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and on behalf of other individuals similarly situated

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

GARCIELA GRAY HERNANDEZ, individually
and on behalf of other individuals similarly
situated,

Plaintiff,

v.

WONDERFUL CITRUS PACKING LLC, a
Delaware limited liability company, and DOES 1
through 100, inclusive

Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1. Failure to Pay All Wages;**
- 2. Short/Late Meal Breaks in Violation of California Labor Code §§ 200, 226.7, 512;**
- 3. Missed/Late Rest Breaks in Violation of California Labor Code §§ 200, 226.7, 512;**
- 4. Failure to Pay All Wages Owed at Termination in Violation of California Labor Code § 203;**
- 5. Failure to Furnish an Accurate, Itemized Wage Statement upon Payment of Wages in Violation of California Labor Code § 226;**
- 6. Failure to Adopt Standards that Minimize Excessive Indoor Heat in Violation of California Labor Code §§ 6720, 226.7;**
- 7. Failure to Provide Adequate Seating in Violation of Labor Code § 1198;**
- 8. Violations of California Business & Professions Code §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff GARCIELA GRAY HERNANDEZ (hereinafter referred to as “Plaintiff”), hereby
2 submits her Class Action Complaint against Defendant WONDERFUL CITRUS PACKING LLC, a
3 Delaware limited liability company; and Does 1-100 (hereinafter referred to as “Defendant”) on behalf
4 of herself and the class of all other similarly situated current and former employees of Defendant as
5 follows:

6 **INTRODUCTORY FACTUAL ALLEGATIONS**

7 1. This class action is within the Court's jurisdiction under California *Labor Code* and
8 California *Business and Professions Code* § 17200, et seq., (Unfair Practices Act).

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

12 3. Plaintiff seeks relief on behalf of herself and the members of the Plaintiff Class as a
13 result of employment policies, practices and procedures more specifically described below, which
14 violate the California *Labor Code*, and the orders and standards promulgated by the California
15 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards,
16 and which have resulted in the failure of Defendants to pay Plaintiff and members of the Plaintiff
17 Class all wages due to them. Said employment policies, practices and procedures are generally
18 described as follows:

- 19 a. Failure to pay all wages to Plaintiff and members of the Plaintiff Class;
20 b. Failure to provide Plaintiff and members of the Plaintiff Class with timely meal
21 and rest breaks;
22 c. Failure to adopt standards that minimize excessive indoor heat in violation of
23 California *Labor Code* §§ 6720, 226.7;
24 d. Failure to provide accurate itemized wage statements;
25 e. Failure to timely pay all wages due to Plaintiff and members of the Plaintiff Class
26 upon termination or within 72 hours of resignation; and
27 f. Failure to provide Plaintiff and members of the Plaintiff Class with adequate
28 seating.

1 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant has
2 engaged in, among other things a system of willful violations of the California *Labor Code*, California
3 *Business and Professions Code*, and applicable IWC wage orders by creating and maintaining policies,
4 practices and customs that knowingly deny employees the above stated rights and benefits.

5 5. The policies, practices and customs of Defendant described above and below have
6 resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that
7 routinely adhere to the structures of the California *Labor Code*, and California *Business and*
8 *Professions Code*.

9 6. This matter is brought as a class action pursuant to California *Code of Civil Procedure*
10 §382, on behalf of Plaintiff and the plaintiff class, which is defined more specifically below, but which
11 is comprised, generally, of all former and current employees of Defendant WONDERFUL CITRUS
12 PACKING LLC, a Delaware limited liability company; who hold or held the job positions which
13 Defendant classified as “non-exempt” at any of Defendant’s facilities in California and throughout the
14 United States.

15 7. This Complaint alleges systematic violations of the California *Labor Code* (hereinafter,
16 “*Labor Code*,”) and the California *Business & Professions Code* and is brought by Plaintiff on her
17 own behalf and on behalf of the members of the plaintiff class.

18 8. The California Plaintiff “Class Period” is defined as the period from four years prior to
19 the filing of this action through and including the date judgment is rendered in this matter. Plaintiff
20 herein reserves the right to amend this Complaint to reflect a different Class Period as discovery in
21 this matter proceeds.

22 9. The actions of Defendant are in violation of the California *Labor Code* as well as the wage
23 orders of the Industrial Wage Commission of the State of California and, as a result, are unlawful and
24 unfair acts, thus constituting a violation of California *Business & Professions Code* § 17200, et seq. (Unfair
25 Practices Act).

