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Superior Court of California
County of Fresno
By: C. York, Deputy

Attorneys for Plaintiff

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

MARIA CHAVARIN DE GAMEZ, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

CALIFORNIA FRUIT BASKET, INC., a
California corporation; MELKONIAN
ENTERPRISES, INC., a California
corporation; and DOES 1 through 100,
Defendants.

Case No.: 20CECG02531

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
1194, AND 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Maria Chavarin De Gamez (“Plaintiff”), on behalf of herself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“FAC”) against California Fruit Basket, Inc., a California corporation; Melkonian Enterprises,
4 Inc., a California corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), and on
5 information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business & Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12,
10 1194, 1194.2, 1197, 1198, 2698 *et seq*; and Industrial Welfare Commission Wage Order 8 (“Wage
11 Order 8”), in addition to seeking declaratory relief and restitution. This Complaint is brought
12 pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 this Court's jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
17 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
18 County of Fresno. One or more of the Defendants own, maintain offices, transact business, have
19 agent(s) within the County of Fresno, and/or otherwise are found within the County of Fresno,
20 and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198; California

Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 8, which sets employment standards for Industries Handling Products After Harvest.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by employing employees to process, and ship agricultural commodities in the United States, and employed Plaintiff and other, similarly-situated non-exempt employees within Fresno County and the state of California and, therefore, were (and are) doing business in Fresno County and the State of California.

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

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

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

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

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

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants are in the agricultural business and employ non-exempt employees to
5 process, ship, and market agricultural goods, including dried fruits. Plaintiff commenced
6 employment with Defendants as a non-exempt employee around May 2009. Plaintiff generally
7 worked Monday through Friday from 6:30 a.m. until 3:30-4:00 p.m. and occasionally worked on
8 Saturdays from 5:00 a.m. until 1:30 p.m. Plaintiff was tasked with the job of working in the
9 dehydration line in the packing department. Plaintiff's duties included packing boxes of
10 dehydrated fruit, weighing boxes, changing pallets, sorting fruits, and placing the fruits into the
11 appropriate machines. Between 2009 and 2017, Plaintiff and other non-exempt employees had
12 their time allegedly recorded by a foreperson on site who was in exclusive possession of the time
13 records. Plaintiff and other non-exempt employees would then be made to sign off on the hours
14 presented to them by the foreperson at the end of each week. On information and belief, Plaintiff
15 alleges that Defendants did not employ any actual timekeeping practices to ensure Plaintiff and
16 other non-exempt employees' actual hours worked were properly recorded, which resulted in
17 systematic underpayment of wages. Defendants implemented a time clock system to record
18 employee's hours after 2017; however, even with the advent of a proper way to keep track of
19 time, Defendants still failed to accurately record the actual time worked by Plaintiff and other
20 non-exempt employees through their use of improper rounding practices. As discussed below,
21 Plaintiff usually worked considerably more time per shift than she was credited by Defendants.

22 **Shortened/Late Meal Periods**

23 10. Defendants also did not provide Plaintiff and other non-exempt employees with a
24 legally complaint first meal period when they worked shifts in excess of 6.0 hours. Specifically,
25 Plaintiff and other non-exempt employees would be required to be back in line and ready to return
26 to work exactly thirty minutes after they were released for their meal periods. At no point during
27 their employment with Defendants were Plaintiff and the other non-exempt employees made to
28 clock in and out for their meal periods. As Plaintiff and the other non-exempt employees had to

properly wash their hands and put on all of their work equipment before they recommenced work, their meal periods were functionally and unlawfully shortened on a daily basis. Defendants were not only aware of, but actively facilitated and required this practice. Further, Defendants failed to provide second meal periods when non-exempt employees worked shifts in excess of 10.0 hours. Upon information and belief, Defendants' forepersons did not accurately record the beginning and ending of each meal period on the timecards prior to 2017. Further, after the formal timekeeping system was implemented after 2017, Defendants still unlawfully engaged in the practice of automatically deducting thirty minutes from Plaintiff and other non-exempt employee's time sheets regardless of whether or not they received a full thirty-minute meal period. Lastly, on those occasions when Plaintiff and other non-exempt employees were made to work on Saturdays, they would often be made to take their meal period after their fifth hour worked despite the fact that their shifts were scheduled for 8.5 hours. Despite Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to their uniform and unlawful practices, Defendants, on information and belief, never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

