an amount to be shown according to proof at trial.

73. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 *ET SEQ.* (“PAGA”)

74. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

75. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

76. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred

1 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
2 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
3 period in which Defendants violated these provisions of the Labor Code.

4 77. Defendants' conduct violates numerous Wage Order and Labor Code sections,
5 including, but not limited to, the following:

- 6 a. violation of Labor Code §§ 201-203, 204, 210, 1182.12, 1194, 1194.2,
7 1197, and 1198 for failure to timely pay all earned wages owed to Plaintiff
8 and other aggrieved employees during employment and upon separation of
9 employment as herein alleged;
- 10 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
11 periods to Plaintiff and other aggrieved employees and failure to pay
12 premium wages for missed meal periods as herein alleged;
- 13 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
14 Plaintiff and other aggrieved employees and failure to pay premium wages
15 for missed rest periods as herein alleged;
- 16 d. violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
17 itemized wage statements to Plaintiff and other aggrieved employees as
18 herein alleged;
- 19 e. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
20 necessary business-related expenses and losses incurred by Plaintiff and
21 other aggrieved employees as herein alleged; and
- 22 f. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
23 accurate and complete records showing, among other things, the hours
24 worked daily by and the wages paid to aggrieved employees.

25 78. Plaintiff is an "aggrieved employee" because she was employed by the alleged
26 violator and had one or more of the violations committed against her, and therefore is properly
27 suited to represent the interests of all other aggrieved employees.
28

79. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

80. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

81. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;
2. For appointment of Ashley Solis as the class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For liquidated damages pursuant to Labor Code § 1194.2;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful,

1 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
2 Professions Code §§ 17200, *et seq.*;

3 12. For pre-judgment interest;

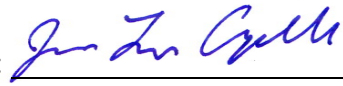
4 13. For civil penalties;

5 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
6 by law, including, but not limited to, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e),
7 1194, and 2698 *et seq.*; and

8 15. For such other relief as the Court deems just and proper.

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10 Dated: September 4, 2020

AEGIS LAW FIRM, PC

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12 By: 
13 Jessica L. Campbell
14 Attorneys for Plaintiff Ashley Solis
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CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On September 22, 2020, I served the foregoing document entitled:

- **[Amended as a matter of right, pursuant to Labor Code section 699.3(a)(2)(C)] SECOND AMENDED CLASS ACTION COMPLAINT**

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

Katherine C. Den Bleyker Raina. Singer LEWIS BRISBOIS BISGAARD & SMITH LLP 633 W. 5th Street, Suite 4000 Los Angeles, CA 90071 Telephone: 213.580.7940 Facsimile: 213.250.7900 Katherine.denbleyker@lewisbrisbois.com Raina.singer@lewisbrisbois.com <i>Attorneys for Defendant:</i> MCMANGA FOODS, INC.	Kevin Mahoney, Esq. (SBN: 235367) John A. Young, Esq. (SBN: 299809) MAHONEY LAW GROUP, APC 249 E. Ocean Boulevard, Suite 814 Long Beach, California 90802 Telephone: (562) 590-5550 Facsimile: (562) 590-8400 kmahoney@mahoney-law.net jyoung@mahoney-law.net <i>Attorneys for Plaintiff:</i> FRANCESKA LEWIS
Louis Benowitz Benjamin Smith Michelle Nabati SMITH & BENOWITZ 4515 Van Nuys Boulevard, Suite 302 Sherman Oaks, CA 91403 Telephone: 818.839.7800 Facsimile: 818.839.9700 louis@smithbenowitz.com benjamin@smithbenowitz.com michelle@smithbenowitz.com <i>Attorneys for Plaintiff:</i> TIANA WILLIAMS	Sunjay P. Bhatia BHATIA LAW FIRM, P.C. 3620 Pacific Coast Highway, Suite 200 Torrance, CA 90505 Telephone: 424.452.6221 sunjay@bhatiafirm.com <i>Attorneys for Plaintiff:</i> TIANA WILLIAMS

- ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

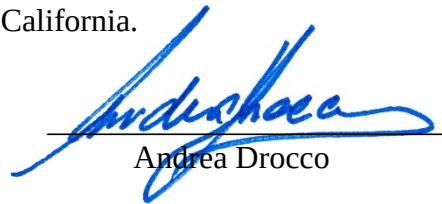
☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 22, 2020, at Irvine, California.


Andrea Drocco