26 10. The policies, practices and customs of Defendant described above and herein have resulted
27 in unjust enrichment of Defendant and an unfair business advantage over businesses that routinely adhere
28 to the requirements of the California *Labor Code* and of the *Business & Professions Code*.

1 **JURISDICTION AND VENUE**

2 11. On information and belief, Defendant is either a citizen of California, has sufficient
3 minimum contacts in California, or otherwise intentionally avails itself of the California market so as
4 to render the exercise of jurisdiction over them by the California courts consistent with traditional
5 notions of fair play and substantial justice.

6 12. Venue is proper in Riverside County because the acts which give rise to this litigation
7 occurred in this county and Defendant does business in Riverside County.

8 **THE PARTIES**

9 13. Plaintiff GARCIELA GRAY HERNANDEZ ("Plaintiff") is a resident of Riverside
10 County, in the State of California. Plaintiff was employed by Defendant, WONDERFUL CITRUS
11 PACKING LLC, a Delaware limited liability company, in Indio, California for approximately seven
12 years until her date of termination on May 12, 2020. Plaintiff was employed as a "Laborer."

13 14. Defendant, WONDERFUL CITRUS PACKING LLC, is a Delaware limited liability
14 company that conducts business in California.

15 15. Defendant is the largest fresh citrus grower in the western United States.

16 16. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
17 mentioned Defendant and DOES 1 through 100, are and were corporations, business entities,
18 individuals, and partnerships, licensed to do business and actually doing business in the State of
19 California.

20 17. Plaintiff does not know the true names or capacities, whether individual, partner or
21 corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
22 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
23 when the true names and capacities are known. Plaintiff is informed and believes, and based thereon
24 alleges, that each of said fictitious Defendants were responsible in some way for the matters alleged
25 herein and proximately caused Plaintiff and members of the general public and class to be subject to
26 the illegal employment practices, wrongs and injuries complained of herein.

27 18. At all times herein mentioned, Defendants participated in the doing of the acts
28 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and

1 each of them, were the agents, servants and employees of each of the other Defendants, as well as the
2 agents of all Defendants, and at all times herein mentioned, were acting within the course and scope
3 of said agency and employment.

4 19. Plaintiff is informed and believes, and based thereon alleges, that at all times material
5 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venturer
6 of, or working in concert with each of the other co-Defendants and were acting within the course and
7 scope of such agency, employment, joint venture, or concerted activity. To the extent said acts,
8 conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants
9 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

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

13 21. At all times herein mentioned, the acts and omissions of various Defendants, and each
14 of them, concurred and contributed to the various acts and omissions of each and all of the other
15 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
16 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
17 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
18 and omissions of each and all of the other Defendants in proximately causing the damages as herein
19 alleged.

20 22. The members of the Plaintiff Class, including the representative Plaintiff named herein,
21 have been employed during the Class Period in California. The practices and policies which are
22 complained of by way of this Complaint are enforced throughout the State of California and the United
23 States.

24 **FACTUAL ALLEGATIONS**

25 23. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

26 24. Plaintiff and the members of the Plaintiff Class seek compensation from Defendant for
27 the relevant time period because Defendant:
28

- a. Failed to pay Plaintiff and members of the Plaintiff Class all wages owed, by subjecting them to unpaid drug tests;
- b. Failed to provide Plaintiff and members of the Plaintiff Class with timely rest and meal periods as mandated by California law;
- c. Failed to timely pay Plaintiff and members of the Plaintiff Class with all wages owed at time of termination or within 72 hours;
- d. Failed to provide Plaintiff and members of the Plaintiff Class with accurate itemized wage statements;
- e. Failed to adopt standards that minimize excessive indoor heat in violation of California *Labor Code* §§ 6720, 226.7; and
- f. Failed to provide Plaintiff and other members of the Plaintiff Class with adequate seating.

25. Defendant has engaged in, and continues to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

26. Defendant's utilization of such unfair business practices deprives Plaintiff and other aggrieved employees of the general minimum working standards and entitlements due to them under California law and the Industrial Welfare Commission wage orders as described herein.

27. Plaintiff and all other aggrieved employees were and are classified by Defendant as non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders and standards promulgated by the California Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards. As non-exempt employees, Plaintiff and all other aggrieved employees are entitled to certain benefits, including mandated meal and rest breaks. In addition, said statutory provisions, wage orders, regulations and standards obligate the employer to maintain accurate records of the hours worked by employees.

28. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to

1 compel Defendant to fully perform its obligations under state law, all to Plaintiff's respective damage
2 in amounts according to proof at the time of trial.

