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ROSA GUARDADO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ROSA GUARDADO, individually and as a
private attorney general;

Plaintiff,

vs.

MULTI-PAK CORPORATION, a California
corporation; STAFFMARK INVESTMENT
LLC, doing business as Advantage
Resourcing, a Delaware corporation; and
DOES 1 through 50, inclusive,

Defendants.

COMPLAINT FOR: 20STCV45681

- (1) RETALIATION (CALIFORNIA
LABOR CODE § 98.6 AND 1102.5)**
- (2) WRONGFUL TERMINATION**
- (3) VIOLATION OF CALIFORNIA
LABOR CODE §§ 510 AND 1198
(UNPAID OVERTIME)**
- (4) VIOLATION OF CALIFORNIA
LABOR CODE §§ 1194, 1197 AND
1197.1 (UNPAID MINIMUM
WAGES)**
- (5) VIOLATION OF CALIFORNIA
LABOR CODE § 226.7 (UNPAID
REST PERIOD PREMIUMS)**
- (6) VIOLATION OF CALIFORNIA
LABOR CODE §§ 226.7 AND
512(a) (UNPAID MEAL PERIOD
PREMIUMS)**
- (7) VIOLATION OF CALIFORNIA
LABOR CODE § 226(a) (FAILURE
TO PROVIDE ACCURATE
WAGE STATEMENTS)**
- (8) VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202 AND
203 (FINAL WAGES NOT
TIMELY PAID)**
- (9) VIOLATION OF CALIFORNIA
LABOR CODE § 1198.5 (FAILURE
TO PROVIDE PERSONNEL
RECORDS)**

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**(10) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.**

**(11) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ**

DEMAND FOR TRIAL BY JURY

17 Plaintiff ROSA GUARDADO (“Plaintiff”), as an individual, and as a private attorney
18 general alleges as follows:

19 **THE PARTIES, JURISDICTION AND VENUE**

20 1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of
21 Los Angeles, State of California.

22 2. Defendant MULTI-PAK CORPORATION (“Multi-Pak”), and at all times mentioned
23 herein was, a corporation organized and existing under the laws of the State of California, doing
24 business in the County of Los Angeles, California.

25 3. Defendant STAFFMARK INVESTMENT LLC, doing business as Advantage
26 Resourcing (“Staffmark”), and at all times mentioned herein was, a corporation organized and
27 existing under the laws of the State of California, doing business in the County of Los Angeles,
28 California.

4. Multi-Pak and Staffmark at all times herein mentioned were, (a) conducting business in the County of Los Angeles, State of California; (b) the employer of Plaintiff consistent with California Labor Code and Industrial Welfare Commission Wage Orders; and (c) Plaintiff's employer as defined under Government Code section 12926 subsection (c).

5. The acts alleged herein arose, in part, in Los Angeles County, within the State of California.

6. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged was proximately caused by its conduct. Doe Defendants 1 through 50, Multi-Pak, and Staffmark are herein collectively referred to as "Defendants."

GENERAL ALLEGATIONS

7. Plaintiff was employed by Defendants from approximately February 2016 through approximately February 2020 as a packer.

8. Plaintiff was scheduled to work Monday through Thursday and was required to work at least eight (8) hours per day and frequently work in excess of ten (10) hours per day.

9. Plaintiff's responsibilities included working in the warehouse inspecting and packaging.

10. Plaintiff and similarly aggrieved current and former non-exempt employees (“Aggrieved Employees”) were required to regularly work more than five (5) hours without being provided a meal period and to work more than ten (10) hours without being provided with a second

1 meal period. In fact, Plaintiff was reprimanded for taking or attempting to take an uninterrupted
2 30-minute meal period. Further, Defendants forced Plaintiff and Aggrieved employees to take
3 their lunch after six (6) hours of working.

4 11. Plaintiff and Aggrieved Employees never waived their rights to a meal period when
5 they worked six (6) or more hours.

6 12. Plaintiff and Aggrieved Employees never received a second lunch period.

7 13. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour
8 of pay at their regular rate of pay when a meal period was missed or interrupted.

9 14. Because of Defendants' policies and practices, Plaintiff was never able to take an
10 uninterrupted ten (10) minute rest break and was reprimanded every time she asked for one or
11 attempted to take one.

12 15. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour
13 of pay at their regular rate of pay when a rest break was missed or interrupted.