Shortened Rest Periods

11. Plaintiff and other non-exempt employees were not provided all legally required rest periods. Specifically, Plaintiff and other non-exempt employees would not be permitted to leave the premises for their rest periods, as such their rest periods were not duty-free. Additionally, as with meal periods, Plaintiff and other non-exempt employees would have their rest periods shortened by virtue of Defendants policies dictating that employees must be in line and ready to work by the end of their rest breaks. Wage Order 8, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of pay at their

regular rate for each missed rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or another mechanism for the payment of rest period premiums in the event Plaintiff and other non-exempt employees were not authorized to take lawful rest periods.

Off-The-Clock

12. Defendants have also failed to record employees' total hours worked each workday accurately. Specifically, from 2009 until 2017, Defendants' forepersons would maintain timecards for all non-exempt employees, but on information and belief, such timecards did not accurately reflect the times that employees began and ended each workday, which resulted in the regular shaving of hours off of Plaintiff and other non-exempt employees' timesheets. Additionally, once a formal timekeeping system was implemented after 2017, Defendants engaged in the systemic unlawful practice of utilizing a rounding mechanism that is not neutral or even-handed, and/or only compensates non-exempt employees for scheduled times as opposed to time actually worked. These practices resulted in the systemic underpayment of wages to Plaintiff and other non-exempt employees. As a result, Defendants failed to ensure that Plaintiff and other non-exempt employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Plaintiff and other non-exempt employees received proper overtime wages for all overtime hours worked, including overtime payment for hours worked over 8.0 in a workday and over 40.0 in a workweek, in compliance with Wage Order 8.

Failure to Provide Seating

13. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. Defendants failed to provide Plaintiff and other non-exempt employees with seats in violation of Wage Order 8 § 14, which states, "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." It was only when Plaintiff was late in her pregnancy that she was provided a chair. No other employees at Defendants' facility were provided chairs at any point during Plaintiff's employment. By failing to provide Plaintiff and other non-exempt employees with seats in violation of Wage Order 8 § 13, Defendants violated Labor Code § 1198.

1 **Failure to Provide Accurate Wage Statements**

2 14. As a result of Defendants' failure to accurately compensate Plaintiff and other
3 non-exempt employees all minimum and overtime wages, and failure to provide all required meal
4 periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants have
5 maintained inaccurate payroll records, and issued inaccurate wage statements. Furthermore,
6 Plaintiff's wage statements are facially deficient as the wage statements failed to list the address
7 and full legal name of the legal entity that is the employer.

8 **Waiting Time Penalties**

9 15. As a further result of Defendants' failure to pay all minimum and overtime wages,
10 and failure to provide all required meal periods and authorize all rest periods or pay premium pay
11 in lieu thereof, Defendants failed to pay all wages owed to Plaintiff upon her separation of
12 employment from Defendants.

13 **CLASS ACTION ALLEGATIONS**

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

- 16 a. The Rest Period Class consists of all current and former non-exempt employees of
17 Defendants in California who worked at least one shift in excess of 3.5 hours
18 during the four years immediately preceding the filing of this lawsuit through the
19 present;
- 20 b. The Off-The-Clock-Class consists of all Defendants' current and former non-
21 exempt employees in California who were not permitted to record their actual
22 hours worked, during the four years immediately preceding the filing of the lawsuit
23 through the present;
- 24 c. The Overtime Wage Class consists of all current and former non-exempt
25 employees of Defendants in California who were not compensated at one and one-
26 half times their regular rate of pay for: (i) hours worked over 8.0 in a workday
27 and/or (ii) hours worked over 40.0 in a workweek during the four years
28 immediately preceding the filing of this lawsuit through the present;

d. The Meal Period Class consists of all current and former non-exempt employees of Defendants in California who: (i) worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work, and who do not have a corresponding meal period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present;

e. The Wage Statement Class consists of all members of the Rest Period Class, Off-The-Clock Class, Overtime Class, and/or Meal Period Class who received a wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present; and

f. The Waiting Time Class consists of all Defendants' formerly employed members of the Rest Period Class, Off-The-Clock Class, Overtime Class, and/or Meal Period Class who separated from employment during the three years immediately preceding the filing of this lawsuit through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants paid at least the minimum wages owed for all hours worked to members of the Off-The-Clock Class pursuant to Labor Code §§ 118.2, 1194,