3 ***Defendants' Failure to Pay for All Hours Worked***

4 29. Defendant did not compensate their hourly non-exempt employees for all the minutes
5 that they worked as described above, including but not limited to the time that the employees were
6 subject to the control and direction of Defendants; and/or the time that the employees were suffered
7 or permitted to work. This includes the time spent "off the clock" for mandatory drug tests.

8 ***Unpaid Drug Test***

9 30. Pursuant to a uniform policy originated by Defendant, all hourly employees are subject
10 to undergo a drug test. Hourly employees were and are subject to an unpaid drug test lasting
11 approximately three hours.

12 31. By way of example, on April 13, 2020, Plaintiff was required to drive to Premier
13 Occupational Clinic in Indio, and spent approximately three hours for a mandatory drug test. This time
14 was spent "off-the-clock."

15 32. Thus, at the discretion and control of the Defendant and solely for their benefit, Plaintiff
16 and other members of the Plaintiff Class were and are required to have drug testing on their own time.
17 This uncompensated time was necessary to the employee's primary work and done solely for
18 Defendant's benefit.

19 ***Defendants' Failure to Provide Compliant Meal Breaks***

20 33. Plaintiff alleges that meal breaks were short as a result of waiting in line (three to five
21 minutes) to clock out, thereby depriving Plaintiff and members of the Plaintiff Class of the full meal
22 break as required. Plaintiff also alleges that meal breaks were only provided when time permitted, and
23 were sometimes taken after the fifth hour.

24 34. Plaintiff alleges that throughout the Relevant Time Period, Defendant regularly:

- 25 a. Failed to provide Plaintiff and the members of the Plaintiff Class with a first meal
26 period of not less than thirty (30) minutes during which they are relieved of all duty
27 before working more than five (5) hours;
28 b. Failed to provide Plaintiff and the members of the Plaintiff Class with a second
meal period of not less than thirty (30) minutes during which they are relieved of

all duty before working more than ten (10) hours per day;

c. Failed to pay Plaintiff and the members of the Plaintiff Class one hour of pay at their regular rate of compensation for each workday that a meal period was not provided; and

d. Failed to accurately record all meal periods.

Defendants' Failure to Provide Compliant Rest Breaks

35. At all times, relevant hereto, California *Labor Code* § 226.7 and IWC Wage Order, section 12, required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

36. At all times, relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage Order, section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendant failed to effectively communicate California rest period requirements to Plaintiff and the members of the plaintiff class. Plaintiff is further informed and believes and based thereon alleges that throughout the relevant time period Defendant failed to provide rest periods.

38. Plaintiff alleges that she would work between four (4) and 13 (thirteen) hours per shift, however, was only ever provided with one rest break on any given shift.

39. Plaintiff alleges other members of the Plaintiff Class would also only receive one rest break.

40. Throughout the Relevant Time Period, Plaintiff and the members of the Plaintiff Class were routinely denied the rest breaks they were entitled to under California law.

41. Specifically, throughout the Relevant Time Period, Defendants regularly:

e. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the members of the Plaintiff Class were relieved of all duty for each four (4) hours of work and able to take rest periods within the middle of the shift; and

f. Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not permitted.

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2 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

3 42. At all times, relevant hereto, California *Labor Code* § 201 required an employer that
4 discharges an employee to pay compensation due and owing to said employee immediately upon
5 discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits any
6 compensation due and owing to said employee within seventy-two (72) hours of an employee's
7 resignation. California *Labor Code* § 203 provides that if an employer willfully fails to pay
8 compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then
9 the employer is liable for waiting time penalties in the form of continued compensation for up to thirty
10 (30) work days.

11 43. Defendants willfully and knowingly failed to pay Plaintiff and other members of the
12 Plaintiff Class, upon termination of employment, all accrued compensation.

13 44. Specifically, Plaintiff was entitled to meal and rest break premiums, and compensation
14 for time spent "off-the-clock."

15 ***Defendants' Failure to Provide Accurate Wage Statements***

16 45. Defendants failed to comply with California *Labor Code* Section 226(a) because the
17 hours worked, meal and rest breaks were incorrect.

18 ***Defendants' Failure to Minimize Excessive Indoor Heat***

19 46. Defendant failed to comply with California *Labor Code* §§ 6720, 226.7 and the
20 applicable Wage Order section 15 because it provided employees with an excessively hot indoor
21 working environment. Defendant failed to implement indoor heat- related standards and increased
22 employees' risk of heat illnesses. Plaintiff and members of the Plaintiff Class who worked in the
23 warehouse had limited areas to get relief from the heat.

24 47. Plaintiff alleges that the facility was excessively hot with temperatures often reaching
25 over 100 degrees Fahrenheit, with no air conditioning.