14 16. Plaintiff requested that her supervisors provide her with a ten (10) minute uninterrupted
15 rest break and/or a thirty (30) minute uninterrupted meal period, however such requests were
16 denied and met with hostility.

17 17. Defendants employed a time rounding policy that was not neutral and designed to
18 consistently round time in Defendants' favor, ensuring that Plaintiff, and the Aggrieved Employees
19 were not paid for all time worked.

20 18. Furthermore, Defendants often requested Plaintiff and Aggrieved Employees to work
21 prior to clocking-in or to keep working after they clocked-out for the day to finish their assigned
22 work. Defendants failed to pay Plaintiff and Aggrieved Employees for time worked off the clock
23 prior to and at the end of their respective shifts.

24 19. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours in a
25 day, and/or forty (40) hours in a week during their employment with Defendants.

26 20. Plaintiff and Aggrieved Employees did not receive payment of all wages, including
27 overtime and minimum wages and meal and rest period premiums, within any time permissible
28 under California Labor Code section 204.

1 21. Plaintiff and Aggrieved Employees were entitled to receive complete and accurate
2 wage statements in accordance with California law, but, in fact, they did not receive complete and
3 accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to
4 include the gross wages earned, total hours worked by the employee, net wages earned, the
5 inclusive dates of the pay period, the name of Plaintiff and Aggrieved Employees' and his or her
6 social security number, the name and address of the legal entity that is the employer, and all
7 applicable hourly rates in effect during the pay period and the corresponding number of hours
8 worked at each hourly rate by Plaintiff and Aggrieved Employees and the failure to include
9 premium pay for missed and/or interrupted rest and meal breaks.

10 22. Plaintiff complained to Defendants in response to not receiving all wages earned and
11 failure to provided meal and rest breaks.

12 23. In direct retaliation to Plaintiff's complaints, Defendants terminated Plaintiff's
13 employment in or about February 2020.

14 24. Plaintiff never received the missing wages earned upon termination of her employment.

15 25. On or about June 10, 2020, Plaintiff's counsel sent a letter to Defendant Multi-Pak,
16 pursuant to California Labor Code sections 226, 432, 1174 and 1198.5, requesting Plaintiff's
17 personnel file and other documents enumerated in aforementioned code sections. Defendants were
18 required to produce these documents within twenty-one (21) days and thirty (30) from the date of
19 the request respectively and failed to do so.

20 26. On or about June 24, 2020, Plaintiff's counsel sent a letter to Defendant Staffmark,
21 pursuant to California Labor Code sections 226, 432, 1174 and 1198.5, requesting Plaintiff's
22 personnel file and other documents enumerated in aforementioned code sections. Defendants were
23 required to produce these documents within twenty-one (21) days and thirty (30) from the date of
24 the request respectively and failed to do so.

25 27. On or about July 2, 2020, Plaintiff notified Defendants via certified mail and filed an
26 online PAGA claim notice with the California Labor and Workforce Development Agency
27 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
28 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code

section 2698 et seq.

FIRST CAUSE OF ACTION

(Retaliation)

(Against All Defendants)

28. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

29. Defendants, by and through their managing agents and supervisors, retaliated against Plaintiff for engaging in protected activity of disclosing, or potentially disclosing information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance.

30. Such conduct violates California Labor Code section 98.6(a) which provides that “[n]o person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter.”

31. Such conduct also violates Labor Code section 1102.5, subd. (b) which provides that “[a]n employer . . . shall not retaliate against an employee for disclosing information , or because the employer believes that the employee disclosed or may disclose information . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

32. Pursuant to California Labor Code section 1105, Plaintiff is entitled to recover damages from Defendants for injury suffered as a result of the foregoing retaliation.

33. During her employment, Plaintiff complained to Defendants that she was forced to work without receiving her uninterrupted thirty (30) minute meal periods and uninterrupted ten (10) minute rest breaks, in addition to working off the clock, and accordingly was not receiving

her proper compensation. Plaintiff's complaints are protected from retaliation by statute, including California's Labor Code.

34. In violation of her statutory rights, and, in part, on the basis of Plaintiff's aforementioned legally protected rights, Defendants, and each of them, retaliated against Plaintiff by terminating Plaintiff's employment.

35. Plaintiff alleges that Defendants, and each of them, were motivated to retaliate against Plaintiff, in part, for her protected actions.

36. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, substantial losses in earnings, other employment benefits, and future earning capacity, and other pecuniary loss not presently ascertained, in an amount according to proof at the time of trial.