1194.2, and 1197;

- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 and Wage Order 8 by requiring members of the Overtime Wage Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Off-The-Clock Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- v. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- vi. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' meal and rest period policies and practices, timekeeping policies and practices, wage statement, policies with respect to providing seating for employees, and payment of final wages policies and practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to her or her eligibility for recovery or as to the amount of her or her damages.

20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged

herein, Plaintiff, like the members of the Classes, was paid on an hourly basis, was subject to Defendants' meal and rest period and timekeeping policies and practices, was furnished with inaccurate and incomplete wage statements, was not provided suitable seating, and was not paid all wages earned at the time of her separation of employment.

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

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal

determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

24. Wage Order 8, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Off-The-Clock Class for all hours actually worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 8.

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

26. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Off-The-Clock Class have sustained economic damages, including but

1 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
2 entitled to recover economic and statutory damages and penalties and other appropriate relief as
3 a result of Defendants' violations of the California Labor Code and Wage Order 8.

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

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES**

12 **(AGAINST ALL DEFENDANTS)**

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

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

18 30. At all times relevant herein, Defendants were required to properly compensate
19 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
20 Labor Code § 1194 and Wage Order 8. Wage Order 8, § 3 requires an employer to pay overtime
21 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
22 in the Wage Order.

23 31. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
24 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
25 Class at one and one-half times their regular rate of pay for such hours.

26 32. The foregoing policies and practices are unlawful and create entitlement to
27 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
28 premiums owing, including interest thereon, statutory and civil penalties, and attorneys' fees and

costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 8, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 8, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

35. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 8, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

37. Wage Order 8, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

38. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods.

39. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums

owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

42. Furthermore, Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to conform to Labor Code §226 *et seq* by unlawfully failing to include the address of the legal entity that is the employer.

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

44. Defendants' failures created an entitlement to Plaintiff and members of the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226, including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit pursuant to Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

46. This cause of action is brought pursuant to Labor Code §§ 201-203, which require

an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of her/her intent to quit. In the event the employee provides less than 72 hours of notice of her/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

47. Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, unpaid amounts for rest and recovery periods and non-productive time, underpaid overtime and minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

all final wages upon separation of employment.

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

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

53. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

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

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

56. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited

to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, the Off-The-Clock-Class, and other similarly aggrieved employees in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff, the Meal Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Penalty Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- e. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to pay non-exempt employees all earned wages at least twice during

each calendar month in violation of Labor Code § 204;

h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174; and

i. Failing to provide Plaintiff and other aggrieved employees with suitable seating in violation of Labor Code § 1198 and Wage Order 8 § 14.

57. August 28, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 57 (a)-(i). The LWDA has not provided notice that it intends to investigate the violations, and therefore Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

3 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
4 226, *et seq.*;

5 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
6 Labor Code § 201-203;

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

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

24 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
25 Code § 218.6 and Civil Code §§ 3287 and 3289;

26 13. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
27 Procedure § 1021.5 and all other applicable statutes; and

28 14. For such other and further relief the Court may deem just and proper.

1
2 Dated: November 3, 2020

Respectfully submitted,
STANBURY BROWN LAW

3
4 By:



Daniel J. Brown
Attorneys for Plaintiff

5
6 **DEMAND FOR JURY TRIAL**

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

8
9 Dated: November 3, 2020

Respectfully submitted,
STANBURY BROWN LAW

10
11 By:



Daniel J. Brown
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On November 3, 2020 I served the document listed below on the parties in this action as follows:

- First Amended Class and Representative Action Complaint

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 3, 2020 at Venice, California.



Daniel J. Brown

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SERVICE LIST

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