26 ***Defendants' Failure to Provide Adequate Seating***

27 48. At all times, relevant hereto, the applicable wage order section 14(a), requires that "[a]ll
28 working employees be provided with suitable seats when the nature of the work reasonably permits

1 the use of seats.” Section 14 (b) requires that “[w]hen employees are not engaged in the active duties
2 of their employment and the nature of the work requires standing, an adequate number of suitable
3 seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use
4 such seats when it does not interfere with the performance of their duties.”

5 49. Defendant willfully and knowingly failed to provide Plaintiff and members of the
6 Plaintiff Class with suitable seats, although the nature of work required standing for substantial periods
7 of time.

8 50. California *Labor Code* § 1198 makes it illegal to employ an employee under conditions
9 of labor that are prohibited by the applicable wage order. By failing and refusing to provide seating to
10 Plaintiffs and other Class Members in violation of the applicable Wage Order Section 14, Defendant
11 has violated and continue to violate California *Labor Code* § 1198.

12 ***Facts Regarding Willfulness***

13 51. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and was
14 advised by skilled lawyers, other professionals, employees with human resources background and
15 advisors with knowledge of the requirements of California wage and hour laws.

16 52. Plaintiff is informed and believes and based thereon alleges that at all relevant times,
17 Defendant had a consistent policy or practice of failing to compensate the Plaintiff Class members,
18 including Plaintiff.

19 53. Plaintiff is informed and believes and based thereon alleges that at all relevant times,
20 Defendant knew or should have known, that the Plaintiff Class members, including Plaintiff, were
21 entitled to receive duty-free meal periods within the first five (5) hours of any shift of six (6) or more
22 hours worked, and that any failure to do so requires Defendant to pay Plaintiff and the members of the
23 plaintiff class one (1) hour of wages per day for untimely, missed, or on-duty meal periods.

24 54. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times,
25 Defendant knew or should have known, that the Plaintiff Class members, including Plaintiff, were and
26 are entitled to one (1) ten (10) minute rest break for each shift of four (4) hours or more, and that any
27 failure to allow said breaks requires Defendant to pay the plaintiff class members, including Plaintiff,
28 one (1) hour of wages per day for missed or on-duty rest breaks.

1 ***Plaintiff's Exhaustion of Administrative Remedies***

2 55. Plaintiff is currently complying with the procedures for bringing suit specified in
3 California *Labor Code* § 2699.3.

4 56. By letter dated July 20, 2020 required notice was sent to Labor and Workforce
5 Development Agency ("LWDA") and Defendant of the specific provisions of the California *Labor*
6 *Code* alleged to have been violated, including the facts and theories to support the alleged violations.

7 57. This Complaint will be amended when more than sixty (60) days have passed since the
8 date the notice was mailed to Defendant and the LWDA, if the LWDA chooses not to investigate the
9 allegations herein.

10 ***Unfair Business Practices***

11 58. Defendant has engaged in, and continues to engage in, unfair business practices in
12 California by practicing, employing and utilizing the employment practices and policies outlined
13 above.

14 59. Defendant's utilization of such unfair business practices constitutes unfair competition
15 and provides an unfair advantage over Defendant's competitors.

16 60. Defendant's utilization of such unfair business practices deprives Plaintiff and
17 members of the Plaintiff Class of the general minimum working standards and entitlements due them
18 under California law and the Industrial Welfare Commission wage orders as described herein.

19 61. As a direct result of the wage and hour violations herein alleged, Plaintiff and members
20 of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and
21 enjoyment of wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel
22 Defendant to fully perform their obligations under state law, all to Plaintiff's respective damage in
23 amounts according to proof at the time of trial.

24 **CLASS ACTION ALLEGATIONS**

25 62. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

26 63. Plaintiff brings this action on behalf of herself and all others similarly situated as a
27 class action, pursuant to California *Code of Civil Procedure* § 382. The classes which Plaintiff seeks
28 to represent are composed of, and defined as follows:

1 **Plaintiff Class**

2 All persons who have been, or currently are, employed by Defendant
3 and who held, or hold, job positions which Defendant has classified as
4 “non-exempt” employees in the State of California. (The Class Period
5 is defined as the period from four years prior to the filing of this action
6 through and including the date judgment is rendered in this matter).

7 **Terminated Sub Class**

8 All members of the Plaintiff Class whose employment ended during the
9 Class Period (The Class Period is defined as the period from four years
10 prior to the filing of this action through and including the date judgment
11 is rendered in this matter).