37. As a further direct and legal result of the acts and conducts of Defendants, and each of them, Plaintiff has been caused to and did suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, mental and physical pain, discomfort and anxiety, all to her damage in an amount according to proof at the time of trial. Plaintiff does not know at this time the exact duration or permanence of said injuries.

38. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in willful, malicious, intentional, oppressive, fraudulent and despicable conduct.

39. Defendants, and each of them, also acted in willful and conscious disregard of the rights, welfare and safety of Plaintiff thereby justifying the award of punitive and exemplary damages in an amount according to proof at the time of trial.

40. Plaintiff is also entitled to recover reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION

(Wrongful Termination)

(Against All Defendants)

41. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

1 42. Defendants, by and through their managing agents and supervisors, retaliated against
2 Plaintiff for engaging in protected activity of disclosing, or potentially disclosing information, to
3 a government or law enforcement agency, to a person with authority over the employee or another
4 employee who has the authority to investigate, discover, or correct the violation or noncompliance.

5 43. Such conduct violates California Labor Code section 98.6(a) which provides that “[n]o
6 person shall discharge an employee or in any manner discriminate against any employee or
7 applicant for employment because the employee or applicant engaged in any conduct delineated
8 in this chapter.”

9 44. Such conduct also violates Labor Code section 1102.5, subd. (b) which provides that
10 “[a]n employer . . . shall not retaliate against an employee for disclosing information, or because
11 the employer believes that the employee disclosed or may disclose information . . . to a person
12 with authority over the employee or another employee who has the authority to investigate,
13 discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to
14 believe that the information discloses a violation of state or federal statute, or a violation of or
15 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
16 the information is part of the employee’s job duties.”

17 45. Pursuant to California Labor Code section 1105, Plaintiff is entitled to recover damages
18 from Defendants for injury suffered as a result of the foregoing retaliation.

19 46. In violation of her statutory rights, and, in part, on the basis of Plaintiff’s
20 aforementioned legally protected rights, Defendants, and each of them, retaliated against Plaintiff
21 by terminating Plaintiff’s employment.

22 47. Plaintiff alleges that Defendants, and each of them, were motivated to retaliate against
23 Plaintiff, in part, for her protected actions.

24 48. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been
25 directly and legally caused to suffer actual damages including, but not limited to, substantial losses
26 in earnings, other employment benefits, and future earning capacity, and other pecuniary loss not
27 presently ascertained, in an amount according to proof at the time of trial.

49. As a further direct and legal result of the acts and conducts of Defendants, and each of them, Plaintiff has been caused to and did suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, mental and physical pain, discomfort and anxiety, all to her damage in an amount according to proof at the time of trial. Plaintiff does not know at this time the exact duration or permanence of said injuries.

50. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in willful, malicious, intentional, oppressive, fraudulent and despicable conduct.

51. Defendants, and each of them, also acted in willful and conscious disregard of the rights, welfare and safety of Plaintiff thereby justifying the award of punitive and exemplary damages in an amount according to proof at the time of trial.

52. Plaintiff is also entitled to recover reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against All Defendants)

53. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

54. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “...the standard conditions of labor fixed by the commission shall be the ...standard conditions of labor for employees. The employment of any employee ...under conditions of labor prohibited by the order is unlawful.”

55. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time and one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

56. Specifically, the applicable IWC Wage Order provides that Defendants were required to pay Plaintiff, when working more than eight (8) hours in a day or more than forty (40) hours in

1 a workweek, at the rate of time-and one-half for all hours worked in excess of eight (8) hours in a
2 day or more than forty (40) hours in a workweek.

3 57. The applicable IWC Wage Order further provides that Defendants were required to pay
4 Plaintiff, when working more than twelve (12) hours in a day, overtime compensation at a rate of
5 two (2) times their regular rate of pay.

6 58. California Labor Code section 510 codifies the right to overtime compensation at one-
7 and one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
8 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
9 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
10 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day.

11 59. During the relevant time period, Plaintiff worked in excess of eight (8) hours in a day,
12 in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week. Although
13 Plaintiff regularly worked off-the-clock that should have been compensated at an overtime rate.

14 60. Moreover, Defendants failed to pay the correct overtime rate. Defendants' failure to
15 pay Plaintiff this overtime compensation, as required by California law, violates the provisions of
16 California Labor Code sections 510 and 1198, and is therefore unlawful.