12 (collectively “Plaintiff Class” or “Class Members”)

13 64. Plaintiff is informed and believes, and on that basis alleges, that during the class period
14 thousands of class members have been employed by Defendant as non-exempt employees in the State
15 of California. Because so many persons have been employed by Defendant in this capacity, the
16 members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or
17 impracticable.

18 65. Common questions of law, in fact, exist as to all members of the Plaintiff Class and
19 predominate over any questions affecting solely individual members of the Plaintiff Class. Among
20 the questions of law and fact, that are relevant to the adjudication of class members claims are as
21 follows:

- 22 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits
23 of California wage and hour statutes;
- 24 b. Whether Defendant maintained accurate records of the hours worked by
25 employees;
- 26 c. Whether Defendant had a standard policy of not providing mandated meal and
27 rest breaks to Plaintiff and members of the Plaintiff Class;
- 28 d. Whether Defendant unlawfully and/or willfully deprived Plaintiff and Class

Members of meal and rest breaks and failed to pay for missed breaks pursuant to California *Labor Code*;

- e. Whether Defendant unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of California *Labor Code* §226;
- f. Whether Defendant unlawfully and/or willfully failed to compensate employees for all hours worked;
- g. Whether Defendant unlawfully/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- h. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;
- i. Whether Defendant failed to minimize indoor heat and failed to adopt standards that minimize heat-related illness and injury among workers;
- j. Whether Defendant failed to provide Plaintiff and members of the Plaintiff Class with adequate seating; and
- k. Whether Defendant's conduct as alleged herein violates the Unfair Business Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

66. The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Plaintiff and the members of the Plaintiff Class sustained losses, injuries and damages arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

67. Plaintiff is an adequate representative of the proposed classes because she is a member of the class, and her interests do not conflict with the interests of the members she seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute this action vigorously for the benefit of the classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and her attorneys.

68. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action device presents far fewer management difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive supervision by a single court.

69. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of the California *Code of Civil Procedure* § 382 because:

- a. The prosecution of separate actions by hundreds of individual class members would create a risk of varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for Defendants, and
- b. The prosecution of separate actions by individual class members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other class members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

70. Plaintiff hereby incorporates each and every allegation contained above and realleges said allegations as if fully set forth herein.

FIRST CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

71. Plaintiff incorporates herein by reference the allegations set forth above.

72. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees

1 for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant
2 to the Industrial Welfare Commission Orders and California *Labor Code* §§ 200, 226, 1197, and 1198.

3 73. For at least the four (4) years preceding the filing of this action, Defendant failed to
4 compensate employees for all hours worked. Defendant implemented policies that actively prevented
5 employees from being compensated for all time worked by subjecting employees to security checks
6 at meal breaks and upon completion of the shift.

7 74. Under the above-mentioned wage order and state regulations, Plaintiff and the Plaintiff
8 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
9 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
10 accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code*
11 §203 and 206.

12 75. Pursuant to a uniform policy originated by Defendant, all hourly employees are subject
13 to a drug test. Hourly employees were and are subject to an unpaid drug test lasting approximately
14 three hours.

15 76. By way of example, on April 13, 2020, Plaintiff was required to drive to Premier
16 Occupational Clinic in Indio, and spent approximately three hours for a mandatory drug test.

17 77. Thus, at the discretion and control of the Defendant and solely for their benefit, Plaintiff
18 and other members of the Plaintiff Class were and are required to have drug testing on their own time.
19 This uncompensated time was necessary to the employee's primary work and done solely for
20 Defendant's benefit

21 78. Defendant has knowingly and willfully refused to perform their obligations to
22 compensate Plaintiffs and the Plaintiff Class for all wages earned and all hours worked, in violation
23 of state law. As a direct result, Plaintiff and the Plaintiff Class have suffered, and continue to suffer,
24 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
25 expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under
26 state law, in accordance with Plaintiff's and the Plaintiff Class' respective damage amounts according
27 to proof at time of trial.

28 ///

79. Defendant committed such actions alleged knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff's and the Plaintiff Class' rights.

80. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

81. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff Class have been damaged in an amount according to proof at time of trial.

SECOND CAUSE OF ACTION

SHORT AND LATE MEAL BREAKS IN VIOLATION OF

CAL. LABOR CODE §§200, 226.7, 512

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

82. Plaintiff incorporates herein by reference the allegations set forth above.

83. For at least the four (4) years preceding the filing of this action, Defendant failed to provide meal breaks as required by law.

84. California *Labor Code* § 226.7(a) provides that: “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

85. California *Labor Code* § 512 provides that: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

86. The applicable Wage Order Section 11(D) states “If an employer fails to provide an employee a meal period in the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation each day that the meal period is not provided.”

87. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class consistently worked over five (5) hours per work period, and therefore, were entitled to a meal period

of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

88. Further, meal breaks were often cut short as Plaintiff alleges that she and other members of the Plaintiff Class were required to wait in line for approximately three (3) to five (5) minutes to clock in and clock out.

89. Defendant failed to pay Plaintiff and the Class members the full statutory penalty for all late and short meal periods.

90. At all times relevant to this Complaint, each Defendant failed, and have continued to fail, to timely provide Plaintiff and the members of the Plaintiff Class with meal periods.

91. Thus, throughout the Class Period, Defendant regularly:

- a. Failed to provide timely, 30-minute uninterrupted meal periods during which Plaintiff and the members of the Plaintiff Class were relieved of all duty for each five (5) hours of work;
- b. Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not permitted.
- c. Failed to provide Plaintiff and the members of the Plaintiff Class with a second meal period of not less than thirty (30) minutes during which they are relieved of all duty before working more than ten (10) hours per day

92. Specifically, Plaintiff and Plaintiff Class members' meal breaks were routinely cut short, as Plaintiff and Plaintiff Class members had to wait in line to clock in.

93. As a direct and proximate result of the acts and/or omissions of Defendant, Plaintiff and the members of the Plaintiff Class have been deprived of meal period wages due in amounts to be determined at trial.

94. Defendant's conduct described herein violates the Industrial Welfare Commission Order and California *Labor Code* §§ 226, 226.7, 512, and 1198.

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THIRD CAUSE OF ACTION
MISSED REST BREAKS IN VIOLATION OF
CAL. LABOR CODE §§200, 226.7, 512

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

95. Plaintiff incorporates herein by reference the allegations set forth above

96. For at least the four (4) years preceding the filing of this action, Defendant failed to provide meal breaks as required by law.

97. The applicable Wage Order Section 12(A) states “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

98. The applicable Wage Order Section 12(B) states “If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

99. Plaintiff and the Class Members are entitled to recover additional compensation for all rest periods that were missed, but not paid for, during the four (4) years preceding the filing of this Complaint, plus reasonable attorneys’ fees and costs of suit pursuant to California *Labor Code* § 218.5 and penalties pursuant to California *Labor Code* § 226.7.

100. Defendant failed to provide Plaintiff and Class Members the full ten (10) minutes of rest time prescribed by law. Specifically, Plaintiff alleges that she was only every provided with one rest break even when her shifts were longer than four (4) hours in length.

101. As a proximate result of the aforementioned violations, Plaintiff and the Class Members have been damaged in an amount according to proof at time of trial and have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on such monies, and expenses and attorneys’ fees in seeking to compel Defendant to fully perform its obligations under state law. Plaintiff and the Class Members are thus entitled to recover nominal, actual, compensatory and exemplary damages in amount according to proof at time of trial.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES AT TIME OF**

3 **TERMINATION IN VIOLATION OF CAL. LABOR CODE §§ 201-203**

4 **(By Plaintiff and Members of the Terminated Sub Class Against Defendant)**

5 102. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth
6 herein.

7 103. At all times, relevant herein, Defendant was required to pay their employees all wages
8 owed in a timely fashion during and at the end of their employment, pursuant to California *Labor*
9 *Code* §§ 201-203.

10 104. As a pattern and practice, Defendant regularly failed to pay Plaintiff and the members
11 of the Terminated Sub Class their final wages pursuant to California *Labor Code* §§ 201-203, and
12 accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

13 105. The conduct of Defendant and its agents and managerial employees as described herein
14 was willful, and in violation of the rights of Plaintiff and the individual members of the Terminated
15 Sub Class.

16 106. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful
17 failure to pay wages due and owing them upon separation from employment results in a continued
18 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
19 Class Members who have separated from employment are entitled to compensation pursuant to
20 California *Labor Code* § 203.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO FURNISH AN ACCURATE ITEMIZED WAGE STATEMENT IN**

23 **VIOLATION OF CAL. LABOR CODE § 226**

24 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

25 107. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth
26 herein, the allegations contained above.

27 108. California *Labor Code* § 226(a) sets forth reporting requirements for employers when
28 they pay wages, as follows: "[e]very employer shall ... at the time of each payment of wages, furnish

his or her employees ... an accurate itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee.... (5) net wages earned ... (8) the name and address of the legal entity that is the employer... (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” (Emphasis added.) Section (e) provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable attorney’s fees.”