17 61. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover their
18 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

21 **(Against All Defendants)**

22 62. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
23 forth above.

24 63. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
25 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
26 wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is
27 unlawful.

28 64. As set forth above, Defendants regularly required Plaintiff to work off-the-clock during

1 meal periods and before and after her scheduled shifts. To the extent that these off-the-clock hours
2 did not qualify for overtime premium payment, Defendants did not even pay minimum wages for
3 those hours worked off-the-clock in violation of California Labor Code sections 1194, 1197 and
4 1197.1.

5 65. Defendants' failure to pay Plaintiff the minimum wage as required violates California
6 Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff is entitled to
7 recover the unpaid balance of her minimum wage compensation as well as interest, costs, and
8 attorney's fees.

9 66. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover
10 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

11 **FIFTH CAUSE OF ACTION**

12 **(Violation of California Labor Code § 226.7)**

13 **(Against All Defendants)**

14 67. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
15 forth above.

16 68. At all relevant times herein set forth, the applicable IWC Wage Order and California
17 Labor Code section 226.7 were applicable to Plaintiff's employment by Defendants.

18 69. At all relevant times, California Labor Code section 226.7 provides that no employer
19 shall require an employee to work during any rest period mandated by an applicable order of the
20 California IWC.

21 70. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
22 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
23 in the middle of each work period" and that the "rest period time shall be based on the total hours
24 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
25 unless the total daily work time is less than three and one-half (3 1/2) hours."

26 71. During the relevant time period, Defendants required Plaintiff to work four (4) or more
27 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period
28 worked. Defendants' failure to properly staff and coordinate Plaintiff's schedule forced Plaintiff

1 to work through all or part of her rest breaks.

2 72. Defendants had no policy and/or practice to pay premiums for missed rest breaks and
3 thus failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code
4 section 226.7.

5 73. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
6 Code section 226.7.

7 74. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at
9 Plaintiff's regular hourly rate of compensation for each work day that the rest period was not
10 provided.

11 **SIXTH CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 226.7 and 512(a))**

13 **(Against All Defendants)**

14 75. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
15 forth above.

16 76. At all relevant times herein set forth, the applicable IWC Wage Order and California
17 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's employment by Defendants.

18 77. At all relevant times herein set forth, California Labor Code section 226.7 provides that
19 no employer shall require an employee to work during any meal period mandated by the applicable
20 IWC Wage Order.

21 78. At all relevant times herein set forth, California Labor Code section 512(a) provides
22 that an employer may not require, cause, or permit an employee to work for a period of more than
23 five (5) hours per day without providing the employee with a meal period of not less than thirty
24 (30) minutes, except that if the total work period per day of the employee is not more than six (6)
25 hours, the meal period may be waived by mutual consent of both the employer and the employee.

26 79. During the relevant time period, Defendants willfully required Plaintiff to work during
27 meal periods and failed to compensate Plaintiff for work performed during meal periods.
28 Moreover, Defendants did not schedule or take any action to relieve Plaintiff of her duties for

1 second meal periods when she worked shifts over 10 hours or more. At the same time, Defendants
2 had a practice and/or policy of not paying all premiums due for meal break violations. As a result,
3 Defendants failed to pay Plaintiff all meal period premiums due pursuant to California Labor Code
4 section 226.7.

5 80. Defendants' conduct violates the applicable IWC Wage Order and California Labor
6 Code sections 226.7 and 512(a).

7 81. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's
9 regular hourly rate of compensation for each work day that the meal period was not provided.

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of California Labor Code § 226(a))**

12 **(Against All Defendants)**

13 82. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
14 forth above.

15 83. Labor Code § 226(a) requires employers, including Defendants, to furnish employees
16 accurate itemized wage statements in writing showing (1) gross wages earned, (2) total hours
17 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
18 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
19 on written orders of the employee may be aggregated and shown as one item, (5) net wages
20 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
21 employee and his or her social security number, (8) the name and address of the legal entity that
22 is the employer, and (9) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee. The deductions
24 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
25 showing the month, day, and year, and a copy of the statement or a record of the deductions shall
26 be kept on file by the employer for at least three years at the place of employment or at a central
27 location within the State of California.

1 84. Defendants knowingly and intentionally, as a matter of uniform policy and practice,
2 failed to furnish Plaintiff with accurate and complete wage statements regarding, among other
3 things, Plaintiff's correct regular rates of pay, rates of overtime pay, corresponding hours worked
4 at each rate of pay, total gross wages earned, proper entity name, and total net wages earned, in
5 violation of Labor Code § 226.