109. Defendants failed to accurately report the gross wages earned and the net wages earned by Plaintiff and the Class Members on their wage statements.

110. Defendants failed to accurately represent the total hours worked by Plaintiff and Class members in that all hours worked are not accurately reflected on their wage statements.

111. These wage statement violations are due to Defendant’s failure to accurately compensate Plaintiff and other Class Members for all time spent “off-the-clock”, and for meal and rest break violations.

112. Plaintiff and Class members were damaged by these failures because, among other things, the failures hindered Plaintiff and Class members from determining the amounts of wages actually owed to them.

113. Plaintiff and Class Members request recovery of California *Labor Code* § 226(e) penalties according to proof, as well as interest, attorneys’ fees and costs pursuant to California *Labor Code* § 226(e), in a sum as provided by the Labor Code and/or other statutes.

114. WHEREFORE, Plaintiff requests relief as hereinafter provided.

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SIXTH CAUSE OF ACTION
FAILURE TO ADOPT STANDARDS THAT MINIMIZE EXCESSIVE INDOOR HEAT
VIOLATION OF CAL. LABOR CODE §§ 6720, 227.3

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

115. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

116. California *Labor Code* § 6720 sets forth requirements for adapting a standard that minimizes heat-related illness and injury among workers working in indoor places by January 1, 2019. The provision states the following: “[t]he standard shall be based on environmental temperatures, work activity levels, and other factors.”

117. California *Labor Code* § 227.3(a) states “As used in this section, “recovery period” means a cooldown period afforded an employee to prevent heat illness.” Section 227.3(c) states “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

118. The applicable Wage Order section 15(A) provides the following: “The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.” Section 15(B) states “If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.”

119. Defendant failed to comply with California *Labor Code* §§ 6720, 227.3(a), and the applicable Wage Order, by maintaining an excessively hot working environment.

120. Plaintiff alleges that the facility was excessively hot with temperatures often reaching over 100 degrees Fahrenheit. Further, the facility did not have air conditioning.

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121. Defendant fails to provide Plaintiff and members of Plaintiff Class with a recovery period and fails to adopt standards to reduce heat-related illnesses, and as a result, Defendant has failed to maintain a safe indoor working environment.

122. Plaintiff and Class Members request recovery and penalties according to proof, as well as interest, attorneys' fees and costs pursuant to California *Labor Code*.

SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE ADEQUATE SEATING
IN VIOLATION OF WAGE ORDER 7

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

123. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the allegations contained above.

124. The applicable Wage Order, section 14, and regulations pertaining to Plaintiff, and members of the Plaintiff Class requires that all working employees be provided with suitable seats when the nature of work reasonably permits the use of seats. The Wage Order further requires that when employees are not engaged in the active duties of their employment and the nature of the work require standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

125. By way of example, only, Plaintiff has been employed by Defendant in a position which requires her to be standing for the duration of her shift, which is typically between four (4) to thirteen (13) hours. The only opportunity for Plaintiff to sit is during her rest and meal breaks, which are also typically missed or short.

126. Plaintiff alleges, on information and belief, that the same conditions exist as to other Class Members who are employed in positions where the work requires long periods of standing.

127. The work in positions, such as laborers, and other similar positions, is conducive to allowing employees to sit in appropriate seating either while performing their duties or during those times when the work flow subsides and the employees are waiting to perform additional duties.

128. Despite the requirements of the Wage Order and regulations pertaining to such

positions, Defendant has not and does not provide employees in these positions with adequate seating.

129. California *Labor Code* § 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. By failing and refusing to provide seating to Plaintiff and other Class Members in violation of the applicable Wage Order Section 14, Defendant has violated and continue to violate California *Labor Code* § 1198.

130. Wherefore, Plaintiff and Class Members are entitled to the penalties provided by law for violation of the Wage Order and regulations, and all other related remedies, in the amount to be determined at the time of trial.

EIGHTH CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA

BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

131. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

132. Section 17200 of the California *Business and Professions Code* prohibits any unlawful, unfair or fraudulent business act or practice.

133. Plaintiff brings this cause of action in a representative capacity on behalf of the general public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and monetary damages because of Defendant's actions.

134. The actions by Defendant as herein alleged amount to conduct which is unlawful and a violation of law. As such, said conduct amounts to unfair business practices in violation of California *Business and Professions Code* § 17200, et seq.

135. Defendant's conduct as herein alleged has damaged Plaintiff and the members of the Plaintiff Class by denying them wages due and payable, by failing to provide proper meal and rest breaks, and by failing to pay all wages due in a timely manner at the time of termination (for the Terminated Sub Class). Defendant's actions are thus substantially injurious to Plaintiff and the members of the Plaintiff Class, causing them injury in fact and loss of money.