6 85. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage
7 statements resulted in actual injury, as said failures lead to, among other things, the non-payment
8 of all Plaintiff's wages, and deprived Plaintiff of the information necessary to, among other things,
9 identify the discrepancies in Defendants' reported data, and to know, understand and question the
10 rate of pay and hours Defendants used to calculate their wages.

11 86. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for
12 all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil
13 penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code §§ 226
14 and 226.3.

15 **EIGHTH CAUSE OF ACTION**

16 **(Violation of California Labor Code §§ 201, 202, 203)**

17 **(Against All Defendants)**

18 87. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
19 forth above.

20 88. At all times herein set forth, California Labor Code sections 201 and 202 provide that
21 if an employer discharges an employee, the wages earned and unpaid at the time of discharge are
22 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
23 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
24 unless the employee has given seventy-two (12) hours previous notice of his or her intention to
25 quit, in which case the employee is entitled to his or her wages at the time of quitting.

26 89. During the relevant time period, Defendants willfully failed to pay Plaintiff earned and
27 unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and
28 meal and rest period premium wages, either at the time of discharge, or within seventy-two (72)

hours of their leaving Defendants' employ.

90. Defendants' failure to pay Plaintiff her wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

91. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

92. Plaintiff is entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

NINTH CAUSE OF ACTION

(Violation of California Labor Code § 1198.5)

(Against All Defendants)

93. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

94. Pursuant to California Labor Code section 1198.5(b) "the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer, agree in to a date beyond the 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request."

95. Further, pursuant to Subsection (k) of Labor Code section 1198.5 "[i]f an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer."

1 96. Defendants intentionally and willfully failed to provide Plaintiff with a copy of records
2 pursuant to California Labor Code section 1198.5 within 30 calendar days from the date of the
3 request.

4 97. Pursuant to California Labor Code section 1198.5, Plaintiff is entitled to damages in
5 the amount of \$750.00 plus attorneys' fees and costs.

6 **TENTH CAUSE OF ACTION**

7 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

8 **(Against All Defendants)**

9 98. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
10 forth above.

11 99. California Business & Professions Code § 17200, et seq., prohibits acts of unfair
12 competition, which includes any "*unlawful, unfair or fraudulent business act or practice....*"

13 100. Defendants have engaged and continue to engage in unfair and/or unlawful business
14 practices in California in violation of California Business and Professions Code § 17200, et seq.,
15 by engaging in the conduct alleged herein, including, but not limited to, (1) failing to pay Plaintiff
16 all overtime and minimum wages owed; (2) failing to pay Plaintiff an additional hour of premium
17 pay for meal period violations; (3) failing to pay Plaintiff an additional hour of premium pay for
18 rest period violations; (4) willfully failing to timely pay Plaintiff all wages during and at the end
19 of employment; and (5) knowingly failing to furnish Plaintiff with accurate and complete wage
20 statements.

21 101. Defendants' utilization of these unfair and/or unlawful business practice deprived
22 Plaintiff of compensation to which Plaintiff was legally entitled, constitutes unfair and/or
23 unlawful competition, and provides an unfair advantage over Defendants' competitors who have
24 been and/or are currently employing workers and attempting to do so in honest compliance with
25 applicable wage and hour laws.

26 102. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
27 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore
28

any and all monies withheld, acquired and/or converted by the Defendants pursuant to Business and Professions Code §§ 17203, 17208.

103. The acts complained of herein occurred within the last four (4) years immediately preceding the filing of the Complaint in this action.

104. Plaintiff retained the services of counsel to file this court action to protect her interests, to obtain restitution, and to enforce important rights affecting the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under the Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

(Violation of Labor Code § 2698, et seq.)

(Against All Defendants)

105. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

106. Plaintiff brings this claim as an individual employee and in her capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. ("PAGA").

107. On or about July 2, 2020, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency ("LWDA") identifying Defendants' violations of the California Labor Code identified in this Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code section 2698 et seq. The LWDA assigned Plaintiff's case number LWDA-CM-795492-20. Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with Labor Code section 2699.3(a)(1)(B).

108. Sixty-five days have passed from the date of Plaintiff's notice to the LWDA, and thus Plaintiff has exhausted her administrative remedies, thereby allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section 2698.