1 136. Because of such conduct, Defendants have unlawfully and unfairly obtained monies
2 due to the Plaintiff and the members of the Plaintiff Class.

3 137. All members of the Plaintiff Class can be identified by reference to payroll and related
4 records in the possession of the Defendants. The amount of wages due to Plaintiff and members of the
5 Plaintiff Class can be readily determined from Defendants' records. The Class Members are entitled
6 to restitution of monies due and obtained by Defendant during the Class Period as a result of
7 Defendants' unlawful and unfair conduct.

8 138. During the Class Period, Defendant committed, and continues to commit, acts of unfair
9 competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and among other
10 things, engaging in the acts and practices described above.

11 139. Defendant's course of conduct, acts, and practices in violation of the California law as
12 mentioned in each paragraph above constitutes a separate and independent violation of § 17200, etc.,
13 of the *Business and Professions Code*.

14 140. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully denied
15 lawfully earned and unpaid wages outweighs the utility, if any, of Defendant's policies and practices
16 and, therefore, Defendant's actions described herein constitute an unfair business practice or act within
17 the meaning of *Business and Professions Code* § 17200.

18 141. Defendant's conduct described herein threatens an incipient violation of California's
19 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
20 threatens or harms competition.

21 142. Defendant's course of conduct described herein further violates California *Business*
22 *and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

23 143. The unlawful, unfair, and fraudulent business practices and acts of Defendant as
24 described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were
25 wrongfully denied the timely and full payment of wages due to them.

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1 **PRAYER FOR RELIEF**

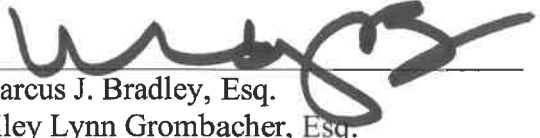
2 WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

- 3 1. An order that the action be certified as a class action;
- 4 2. An order that counsel for Plaintiff be appointed class counsel;
- 5 3. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class
- 6 and disgorgement of all profits from the unlawful business practices of Defendant;
- 7 4. For compensatory damages;
- 8 5. For penalties pursuant to California *Labor Code* §§ 200, 218.5, 226, 226.7, 226.3;
- 9 6. For interest accrued to date;
- 10 7. For costs of suit and expenses incurred herein pursuant to California *Labor Code*
- 11 §§ 226 and 1194;
- 12 8. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 226, and 1194;
- 13 and,
- 14 9. A declaratory judgment that Defendants have knowingly and intentionally violated the
- 15 following provisions of law:
- 16 a. California *Labor Code* §§ 1194, 510, by failing to pay all wages owed;
- 17 b. California *Labor Code* § 226, by failing to provide the information required
- 18 with each payment of wages;
- 19 c. California *Labor Code* §§ 201-203, by failing to pay all wages when due and
- 20 by willfully failing to make timely payment of the full wages due to workers who quit
- 21 or have been discharged;
- 22 d. California *Labor Code* § 226.7 by failing to provide meal and rest breaks
- 23 mandated by law;
- 24 e. California *Labor Code* §§ 6720, 226.7 for failing to adopt standards to
- 25 minimize indoor heat-related illnesses;
- 26 f. California *Labor Code* § 1198 by failing to provide adequate seating; and
- 27 g. California *Business & Professions Code* §§ 17200-08 by violating the
- 28 provisions set forth herein above; and

1 10. For all such other and further relief that the Court may deem just and proper.

2
3 DATED: July 20, 2020

BRADLEY/GROMBACHER LLP
LAW OFFICES OF SAHAG MAJARIAN II

4
5 By: 

6 Marcus J. Bradley, Esq.
7 Kiley Lynn Grombacher, Esq.
8 Lirit A. King, Esq.
9 Sahag Majarian II, Esq.

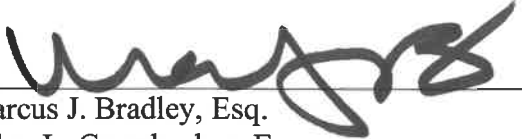
Attorneys for Plaintiff

10 **JURY DEMAND**

11 Plaintiff demands a trial by jury on all issues so triable as a matter of right.

12 DATED: July 20, 2020

BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II

13
14 By: 

15 Marcus J. Bradley, Esq.
16 Kiley L. Grombacher, Esq.
17 Lirit A. King, Esq.
18 Sahag Majarian II, Esq.

Attorneys for Plaintiff