109. During all relevant times for this action, Defendants regularly required Plaintiff and Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week.

1 However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages
2 and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees were
3 paid for just eight (8) hours in a day or forty (40) hours in a week.

4 110. During all relevant times for this action, Defendants failed to provide uninterrupted
5 meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours
6 per day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved
7 Employees to stay on duty and never provided an uninterrupted first or second meal break.

8 111. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to take
9 uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction thereof.

10 112. Although Defendants failed to provide uninterrupted meal and rest breaks as required
11 by California law, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for
12 those days in which they were not permitted to take a meal and/or rest break which was duty free.

13 113. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with
14 properly itemized wage statements including because Defendants failed to include the gross wages
15 earned, total hours worked by the employee, net wages earned, the inclusive dates of the pay
16 period, the name of Plaintiff and Aggrieved Employees' and his or her social security number, the
17 name and address of the legal entity that is the employer, and all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours worked at each hourly rate by
19 Plaintiff and Aggrieved Employees and the failure to include premium pay for missed and/or
20 interrupted rest and meal breaks.

21 114. Further, during Plaintiff and Aggrieved Employees' employment, Defendants were
22 required to pay all wages earned for labor in excess of the normal work period not later than the
23 payday for the next regular payroll period. However, Defendants failed to pay Plaintiff and
24 Aggrieved Employees all wages due to them within the time period specified by California Labor
25 Code section 204, including premiums owed.

26 115. Plaintiff complained to Defendants in response to not receiving all wages earned, and
27 failure to provided meal and rest breaks. In direct retaliation to Plaintiff's complaints, Defendants
28 terminated Plaintiff's employment in or about February 2020.

1 116. Plaintiff, as an “Aggrieved Employee” within the meaning of Labor Code § 2698 *et*
2 *seq.*, acting on behalf of herself and other similarly Aggrieved Employees, brings this
3 representative action against Defendants to recover the civil penalties due to Plaintiff, other
4 similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor
5 Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200.00
6 for each subsequent violation per employee per pay period for the following Labor Code
7 violations:

- 8 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
9 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 10 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
11 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et*
12 *seq.*;
- 13 c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
14 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and
15 512;
- 16 d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
17 of premium pay for rest period violations in violation of Labor Code §§ 226.7 and
18 512;
- 19 e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
20 at end of employment in violation of Labor Code § 203;
- 21 f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
22 owed during employment;
- 23 g. Failing to furnish Plaintiff and other similarly Aggrieved Employees with
24 complete, accurate, itemized wage statements in violation of Labor Code § 226;
25 and for
- 26 h. Failing to maintain accurate records relating to Plaintiff and other similarly
27 Aggrieved Employees work periods, meal periods, total daily hours, hours per pay
28 period, and applicable pay rates.

- i. Defendants' unlawful retaliation against Plaintiff and termination of employment after Plaintiff complained about violations under California's Labor Code in violation of California Labor Code §§ 1102.5(b) and 1102.5(f);
- j. Defendants' unlawful retaliation against Plaintiff and termination of employment after Plaintiff complained about violations under California's Labor Code in violation of California Labor Code §§ 98.6(a) and 98.6(b)(3); and

117. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

PRAYER FOR RELIEF

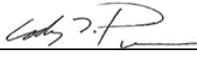
WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For general and compensatory damages including but not limited to, lost wages and benefits and damages for emotional distress normally associated retaliation, wrongful termination, humiliation, and loss of reputation;
 2. For punitive and exemplary damages according to proof;
 3. For statutory attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5; and Labor Code sections 226, 226.8, 1194, 1198, 1198.5, 2699, *et seq.*, and as allowed by law and according to proof;
 4. For statutory civil penalties pursuant to Labor Code section 2698, *et seq.*, and as allowed by law and according to proof;
 5. For unpaid wages and overtime;
 6. For unpaid wage premiums for each day Plaintiff did not receive a meal and/or rest period;
 7. For costs of suit incurred herein;
 8. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed;
- and
///

1 9. For such other and further relief as the Court may deem just and proper.

2
3 DATED: November 25, 2020

PAYNE NGUYEN, LLP

4 By: 
5 Cody Payne
6 Kim Nguyen
7 Attorneys for Plaintiff
8 ROSA GUARDADO
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DATED: November 25, 2020

By:

Cody Payne
Kim Nguyen
Attorneys for Plaintiff
ROSA GUARDADO